

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No.110/MP/2016**

**Coram:**

**Shri A.K. Singhal, Member**

**Shri A.S. Bakshi, Member**

**Dr. M.K. Iyer, Member**

**Date of Order: 3<sup>rd</sup> April, 2018**

**In the matter of**

Petition under Section 79 (1) (f) read with Section 79 (1) (c) of the Electricity Act, 2003 seeking compensatory and declaratory relief under the Transmission Service Agreement dated 6.8.2013 on account of 'Change in Law' and 'Force Majeure' events.

**And**

**In the matter of**

Purulia and Kharagpur Transmission Company Ltd.  
C-2, 2<sup>nd</sup> Floor, The Mira Corporate Suites,  
1 & 2 Ishwar Nagar, Okhla Crossing  
Mathura Road, New Delhi - 110065

**...Petitioner**

Vs.

1. Power Grid Corporation of India Ltd.  
Central Transmission Utility  
B-9, Qutub Institutional Area,  
Katwaria Sarai, New Delhi – 110016
2. Bihar State Electricity Board  
Vidhut Bhawan, 4<sup>th</sup> Floor  
Bailey Road, Patna, Bihar-800021
3. Maithon Power Limited MA-5  
Gogna Colony  
Maithan Dam Post Office  
Distt: Dhanbad  
Jharkhand-828207
4. Grid Corporation of Orissa Limited  
Shahid Nagar  
Bhubaneshwar-751007

5. Power Grid Corporation of India Limited  
HVDC Pusauli, "Saudamini" Plot No.2  
Sector-29, Gurgaon-122001
6. Damodar Valley Corporation  
DVC Tower, Maniktala Civic Tower  
VIP Road, Kolkata-700054
7. Power Department, Govt. of Sikkim  
Kazi Road  
Gangtok-737101
8. Jharkhand State Electricity Board  
Engineering Building  
HEC, Dhurwa  
Ranchi-834004
9. West Bengal State Electricity Distribution Company Limited  
Bidyut Bhawan, Bidhan Nagar  
Block DJ, Sector-II, Salt Lake City  
Kolkata-700091

.... Respondents

**Parties present :**

Shri Sitesh Mukherjee, Advocate, PKTCL  
Shri Gautam Chawla, Advocate, PKTCL  
Shri T.A.N. Reddy, PKTCL  
Shri Harshit Gupta, PKTCL  
Shri Rohit Gera, PKTCL

**ORDER**

The Petitioner, Purulia and Kharagpur Transmission Company Limited (PKTCL), has filed the present petition seeking compensatory and declaratory reliefs under the Transmission Services Agreement dated 6.8.2013 (TSA) on account of force majeure and change in law events affecting the construction of the transmission project. The Petitioner has made the following prayers:

“(a) Allow the present Petition and declare that the delay in finalization of termination point at Purulia end on part of WBSETCL, resultant delay in initiation of forest diversion proposal for Purulia district, and delay in grant of force clearance for PR Line constitutes a Force Majeure event under Article 11 of the TSA..

(b) Declare the events i.e. (i) change of termination point at Purulia end,

(ii) cancellation of initial forest diversion proposal and submission of revised forest diversion proposal owing to revision of termination point due to intersection with Turganala dam, and (iii) interim arrangement for termination of PR Line owing to delay in commissioning of bays by WBSETCL, respectively constitute Change in Law under Article 12 of the TSA.

(c) Declare that the inordinate delay in obtainment of forest clearance for the KC Line, and the loss of execution days on account of frequent bandhs, naxalite attacks, bad law and order situation in the states of Jharkhand and West Bengal), constitute Force Majeure events under Article 11 of the TSA.

(d) Declare that the interim arrangement for connectivity of KC Line owing to non-commissioning of the bays at Kharagpur, constitute Change in Law under Article 12 of the TSA.

(e) Grant an extension in the Scheduled Commercial Operation Date of the project to the date of actual commercial operation, and waive any liabilities or any consequences under the TSA owing to the uncontrollable delay.

(f) Without prejudice to the above prayer relating to extension of Scheduled Commercial Operation Date of the project to the date of actual commercial operation, allow the payment of transmission charges from the date of Scheduled Commercial Operations Date i.e. 8.4.2016.

(g) Allow interest during construction and overhead costs from the date of Scheduled Commercial Operations Date i.e. 8.4.2016 until actual commissioning of the project.

(h) Pass any such further order(s) as this Hon'ble Commission may deem fit in the facts and circumstances of the present case."

2. The Petitioner is a fully owned subsidiary of Sterlite Grid Limited (SGL) which was selected as a successful bidder through the international tariff based competitive bidding under Section 63 of the Electricity Act, 2003 (hereinafter referred to as 'the Act') to establish the following transmission systems on Build, Own, Operate and Maintain (BOOM) basis and to provide transmission service to the Long Term Transmission Customers (LTTCS) of the Project:

(a) Purulia- Ranchi 400 kV Quad D/C transmission line from the Purulia Pumped Storage Power Project in West Bengal to PGCIL's Ranchi 765/400 kV sub-station (PR

Line);

(b) Kharagpur-Chaibasa 400 kV Quad D/C transmission line (KC Line).

3. The Petitioner was incorporated as a special purpose vehicle by PFC Consulting Ltd. (PFCCL) as part of Tariff Based Competitive Bidding process for implementing the project on BOOM basis. SGL participated in the competitive bidding process conducted by PFCCL and on emerging as the successful bidder, Letter of Intent (LOI) was issued by PFCCL to SGL on 17.9.2013. In accordance with the bidding documents, SGL acquired 100% of the shareholding in the Petitioner Company by executing a Share Purchase Agreement with PFCCL and the Petitioner Company on 9.12.2013. The Petitioner entered into the Transmission Service Agreement with eight Long Term Transmission Customers. The Petitioner approached the Commission for grant of transmission licence in Petition No. 326/TL/2013 and for adoption of tariff of the transmission system in Petition No. 130/2010. The Commission in its order dated 30.5.2014 in Petition No. 326/TL/2013 granted transmission licence to the Petitioner for inter-State transmission of electricity and in order dated 20.8.2014 in Petition No. 325/TT/2013 adopted the tariff of the transmission system.

4. As per the TSA, both PR Line and KC Line were to achieve commercial operation within 28 months from the effective date (9.12.2013) i.e. by 8.4.2016. The Petitioner has submitted that it started developing the project with effect from 9.12.2013 and the detailed construction progress was being reported on a monthly basis to the Central Electricity Authority in terms of Article 4.1(g) of the TSA. However, due to various unforeseen and uncontrollable events that took place subsequent to the award of the Project, the Petitioner was not able to complete the Project by the

Scheduled date of commercial operation i.e. 8.4.2016. According to the Petitioner, the execution of the PR Line and KC Line has been affected on account of the following force majeure and/or change in law events:

- (a) Delay in finalization of termination point at Purulia end of PR Line, and resultant delay in application for forest diversion proposal;
- (b) The shifting of the termination point from the existing Purulia PSP 400 kV GIS sub-station to proposed New Purulia PSP 400 kV sub-station;
- (c) Cancellation of initial forest land diversion application and resubmission of revised forest diversion application due to inter-section with the proposed Turganala in respect of PR Line;
- (d) Delay in grant of forest clearance in case of PR Line;
- (e) Interim arrangement for termination of the PR line due to delay in the commissioning of New Purulia sub-station bays;
- (f) Delay in commissioning of KC Line on account of bad law and order situation in the States of Jharkhand and West Bengal;
- (g) Delay in receipt of forest clearance in respect of KC Line;
- (h) Interim arrangement for the termination of KC Line due to non-commissioning of the bays at Kharagpur; and
- (j) Change in tax rates in respect of materials and services deployed for execution of PR Line and KC Line.

5. The Petitioner has submitted that as a result of the force majeure and Change in Law events, there has been a cumulative loss of atleast 14 months of working time on the date of filing the application which has rendered it impossible to complete the project within the timelines stipulated in the TSA. The petitioner has submitted that on account of force majeure events, it is entitled to (i) compensatory relief under Article 11.7 (b) of the TSA, (ii) Interest During Construction and overhead costs with effect from 8.4.2016 up to the date of the commercial operation of the project; and (iii) extension of the SCOD till the date of commercial operation of the lines. With regard to Change in Law, the Petitioner has submitted that while bidding, it has taken into account the consents, clearances and permits required for the project. However, owing to the subsequent uncontrollable events, there has been a substantial deviation in the manner of obtainment of the requisite consents, clearances and permits in as much as there have been addition/change of terms and conditions which lead to additional work and resultant cost over-run. Therefore, the Petitioner is entitled to an appropriate increase in the non-escalable transmission charges receivable by it under Article 12.2.1 of the TSA. Petitioner has stated that KC line was actually commissioned w.e.f 13.5.2016 and has enclosed the letter issued to LTTCs.

6. The petition was admitted on 15.9.2016 and notice was issued to the respondents to file their replies. The Petitioner was also directed to file the following information:

- i. PERT Chart detailing the different activities envisaged to be undertaken to complete the project.
- ii. Activities which have been affected by the Force Majeure.

- iii Dates of commencement and dates of cessation of force majeure and whether notices have been given as per the provisions of the TSA.
- iv. Details of the items of expenditure on which the enhanced taxes and duties have been paid, supported by Auditor's Certificate.
- v. All correspondences regarding grant of forest clearance.

7. The Petitioner vide affidavit dated 7.10.2016 has filed the aforesaid information.

(a) With regard to PERT Chart, the Petitioner has submitted that for the development and implementation of the Project, it has undertaken various activities and tasks, *inter alia*, the acquisition of SPV, application for the requisite licenses and proposals from various governmental agencies including forest diversion proposal, design and engineering activities for the Project, purchase of equipment for the setting up of the lines and erection activities. The details of said activities have been furnished by the Petitioner at the Annexure A1 of the affidavit dated 7.10.2016.

(b) Petitioner has submitted the details of the activities undertaken by it for the completion of the PR Line and KC Line which were adversely affected by Force Majeure events as under:

**A. PR Line**

(i) Delay in route finalization and rework due to shifting of coordinates at Purulia end: In the final approval of the coordinates/route that was given by WBSETCL, the termination point of the PR Line was shifted to a location which was approximately 2 kms away from the existing switchyard. This shifting of the termination point severely impacted the performance of the Petitioner's obligations under TSA. As the

construction of the line as was contingent upon the finalization of the coordinates/route, the shifting of coordinates delayed the finalization of the route which in turn caused delays in construction of the PR Line. Moreover, the new termination point was a deviation from the one provided for in the bid documents which led to addition in the scope of work for the Petitioner.

(ii) Rework due to change of route alignment for avoiding intersection of the Project with the proposed Turganala Dam: While the Petitioner's application for diversion of forest land for the construction of the PR line was at an advanced stage of approval, WBSETCL informed the Petitioner that some of the tower locations of the PR Line were not at a safe distance from the boundary of the Turganala Dam which was proposed to be constructed in that area. The Petitioner was, therefore, constrained to alter its route, cancel its forest diversion application (while it was at an advanced stage), and re-submit the forest diversion proposal.

(iii) Delay in Forest Clearances: The forest clearance for the Ranchi and Khunti and Purulia districts was severely delayed. In fact, the tree cutting permission for the Ranchi district was received as late as May 2016 which was much after the scheduled commercial operation date under the TSA. This resulted in further delaying the execution of the Project by the Petitioner.

(iv) Delay in procurement of the transmission line material: The aforementioned events were beyond the control of the Petitioner i.e. the



delay in the conducting of the land survey, delay in the finalization of coordinates/route, delay in forest approvals and the consequent delay in identifying the type of tower required for the Project, led to delay in the procurement of transmission line materials for the erection of the transmission lines.

(v) Additional scope of work for the Petitioner: In view of the delay in commissioning caused by the above factors, as an interim measure, the Petitioner was directed to carry out alignment of the line to terminate through a Line-In-Line-Out of Purulia PSP- Arambagh line. This interim arrangement was an addition to the scope of work for no fault of the Petitioner.

(vi) Delay in the application for grant of Section 164 approval: There was substantial delay in finalization of bay location and corridor finalization by WBSETCL for termination of the PR Line at Purulia end despite repeated follow-ups by the Petitioner. This resulted in delay in conducting the land survey for identification of forest land for construction of the Project. This ultimately prevented the Petitioner from applying for forest clearance to carry out the execution work at site.

## **B. KC Line**

(i) Obstruction to execution of works on ground: On account of the various unforeseeable events i.e. frequent bandhs, *naxalite* attacks, bad law and order situation in the States of Jharkhand and West Bengal, there was a substantial loss of execution days in the

commissioning of the KC Line.

(ii) Loss of working time due to delay in granting of forest clearance and tree cutting permission: Despite repeated follow-ups by the Petitioner and the CEA, there was a delay in obtainment of forest clearance and tree cutting permission from the Ministry of Environment & Forests ("**MoEF**"). Without the said clearances, the Petitioner could not proceed with the execution of the works for the Project and the delay in according of these clearances by the MoEF resulted in a substantial loss of working time to the Petitioner.

(iii) Additional scope of work for the Petitioner: Owing to the inability and delay on part of the PGCIL to complete the bays at Kharagpur, as an interim measure, the Petitioner was directed to interconnect the KC Line by LILO circuit of the Kharagpur- Kolaghat 400 kV D/C line near Kharagpur end, till the bays at the Kharagpur sub-station were commissioned. This interim arrangement was an addition in the scope of work for no fault of the Petitioner.

(iv) Delay in commencement of construction activity: On account of repeated delays on the part of the governmental agencies in granting approvals and clearances, the construction activities undertaken by the Petitioner for erection, stringing and building of foundation etc. were severely impacted and delayed.

(c) With regard to the dates of commencement and dates of cessation of Force Majeure and whether notices have been given as per the provision of the TSA, the Petitioner has submitted that for all the unforeseeable events, beyond the control of the Petitioner, the Petitioner sent force majeure notice ("FM Notice") to all LTTCs duly intimating them that the delay in the execution of the Project was beyond its control. The Petitioner has submitted a tabular representation of the commencement of force majeure events and their cessation along with the corresponding FM Notices sent for it.

(d) With regard to details of the items of expenditure on which the enhanced taxes and duties have been paid and supported by Auditor's Certificate, the Petitioner has submitted that subsequent to the award of the Project to the Petitioner, there has been increase in various taxes post the date of bid. The revision in the tax rates was not contemplated at the time of bid submission and involves additional financial burden on the Petitioner for reasons which are beyond the control of the Petitioner. The Petitioner has placed on record the Auditor's Certificate certifying various taxes, their rates at the time of the bid and subsequent increase of tax rate post-bid along with details of the items on which enhanced tax and duties have been paid by the Petitioner.

(e) The Petitioner has submitted a list of correspondence pertaining to the grant of forest clearance for the PR Line and the KC line as under:

Forest clearance correspondence pertaining to PR Line					
S. No.	Date	Letter Ref No	Letter Addressed by	Letter Addressed to	Subject/Content

1.	19.4.14	PKTCL/SGL/F-2/D-52	PKTCL	PCCF cum Nodal Officer Van Bhawan, Ranchi	Diversion of 37.881 Ha of forest land for laying 400KV D/C PR line in favour of PKTCL in Khunti forest division in Jharkhand state
2.	21.4.14	PKTCL/SGL/F-2/D-59	PKTCL	PCCF cum Nodal Officer, Van Bhawan Ranchi	Diversion of 21.618Ha of forest land for laying 400KV D/C PR line in favour of PKTCL in Khunti forest division in Jharkhand state
3.	4.6.14	539	PCCF, Van bhawan, Ranchi	DFO, Khunti	Forwarding of FDP to DFO, Khunti
4.	4.6.14	538	PCCF, van bhawan Ranchi	DFO, Khunti	Forwarding of FDP to DFO, Ranchi
5.	20.2.15	PKTCL/SGL/F-2/D.111	PKTCL	PCCF, Kolkata	Diversion of 17.69Ha of forest land for construction of 400 KV PR Line in Purulia district of WB
6.	13.7.15	PKTCL/SGL/F-1/D.141	PKTCL	C.E., WBSETCL	Request to keep the original Route of PKTCL keeping various Statutory Clearance already obtained by PKTCL based on the original route.
7.	22.7.15	CE/CPD/PKTCL/4 10	CE, WBSETCL	PKTCL	Regarding tower Locations may not keep safe electrical clearance from Lower Dam of proposed Turganala Pump Storage Project.
8.	14.9.15		Mr. TAN Reddy	MD, WBSEDCL	Regarding submission of revised route

					avoiding WBSEDCL proposed dam
9.	24.9.15	FP/JH/Trans/1484 2/2014/116	MoEF, Ranchi	PS Deptt. of forest, Ranchi	Stage I clearance for 59.501 Ha for 400 KV PR line in Ranchi and Khunti Distt. Of Jharkhand
10.	10.10.15	CE/CPD/PKTCL/54	WBSETCL	PKTCL	Clearance of route alignment for proposed new PPSP-Ranchi 400 KV D/C line
11.	23.10.15	PKTCL/F-2/D-235	PKTCL	DFO, Khunti	Stage I compliances for Khunti FDP
12.	30.10.15	PKTCL/SGL/F-2/PR/Compliance/01	PKTCL	DFO, Ranchi	Stage I compliances for Khunti FDP
13.	30.10.15	PKTCL/FDP/PR/Khunti/01/D.239	PKTCL	DFO, Khunti	Request for working and tree cutting permission in forest land
14.	9.11.15	PKTCL/SGL/PR/Purulia/01	PKTCL	Addl PCCF, Kolkata	Regarding resubmission of FDP for 12.288 Ha for construction of 400 KV PR line in Purulia district of WB
15.	19.11.15	PKTCL/SGL/F-2/D-250	PKTCL	DFO, Khunti	Request for commencement of work in forest area and tree cutting permission after stage I accorded by MoEF&CC and compliance submission by PKTCL
16.	25.11.15	PKTCL/F-2C/D.259	PKTCL	DFO, Purulia	Information regarding the cancellation of WB state forest proposal for 17.695 Ha and resubmission of revised proposal of 12.288 Ha of forest area

17.	30.11.15	PKTCL/SGL/F-2/D-261	PKTCL	Principal Secretary, MoEF, Govt of Jharkhand	Tree cutting and working permission in DFO Khunti jurisdiction is urgently required for completion of project
18.	3.12.15	PKTCL/SGL/D-265	PKTCL	DFO, Ranchi	Submission of undertaking on behalf of PKTCL for payment of additional amount of CA and medicinal plantations.
19.	8.12.15	PR/FDP/Ranchi/2015/01	PKTCL	Principal Secretary, MoEF, Govt of Jharkhand	Request for appointment of briefing about project status and requesting for commencement of work and tree cutting permission for PKTCL projects.
20.	29.12.15	PKTCL/F-2/D-291	PKTCL	DFO, Khunti	Compliance of Stage I conditions for Khunti forest area (pillaring works)
21.	6.1.16	Van-Bhumi 11/2015/50	Principal Secretary	PCCF, Van Bhawan Ranchi	Working permission for 59.501 Ha for 400 KV PR line in Ranchi and Khunti Distt. Of Jharkhand
22.	7.1.16	PKTCL/F-2/D-295	PKTCL	DFO, Khunti	Start of construction activity in Khunti forest area
23.	13.1.16	PKTCL/F-2/D-304	PKTCL	DFO, Ranchi	Start of construction activity in Khuntiforest area
24.	21.1.16	107	DFO office, Khunti	Van Nigam Authority	Tree cutting permission for Khunti division
25.	29.4.16	PKTCL/SGL/F-2/D-373	PKTCL	DFO, Ranchi	Updated compliance status of conditions in principal approval accorded by MoEF in favour of 400KV D/C PR line
26.	29.4.16	1126	DFO Ranchi	PKTCL	Reduction of Nos. of trees to be felled in Ranchi forest area

27.	5.5.16	1131	DFO office Ranchi	Van Nigam Authority	Tree cutting permission for Ranchi division
28.	22.9.16	5-WBC093/2016- BHU	MoEF, Bhuwaneshwar	Principal Secretary, Forest Deptt, Kolkata	Stage I WB clearance

Forest clearance correspondence pertaining to KC Line					
S.No.	Date	Letter Ref No.	Letter addressed by	Letter Addressed to	Subject/Content
1.	30.05.14	PKTCL/SGL/F-2/O-61	PKTCL	PCCF cum Nodal Officer, Bhubanswar	FDP Submission-Diversion of 2.698 Ha of forest land for laying 400 kV O/C Kharagpur to Chaibasa Transmission line in favor of Purulia & Kharagpur Transmission Company limited (PKTCL) in Rairangpur Forest Division in state of Odisha
2.	04.06.14	PKTCL/SGL/F-2/D-68	PKTCL	PCCF & Head of Forest Force, Kolkata	FOP Submission-Diversion of 13.049 Ha of forest land for laying 400kV D/C Kharagpur to Chaibasa Transmission line in favor of Purulia & Kharagpur Transmission Company Limited (PKTCL) in Kharagpur Forest Division in state of West Bengal
3.	09.06.14	PKTCL/SGL/F-2/D-65	PKTCL	PCCF cum Nodal Officer, Ranchi	FOP Submission-Diversion of 4.497 Ha of forest land for laying 400kV D/C Kharagpur to Chaibasa Transmission line in favor of Purulia & Kharagpur Transmission Company limited (PKTCL) in Saraikela Forest Division in state of Jharkhand

4.	23.06.14	PKTCL/SGL/F-2/D-82	PKTCL	PCCF cum Nodal Officer, Ranchi	FDP Submission-Diversion of 28.577 Ha of forest land for laying 400kV D/C Kharagpur to Chaibasa Transmission line in favor of Purulia&Kharagpur Transmission Company Limited (PKTCL) in East Singhbhum Forest Division in state of Jharkhand
5.	15.07.14	CEA/PS/PSM/135/76-78	CEA	Addl Chief Secretary, Forest Dept.	Proposal for Forest Clearance
6.	17.11.14	No 781-83	CEA	Principal Forest Conservation Officer	Proposal for forest clearance
7.	17.07.15	WBC083/2015-BHU	Conservator of Forests (Central)- MoEF, Bhubaneswar	Principal Secretary, Kolkata	Stage-1 of Kharagpur Forest Division.
8.	04.09.15	No.5-ORB2S4/2015-BHU	Conservator of Forests (Central)- MoEF, Bhubaneswar	Principal Secretary, Bhubaneswar	Stage-1 of Kharagpur Forest Division.
9.	24.09.15	No. FP/JH/TRANS/14843/201	Deputy Conservator of Forests (Central)- MoEF, Ranchi	Principal Secretary, Ranchi	Stage-1 of Saraikela & East Singhbhum District
10	24.09.15	2017/8-5(FCA)/2015	DFO, Kharagpur	PKTCL	Tree Cutting Permission of Kharagpur Division
11	08.10.15	3729	DFO, Rairangpur	PKTCL	Tree Cutting Permission of Rairangpur Division
12	21.12.15	Van Bhumi-14/2015-6410	Secretary Jharkhand	PCCF Jharkhand	Tree Cutting Permission of Saraikela& Jamshedpur Division



8. The Petitioner was directed to file the bid documents and a map indicating the original and the revised coordinates. The Petitioner vide affidavit dated 25.11.2016 has filed the requisite information as under:

(a) With regard to bid documents, the Petitioner has submitted that the final approval of the coordinates/route for the termination of the PR Line was given by WBSETCL only on 3.12.2014. In the said approval, WBSETCL shifted the termination point of the PR Line to a location which was approximately 2 kms away from the existing switchyard. This amounted to (i) a deviation from the coordinates provided in the bid documents, and (ii) a change in scope of the PR Line. The factual timeline of the change in termination point of the PR Line has been explained at paragraphs C II of the Petition. The Petitioner has submitted that the coordinates as per the bid documents for the end point at Purulia of the PR Line were Easting 406962, Northing 2565233; as is evident from page 22 of the preliminary survey report, conducted by the Power Finance Corporation Ltd. for the construction of the PR Line ("Preliminary Survey Report"). However, WBSETCL shifted the end point at Purulia to a new set of coordinates, i.e. Easting 405308, Northing 2565193; a location which was approximately 2 kms away from the existing switchyard. Therefore, this shifting of coordinates clearly amounts to a change in the scope of work originally agreed to be carried out by the Petitioner, in as much as it is a deviation from the bid document, and amounts to a Change in Law under the Article 12.1.1 of the TSA, entitling the Petitioner to claim relief in accordance with Article 12.2.1 of the TSA. The Petitioner has submitted that such a change in the termination point neither could have been anticipated at the time of submission of bid documents, nor could have been mitigated by

the Petitioner since it was outside its control. The Petitioner has placed on record a copy of the Preliminary Survey Report showing the original coordinates of the PR Line at the time of bidding at Annexure A-1 to the affidavit dated 25.11.2016.

(b) With regard to Map indicating the original and the revised coordinates of the PR Line, the Petitioner has submitted that the shifting of the termination point of the PR Line severely impacted the performance of the Petitioner's obligations under TSA, in as much as (i) construction of the line was contingent upon the finalization of the route, and this delay in finalizing the route caused resultant delays in construction of the PR Line; and (ii) it was a deviation from the bid documents where the PR Line was to terminate at the existing PPSP 400KV GIS switchyard and not the new PPSP 400KV sub-station. This deviation of the termination of the PR line from the original coordinates, as stipulated in the Bid Documents, to a new set of coordinates has been illustrated in a satellite map, a copy of which has been attached with Annexure A-2 of the affidavit dated 25.11.2016.

9. Power Grid Corporation of India Limited (PGCIL) vide its affidavit dated 11.12.2017 has submitted as under:

(a) The Eastern Region Strengthening Scheme (ERSS-VII) project was finalised in the 10<sup>th</sup> and 13<sup>th</sup> (1<sup>st</sup> of 2012) Meeting of Standing Committee on Power System Planning of Eastern Region held on 14.9.2009 and 8.2.2012 respectively wherein the representatives of West Bengal were present and also in 21<sup>st</sup> ERPC meeting held on 21.4.2012.

(b) The scheme was approved for implementation through Tariff Based Competitive Bidding (TBCB) route in the 29<sup>th</sup> meeting of Empowered Committee on Transmission held on 15.6.2012.

(c) Implementation of both transmission lines was processed further through TBCB route by PFCCL (Bid Process Co-ordinator). The Transmission Service Agreement (TSA) was signed on 6.8.2013 with lead LTTC as BSEB (now BSPHCL) and the Special Purpose Vehicle (SPV) company along with project was acquired by the successful bidder viz. Sterlite Grid Ltd. on 9.12.2013. The transmission licence was granted to the petitioner on 30.5.2014.

(d) Implementation of line bays for termination of the transmission lines at Ranchi-New(PowerGrid), Purulia PSP(West Bengal), Chaibasa (PowerGrid) and Kharagpur (West Bengal) and associated reactive compensation was entrusted to PGCIL. The line bays at Purulia PSP (West Bengal) and Kharagpur (West Bengal) were being implemented by WBSETCL as deposit works of PGCIL.

(e) The Petitioner vide its letter dated 22.12.2014 informed PGCIL that there has been substantial delay of 12 months due to non-finalization of co-ordinates of Purulia PSP by WBSETCL (STU of West Bengal) for termination of PR line. PGCIL vide its letter dated 18.2.2015 with copy to CEA advised the Petitioner to take up the matter suitably with Lead Procurer/CERC under intimation to CEA and CTU.

(f) WBSEDCL vide its letter dated 13.6.2015 informed PGCIL that lot of surveys and engineering works by both WBSEDCL and WBSETCL have been carried out for accommodating 2 nos. of Line bays at Purulia PSP end,

but suitable space for the same was not found. WBSEDCL further informed that WBSETCL has invited tender for construction of New Purulia PSP 400 kV GIS switchyard and the line bays should be constructed there instead of that at Purulia PSP. In the 13<sup>th</sup> SCM held on 8.2.2012, WBSETCL did not mention the space constraint at Purulia PSP for termination of PRLine.

(g) In the meeting held under the chairmanship of Member (PS) at CEA on 25.6.2015, the matter of non-availability of space at Purulia PSP was discussed and it was agreed to shift the PR Line to New Purulia PSP in view of space constraint at Purulia PSP. In the said meeting, an interim arrangement was agreed for commissioning of the line in case of delay in implementation of New Purulia PSP substation by West Bengal. In the said meeting, WBSETCL was also requested to provide coordinates of the new sub-station. In the said meeting, the representative of the Petitioner informed that after finalization of coordinates at new substation of WBSETCL near Purulia PSP for termination of line, PKTCL will start construction of line and shall complete the same by March, 2016. As per transmission licence, the completion schedule of the lines was 28 months from the effective date of 9.12.2013, which works out to 8.4.2016. As per the deliberations of the meeting held on 25.6.2015, WBSETCL vide letter dated 27.6.2015 informed the requisite coordinates (copy of the letter is placed at Annexure-12 of the petition). In the letter dated 27.6.2015 WBSETCL also mentioned that the same coordinates were communicated to PKTCL through its letter dated 18.6.2014.

(h) Progress of Ranchi-New (PGCIL)-Purulia PSP (West Bengal) 400 kV D/c line was further reviewed in the meetings held under the Chairmanship of

Member (PS) at CEA at 22.9.2015 and 9.2.2016 wherein PKTCL informed that expected commissioning schedule of the line is April, 2016 and March, 2016 respectively.

(i) In the subsequent meeting held under the Chairmanship of Member (PS) at CEA on 29.3.2016, implementation of the Ranchi-New (PGCIL)-Purulia PSP (West Bengal) 400 kV D/c line and New Purulia PSP substation was reviewed. In the said meeting, PKTCL informed that the line construction is going on in full swing and only 50 foundations out of 302 are pending. PKTCL assured that the line would be ready by 31.5.2016. WBSETCL informed commissioning schedule of New Purulia PSP as November 2016. In view of mismatch in completion of line by PKTCL and associated substation by WBSETCL, it was agreed in the meeting that interim arrangement approved in the meeting held at CEA on 25.6.2015 may be utilized for line commissioning. The interim arrangement was regularized in the 18<sup>th</sup> meeting of Standing Committee on Power System Planning of ER held on 18.6.2016.

(j) The Ranchi-New (PGCIL)-Purulia PSP (West Bengal) 400 kV D/c line was taken into service through interim arrangement on 6.1.2017 (as per monthly grid report of ERLDC, POSOCO for the month of Jan 2017). With commissioning of new 400 kV New Purulia PSP sub-station of WBSETCL including 2 nos. 400 kV line bays, the interim arrangement has been removed & line has been terminated at New Purulia PSP w.e.f. 24.7.2017 (as per monthly grid report of ERLDC, POSOCO for the month of July 2017).

### **Analysis and Decision:**

10. We have heard the learned counsel for the Petitioner and perused documents

on record. In the light of the prayers in the petition and the available documents and submissions by the Petitioner and the PGCIL, the following issues arise for our consideration:

- (a) Whether the Petitioner has complied with the provisions of the TSA before approaching the Commission?
- (b) Whether the claims of the Petitioner under Force Majeure event and Change in Law are admissible?
- (c) What reliefs should be granted to the petitioner in the light of the answer to the above issues?

The above issues have been dealt with in succeeding paragraphs.

**Issue No. 1: Whether the Petitioner has complied with the provisions of the TSA before approaching the Commission?**

11. The Petitioner has claimed relief under Article 11(Force Majeure) and Article 12 (Change in Law) of the TSA. Article 11.5.1 of the TSA provides as under:

**11.5 Notification of Force Majeure Event**

11.5.1 The Affected Party shall give notice to the other Party of any event of Force Majeure as soon as reasonably practicable, but not later than seven (7) days after the date on which such Party knew or should reasonably have known of the commencement of the event of Force Majeure. If an event of Force Majeure results in a breakdown of communications rendering it unreasonable to give notice within the applicable time limit specified herein, then the Party claiming Force Majeure shall give such notice as soon as reasonably practicable after reinstatement of communications, but not later than one (1) day after such reinstatement.

Provided that such notice shall be a pre-condition to the Affected Party's entitlement to claim relief under this Agreement. Such notice shall include full particulars of the event of Force Majeure, its effects on the Party claiming relief and the remedial measures proposed. The Affected Party shall give the other Party regular reports on the progress of those remedial measures and such other information as the other Party may reasonably request about the Force Majeure.

11.5.2 The Affected Party shall give notice to the other Party of (i) the cessation of the relevant event of Force Majeure; and (ii) the cessation of the effects of such event of Force Majeure on the performance of its rights or obligations under this Agreement, as soon as practicable after becoming aware of each of these cessations."

Article 12.3.1 of the TSA provides as under:

“12.3.1 If the TSP is affected by a Change in Law in accordance with Article 12.1 and wishes to claim relief for such Change in Law under this Article 12, it shall give notice to Lead Long TERM Transmission Customer of such Change in Law as soon as reasonably practicable after becoming aware of the same.”

Under Article 11.5.1 of the TSA, an affected party shall give notice to the other party of any event of Force Majeure as soon as reasonably practicable, but not later than seven days after the date on which the party knew or should have reasonably known of the commencement of the event of force majeure. It further provides that such notice shall be a pre-condition to the affected party's entitlement to claim relief under the TSA. Under Article 12.3.1 of the TSA, the affected party is required to give notice to the other party about the occurrence of change in law.

12. The Petitioner gave the following notices to the LTTCs including lead LTTC:

(a) Notice dated 22.12.2014 under Article 11.3 of the TSA (Force Majeure) regarding the delay of 12 months due to non-finalization of co-ordinates of Purulia PSP by WBSETCL and delay in application of Forest Diversion proposal due to non-finalisation of Terminal Point at Purulia end.

(b) Notice dated 20.4.2016 regarding delay in application of Forest clearance for Ranchi and Khunti and Purulia District (in respect of PR Line and KC Line) and regarding frequent Bandhs, Naxalite attack, bad law and order situation.

(c) Notices dated 24.8.2015, 13.5.2016, 15.6.2016 and 2.6.2016 regarding increase in tax [CVD (for custom duty calculation), Central Excise Duty, Service Tax, (inclusive of Swachh Bharat Cess and Krishi Kalyan Cess) under Article 12 of the TSA.

13. No response was received by the Petitioner from the LTTCs in this regard. Thereafter, the Petitioner has approached the Commission by filing the present petition. In our view, the petitioner has complied with the requirement of TSA regarding prior notice to the LTTCs before approaching the Commission.

**Issue No. 2: Whether the claims of the Petitioner under Force Majeure event and Change in Law admissible?**

14. The provisions of the TSA with regard to force majeure are extracted as under:

**“11 FORCE MAJEURE**

**11.1 Definitions**

11.1.1 The following terms shall have the meanings given hereunder.

**11.2 Affected Party**

11.2.1 An Affected Party means any of the Long Term Transmission Customers or the TSP whose performance has been affected by an event of Force Majeure.

11.2.2 An event of Force Majeure affecting the CTU/STU, or any agent of the Long Term Transmission Customers, which has affected the Interconnection Facilities, shall be deemed to be an event of Force Majeure affecting the Long Term Transmission Customers.

11.2.3 Any event of Force Majeure shall be deemed to be an event of Force Majeure affecting the TSP only if the Force Majeure event affects and results in, late delivery of machinery and equipment for the Project or construction, completion, commissioning of the Project by Scheduled COD and/or operation thereafter ;

**11.3 Force Majeure**

A ‘Force Majeure’ means any event or circumstance or combination of events and circumstances including those stated below that wholly or partly prevents or unavoidably delays an Affected Party in the performance of its obligations under this Agreement, but only if and to the extent that such events or circumstances are not within the reasonable control, directly or indirectly, of the Affected Party and could not have been avoided if the Affected Party had taken reasonable care or complied with Prudent Utility Practices:

- (a) **Natural Force Majeure Events:** Act of God, including, but not limited to drought, fire and explosion (to the extent originating from a source external to the Site), earthquake, volcanic eruption, landslide, flood, cyclone, typhoon, tornado, or



exceptionally adverse weather conditions which are in excess of the statistical measures for the last hundred (100) years,

**(b) Non-Natural Force Majeure Events:**

i. Direct Non–Natural Force Majeure Events:

- Nationalization or compulsory acquisition by any Indian Governmental Instrumentality of any material assets or rights of the TSP; or
- the unlawful, unreasonable or discriminatory revocation of, or refusal to renew, any Consents, Clearances and Permits required by the TSP to perform their obligations under the RFP Project Documents or any unlawful, unreasonable or discriminatory refusal to grant any other Consents, Clearances and Permits required for the development/ operation of the Project, provided that a Competent Court of Law declares the revocation or refusal to be unlawful, unreasonable and discriminatory and strikes the same down; or
- any other unlawful, unreasonable or discriminatory action on the part of an Indian Governmental Instrumentality which is directed against the Project, provided that a Competent Court of Law declares the action to be unlawful, unreasonable and discriminatory and strikes the same down.
- ii. Indirect Non - Natural Force Majeure Events
- act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action; or

\* radioactive contamination or ionising radiation originating from a source in India or resulting from any other Indirect Non Natural Force Majeure Event mentioned above, excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Site by the Affected Party or those employed or engaged by the Affected Party; or

- industry wide strikes and labour disturbances, having a nationwide impact in India.

**11.4 Force Majeure Exclusions**

11.4.1 Force Majeure shall not include (i) any event or circumstance which is within the reasonable control of the Parties and (ii) the following conditions, except to the extent that they are consequences of an event of Force Majeure:

- (a) Unavailability, late delivery, or changes in cost of the machinery, equipment, materials, spare parts etc. for the Project;
- (b) Delay in the performance of any Contractors or their agents;
- (c) Non-performance resulting from normal wear and tear typically experienced in transmission materials and equipment;
- (d) Strikes or labour disturbance at the facilities of the Affected Party;
- (e) Insufficiency of finances or funds or the Agreement becoming onerous to perform; and

- (f) Non-performance caused by, or connected with, the Affected Party's:
- i. negligent or intentional acts, errors or omissions;
  - ii. failure to comply with an Indian Law; or
  - iii. breach of, or default under this Agreement or any Project Documents.

#### **11.6 Duty to perform and duty to mitigate**

To the extent not prevented by a Force Majeure Event, the Affected Party shall continue to perform its obligations as provided in this Agreement. The Affected Party shall use its reasonable efforts to mitigate the effect of any event of Force Majeure as soon as practicable.

**11.7 Available Relief for a Force Majeure Event** Subject to this Article 11 (a) no Party shall be in breach of its obligations pursuant to this Agreement except to the extent TSA for Selection of Transmission Service Provider for that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure Event;

(b) every Party shall be entitled to claim relief for a Force Majeure Event affecting its performance in relation to its obligations under this Agreement.

(c) For the avoidance of doubt, it is clarified that the computation of Availability of the Element(s) under outage due to Force Majeure Event, as per Article 11.3 affecting the TSP shall be as per Central Electricity Regulatory Commission (Terms & Conditions for Determination of Tariff) Regulations 2009 and related amendments from time to time, as applicable seven (7) days prior to the Bid Deadline. For the event(s) for which the Element(s)is/are deemed to be available as per Central Electricity Regulatory Commission (Terms and Conditions) Regulations for Order.

(d) For so long as the TSP is claiming relief due to any Force Majeure Event under this Agreement, the Lead Long Term Transmission Customer may, from time to time on one (1)day notice, inspect the Project and the TSP shall provide the Lead Long Term Transmission Customer's personnel with access to the Project to carry out such inspections, subject to the Lead Long Term Transmission Customer's personnel complying with all reasonable safety precautions and standards."

15. "Force Majeure" has been defined as any event or circumstance or combination of events and circumstances that wholly or partly prevents or unavoidably delays an Affected Party in the performance of its obligations under the TSA, but only if and to the extent that such events or circumstances are not within the reasonable control, directly or indirectly, of the Affected Party and could not have been avoided if the Affected Party had taken reasonable care or complied with Prudent Utility Practices. Force Majeure also includes Natural Force Majeure Events and Non-Natural Force Majeure Events and excludes the events covered under

Force Majeure Exclusions unless they are results of force majeure events. Further, the definition of force majeure provides that the Affected Party is entitled to the protection of force majeure to the extent the events or circumstances are not within the reasonable control of the Affected Party.

16. The provisions of Change in Law in the TSA are extracted as under:

“12.1.1 Change in Law means the occurrence of any of the following after the date, which is seven (7) days prior to the Bid Deadline resulting into any additional recurring/non-recurring expenditure by the TSP or any income to the TSP:

- the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law;
- a change in the interpretation or application of any Law by an Indian Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of Law;
- the imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier;
- a change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits;
- any change in the licensing regulations of the Appropriate Commission, under which the Transmission License for the Project was granted if made applicable by such Appropriate Commission to the TSP;
- any change in the Acquisition Price; or
- any change in tax or introduction of any tax made applicable for providing Transmission Service by the TSP as per the terms of this Agreement.

17. A combined reading of the above provisions would reveal that the Commission has the jurisdiction to adjudicate upon the disputes between the Petitioner and the Respondents with regard to “Change in Law” which occur after the cut-off date which is seven days prior to the bid deadline. The events broadly covered under Change in Law are following:

- (a) Any enactment, coming into effect, adoption, promulgation, amendment, modification or repeal, of any Law;
- (b) Any change in interpretation of any Law by a Competent Court of law, or Indian Governmental Instrumentality having the legal power for such interpretation; or
- (c) Imposition of a requirement for obtaining any consents, clearances and permits which was not required earlier;
- (d) A change in terms and conditions prescribed or inclusion of any new terms and conditions for obtaining consents, clearances and permits or the inclusion of new terms and conditions for obtaining such consents, Clearances and Permits;
- (e) Any change in the Commission`s Transmission Licence Regulations;
- (f) Any change in the Acquisition price;
- (g) Any change in tax or introduction of any tax made applicable for providing transmission service by the TSP as per the terms of the agreement.

In the light of the provisions of force majeure and change in law, the claims of the Petition have been examined.

**(i) Delay in finalization of termination point at Purulia end of PR Line and resultant delay in application for forest diversion proposal:**

18. The Petitioner has submitted that PR Line passed through certain forest land and the Petitioner was mandatorily required to apply for diversion of forest in order to

carry out the requisite construction activities (on forest land) in terms of the Forest (Conservation) Act, 1980, rules framed under the guidelines issued by the Ministry of Environment and Forests, Government of India. However, the Petitioner could apply for the diversion of forest land only after approval of start and end point coordinates of the PR Line. There was substantial delay in finalization of bay location and corridor finalization by WBSETCL for termination of PR Line. This substantial delay resultantly delayed the identification of forest land, which in-turn prevented the Petitioner from applying for forest clearance to carry out the execution work at site.

19. The Petitioner has submitted that it made serious efforts to execute the PR Line and through several in person meetings and correspondences dated 3.1.2014, 14.4.2014 and 27.5.2014 sought the co-ordinates of the termination point of the PR Line from WBSETCL. The Petitioner has submitted that WBSETCL vide its letter dated 18.6.2014 communicated to the Petitioner the coordinate/termination point which resulted in the shifting of the coordinate/termination point mentioned in the bid document by two kilometres. The final approval of the route was accorded by WBSETCL vide its letter dated 3.12.2014. The Petitioner has submitted that due to undue delay of 12 months on the part of WBSETCL in approval of the route alignment of the PR Line and finalization of the termination coordinates, it could not apply for requisite forest clearance. The Petitioner has submitted that the new termination point was a deviation from the one provided for in the bid documents and even the said coordinate was tentative and could undergo a change which led to addition in the scope of work for the Petitioner. Therefore, its case is covered under indirect non-natural force majeure event under Article 11.3 of the TSA and the Petitioner is entitled for relief accordingly.

20. PGCIL has submitted that implementation of line bays for termination of the PR Line and KC Line at Ranchi-New (POWERGRID), Purulia PSP (West Bengal), Chaibasa (POWERGRID) and Kharagpur (West Bengal) and associated reactive compensation was entrusted to PGCIL. The line bays at Purulia PSP (West Bengal) and Kharagpur (West Bengal) were being implemented by WBSETCL as deposit work of PGCIL. PGCIL has submitted that in the 13<sup>th</sup> SCM, WBSETCL did not mention the space constraint at Purulia PSP for termination of Ranchi-Purulia PSP line. The Petitioner vide its letter dated 22.12.2014 informed PGCIL that there has been substantial delay of 12 months due to non-finalization of co-ordinates of Purulia PSP by WBSETCL for termination of the PR Line. WBSEDCL vide its letter dated 13.6.2015 informed PGCIL that lot of survey and engineering works have been carried out by both WBSEDCL and WBSETCL for accommodating 2 nos. line bays at Purulia PSP end, but suitable space for the same was not found. WBSEDCL further informed that WBSETCL has invited tender for construction of New Purulia PSP 400kV GIS switchyard and the line bays would be constructed at New Purulia PSP instead of Purulia PSP. PGCIL has submitted that in the meeting held under the Chairmanship of Member (PS) at CEA on 25.6.2015, the matter of non-availability of space at Purulia PSP was discussed and it was agreed to shift the termination point of PR Line to New Purulia PSP in view of space constraint at Purulia PSP. In the said meeting, an interim arrangement was agreed for commissioning of the PR line in case of delay in implementation of New Purulia PSP sub-station by WBSETCL. In the meeting, WBSETCL was also requested to provide coordinates of the new substation and the representative of the Petitioner informed that after finalization of coordinates at new substation of WBSETCL near Purulia PSP for termination of line,

PKTCL will start construction of line and shall complete the same by March, 2016. PGCIL has submitted that as per the TSA, the transmission lines were to be completed within 28 months from the effective date of 9.12.2013 i.e. by 8.4.2016. As per the deliberations of the meeting held on 25.6.2015, WBSETCL vide its letter dated 27.6.2015 informed the requisite coordinates. In the said letter dated 27.6.2015, WBSETCL also informed that the same coordinates were communicated to PKTCL through its letter dated 18.6.2014.

21. We have considered the submissions of the Petitioner and PGCIL. The project was awarded to the Petitioner through the Tariff Based Competitive Bidding. As per the TSA, PR Line was to be terminated at Purulia PSP of WBSETCL. Though the implementation of line bays was within the scope of work of PGCIL, the work was entrusted by PGCIL to WBSETCL to be executed as deposit work. Accordingly, the Petitioner has been interacting with WBSETCL with regard to the construction of the sub-station for termination of the PR Line.

22. The Petitioner has submitted that due to change in location of the bays from Purulia PSP to New Purulia PSP, delay of 584 days have taken place for commercial operation of the PR Line (From 9.12.2013 when the Petitioner started developing its project to 16.7.2015 when the coordinates were approved in the Standing Committee). It is noted that WBSETCL vide its letter dated 18.6.2014 informed the Petitioner that due to space constraint at existing Purulia PSP, PR Line would be terminated at proposed New Purulia PSP 400kV sub-station which is located 2 kms away from existing Purulia PSP switchyard. WBSETCL further informed that the final gantry location would be finalized during joint site visit. There is nothing on record to show that joint site visit had indeed taken place. However, WBSETCL vide its letter

dated 3.12.2014 communicated its approval to the Petitioner about the route alignment of the PR line. The relevant portion of the said letter dated 3.12.2014 is extracted as under:

“Refer to above, clearance is hereby given to you for the Route Alignment of proposed 400 kV Baghmundi (Purulia) Ranchi transmission line for portions Angle Point R-1(Gantry Tower at proposed Baghmundi 400/220 kV sub-station WBSETCL) to R1-6 in line with your proposed Route indicated at TOPO SHEET No. 73 ¼.

This is for your intimation and necessary action please.”

As per the minutes of meeting taken by Member (PS), CEA on 25.6.2015 to review the progress of construction of 400 kV bays at PPSP for termination of PR Line, the issue of confirmation of co-ordinates of the bays for termination of PR Line was discussed. The Managing Director (WBSETCL) informed that there is space constraint at GIS switchyard of Purulia PSP for construction of 2 Nos. bays (400 kV) and the proposal for setting up of a new 400 kV sub-station close to Purulia PSP has been approved by WBSETCL Board and location of sub-station has been fixed. Member (PS), CEA advised WBSETCL to take up the matter of proposed new sub-station near Purulia PSP in the next committee meeting for its approval. The representative of the Petitioner informed that after finalization of co-ordinates at new-sub-station of WBSETCL near PSP, it will start construction of the PR Line and shall complete 400 kV D/C line by March, 2016.

23. From the above discussion, it is clear that though WBSETCL in its letter dated 18.6.2014 had informed about the coordinates of the bays at New Purulia PSP located at a distance of two kilometres. The coordinates of the New Purulia PSP was approved in the Standing Committee Meeting held on 26.7.2015. Since, the Petitioner was not intimated about the final coordinates of the bays where the PR Line would terminate, the Petitioner could not undertake the construction of last



phase of PR Line. Thus, the event was beyond the control of the Petitioner and is a force majeure event. This delayed the construction of the PR line.

**(ii) Shifting of the termination point from the existing Purulia PSP 400 kV GIS sub-station to proposed New Purulia PSP 400 kV sub-station-PR Line.**

24. The Petitioner has submitted that WBSETCL granted approval of the coordinates/routes on 3.12.2014. The Petitioner has submitted that final decision of shifting of the termination point at Purulia end from the existing Purulia PSP switchyard to the proposed Purulia PSP was agreed in the meeting held at CEA on 25.6.2015 between WBSETCL, WBSEDCL, PGCIL, PFC and PKTCL. WBSETCL vide its letter dated 27.6.2015 confirmed that the new sub-station would be located at a distance of 1.6 km from the point originally contemplated at the time of the bid and requested the CEA to arrange the meeting of the Standing Committee for Power System Planning in the Eastern Region for approval of the changed scheme. The coordinates of the new sub-station was approved by the Standing Committee on Transmission Planning in Eastern Region on 26.7.2015. The Petitioner has submitted that the subsequent revision of termination point to a location that was 1.6 kms. away from the termination point specified in the bid documents was a deviation from original scope of work and therefore, amounts to a Change in Law under the Article 12.1.1 of the TSA and accordingly, the Petitioner has claimed relief in accordance with Article 12.2.1 of the TSA.

25. Sub-clauses (3), (4) and (5) of Clause 2.14.2 of the RfP provide that the bidders shall inform themselves fully about the following:

“2.14.2.3 Bidders may visit the route of the Transmission Lines associated with the Project and the surrounding areas and obtain/verify all information which they deem fit and necessary for the preparation of their Bid.

2.14.2.4 The BPC has carried out a survey of the Transmission Lines associated with

the Project and shall provide each Bidder with its Survey Report of the Project. Bidders in their own interest should carry out required surveys and field investigation for submission of their Bid.

2.14.2.5 Failure to investigate the route of the Transmission Lines associated with the Project and to examine, inspect site or subsurface conditions fully shall not be grounds for a Bidder to alter its Bid after the Bid Deadline nor shall it relieve a Bidder from any responsibility for appropriately eliminating the difficulty or costs of successfully completing the Project."

A perusal of the above provisions of RfP reveals that though the BPC has carried out survey of the transmission lines, bidders are required to carry out survey and field investigation with regard to the routes of transmission lines for the purpose of submission of the bids. In the present case, there is no dispute about the route of the transmission line. But the length of the PR Line has increased as the line is to be connected to the bays of the sub-station which is located at a distance of 1.6 km from the site indicated in the RfP. Though there has been change in scope of work, the variation in route length is on account of space constraints in the existing Purulia PSP and not due to any change in law event. In our view, change in the coordinates of the terminating sub-station at New Purulia cannot be covered under any provision of change in law.

26. At this stage, we intend to make some pertinent observations with regard to the varying positions being taken by PGCIL with regard to the bays in Purulia PSP in the present petition and in Petition No.210/TT/2016. As per the TSA entered into by the Petitioner as a result of competitive bidding, the SCOD of PR Line is 8.4.2016. This line is to be connected to the bays in Purulia PSP at one end and Ranchi 765/400 kV sub-station (POWERGRID) at other end which means that the sub-stations are to be ready matching with the SCOD of 8.4.2016. However, as per Petition No.210/TT/2016, the investment approval was accorded on 24.3.2015 with a schedule commissioning period of 24 months which means that the SCODs of the

sub-stations are 24.3.2017 which is almost one year after the scheduled commissioning of PR Line. In this connection, observations of the Commission in order dated 24.7.2017 in Petition No. 210/TT/2016 are as under:

“3. The Investment Approval for the transmission project was accorded by the Board of Directors of the petitioner vide Memorandum No. C/CP/ERSS-IV dated 24.3.2015, at an estimated cost of `7135 lakh including an IDC of `396 lakh (based on December, 2014 price level). The project was scheduled to be commissioned within 24 months from the date of investment approval. Therefore, the scheduled date of commissioning of the transmission system was 23.3.2017. The scope of work covered under the "Eastern Region Strengthening Scheme VII" is broadly as follows:-

Transmission Lines:

1. 02 nos. 400 kV line bays at Purulia PSPP switchyard of West Bengal;
2. 2 nos. 400 kV line bays at Ranchi 765/400 kV Sub-station (POWERGRID);
3. 2 nos. 400 kV line bays at Kharagpur West Bengal;
4. 2 nos. 400 kV line bays at Chaibasa (POWERGRID);
5. 2x50 MVR (fixed) line reactors (with 400 ohm NGRs) at Ranchi end of Purulia; PSPP(West Bengal)-Ranchi 765/400kV (POWERGRID) 400 kV D/C line; and
6. 2x63 MVAR (fixed) line reactors (with 450 ohm NGRs) at Chaibasa end of Kharagpur (West Bengal)-Chaibasa(POWERGRID) 400 kV D/C line”

This is a clear case of mismatch of SCOD of the transmission line with the SCOD of the sub-station. PGCIL as CTU should have ensured that the transmission lines being executed through competitive bidding and sub-station being executed through PGCIL itself are commissioned in a matching timeframe. Further, PGCIL in Petition No. 210/TT/2016 had submitted that its sub-station was delayed on account of delay in completion of the transmission line being implemented under TBCB by the Petitioner. The relevant extract of the order dated 24.7.2017 is as under:

“13. The petitioner has submitted that the 400 kV D/C Purulia (WB)-Ranchi (PG) line under scope of Sterlite Ltd. and associated 02 Nos 400 kV line bays at Ranchi Sub- station under scope of Powergrid was issued NIT and

subsequently the check survey and forest proposal was submitted by Sterlite Limited with a completion schedule of April, 2016. Keeping in view the progress of the associated transmission line, the petitioner placed LOA in April, 2015 to commission the associated Bays with the completion schedule of June, 2016. However, the line was delayed due to force majeure event and it was not possible to further delay the associated bays. The petitioner completed the work in time schedule and commissioned the bays on 17.10.2016. With the delay in the commissioning of the 400 kV D/C Purulia (WB) - Ranchi (PG) line, the 02 nos. of 400 kV bays at Ranchi Sub-station was not utilized and the same was beyond the control of the petitioner. Therefore, the petitioner has prayed for approval of COD of 02 nos. of 400 kV line bays w.e.f 17.10.2016 under proviso 4(3)(ii) of the 2014 Tariff Regulations."

It is however, noticed that while non-completion of the transmission line is on account of delay in completion of the Purulia sub-station which is within the scope of work of PGCIL, in Petition No. 210/TT/2016 PGCIL has claimed COD of the Ranchi sub-station as 17.10.2016 under Proviso to Regulation 4(3)(ii) of the 2014 Tariff Regulations on the ground that the sub-station could not be put to use as the transmission line executed by the Petitioner was not ready. We caution PGCIL to take necessary measures to avoid such mismatch in future and also to bring to notice of the Commission, the entire facts while seeking the tariff and not only a part of it.

**(iii) Cancellation of initial forest land diversion application and resubmission of revised forest diversion application due to inter-section with the proposed Turganala Dam-PR Line:**

27. The Petitioner has submitted that while the Petitioner's application for diversion of forest land for the construction of the PR line was at an advanced stage of approval, WBSETCL vide its letter dated 8.5.2015 intimated the Petitioner that WBSEDCL has finalised the location of lower dam for its proposed Turganala Pump Storage Project and some of the tower locations of the PR Line are not at a safe distance from the boundary of the Turganala Dam which are required to be shifted.

WBSETCL requested the Petitioner to consult PGCIL and WBSEDCL for route alignment issues near Turganala Dam. The Petitioner vide its letter dated 13.7.2015 requested WBSETCL to follow the already approved route principally due to certain reasons i.e. (i) the route alignment had already been approved by WBSETCL on 3.12.2014 and post such approval, the Petitioner had initiated steps for forests diversions, FRA compliance, obtained approval under Section 164 of the Act. (ii) Since, the Petitioner's forest application was at an advanced stage, any change in the route alignment at such point in time would necessarily result in changes to the forest diversion application and the FRA clearance which would take another 12 months delaying the completion of the PR Line. However, WBSETCL, vide its letter dated 22.7.2015 requested the Petitioner for relocation of the route of the PR Line. Accordingly, the Petitioner conducted the joint site visit along with the representatives of PGCIL and WBSETCL on 31.8.2015 to carry out the route alignment. The Petitioner, vide its letter dated 14.9.2015 submitted a revised route to WBSETCL for PR Line, as well as the sub-station coordinates to avoid the intersection of the line with the Turganala Dam. After discussion with WBSEDCL and WBSETCL on the proposed alternate route, WBSETCL vide its letter dated 14.9.2015 accorded clearance to the new route.

28. According to the Petitioner, due to change in the route alignment of the PR line, there was a change in the quantum of forest area required. Therefore, the Petitioner vide its letter dated 9.11.2015 made a fresh proposal to Divisional Forest Officer, Purulia Division for approval of forest diversion proposal of 12.228 Hc. under Purulia forest division and sought cancellation of the initial forest proposal dated 20.2.2015. The Divisional Forest Officer vide its letter dated 10.12.2015 cancelled

the original forest clearance proposal. The forest clearance for the Purulia District for the construction of the PR Line was granted on 22.9.2016 and tree cutting permission was granted on 28.10.2016.

29. The Petitioner has submitted that deviation from the agreed coordinates on the basis of which the forest application was submitted led to a loss of working time of 14 months in completion of PR Line. The Petitioner has submitted that since, the forest clearance proposal is an essential consent/clearance, it amounts to Change in Law under Article 12.1.1 of the TSA.

30. We have considered the submission of the Petitioner. The TSA provides the following as Change in Law with regard to “consent, clearances and permits”:

“-the imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier;  
-a change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits;”

The quantum that arises for consideration is whether making a fresh application for forest clearance which involved change in quantum of forest area required falls under any of the provisions of the TSA as quoted above.

31. Clause 1.5 of the Frap lists out the tasks to be carried out by the BPC. Clause 1.5(a) provides as under:

“1.5 The BPC has initiated development of the Project and shall be responsible for the tasks in this regard as specified here under:

(a) Provide to the bidders a Survey Report for the project at least ninety days prior to the bid deadline. The Survey Report will contain information regarding the transmission line, i.e. voltage level, line configuration (i.e. S/C or D/C), indicative route alignment, conductor type, conductor configuration and type of terrain likely to be encountered. Provided that neither the BPC, its authorized representative, any of the LTTCs, nor their directors, employees or advisors/consultants make any

representation or warranty, express or implied, or accept any responsibility or liability, whatsoever, in respect of any statements or omissions made in the Survey Report, or the accuracy, completeness or reliability of information contained therein, and shall incur no liability under any law, statute, rules or regulations as to the accuracy, reliability or completeness of such Survey report, even if any loss or damage is caused to the Bidders by any actor omission on their part.

Perusal of the above provisions of RfP reveals that the BPC is required to provide the bidders with the Survey Report of the project which shall contain information regarding the transmission line. i.e. voltage level, line configuration (i.e. S/C or D/C), indicative route alignment, conductor type, conductor configuration and type of terrain likely to be encountered. In the context of the present petition, the term “indicative route alignment” is important. The term has not been defined in the RfP. However, the scope of the term can be gathered from the meaning ascribed in the dictionary. The word “indicative” means “suggestive or giving indication of”, the word “route” means “way taken from one place to another” and the word “alignment” means “to ally; to place in or bring into line” Thus the term “indicative route alignment” in ordinary dictionary meaning would mean suggestive route of the transmission line from one place to another to ally with the existing ones. The “indicative route alignment” in the Survey Report should include the entire route of the transmission lines with both start and end points. The RfP contains a general disclaimer and a specific disclaimer under clause 1.5(a) which seek to exempt the BPC or its authorized representative, any of the LTTCs or their directors, employees or advisors/consultants from any responsibility or liability in respect of the statement or omissions made in the Survey Report or the accuracy, completeness or reliability of information contained in the Survey Report. The perspective bidders are required to carry out their own survey and factor all requirements including the requirement for obtaining forest clearance while quoting the bid. Further, after award of the bid, the TSP is required to finalize the route alignment in consultation with all concerned authorities and execution of the transmission line.

32. The Survey Report shared by the BPC with the prospective bidders contained a tentative route alignment with a general disclaimer with regard to the accuracy and authority. The bidders were expected to carry out their own survey and decide the route before qualify the bid and factor all eventualities including that of forest clearance. Further, after award of the bid, the TSP is required to finalize the route alignment in consultation with all concerned. The Petitioner finalized the route alignment in consultation with all concerned and obtained approval of WBSETCL. The route alignment was further change on account of the decision about the location of the lower dam of the proposed Turganala Pump of WBSEDCL which involved fresh forest clearance. Both instances of route alignment took place after the cut-off date. Therefore, the case will not be covered under “imposition of a requirement for obtaining any consents, clearances or permits was not required earlier” nor under “change in the terms and conditions prescribed for obtaining any consents, clearances and permits or inclusion of any new terms and conditions for obtaining such consents, clearances and permits”. The event is also not covered under any of the other provisions of the change in law under the TSA.

**(iv) Delay in grant of forest clearance:**

33. The Petitioner has submitted that consequent to the award of the project and subsequent acquisition of SPV, the Petitioner has undertaken necessary steps for securing grant of forest clearance in accordance with the procedure prescribed in the Forest (Conservation) Rules, 2003 and the forest guidelines. The Petitioner initiated a survey of the transmission line in December, 2013 to determine the line-length falling in forest areas. The Petitioner submitted the proposal for forest clearance for Ranchi, Khunti and Purulia districts on 21.4.2014, 9.5.2014 and 20.2.2015



respectively to PCCF Cum Nodal Officer, Ranchi. The Principal Chief Forest Conservator vide its letter dated 4.6.2014, requested Divisional Forest Officer to conduct site inspection of the proposed forest land and to provide all the records, site plan, requisite report along with opinion in terms of the Forest Conservation Act, 1980. He was also requested to submit NOC of concerned Deputy Commissioner about the use of forest bushes land included in 3.124 heccts out of the total forest land to be diverted for the project. The Ministry of Environment, Forests and Climate vide its letter dated 24.9.2015 accorded in-principle approval for diversion of 59.501 ha forest land for construction of PR Line in Ranchi and Khunti district of Jharkhand subject to condition that after receipt of the compliance report on fulfilment of the conditions from the State Government, formal approval would be issued in this regard under Section 2 of Forest (Conservation) Act, 1980. The Petitioner vide its letter dated 21.10.2015 submitted a compliance report to the Divisional Forest Officer with request to forward the same to PCCF Cum Nodal Officer, Jharkhand and requested to grant permission of tree cutting and work execution as per the guidelines of the Ministry of Environment, Forest and Climate Change dated 28.8.2015 and accord final approval as per Section 2 of the Forest (Conversation) Act, 1980. The Petitioner vide letter dated 30.10.2015 informed the Divisional Forest Officer, Khunti Jharkhand that as per MOEF& CC guidelines dated 28.8.2015 that in order to facilitate speedy execution of Projects involving linear diversion of forest land (such as laying of transmission line), the in-principle approval under the Forest (Conversation) Act, 1980 issued by the Central Government may be deemed as the working permission for tree cutting and commencement of work. It was also informed that working permission for this may be granted once the required funds for compensatory afforestation, net present value wildlife conservation plant and all such

other compensatory levies in the in-principle approval are realized from the user agency. The Petitioner requested to grant permission for tree cutting and commencement of work starting from Tamar Forest Range and ending to Karra forest range for timely completion of PR line.

34. Subsequently, the Petitioner vide its letter 25.11.2015 requested the Divisional Forest Office, Purulia (West Bengal) that considering the guidance provided by Additional Chief Secretary (Energy) West Bengal and subsequent letter received from WBSEDCL and WBSETCL, the previous forest diversion proposal of 17.695 hectare stands null and void and re-submitted the Forest Diversion Proposal for 12.299 hectare for construction of 400 kV PR Line in Purulia District of West Bengal. The Petitioner vide its letter dated 30.11.2015 sought permission from the Principal Secretary, Ministry of Environment and Forest, Government of Jharkhand for tree cutting and commencement of work. DFO, Khunti (Government of Jharkhand) vide its letter dated 6.1.2016 granted work permission for the period of one year on the notified forest land. The Petitioner vide its letter dated 7.1.2016 informed the Divisional Forest Officer, Khunti Forest Division about starting of the construction activities in Forest areas and requested to arrange for the cutting of trees in forest areas to complete the work by March, 2016. The Petitioner vide its letter dated 13.1.2016 made similar request to Divisional Forest Officer, Ranchi. Divisional Forest Officer, Ranchi Forest Division vide its letter dated 29.4.2016 directed the Petitioner to submit the proposal in the light of Paras 6 and 13 (a) (b) (c) (d) (e) of the Government of India letter dated 24.9.2015, so that it could be considered and to submit the compliance report of all the conditions imposed by the Government of India. The Divisional Forest Officer, Ranchi Forest Division vide its letter dated 17.5.2016 granted tree cutting permission and requested the Sub-

divisional Manager Micro Forest Products Project Zone to take action for surrendering of 5267 trees falling in the notified forest land and 464 trees falling in the forest bushes. The Divisional Forest Officer, Purulia Forest Division vide its letter dated 28.10.2016 granted tree cutting permission to the Petitioner on the notified forest land.

35. On perusal of the documents on record, it is noted that in case of forest clearance of Ranchi, Khunti and Purulia, the Petitioner got the tree cutting permissions on 17.5.2016, 6.1.2016 and 28.10.2016 respectively. The forest clearance for the Ranchi, Khunti and Purulia districts was severely delayed. In fact, the tree cutting permission from DFO Ranchi was received as late as May, 2016 which was much after the scheduled commercial operation date (SCoD) under the TSA. We have already discussed the reasons for the delay in approval from DFO Purulia in para 27 to 32 of this order. The detailed description in getting Stage-I Approval and tree cutting permission from the date of submission of forest diversion proposal for 400kV D/C Purulia-Ranchi Transmission line is as below:

Transmission Line	Purulia-Ranchi 400kV D/C Line.		
Description	Ranchi Division	Khunti Division	Purulia Division
Date of FDP Submission	21.4.2014	9.5.2014	May 2015
Stage-I Approval	24.9.2015	24.9.2015	22.9.2016
Date of getting Treecutting Permission	17.5.2016	6.1.2016	28.10.2016
Overall Delay in getting Tree Cutting Permission	13 Months	8 Months 7 Days	6 months 6 days

36. Forest clearance is a mandatory requirement for laying the transmission lines in the forest areas. The Petitioner took up the matter with the authorities for forest clearance. Therefore, the time taken for grant of forest clearance which was beyond the reasonable control of the Petitioner and has affected the project implementation

and thereby prevented the Petitioner from performance of its obligations under the TSA i.e. to declare commercial operation of the project by SCOD and provide transmission services to the LTTCs. In our view, the Petitioner's project is affected by force majeure event on account of delay in forest clearance which has unavoidably delayed the Petitioner in the performance of its obligations under the TSA.

37. Since, the Petitioner could not have commenced the work lying in forest area without forest clearance, we are of the view that the Petitioner is affected by force majeure event on account of delay in getting forest clearance from the FDP submission till the time forest clearance was granted as the same was beyond the control of the Petitioner. We observe that Petitioner received last forest clearance on 28.10.2015 after which it took approximately 70 days in completion of trial run which is found to be reasonable.

38. Combination of events of force majeure as determined by us in Paras 23, 31 and 36 has delayed COD. The Petitioner achieved the completion of trial run of the PR Line on 7.1.2017 as against the SCOD of 8.4.2016, resulting in a delay of 274 days. In our view, the delay of 274 days is not attributable to the Petitioner and is due to various factors not within control of the Petitioner and is covered under force majeure.

**(V) Interim arrangement for termination of the PR Line due to delay in the commissioning of New Purulia sub-station bays:**

39. The Petitioner has submitted that in view of the delay in commissioning caused by the aforementioned distinct factors, as an interim arrangement, the Petitioner was directed to carry out alignment of the line to terminate at a suitable location through a Line-In-Line-Out (LILO) of Purulia PSP-Arambagh line. This

interim arrangement was an addition in the scope of work. The Petitioner has stated that since, this interim arrangement was not part of the original scope of work, it amounts to an addition in the scope of work under Article 12.1.1 of the TSA entitling the Petitioner to claim relief in accordance with Article 12.2.1. of the TSA. The Petitioner has submitted that in the meeting held at CEA on 29.3.2016, in view of the anticipated delay in the commissioning of New Purulia 400 KV GIS by WBSETCL, it was decided that the Petitioner may connect Ranchi-New Purulia 400 KV line at a suitable location by a LILO of one circuit of Purulia-Arambagh D/C line of WBSETCL as an interim arrangement till the commissioning of 400KV GIS bays at New Purulia. In the said meeting, it was agreed that for the recovery of additional cost due to these changes, the Petitioner may approach the Commission. The relevant portion of the minutes of the meeting dated 29.3.2016 is extracted as under:

"12. After further deliberations, following was agreed:

(a) \*\*\*

(b) M/s PKTCL would terminate their Ranchi-Purulia PSP 400 k V D/C line at New Purulia GIS of WBSETCL. This change in transmission scope would be finalized in the next meeting of SCSPER and would get noted in the next Empowered committee meeting on Transmission.

(c) In view of anticipated delay in commissioning of New Purulia 400 kV GIS by WBSETCL, M/s Sterlite Grid (PKTCL) may connect Ranchi-New Purulia 400 kV D/C line at a suitable location by LILO of one circuit of Purulia-Arambagh D/C line of WBSETCL as an interim arrangement till the commissioning of 2 no. 400 kV GIS bays at New Purulia. Based on the studies furnished by PGCIL (as mentioned above), the interim arrangement would also be formalized in the next meeting of SCSPER and would get noted in the next meeting of the Empowered Committee on Transmission.

Regarding recovery of additional cost, if any, due to these changes, PKTCL may take up with CERC.

(d) WBSEDCL and WBSETCL would submit SLD and general arrangement (GA) layout of the Purulia PSP and Arambag S/S respectively to CEA through E-mail.

(e) PKTCL would interconnect their Kharagpur (WB)-Chiabasa (PG) 400 kV D/C line by LILO one circuit of Kharagpur (WB)-Kolaghat 400 kV D/C line near Kharagpur end as an interim arrangement till the 400 kV bays at Kharagpur (WB) are

commissioned with no additional cost to be recovered as tariff. The interim arrangement would be formalized in next meeting of SCPSPER.

- (f) WBSETCL would furnish the load flow/system studies results in respect of New Purulia 400 kV s/s and associated transmission line to CEA, urgently, so that same could be taken in the forthcoming meeting of the SCPSPER.
- (g) PKTCL would provide tower location and route alignments near the Purulia PSP and New Purulia for the (i) original Ranchi-Purulia PSP line (ii) re-alignment to New Purulia and (iii) alignment for terminating LILO in the Purulia PSP-Arambag line.”

As per said minutes of meeting, the interim arrangement was required to be formalized in the next meeting of SCPSPER and was required to be noted in the next meeting of the Empowered Committee on Transmission. However, the Petitioner has not placed on record the documents approving the interim arrangement.

40. Article 6.1.2 of TSA dealing with connection with the inter-connection facilities provides as under:

“6.1.2 The RLDC/SLDC (as the case may be) or the CTU/STU (as the case may be) of the Lead Long Term Transmission Customer may, for reasonable cause, including failure to arrange for interconnection Facilities as per Article 4.2 defer the connection for up to fifteen (15) days from the date notified by the TSP pursuant to Article 6.1.1 if it notifies to the TSP in writing, before the date of connection, of the reason for the deferral and when the connection is to be rescheduled. However, no such deferment on one or more occasions would be more than an aggregate period of 30 days. Further, the Scheduled COD would be extended as required, for all such deferments on day for day basis.

6.1.3 Subject to Articles 6.1.1 and 6.1.2, any Element of Project may be connected with the Interconnection Facilities when:

- (a) it has been completed in accordance with this Agreement and the Connection Agreement;
- (b) it meets the Grid Code, Central Electricity Authority (Technical Standards for Connectivity to the Grid) Regulations, 2007 and all other Indian legal requirements and
- (c) The TSP has obtained the approval in writing of the Electrical Inspector certifying that the Element is ready from the point of view of safety of supply and can be connected with the Interconnection Facilities.”

Further, Article 6.2.1 of the TSA provides as under:

“6.2.1 An Element of the Project shall be declared to have achieved COD seventy two (72) hours following the connection of the Element with the Interconnection Facilities or seven (7) days after the date on which it is declared by the TSP to be ready for charging but is not able to be charged for reasons not attributable to the TSP or seven (7) days after the date of deferment, if any, pursuant to Article 6.1.2.

Provided that an Element shall be declared to have achieved COD only after all the Element(s), if any, which are pre-required to have achieved COD as defined in Schedule 3 of this Agreement, have been declared to have achieved their respective COD.”

As per Article 6.2.1 of the TSA, the Petitioner is required to keep ready its element of the project for charging. If the point of connection was not provided, the Project shall be declared to have achieved COD seven days after the date on which it was declared by TSP to be ready for charging but not able to be charged for reasons not attributable to the TSP. It is noted that TSA does not incur any liability upon the Petitioner to make interim arrangement for termination of the PR Line due to delay in the commissioning of New Purulia sub-station bays. Accordingly, the Petitioner's claim that construction of LILO amounts to an additional scope of work under Article 12.1.1 of the TSA cannot be accepted. However, it is noted that the Petitioner has constructed interim arrangement due to non-availability of bays at Purulia end which was under the scope of PGCIL and PGCIL has failed to make available the bays in matching timeframe of transmission line. Therefore, PGCIL shall bear the expenditure incurred by the Petitioner on interim arrangement.

### **Kharagpur-Chaibasha Transmission Line**

#### **(VI) Bad law and order situation in the States of Jharkhand and West Bengal.**

41. The Petitioner has submitted that on account of the frequent bandh calls and bad law and order situation in the States of Jharkhand and West Bengal, there was stoppage of work for a period of 31 days. The Petitioner had given a notice to the LTTCs on 20.4.2016 regarding occurrence of the bandhs, naxalite attack and bad

law and order situation and according to the Petitioner, the LTTCs have not responded to the notice. The notice given by the Petitioner is extracted as under:

“This is to bring to your kind notice that our obligation for construction of Kharagpur-Chaibasa 400 kV Quad D/C and Purulia-Ranchi 400 kV D/C Transmission line under the above Purulia & Kharagpur Transmission Company Limited (PKTCL) project has been very badly affected and the actual execution days have been reduced due to the frequent ‘Bandhs’, ‘Naxalite Attack’, ‘Bad Law & Order Situation’ and Delay in getting Forest Clearance in the State of Jharkhand and West Bengal, and there has been a loss of total 79 execution days i.e. loss of 31 execution days in Kharagpur-Chaibasa transmission line and loss of 48 execution days in Purulia Ranchi Transmission Line, a detailed tabulation showing the dates and no of days effected and relevant newspaper articles in support to substantiate the said Force Majeure events are annexed herewith as Annexure.

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The said events are beyond our reasonable control and the same are covered under the Article 11.3 and 11.3 (b) (ii) “indirect non-natural Force Majeure event” of above referred Transmission Service Agreement (TSA)

Our obligations under TSA shall be deemed to be suspended for the said period due to the above mentioned Force Majeure Events and the said events are having time and cost impact i.e. we shall be entitled for extension in the scheduled commercial operation date. The exact commercial impact will be intimated in due course.

This is to notify the same as required under Article 11.5 of the TSA and this it is without prejudice to all our other rights.”

42. As per the above notice, the execution days in respect of KC Line and PR Line have been reduced by 31 days and 48 days respectively as on 20.4.2016 (date of notice) on account of Bandhs, Naxal attacks, bad Law and Order situation and delay in getting forest clearance in the State of West Bengal and Jharkhand. The Petitioner has claimed the relief under Article 11.3 and 11.3.(b) (ii) of the TSA. Article 11.3 deals with the general definition of force majeure as the event or circumstances or combination of events and circumstances beyond reasonable control of the affected party which wholly or partly prevents or unavoidably delays the affected party in discharge of its obligations under the TSA. The two bullets under Article 11.3.(b)(ii) provide as under:



“-act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action;  
–industry wide strikes and labour disturbances, having a nationwide impact in India.”

Bandhs, naxal attacks and Law and Order situation is not covered under any of the provisions of Article 11.3.(b) (ii) as extracted above. However, these events can be considered as force majeure under Article 11.3 if it prevented the Petitioner from actual execution of the transmission lines. Though the Petitioner has referred to the newspaper articles with regard to bandhs and naxal attacks and prevalent law and order situations, the Petitioner has not demonstrated as to whether such events actually affected its execution of works. We are, therefore, not inclined to accept the contention of the Petitioner that it was affected by force majeure on account of these events.

**(VII) Delay in grant of Forest Clearance:**

43. The Petitioner has submitted that the delay in obtaining forest clearance was not within the control of the Petitioner and therefore, the Petitioner was affected by force majeure. The Petitioner initiated a survey of the transmission line in December 2013 to determine the line length falling in forest areas. The Petitioner made application on 23.12.2014 to the Divisional Forest Officer, Purulia Division, West Bengal enclosing the application form I. On 20.2.2015, the Petitioner submitted proposal for diversion of 17.695 ha forest land to PCCF Cum Nodal Officer, Govt. of West Bengal. The Conservator of Forest, Directorate of West Bengal vide letter dated 10.3.2015 requested the Divisional Forest Officer, Purulia to conduct a field enquiry for ascertaining the present status of the land and upload the site inspection report in connection with the proposed project on the Ministry's website. Directorate of Forest, Purulia Division vide its letter dated 22.6.2015 submitted its report to the

Chief Conservator of Forests, South West Circle, West Bengal. Subsequently, the Petitioner on 9.11.2015 resubmitted the forest diversion proposals of 112.228 ha of forest land to the Additional PCCF (CAMA), Govt. of West Bengal due to proposed lower dam of WBSETCL under PPSP Turga Dam Project. The Petitioner vide its letter dated 25.11.2016 informed the Divisional Forest Office, Purulia Forest Division that the previous diversion proposal of 17.695 ha stands null and void due to letter received from WBSETCL. The Petitioner vide its letter dated 15/16.7.2014 requested the Additional Chief Secretary, Forest Department, West Bengal and Principal Chief Forest Conservator, Forest Department, Govt. of Jharkhand for grant of forest clearances. The Petitioner vide its letter dated 17/18.11.2014 also informed the CEA about proposal for forest clearance and requested to grant NOC for Jungle Jhari as well as FRA certification required for approval of forest clearance to Kharagpur-Chaibasa 400 kV D/C line to take up the construction of transmission line in forest area. The Ministry of Environment, Forest and Climate Change, Bhubaneswar vide its letters dated 17.7.2015 and 4.9.2015 accorded in-principle approval for diversion of 10.59 ha. and 2.696 ha of forest land to the Petitioner for laying of 400 kV D/C transmission line from Kharagpur to Chaibasa under Saraikela and Rairangpur Forest Divisions respectively and informed that approval for diversion of the said forest land under Section 2 of the Forest (Conservation) Act, 1980 would be issued after receipt of the report on the compliance of the conditions stipulated from the State Government of West Bengal. Similarly, the Ministry of Environment, Forest and Climate Change, Ranchi vide its letter dated 24.9.2015 accorded in principal approval for diversion of 33.484 ha of forest land for construction of 400 kV D/C transmission line from Khargpur to Chaibasa under Saraikela and East Singhbhum forest division. The Divisional Forest Office, Kharagpur Division vide letter dated

24.9.2015, Divisional Forest Officer, Rairangpur Division vide letter dated 8.10.2015 and Government of Jharkhand, the Ministry of Forest, Environment and Climate Change Department vide letter dated 21.12.2015 accorded tree cutting permission to the Petitioner. Relevant portion of the one of the letters dated 24.9.2015 is extracted as under:

“Whereas, Competent Authority from Govt. of India has conveyed in Principal approval vide memo No. 5WBC083/2015 BHU dated 17.7.2015 endorsed to the undersigned.

Whereas, Principal Secretary of Govt. of West Bengal also communicated to the Principal Chief Conservator of Forests (General), WB regarding authorization of Division Forest Officers of State of West Bengal vide his memo No. 1097 For/O/L/10T05/2015, dated 27.5.2015 regarding FCA cases.

And

Whereas, Conservator of Forest, land Affairs & FCA 1980 has conveyed to the undersigned about compliance of necessary action from your end, vide his memo referred above.

The User Agency may take up the requisite works maintaining all the terms & conditions mentioned vide the entire memo referred here in above from all the Competent Authorities of Govt. of India & Govt. of West Bengal should be properly maintained.

The forest produce will be collected by the Forest Department cost of which should be borne by you and the issue is still pending at the end of the Competent Authority.

Concerned field officers should properly be intimated about your action from time to time and may hold joint visit at any time as and when required.

All your actions should be governed by all existing laws of the land in this regard.

Sd/-  
Divisional Forest Officer  
Kharagpur Division”

44. The Petitioner vide its affidavit dated 7.10.2016 has placed on record, the details of Stage-I Approval and tree cutting permission from the date of submission of forest diversion proposal for 400kV D/C Kharagpur-Chaibasa Transmission line as under:

Transmission Line	Kharagpur-Chaibasa 400kV D/C Line
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Description	Saraikela	Jamshedpur	Kharagpur	Rairangpur
Date of FDP Submission	9.6.2014	23.6.2014	4.7.2014	30.5.2014
Stage-I Approval	24.9.2015	24.9.2015	17.7.2015	4.9.2015
Date of getting Treecutting Permission	21.12.2015	21.12.2015	24.9.2015	8.10.2015
Overall Delay in getting Tree Cutting Permission	6 Months 20 days	6 Months 6 days	3 Months	4 Months 16 days

45. Forest clearance is a mandatory requirement for laying the transmission lines in the forest areas. The Petitioner took up the matter with the authorities for forest clearance. The delay in grant of forest clearance was beyond the reasonable control of the Petitioner and has affected the project implementation and thereby prevented the Petitioner from performance of its obligations under the TSA i.e. to declare commercial operation of the project by SCOD and provide transmission services to the LTTCs. It is noted that the Petitioner has claimed the delay of 7 months for forest clearance. We have perused the PERT chart enclosed by Petitioner vide affidavit dated 7.10.2016. As per the PERT chart, Petitioner had scheduled time between obtaining CEA Clearance ( 18.2.2016) and final commissioning (31.3.2016) as 43days. The petitioner declared K-C line deemed COD on 13.5.2017 based on CEA Certificate dated 13.5.2017. We have perused CEA Certificate dated 13.5.2017. It is observed that the Petitioner made application to CEA on 15.3.2016 to which CEA responded on 25.4.2016 suggesting rectifications. The Petitioner was finally issued approval by CEA on 13.5.2017. Clause 6.2 of TSA provides following regarding Commercial Operation:

“An Element of the Project shall be declared to have achieved COD seventy two (72) hours following the connection of the Element with the Interconnection Facilities or seven (7) days after the date on which it is declared by the TSP to be ready for

charging but is not able to be charged for reasons not attributed to the TSP or seven (7) days after the date of deferment, if any, pursuant to Article 6.1.2.

Provided that an Element shall be declared to have achieved COD only after all the Element(s), if any, which are pre-required to have achieved COD as defined in Schedule 3 of this Agreement, have been declared to have achieved their respective COD.”

In the instant case, for KC line, the inter-connecting bays were not available as on 13.5.2017. Hence, element could be declared commercial only 7 days after it was ready for charging but could not be charged due to non-availability of inter-connection facilities. Therefore, we shall consider COD of KC line as on 20.5.2017. The actual delay of the KC Line beyond SCOD is of 42 days (as on 20.5.2017) and 71 days to complete trial operation on 18.6.2016. We observe that the Petitioner obtained last forest clearance on 21.12.2015 which led to subsequent delays in execution of the project. The Petitioner has stated that line was ready on 29.3.2017 as per on Minutes of meeting taken by CEA i.e it took approximately 3 months to complete the line after obtaining forest clearance which is found to be reasonable. Since, the Petitioner could not have commenced the work without forest clearance for works lying in forest areas, we are of the view that the Petitioner is affected by force majeure event on account of delay in getting forest clearance from the FDP submission till the time forest clearance was granted. The period till 20.5.2017 is condoned on account of forest clearance. Since, we have considered COD of the KC line as on 20.5.2017, the transmission charges from 20.5.2017 to 18.6.2017 i.e when the line was put to use shall be paid by Powergrid since the line could not be charged for non-availability of bays in scope of Powergrid. In a similar case, the Commission, vide order dated 27.6.2016 in Petition No. 236/MP/2015 has observed as under:

“42..(b) CEA vide its letter dated 24.8.2015 accorded the approval for energisation of 11 no. bays of 220 kV and 4 No. bays of 400 kV and 60-60

MVA, 400 kV station transformer and associated equipment at Kudgi STPP of NTPC. From the letter of CEA, it is observed that the bays pertaining to NTPC was ready in the month of August, 2015. However, PGCIL Narendra (New) sub-station was charged through PGCIL Kolhapur-New Narendra line from 15.11.2015. Subsequently, 400 kV Kudgi Switchyard was charged on 16.11.2015. Therefore, the petitioner's transmission line could not be utilized due to non-completion of elements under the scope of PGCIL. Accordingly, PGCIL shall pay the transmission charges to the petitioner for the period from 24.8.2015 to 15.11.2015."

**(VIII) Interim arrangement for the termination of the KC line due to non-commissioning of the bays at Kharagpur**

46. The Petitioner has submitted that in the meeting convened by the CEA on 29.3.2016 to discuss the status of the KC Line, the Petitioner was directed to inter-connect the KC Line of the project by LILO circuit of the Kharagpur-Kolaghat 400 kV D/C line near Kharagpur end as an interim arrangement till the bays at Kharagpur sub-station were commissioned. Since, this interim arrangement was not part of the original scope of work, it amounts to an addition in the scope of work under Article 12.1.1 of the TSA. The Petitioner has submitted that despite above challenges, the KC Line was actually commissioned on 13.5.2016.

47. We have perused the minutes of the meeting held on 29.3.2016 at CEA to discuss the issue regarding implementation of Purulia-Ranchi and Kharagpur-Chaibasa 400 kV D/C line, the following has been observed in the said meeting:

"12.(e) PKTCL would interconnect their Kharagpur(WB)-Chaibasa (PG) 400kV D/C line by LILO one circuit of Kharagpur (WB)-Kolaghat 400kV D/C line near Kharagpur end as an interim arrangement till 400kV bays at Kharagpur (WB) are commissioned with no additional cost to be recovered as tariff. The interim arrangement would be finalized in next meeting of SCSPER."

48. As per the above minutes, the Petitioner participated in meeting of the Standing Committee on Power System in Eastern Region held on 29.3.2016. Therefore, the decision in the said meeting that the Petitioner would interconnect the

KC Line by LILO of one circuit of Kharagpur(WB)-Kolaghat 400 kV D/C line near Kharagpur end as an interim arrangement till 400 kV bays at Kharagpur (WB) are commissioned with no additional cost to be recovered as tariff appears to have been taken with the consent of the Petitioner. Though the interim arrangement through LILO was not within the scope of work as envisaged in the TSA, the interim arrangement has been decided with the consent of the Petitioner to be executed with no additional cost in tariff, the Petitioner's claim for reimbursement of the cost of the LILO cannot be accepted.

**(ix) Increase in taxes and duties:**

49. The Petitioner has submitted that subsequent to award of the project, there has been increase in various taxes, i.e. Custom Duty, Central Excise Duty, Service Tax inclusive of Swachh Bharat Cess and Krishi Kalyan Cess. The Petitioner has submitted that revision in the tax rates was not contemplated at the time of submission of bid and involves additional financial burden on the Petitioner for reasons beyond its control. The Petitioner has submitted that as per Article 12 of the TSA, Change in Law means the occurrence, inter alia, of any change in tax or introduction of any tax made applicable for providing transmission service by the Transmission Service Provider (TSP) as per the terms of the TSA, which is 7 days prior to the bid deadline, resulting into any additional recurring/non-recurring expenditure by the TSP or any income to the TSP.

50. In the present case, there has been a change in the CVD (for Custom duty Calculation), Central Excise Duty, Service Tax subsequent to the bid deadline i.e. 9.9.2013. Subsequent to the bid deadline, Govt. of India, the Ministry of Finance

through the Finance Act, 2015 has levied Swachh Bharat Cess and Krishi Kalyan Cess. The details of the change in taxes and duties and new taxes are as under:

Type of Tax	Tax Rate at the Time of Bid Deadline	Revised Tax Rate	Amendment Circular
CVD (for Custom Duty Calculation)	12%	12.50%	Ministry of Finance, Department of Revenue vide Notification No. 16/2015 dated 01.03.2015-Change in CVD due to change in excise duty.
Central Excise Duty	12.36%	12.50%	Ministry of Finance, Department of Revenue vide Notification No. 16/2015 dated 01.03.2015.
Service Tax	12.36%	14%	Ministry of Finance, Department of Revenue vide Notification No. 14/2015 dated May 19, 2015 effective from June 1, 2015.
Swachh Bharat Cess	0%	0.5%	Ministry of Finance, Department of Revenue vide Notification No. 22/2015-Service Tax vide Gazette of India dated 6 <sup>th</sup> Nov 2015 by sub-section (2) of Section 119 of Finance Act, 1994 & effective from 15 <sup>th</sup> Nov 2015.
Krishi Kalyan Cess	0%	0.5%	Ministry of Finance, Department of Revenue vide Gazette of India dated 14 May 2016 under Chapter V of Finance Act, 1994 & effective from 1 <sup>st</sup> June 2016.

51. The Petitioner has submitted the detailed calculation of impact of change in rate of Central Excise Duty, Service Tax (inclusive of Swachh Bharat Cess and Krishi Kalyan Cess) and New Tax Levies as certified by the Petitioner's Chartered Accountants as under:

Type of Tax	Tax Rate at the time of bid deadline	Revised Tax Rate (Post Bid deadline)	Effective Date of Tax Change
Central Excise Duty	12.36%	12.50%	1.3.2015



Service Tax	12.36%	14%	1.6.2015
Swachh Bharat Tax	0	0.5%	15.11.2015
Krishi Kalyan Cess	0	0.5%	1.6.2016

52. We have considered the submissions of the Petitioner. At the time of submission of bid, Countervailing Duty (for custom duty calculation) was 12%. The Ministry of Finance, Department of Revenue vide its Notification No. 16/2015 increased CVD from 12% to 12.50% due to Change in Excise Duty. Similarly, at the time of submission of bid, Excise Duty was 12.36%. The Ministry of Finance, Department of Revenue vide its Notification No. 16/2015 dated 1.3.2015 increased the Central Excise Duty from 12.36% to 12.50%. At the time of submission of bid, Service Tax was 12.36%. The Ministry of Finance, Department of Revenue vide its Notification No. 14/2015-ST dated 19.5.2015 increased the service tax from 12.36% to 14%. After the bid deadline, the Ministry of Finance, Department of Revenue vide its Notification No. 22/2015-Service Tax dated 6.11.2015 and vide Notification dated 14.5.2016 levied 0.5% Swachh Bharat Cess and Krishi Kalyan Cess respectively. Since, the change in Service Tax, Excise Duty and levy of Swachh Bharat Cess and Krishi Kalyan Cess have occurred on account of the Act of the Parliament, they constitute change in law and the expenditure incurred by the Petitioner in this regard is admissible under Change in Law. The Petitioner vide its affidavit dated 7.10.2016 has submitted the Auditor's Certificate dated 6.10.2016 in support of its claim for additional expenditure on account of change in rate of taxes. The Petitioner vide its letters dated 24.8.2015, 13.5.2016, 15.6.2016 and 2.6.2016 has given notices to the LTTCs with regard to increase in tax rates.

53. The changes in counter-veiling duty, service tax, excise duty, Swachh Bharat Cess and Krishi Kalyan Cess fall within the definition of Change in Law as they have

been brought into force through Acts of the Parliament. It is however noted that the Petitioner has not submitted the details of expenditure incurred on which the increase in CVD, Central Excise Duty and Service Tax including Swachh Bharat Cess and Krishi Kalyan Cess were paid. The Petitioner is directed to submit to the LTTCs, the documentary proof of the expenditure incurred due to increase in CVD, Central Excise Duty, Service Tax Swachh Bharat Cess and Krishi Kalyan Cess.

**Issue No.3: What reliefs should be granted to the Petitioner in the light of the answer to the above issues?**

54. The Petitioner has sought extension in the COD of the project up to actual date of commercial operation of project. The TSA provides that the affected party shall continue to perform its obligations under the TSA to the extent it is not prevented by the condition of force majeure and change in law and shall use its reasonable efforts to mitigate the effects of events of force majeure as soon as possible. Article 11.7 of the TSA provides for relief for force majeure events which is extracted as under:

**“11.7 Available Relief for a Force Majeure Event**

Subject to this Article 11

- (a) no party shall be in breach of its obligations pursuant to this Agreement except to the extent TSA for selection of Transmission Service Provider for that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure Event;
- (b) every party shall be entitled to claim relief for a Force Majeure Event affecting its performance in relation to its obligations under this Agreement.”

Further, Article 4.4 provides for extension of time on account of force majeure events. Article 4.4 is extracted as under:

**“4.4. Extension of time**

4.4.2 In the event that an element or the Project cannot be commissioned by its Scheduled COD on account of any Force Majeure Event as per Article 11, the Scheduled COD shall be extended, by a 'day to day' basis, for a maximum period of one hundred and eighty (180) days. In case the Force Majeure Event continues even after the maximum period of one hundred and eighty (180) days, the TSP or the Majority Long Term Transmission Customers may choose to terminate the Agreement as per the provisions of Article 13.5.

55. It may be observed that COD in respect of PR Line and KC line have been delayed by 274 days and 71 days respectively. In case of PR Line, the time has exceeded the limit of 180 days. Though the Petitioner had the option to terminate the TSA after 180 days if the force majeure event continued, the Petitioner has commissioned the project after cessation of force majeure event. The LTTCs are availing the transmission services provided by the Petitioner. Therefore, we consider it appropriate to allow extension of the COD of PR line by a period of 274 days and KC line by a period of 71 days, beyond COD.

56. We have further held that changes in the rates of counter-veiling duty, service tax, central excise duty, Swachh Bharat Cess and Krishi Kalyan Cess are covered under Change in Law. The provision of the TSA regarding relief for the increase in the cost of the project on account of Change in Law is extracted as under:

#### **“12.2 Available Relief for Change in Law**

##### **12.2.1 During Construction Period:**

During the Construction Period, the impact of increase/decrease in the cost of the Project in the Transmission Charges shall be governed by the formula given below:

For every cumulative/decrease of each Rupees One Crore Twenty Lakhs (Rs. 1,20,00,000/-) in the cost of the project upto the Scheduled COD of the Project, the increase/decrease in non-escalable transmission charges shall be an amount equal to 0.32 percent (0.32%) of the Non-Escalable Transmission Charges.

The Petitioner shall be entitled for reimbursement of the impact of change in law on the cost of the project in terms of the above provision. The Petitioner is directed to submit the documentary evidence with regard to payment of taxes etc. supported by the Auditor Certificate to the LTTCs while claiming the relief under Change in Law.

**Summary of our decisions:**

57. The summary of our decision is as under:

(a) Delay in finalization of termination point at Purulia end is not attributable to the Petitioner, but to WBSETCL which was executing the work on the bays on deposit basis on behalf of PGCIL which resulted in delay in completion of PR Line and is covered under Force Majeure.

(b) Shifting in the termination point of PR Line by 1.6 Km is not covered under change in law and hence, no relief is granted.

(c) Delays in obtaining forest clearances for the PR Line and KC line were beyond the control of the Petitioner and are covered under force majeure provisions of the TSA.

(d) Frequent Bandhs, Naxalite Attacks and bad law and order situation in the States of Jharkhand and West Bengal are not covered under force majeure events as no evidence has been placed on record by the Petitioner to substantiate its claim that work on the project was affected due to the said events.

(e) Interim arrangement for termination of the PR Line shall be borne by PGCIL as the interim arrangements had to be made on account of non-readiness of sub-stations of PGCIL. In respect of the interim arrangement in respect of KC Line, the Petitioner shall not be entitled for any reimbursement since the Petitioner has agreed to make the arrangement without any change in tariff.

(f) Change in the rates of CVD, Central Excise Duty, Service Tax, Krishi Kalyan Cess and Swachh Bharat Cess are covered under Change in Law and the Petitioner is entitled for relief under Article 12.2.1 of the TSA. The Petitioner is directed to submit the documentary proof of the expenditure supported by Auditor Certificate to the LTTCs while making claims.

(g) The Petitioner is entitled to extension of COD of PR Line by a period of 274 days and KC Line by a period of 71 days from respective SCOD.

58. The Petition is disposed of in terms of the above.

Sd/-  
**(Dr. M.K Iyer)**  
Member

sd/-  
**(A.S.Bakshi)**  
Member

sd/-  
**(A.K.Singhal)**  
Member