

**Central Electricity Regulatory Commission
New Delhi**

Petition No. 96/MP/2018

**Coram:
Shri P.K. Pujari, Chairperson
Dr. M. K. Iyer, Member**

Date of Order: 10th of May, 2019

In the matter of:

Petition under Sections 79 (1)(c), Section 79 (1)(f) and Section 79 (1)(k) of the Electricity Act, 2003 read with the Regulation 32 of Central Electricity Regulatory Commission (Grant of Connectivity, Long Term Access and Medium term Open Access in inter-state transmission and related matters) Regulations, 2009 along with Regulation 111 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 seeking directions against Power Grid Corporation of India Limited for (i) payment of amounts due to the Petitioner in compliance of the Order dated 15.12.2017 of this Hon'ble Commission in Petition No. 141/TT/2015; and (ii) return of Bank Guarantee of ₹ 60 Crore furnished as per the extant regulations read with the Transmission Agreement dated 14.6.2010 and Long Term Access Agreement dated 17.6.2011.

**And
In the matter of**

MB Power (Madhya Pradesh) Limited

Corporate Office:
239, Okhla Industrial Estate
Phase III, New Delhi-110020

....Petitioner

Versus

Power Grid Corporation of India Limited

Registered Office:
'SAUDAMINI', Plot no.2, Sector 29,
Gurugram-122001, Haryana

....Respondent

Parties present:

Shri Gopal Jain, Senior Advocate, MBPMPL
Shri Sakya Chaudhri, Advocate, MBPMPL
Ms. Gayatri Aryan, Advocate, MBPMPL
Shri Anand Kumar Srivastava, Advocate, MBPMPL
Ms. Samykya Mukku, Advocate, MBPMPL
Shri Abhishek Gupta, MBPMPL
Shri Rohit Kumar Gururani, MBPMPL



Shri Naveen Kumar, MBPMPL
Ms. Suparna Srivastava, Advocate, PGCIL
Shri Tushar Mathur, Advocate, PGCIL
Shri V. Srinivas, PGCIL
Ms. Anita A. Srivastava, PGCIL

ORDER

The present Petition has been filed by MB Power (Madhya Pradesh) Limited (hereinafter referred to as 'MBPMPL') seeking direction against the Power Grid Corporation of India Limited (PGCIL) for payment of dues to the Petitioner in compliance of the Commission's order dated 15.12.2017 in Petition No. 141/TT/2015 and for return of Bank Guarantee of ₹60 crore furnished as per the extant regulations read with the Transmission Agreement dated 14.6.2010 and Long Term Access Agreement dated 17.6.2011.

Background:

2. The Petitioner has submitted that the following facts have led to the filing of the present Petition:

(a) The Petitioner has established a 1200 MW (2X600 MW) coal based Thermal Power Project (hereinafter referred to as the 'Generation Project') in the district of Annupur in the State of Madhya Pradesh.

(b) On 25.2.2010, the Petitioner applied simultaneously for grant of Connectivity and Long-Term Access to PGCIL under the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009 (hereinafter referred to as the "Connectivity Regulations") for evacuation and transmission of power from the Generation Project. The Petitioner sought the



Connectivity for entire 1200 MW. However the LTA was applied for 392 MW, having a target beneficiary in Western Region (200 MW) and Northern Region (192 MW).

(c) On 19.4.2010, PGCIL granted Connectivity and LTA to the Generation Project.

The letter dated 19.4.2010 identified an end to end transmission system as a part of Inter-State Transmission System, for evacuation and transmission of power from the Generation Project of the Petitioner.

(d) Subsequently, Transmission Agreement and Long-Term Access Agreement were executed between the Petitioner and PGCIL on 14.6.2010 and 17.6.2011 respectively.

(e) On 13.7.2010, the Petitioner furnished a Bank Guarantee of ₹ 60 crore (@ ₹ 5 Lakh/MW towards Connectivity charges for the Generation Project's installed capacity of 1200 MW in favour of PGCIL in terms of Clause 5 (b) of the Transmission Agreement dated 14.6.2010. The Bank Guarantee furnished to PGCIL under the Transmission Agreement as per the Connectivity Regulations was required to be kept alive only to the extent of six (6) months from the expected date of commissioning of the Generation Project. Upon expiry of 6 months' time period, the Bank Guarantee ought to have been returned to the Petitioner. Since the Generation Project was declared under commercial operation [Unit-1 (600 MW) COD on 20.5.2015 and Unit-2 (600 MW) COD on 7.4.2016], there is no occasion for PGCIL to hold the Bank Guarantee. The initial period for which the Bank Guarantee was valid was till 31.7.2013. However, due to the unwarranted directions of PGCIL, the Petitioner was forced to extend the validity of the Bank Guarantee from time to time.



(f) There have been several instances from the year 2013 till date, where PGCIL has made conditional claims on the Bank Guarantee. PGCIL raised a conditional claim vide its letter dated 5.6.2013 to the Petitioner's bank (SBI) with a copy to the Petitioner seeking extension of the validity of Bank Guarantee for another year i.e. till 31.7.2014, failing which, instructions were issued to the bank for encashment of the said Bank Guarantee. The Petitioner extended the validity of the Bank Guarantee till 31.7.2014 and the same was informed to PGCIL by the Petitioner vide its letter dated 11.7.2013. Thereafter, as the validity of the Bank Guarantee was nearing expiry, PGCIL again raised a conditional claim vide its letter dated 16.6.2014 seeking extension of the validity of Bank Guarantee for another year i.e. till 31.7.2015. The letter was also issued directly to the Petitioner's Bank (SBI) with a copy to the Petitioner. Following its earlier practice, instructions were issued to the bank for encashment of the said Bank Guarantee in case the Petitioner failed to extend the validity of the said Bank Guarantee. Accordingly, the Bank Guarantee was further extended by the Petitioner and same was informed to PGCIL by the Petitioner vide its letter dated 1.7.2014. Subsequently, PGCIL vide its letter dated 8.6.2015 further raised a conditional claim to the Petitioner's bank and directed the Petitioner to extend the validity of Bank Guarantee.

(g) The Unit-1 (600 MW) of the Generating Project was declared under commercial operation on 20.5.2015 and as per regulations, the Petitioner is required to keep the Bank Guarantee alive till six months after declaration of commercial operation of the Unit. Accordingly, the Petitioner extended the validity of the Bank Guarantee. The Petitioner vide its letter dated 20.7.2015 informed PGCIL in this regard.



(h) In keeping with this practice, PGCIL kept raising conditional claims seeking extension of validity of the Bank Guarantee from time to time and the Petitioner, with a view to prevent the encashment of its Bank Guarantee, kept adhering to PGCIL's requests.

(i) The Transmission Agreement under the Connectivity Regulations issued by the Commission on 7.8.2009 is signed by the applicants desirous of availing connectivity to the grid. Clause 7.3 of the Detailed Procedure made under Connectivity Regulations provides that in all the cases where dedicated transmission system up to point of connection is to be undertaken by CTU/ Inter-State Transmission licensee, the applicant after grant of connectivity shall sign Transmission Agreement as per the format given at FORMAT-CON-8 within one month of the grant of connectivity. Further applicant shall furnish Bank Guarantee (BG) for the amount EITHER (a) at the rate of Rs. 2.5 lakhs/MW if the connectivity requires transmission lines up to 20 kms OR (b) at the rate of Rs. 5 lakhs/MW if the connectivity requires transmission lines more than 20 kms. The BG as per format given at FORMAT-CON-7 should be made in favour of CTU/ Transmission licensee within one month of signing of transmission agreement with validity up to commissioning of above transmission system.

(j) As per the above provisions of the Connectivity Regulations and the Detailed Procedure framed in this regard, the Bank Guarantee of ₹ 60 crore furnished by the Petitioner is related to the connectivity process and is co-terminus with the commissioning of the associated transmission network for connectivity. Therefore, the same is liable to be returned to the project developer immediately after commissioning of the Generation Project and operationalization of the Connectivity granted by PGCIL.



(k) The phrase "utilization of connectivity" as used under the Transmission Agreement and "commissioning of transmission system" as incorporated under the Detailed Procedure are synonymous phrases and are used inter-changeably. The Unit-1 (600 MW) of the Generation Project achieved Commercial Operation on 20.5.2015. With this, the uncertainties and risks associated with commissioning of the Project, were completely mitigated and as such there is no justification for PGCIL's unwarranted act of withholding the Bank Guarantee till date. However, the actual transmission of power from the Generation Project to its beneficiary (under PPA i.e. UP DISCOMs) could commence only in August 2015 i.e. after commissioning of the entire identified transmission network by PGCIL in August 2015. There has been considerable delay in achieving CoD of the identified Transmission System by PGCIL.

(l) As per the provisions of the Transmission Agreement read with the Detailed Procedure, PGCIL ought to have returned the Petitioner's Bank Guarantee of ₹ 60 crore latest by August 2015 i.e. once the entire identified Transmission System was operationalized. However, for reasons not known to the Petitioner, PGCIL has been insisting for extension of the Bank Guarantee. Being under threat of encashment of the Bank Guarantee, the Petitioner had no option but to extend the validity of the same from time to time. As such, the Bank Guarantee has been in unlawful possession of PGCIL since August 2015 with the current validity till 30.6.2018. Therefore, such unwarranted extension of 34 month (from August 2015 till June 2018) in the validity of the Bank Guarantee which caused a financial loss of almost ₹3.5 crore to the Petitioner (@ ₹10 lakh/Month in terms of bank charges for such extension in the validity period of the Bank Guarantee).



(m) For securing the payment of transmission charges, the Petitioner has already established an adequate Payment Security Mechanism by way of opening the required Letter(s) of Credit (aggregating to ₹32 crore) in favour of PGCIL. Therefore, despite having an adequate Payment Security Mechanism available with PGCIL, retention of the said Bank Guarantee is absolutely unwarranted and is in contravention to the relevant regulatory and/or contractual provisions.

(n) Despite various letters written to PGCIL and raising the issue in various Joint Co-ordination Committee meetings hosted by PGCIL seeking return of the Bank Guarantee, PGCIL has failed to provide any reasons whatsoever, for withholding the Bank Guarantee.

(o) A conjoint reading of the Connectivity Regulations and the provisions of the agreements entered into between the Petitioner and PGCIL (i.e. Transmission Agreement dated 14.6.2010 and LTA Agreement dated 17.6.2011) make it amply clear that at no given point the Bank Guarantee can be withheld by PGCIL once

- (i) The dedicated transmission system has been commissioned and the connectivity has been operationalized.
- (ii) The LTA (392 MW) has been operationalized by PGCIL, and
- (iii) The associated Generation Project gets commissioned.

(p) All the three above mentioned conditions were fulfilled by August 2015. As a matter of fact, the Unit-1 (600 MW) of the Generation Project has achieved commercial operation on 20.5.2015, and the Petitioner has been supplying power to its beneficiary under PPA i.e. UP Discoms since 26.8.2015 using the associated transmission system constructed by PGCIL. Therefore, there was no occasion for PGCIL to withhold Bank Guarantee of ₹60 crore once the Generation Project has



been declared under commercial operation; Connectivity and LTA have been operationalized; and the Generation Project has commenced utilization of such transmission system.

(q) In addition to such unlawful possession of the Bank Guarantee, PGCIL has also delayed operationalization of LTA granted to the Petitioner. The Commission in its order dated 15.12.2017 in Petition 141/TT/2015 while considering the issue of delay in operationalization of the Long-Term Access for 392 MW, has observed that in terms of Clause 6(d) of the LTA Agreement dated 17.6.2011 and Annexure-4, the petitioner is required to make alternative arrangement for despatch of power from the Generating station and in the event of delay in commissioning of the concerned transmission system from its schedule, transmission charges proportionate to the concerned LTA shall be paid by the petitioner. Vide that Order, it has been directed that the petitioner and MBPL shall settle the issue of delay in operationalisation of LTA on account of delay in COD of the transmission lines covered under Annexure-4 of the LTA in terms of the LTA Agreement.

(r) In view of the above directions of the Commission, the Petitioner approached PGCIL vide its letters dated 18.12.2017 and 29.12.2017, for settlement of the outstanding dues payable by PGCIL to compensate the Petitioner for delay in operationalization of the LTA in terms of Clause 6(d) of the LTA Agreement dated 17.6.2011. The Petitioner has convened a meeting with PGCIL to seek compliance of the Commission's order on 25.1.2018. During the meeting, PGCIL refused to compensate the Petitioner on account of delay in operationalization of LTA of 392 MW. Subsequently, PGCIL vide its letter dated 15.1.2018 refused to comply with the directions of the Commission given in its order dated 15.12.2017 in Petition No.



141/TT/2015. PGCIL despite clear directions of the Commission imposing the liability to pay reverse transmission charges to the Petitioner for delay in operationalization of the LTA, outrightly without any legal basis has rejected the said claims stating that the same are not tenable under the extant regulatory and contractual framework. The said understanding of PGCIL is not only bad in law but creates to dislodge the clear directions of the Commission.

3. In the above background, the Petitioner has made the following prayers:

“(a) Direct Power Grid Corporation of India to comply with the directions of this Hon’ble Commission at Para 33 of its Order dated 15.12.2017 in Petition No. 141/TT/2015 and make payments of reverse transmission charges to the Petitioner herein;

(b) Direct Power Grid Corporation of India to return the Bank Guarantees and extensions of their validity period thereof BG No. 048031BG0014405 dated 10.07.2010 for INR 60 Crores;

(c) Direct Power Grid Corporation of India not to seek any further extension of the validity period the above Bank Guarantee. The current validity period of the Bank Guarantees is 30.06.2018.

(d) Direct Power Grid Corporation of India to reimburse the costs incurred by the Petitioner in extending the validity of the Bank Guarantee from 01.09.2015 onwards i.e. bank charges towards extension of validity period of the Bank Guarantee plus interest on the margin money kept with the bank for issuance of the Bank Guarantee.”

4. The Petitioner has submitted that the Commission, in its order dated 15.12.2017 in Petition No. 141/TT/2015, has held that there has been delay in operationalization of the Long-Term Access by PGCIL for the concerned transmission systems. Accordingly, PGCIL was made liable to pay reverse transmission charges to the petitioner. The Petitioner vide affidavit dated 9.4.2018 has placed on record the bilateral bill dated 16.3.2018 raised by the Petitioner upon the Respondent, PGCIL. The Petitioner vide the said bill, has raised a claim of ₹25,10,43,783/- against PGCIL, which it is entitled to recover towards the delay in operationalization of LTA by PGCIL. As on date, PGCIL has not disputed this bilateral bill raised by the Petitioner.



5. The Petition was heard on 10.4.2018 and notices were issued to PGCIL to file its reply. PGCIL has filed its reply and Petitioner has filed its rejoinder thereof.

Submissions of the Petitioner and the Respondent:

6. PGCIL vide its reply dated 7.5.2018 has submitted as under:

(a) LTA was granted to the Petitioner vide LTA intimation letter dated 19.4.2010 of PGCIL. The start date of LTA was 1.8.2013 (for a period of 25 years). However, the Petitioner was necessarily required to firm up PPAs for at least 50% of the LTA quantum by 1.8.2010 i.e. 3 years prior to the intended date of availing LTA as per the Connectivity Regulations and intimate to the Respondent.

(b) The common transmission corridors set out in Annexure-1 of the LTA intimation included the HCPTC for IPP projects in Orissa and included the following:

“1. Common transmission system to be shared by Maruti Clean Coal & Power Ltd.(300MW), PTC India (600MW), Dheeru Powergen (450MW), Jaiprakash Power Ventures Ltd (1320MW), Aryan MP Power Generation Pvt. Ltd. (1200 MW) Bina Power (500 MW), M B Power [MP] (1200 MW) to be shared along with IPPs in Orissa in proportion to allocation to NR

- a) Bina-Gwalior 765 kV S/c (3rd)*
- b) Gwalior-Jaipur 765kV S/c (2nd)*
- c) Jaipur-Bhiwani 765 kV S/c”*

(c) Therefore, the Petitioner was required to share the transmission charges for the identified transmission system strengthening scheme for power evacuation from its generation project under LTA as also the regional transmission charges for the common transmission corridors set out in Annexure-1. The bank guarantee of ₹60 crore considered for connectivity was to be available for the LTA also. The



LTA intimation stated that access under the grant was to be provided subject to the availability of identified system strengthening scheme at Annexure-1. It clearly represented to the Petitioner that power flow under the LTA was to take place only when the HCPTC for the IPPs in Orissa was available and/or commissioned. At the time of the LTA grant itself, the Petitioner was well aware that the LTA was being granted to it on the margins available in the HCPTC for IPPs in Orissa and as such, could be operationalized only when such margins became available.

(d) The grant of connectivity and LTA into ISTS are governed by the provisions of the Connectivity Regulations and the Detailed Procedure made thereunder. At the time when the Petitioner had applied for grant of LTA, Regulation 12 of the Connectivity Regulations required that the exact source of supply or destination of off-take was to be firmed up and notified to the Respondent 3 years prior to the intended date of availing LTA to facilitate transmission system augmentation. Further, in the Detailed Procedure, the provision as regards submission of bank guarantee was made as under:

“7.3. In all the cases where dedicated transmission system up to point of connection is to be undertaken by CTU/Inter-State Transmission licensee, the applicant after grant of connectivity shall sign transmission agreement as per the format given at FORMAT CON-8 within one month of the grant of connectivity. Further applicant shall furnish Bank Guarantee (BG) for the amount EITHER (a) at the rate of Rs. 2.5 lakhs/MW (or such amount as amended from time to time, with the approval of the Commission)) if the connectivity requires transmission lines upto 20 kms OR (b) at the rate of Rs. 5 lakhs/MW (or amount as amended from time to time in the Regulations if the connectivity requires transmission lines more than 20 kms. The BG as per format given at FORMAT-CON-7 should be made in favour of CTU / Transmission licensee within one month of signing of transmission agreement with validity upto commissioning of above transmission system.

In case application for Grant of Connectivity and Grant of Long Term Access are made concurrently or after a time gap, then the requirement of submission of above BG should be read in conjunction with the clause for Bank Guarantee of Rs. 5 lakhs per MW for construction/ augmentation of transmission system under “Procedure for Grant of Long Term Access”. In



such cases the total BG required to be submitted for both the construction of dedicated line as well as for augmentation of transmission system together, at any time, shall not exceed Rs. 5 Lakhs per MW.”

- (e) The applicant was to furnish the bank guarantee while signing for Connectivity Agreement for implementation of connectivity line by PGCIL and the same bank guarantee was also applicable in case of grant of LTA. In accordance with the above provisions of the Connectivity Regulations read with the Detailed Procedure, connectivity and LTA was granted to the Petitioner for transfer of power from its generation project.
- (f) Pursuant to the grant of Connectivity, the Petitioner signed a Transmission Agreement dated 14.6.2010 with PGCIL wherein PGCIL agreed to provide connectivity to the Petitioner’s project from the date and in the manner provided in Annexure-1 subject to the fact that MBPMPL, its successor or assignee shall pay the transmission charges in accordance with the Tariff regulation/ Tariff order issued by Central Electricity Regulatory Commission from time to time for PGCIL transmission system mentioned at Annexure-2 from the date of commercial operation of the transmission system.
- (g) Annexure-2 referred to in clause 2.0 provides as under:

“Transmission system to be implemented by POWERGRID and its schedule of commissioning

<i>Sr. No.</i>	<i>Name of Scheme & Elements</i>
<i>1.</i>	<i>Anuppur Thermal Power Project (of MBPMPL)-Jabalpur Pooling Station 400kV D/c (Triple)</i>

Schedule Commissioning

Date from which the connectivity required is 1.2.2013. However, the time frame for commissioning of above dedicated transmission system from the signing of transmission agreement would be 9 months plus the time lines as specified by CERC in tariff regulations, 2009 or actual date of commissioning desired by the applicant and agreed to by the CTU, whichever is earlier.”



(h) As required under the connectivity grant, the Petitioner furnished the bank guarantee of Rs. 60 crore to PGCIL on 10.7.2010.

(i) Pursuant to grant of LTA, the Petitioner signed a BPTA/LTA Agreement dated 17.6.2011 with PGCIL wherein, PGCIL agreed to provide to the Petitioner, LTA on payment of transmission charges from the scheduled date of commissioning of generation project as indicated in Annexure-1. Irrespective of its actual date of commissioning, the said transmission charges were payable from the date of commissioning of the transmission system which was not to be prior to the scheduled commissioning dates of generation units. Annexure 4 of the BPTA which specified the transmission charges for the transmission system for the Petitioner's project, provides as under:

"The charges for the transmission system (other than the dedicated system) indicated at Annexure-3 would be borne by the applicant/generation developers in proportion to capacity for which long term open access has been sought as per CERC norm. The transmission charges will be corresponding to phased development of transmission system and in each time frame, charges should be shared by all the applicants/generation developer/beneficiaries whose generation projects are scheduled to come up in that time frame or earlier.

.....

The composite transmission scheme would be developed in phases keeping in view the commissioning schedule of generation project. Depending upon the status of various generation projects as informed by different generation developers, the details of phasing of development of transmission system has been evolved. Details of staging are described as follows-

.....

1.2 Transmission System

1.21 Connectivity System

- MB TPS-Jabalpur Pooling Station 400kV D/c (Triple)
- 1.22 Transmission System Strengthening for LTA for MB Power (MP) Ltd.

Part-A – being developed by POWERGRID

(I) Common transmission system to be shared by Maruti Clean Coal & Power Ltd.(300MW), Dheeru Powergen(450MW), Jaiprakash Power Ventures Ltd (1320MW), Aryan M.P. Power Generation Pvt. Ltd. (1200 MW) Bina Power (500 MW), CSPTCL (432 MW) M B Power[MP] (1200 MW) along with IPPs in Orissa in proportion to allocation to NR



- a) *Bina-Gwalior 765 kV S/c (3rd)*
- b) *Gwalior-Jaipur 765kV S/c (2nd)*
- c) *Jaipur-Bhiwani 765 kV S/c*

Commissioning schedule – As per the BPTA signed with IPPs Orissa for HCTC-I.”

(j) Thus, it was specifically recorded and agreed under the BPTA that there was to be a phased development of the transmission system for LTA and that the commissioning scheduled for the transmission system strengthening for the Petitioner's LTA was to be as per the BPTA signed with IPPs in Orissa for HCPTC-I. The Gwalior-Jaipur 765 kV S/C line which was also a part of the said transmission system strengthening subsequently became a contentious issue with the Petitioner. The revised agreed schedule as per Annexure 4 of the BPTA signed by the IPPs in Orissa was December 2015. Consequently, the Petitioner could not be permitted to seek operationalization of its LTA prior to December 2015. BPTA also provides for opening of a Letter of Credit for 105% of estimated average monthly billing for the transmission charges three months prior to the scheduled date of commissioning of generation units. However, the same was for payment of transmission charges post operationalization of the LTA. The Bank Guarantee furnished pursuant to the connectivity and LTA grant was to remain initially valid for a period up to six months after the expected date of commissioning schedule of generation units. Considering that the said Bank Guarantee had also been furnished for the connectivity grant, the same could be discharged/ returned back only after the Petitioner had made all contractual payments to PGCIL towards the said connectivity grant.

(k) After signing of the aforesaid Agreements, PGCIL proceeded with implementing the connectivity system for the Petitioner's project. For that purpose, PGCIL obtained Investment Approval from its Board of Directors on 5.8.2011 at an



estimated cost of Rs.425.51 crore (revised to Rs.447.64 crore) with scheduled date of commissioning as September 2013. However, the generation was delayed from the commissioning schedule mentioned in BPTA and the Petitioner changed the commissioning schedule of its units repeatedly. Accordingly, the said connectivity system was commissioned by PGCIL on 8.8.2014. The Petitioner started drawing start-up power for its project from 25.2.2015 and its units were commissioned on 20.5.2015 and 1.4.2016 respectively. In the meantime, PGCIL filed a Petition (being Petition No.141/TT/2015) before the Commission seeking approval of transmission tariff of the connectivity system i.e. “MB TPS (Anuppur)-Jabalpur Pooling Station 400 kV D/c (triple snowbird) line” for tariff block 2014-19 under the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 claiming its commercial operation date (COD) as 8.8.2014. The Commission in its order dated 15.12.2017 held that the asset was put to regular service on 25.2.2015, approved the COD of the connectivity transmission system as 25.2.2015 and directed the Petitioner herein (i.e. MBPMPL) to pay IDC and IEDC to PGCIL for the period from 8.8.2014 to 24.2.2015 and transmission charges from the period 25.2.2015 to 19.5.2015. The Petitioner has failed to pay the said IDC and IEDC to PGCIL, despite the Respondent having raised invoices dated 5.3.2018 and 4.5.2018 in that behalf for the sum of Rs.159,822,718.60 and Rs.142,945,631.60 respectively.

- (I) As far as the Petitioner’s obligation to submit PPA for LTA granted on target region as per the LTA intimation is concerned, the Petitioner submitted its PPA signed with UPPCL vide letter dated 20.1.2014 as per which the LTA was to start from 30.10.2016. The Petitioner thus sought operationalization of LTA from



October 2016. Subsequently, vide its letter dated 19.12.2014, the Petitioner submitted the letter issued by UPPCL for preponing the supply to 1.3.2015. The Petitioner in its above-mentioned letter stated that “in view of the above preponing of commencement of supply of 361 MW from 01.03.2015 under our PPA with UP Discoms, we would request you to kindly grant us LTA for 361 MW from 01.03.2015 onwards”.

(m) The Petitioner further through its letter dated 31.12.2014 to WRLDC, stated that *“We have executed a long term PPA with UP Discoms, UPPCL (thru a back to back with PTC India Limited) in Jan’ 2014 for supply of 361 MW from our subject Project. Under this PPA, the original schedule Delivery Date (SDD) was from 30 Oct’ 2016, however there are enabling provisions in PPA to pre-pone the commencement of supply after approval of UPPCL (Clause # 3.3 & clause 4.1.1). In accordance with these provisions, UPPCL vide letter dated 08.12.2014, has approved the early commencement of power supply under PPA from 01.03.2015 (or actual date of availability of open access to us whichever is later).”*

(n) In reference to the aforesaid letters, PGCIL, vide its letter dated 16.1.2015 informed the Petitioner that *“this LTA was granted subject to availability of common transmission system (details given in Annexure-I to this letter) which inter alia includes Gwalior-Jaipur 765 kV S/c (2nd). The Gwalior-Jaipur 765 kV line is facing severe right of ways issues for which Respondent is making all out efforts to resolve the same. Therefore, with regard to your request for pre-ponement of LTA to 01.03.2015 cannot be operationalized till availability of Gwalior-Jaipur 765 kV S/c (2nd)”.*



(o) The Gwalior-Jaipur 765 kV S/c line was commissioned in August 2015 much before its scheduled commissioning in December 2015 so that there was never an occasion for the Petitioner to contend that there was any non-availability of timely LTA. Even otherwise, the Petitioner had failed to provide to PGCIL the PPAs for 50% of the LTA quantum at least 3 years prior to the proposed LTA operationalization and as such, could not be heard to seek any early LTA operationalization. Consequently on commissioning of Gwalior-Jaipur 765 kV S/c (2nd line) and Jaipur – Bhiwani 765 kV S/c transmission line as indicated in Annexure-3 of LTA Agreement signed on 17.6.2011, PGCIL operationalized LTA vide its letter dated 19.8.2015.

(p) During the course of proceedings in the Petition No. 141/TT/2015, the Petitioner sought to raise untenable and unrelated issues as regards alleged non-operationalization of its LTA due to non-availability of associated transmission system and had submitted as under:

“a. The subject transmission asset and part of the basic network was approved as ISTS by the Commission in its order dated 13.12.2011. MBPL was granted a Long Term Access (LTA) for Northern Region which has been later formalized by CTU to Uttar Pradesh (UP) under Firm Beneficiary pursuant to the MBPL executing a Long Term Power Purchase Agreement ('PPA') with UP. This LTA was granted to MBPL by the CTU on 19.4.2010 and the LTA Agreement (BPTA) was signed between MBPL and the petitioner on 17.6.2011. The Transmission System including the instant transmission asset was accordingly identified for strengthening by the petitioner for the purpose of operationalisation of the granted LTA for evacuation and transmission of power from the Generation Project of MBPL to Northern Region (UP). This system strengthening involves commissioning of a S/C (2ndCkt.) 765 kV Gwalior-Jaipur transmission line (hereinafter referred to as 'G-J Line') by the petitioner and is capable of delivering power from the Generation Project to U.P. periphery.

b. The G-J line has not been commissioned by the petitioner and the commissioning of this line was postponed by the petitioner. As per the CEA report (providing progress till 31.5.2015), the target commissioning of the G-J line was August 2015.

c. MBPL has signed a Long Term PPA with UP for supply of 361 MW power from the Generation Project with the power supply date being 1.3.2015. As mentioned above, MBPL has already secured Open Access for UP from CTU



and the Unit-1 (600 MW) of the Generation Project has achieved COD in May 2015. Thus, despite having achieved COD of the Generation Project (Unit-1) and having secured Open Access way back in April 2010, the Open Access has not been operationalised due to delay in commissioning of the G-J Line by the petitioner. As a result, MBPL is unable to supply power to the power deficit UP under PPA thereby forcing a shutdown of its Generation Project.

d. As per the Clause 6.0 (d) of the LTA Agreement (BPTA) dated 17.6.2011, in event of generation capacity being ready and there is a delay in commissioning of associated ISTS, the petitioner is required to make alternate arrangement for dispatch of power. However, the petitioner has failed to provide any alternate system for dispatch of power from the Generation Project of the MBPL to Uttar Pradesh.”

(q) The above contentions of the Petitioner were completely misplaced and non-admissible for the reasons set out hereinabove. The Petitioner was deliberately seeking to mix the issue of LTA operationalization with the tariff approval for connectivity transmission system, which could not be permitted. Connectivity is a separate instrument provided under the Connectivity Regulations. A person who has been granted connectivity may or may not apply for LTA and choose to inject power on medium-term or short-term basis. The MB Power–Jabalpur transmission line was identified as a connectivity line under the connectivity intimation granted on 19.4.2010 and the Agreement was signed on 14.6.2010, for which the charges were payable irrespective of the grant or operationalization of LTA. The transmission charges of dedicated lines are governed by Regulation 8(5) of the Connectivity Regulations. Petition No.141/TT/2015 was filed by PGCIL for determination of tariff of the connectivity line and payment of its charges could not be linked to operationalization of LTA as is being sought to be done by the Petitioner. The Commission in its order dated 15.12.2017, held as under:

“28. The petitioner has submitted that MBPL’s LTA to MPPMCL for 197.4 MW was operationalised on 20.5.2015. LTA for 192 MW to Uttar Pradesh and LTA for 200 MW WR (Target) [i.e. total=392 MW] was operationalised on 26.8.2015. MBPL has stated that the petitioner has failed to operationalise the LTA amounting to 392 MW to Uttar Pradesh and WR from 20.5.2015 with effect from COD of the first unit of the generating station, due to non-commissioning of downstream assets as covered in Annexure-4 to the LTA Agreement dated 17.6.2011 including S/C (2nd Ckt) 765 kV



Gwalior-Jaipur Transmission Line which were necessary for evacuation of power from the generating station. MBPL vide affidavit dated 3.3.2017 has claimed that till August 2015, Annupur-Jabalpur D/C line could not have fully achieved the intended purpose for which it was constructed in the absence of Gwalior-Jaipur transmission line and hence no liability towards payment of transmission charges should be levied on MBPL.

29. The petitioner vide affidavit dated 1.9.2016 has submitted that the transmission system under instant petition has been identified to facilitate the connectivity of the generation project with the grid and in order to enable LTA, separate transmission system was envisaged.

30. We have considered submissions of petitioner and MBPL. We are not in agreement with MBPL that no liability towards payment of transmission charge should be levied on MBPL till August, 2015 as Annupur-Jabalpur D/C line could not have achieved the intended purpose for which it was constructed. We are of the view that the line under instant petition is dedicated line meant for evacuation of power from the generating station of MBPL for which PGCIL has granted Connectivity vide letter dated 19.4.2010 with the indicative date of operationalisation of connectivity as 1.2.2013. The said line is also indicated as connectivity line in Agreement dated 17.6.2011 between the petitioner and MBPL. Operationalisation of LTA depends on the availability of system strengthening in addition to the connectivity line included in the LTA Agreement. Only because some of the transmission lines covered under the System Strengthening have not been commissioned will not prevent the use of the connectivity line. In fact the connectivity line has been used to the extent of LTA operationalised with effect from 25.5.2015. Regulation 8(6) of the Sharing Regulations provides as under:-

"(6) For Long Term Transmission Customers availing power supply from inter-State generating stations, the charges attributable to such generation for long term supply shall be calculated directly at drawal nodes as per methodology given in the Annexure-I. Such mechanism shall be effective only after commercial operation of the generator. Till then it shall be the responsibility of the generator to pay transmission charges."

In terms of the above provision, the transmission charges for the connectivity lines from 25.2.2016 (date approved as COD of the transmission lines in this order) till the COD of the first unit of generating station of MBPL shall be borne by MBPL.

.....
33. In terms of Clause 6(d) of the LTA Agreement dated 17.6.2011 and Annexure-4, the petitioner is required to make alternative arrangement for despatch of power from the generating station and in the event of delay in commissioning of the concerned transmission system from its schedule, transmission charges proportionate to the concerned LTA shall be paid by the petitioner. It is accordingly, directed that the petitioner and MBPL shall settle the issue of delay in operationalisation of LTA on account of delay in COD of the transmission lines covered under Annexure 4 of the LTA in terms of the LTA Agreement."

(r) In this manner, the Commission recognized that:



- (i) operationalization of LTA depended on the availability of system strengthening in addition to the connectivity line included in the LTA Agreement; and
 - (ii) the liability to pay transmission charges proportionate to the LTA arose on PGCIL only when there was a delay in commissioning of the concerned transmission system.
- (s) Since under the LTA grant as also under the BPTA, an unequivocal representation had been made to the Petitioner that the LTA to the Petitioner was given on margin of HCPTC for IPPs in Orissa and LTA operationalization was subject to the availability of system strengthening (i.e. HCPTC for IPPs in Orissa) and further that the transmission system for the Petitioner's LTA became available (by August, 2015) much before its (revised) scheduled commissioning of December, 2015, there was no occasion for paying any "reverse transmission charges" to the Petitioner as has been wrongly contended by it in the present Petition. The Petitioner is deliberately interpreting Para 33 of the Commission's order de hors its context so as to evade payment of IDC and IEDC as also the transmission charges as directed by the Commission.
- (t) As per the Commission's order dated 15.12.2017, the Petitioner is liable to pay to PGCIL Rs.142,945,631.60 towards IDC and IEDC for the period from 8.8.2014 to 24.2.2015; and Rs.159,822,718.60 towards transmission charges for the period from 25.2.2015 to 19.5.2015 as directed in Para 86 of order.
- (u) Since, each of the aforesaid charges pertain to the connectivity transmission system implemented by PGCIL for the Petitioner's project, the bank guarantee of ₹60 crore is liable to be kept alive by the Petitioner pending the present



proceedings and till such time the said charges are paid to PGCIL. The Letter of Credit being referred to by the Petitioner pertains to payment of transmission charges post operationalization of the LTA and has no relevance to the payment of aforesaid charges for the connectivity transmission system. The Petitioner's claims raised in the present Petition thus being devoid of any merits, the same are liable to be dismissed.

7. The Petitioner, vide its rejoinder dated 31.5.2018 to the reply of PGCIL, has submitted as under:

(a) PGCIL in the garb of its reply, cannot seek to justify the delay in operationalization of the Long Term Access granted to the Petitioner. The Commission has already given a finding in this regard at Para 33 of its order dated 15.12.2017. PGCIL cannot re-open the issue in the present proceedings. Therefore, the contention of PGCIL with respect to justification for delay in operationalization of the Long Term Access granted to the Petitioner must be ignored/ dismissed. Once the order dated 15.12.2017 has been passed by the Commission, the same issues decided therein cannot be re-agitated in the present proceedings.

(b) The submissions made by PGCIL demonstrates the conduct of PGCIL, has been arbitrary and in utter disregard to the regulations issued by the Commission, governing the subject matter of the extant Petition.

(c) In accordance with the Transmission Agreement dated 14.6.2010 executed between the Petitioner and PGCIL, a Bank Guarantee of ₹60 crore was provided by the Petitioner to PGCIL. The validity period and return of the Bank Guarantee is guided by the Detailed Procedure dated 31.12.2009 issued by the



Commission. Clause 7.3 of the Detailed Procedure stipulates that the Bank Guarantee shall be valid till commissioning of the associated transmission system constructed by PGCIL and operationalization of the Connectivity granted to the Generation Project.

(d) In the instant matter, the associated transmission system had been declared under commercial operation and the connectivity had been operationalized by PGCIL long back (i.e. May 2015, post COD of the Unit-1 of the Generation Project of the Petitioner). Therefore, the subject Bank Guarantee was liable to be returned by PGCIL to the Petitioner not later than May 2015 under the regulatory provision. Further, the contractual requirements under the Transmission Agreement dated 14.6.2010 [Clause # 5.0 (c)] and LTA Agreement 17.6.2011 [Clause # 6.0 (b)] entered into between the Petitioner and PGCIL clearly require the subject Bank Guarantee to be kept alive maximum till commissioning the Generation Project of the Petitioner and operationalization of the LTA granted to the Petitioner. The Unit-1 of the Generation Project was declared under commercial operation in May 2015 and the entire LTA of 392 MW granted to the Petitioner was operationalized by PGCIL in August 2015.

(e) There is no occasion for PGCIL to hold the subject Bank Guarantee and seek extension of its validity period after August 2015. Despite innumerable requests by the Petitioner from time to time, the subject Bank Guarantee has still not been returned by PGCIL. During the hearing in the instant Petition on 10.4.2018, the Commission had duly directed PGCIL not to take any coercive measure and the same has been duly recorded in the Record of Proceedings. However, in violation of the directions of the Commission, PGCIL, vide its letter dated



1.5.2018 (i.e. sent by PGCIL after issuance of the said ROP) has raised conditional claim on the Bank of the Petitioner i.e. State Bank of India for encashment of the subject Bank Guarantee in the event the validity of the subject Bank Guarantee (having current validity period till 30.6.2018) is not extended by another one year. Such a gross violation of the directions of the Commission by PGCIL and unwarranted and unlawful retention of the subject Bank Guarantee by PGCIL till date and seeking extension of its validity period from time to time is completely contrary to the provisions of law and the same warrants a stern treatment.

(f) PGCIL itself has acknowledged that the scheduled start date of LTA of 392 MW granted to the Petitioner was 1.8.2013 and PGCIL itself has delayed operationalization of LTA granted to the Petitioner herein by more than 2 years i.e. from scheduled LTA operationalization date of 1.8.2013 till 26.8.2015. PGCIL's contention that the Petitioner was required to firm up PPA for at least 50% of the LTA quantum three years prior to the scheduled LTA commencement date flows from the erstwhile Regulation 12 (1) of the Connectivity Regulations. However, this requirement of upfront firming up of PPAs has been duly deleted/ relaxed/ amended by the Commission vide Second Amendment to the Connectivity Regulations on 21.3.2012.

(g) As evident from the above, the requirement for upfront firming-up of PPA three years prior to scheduled date of operationalization of LTA has been duly done away with by the Commission vide Second Amendment to the Connectivity Regulations dated 21.3.2012. The only regulatory requirement on the Petitioner was to notify PGCIL after signing of the PPA. The Petitioner has diligently



ensured compliance to the regulatory requirement. The Petitioner had executed a long term PPA with Uttar Pradesh (through a back-to-back PPA with PTC India Ltd.) on 20.1.2014 and duly notified the same to PGCIL/ CTU vide its letter dated 21.1.2014. The stand of PGCIL is self-contradictory and also is not borne from records. In this regard, the following facts may be appreciated by the Commission:

(i) PGCIL accorded Investment Approval for the transmission assets in 2011, wherein PGCIL specifically indicated that the LTA granted to the Petitioner shall commence from August 2013. PGCIL has failed to establish that if firming up of the PPA was a condition precedent to grant of LTA, why PGCIL proceeded to seek approval of its Board for augmentation of the transmission system associated for operationalization of LTA granted to the Petitioner.

(ii) PGCIL's letter dated 19.4.2010 granting Connectivity and LTA to the Petitioner is of no consequence after subsequent execution of LTA Agreement on 17.6.2011 which clearly spells out a specific date for commencement of the LTA (i.e. August 2013). It is settled principle of law that once a contract is executed, all preceding communications cease to be relevant. It is only the contract which is required to be looked into.

(iii) Assuming but not admitting, in case the Petitioner, failed to firm up the PPA as desired by PGCIL, there was no occasion for PGCIL to start work either for Connectivity or LTA, since both were granted concurrently by PGCIL to the Petitioner. In such a scenario, it becomes unclear why PGCIL adopted the selective approach of stand-alone development of the



transmission system associated with the Connectivity and concurrently delaying the development of the transmission system associated with LTA vis-à-vis their scheduled commissioned dates for the want of upfront PPAs.

(iv) Further, development pace of Orissa IPPs cannot be a pre-condition for the LTA Agreement executed between the Petitioner and PGCIL. Even if, the agreements with Orissa IPPs were to be considered, then the LTA commencement date should not have been mentioned as August 2013 in the LTA Agreement signed by PGCIL with the Petitioner.

(v) Also, even if the agreements with Orissa IPPs were subsequently modified, the same cannot have any impact of the LTA Agreement executed between the Petitioner and PGCIL, unless PGCIL informed the Petitioner about happening of such modification and accordingly amended the LTA Agreement. This amounts to misrepresentation and non-disclosure of material facts by PGCIL.

(vi) Most importantly, considering the scope and nature of the transmission system being developed by PGCIL and the network augmentation that was planned by PGCIL, upfront firming of PPA cannot be a pre-requisite for operationalization of LTA by PGCIL.

(h) From the above, it is clearly evident that PGCIL is trying to mislead the Commission by quoting the false and obsolete regulatory provisions to twist the facts of the case. Such deceptive allegations of PGCIL are devoid of merits and are liable to be rejected. Such a fallacious approach of PGCIL is not only bad in the taste of law, but also clearly reflects malicious intent of PGCIL.



- (i) The contention of PGCIL that the subject LTA was granted to the Petitioner based on the margins available in the downstream transmission system constructed for IPPs in Orissa, is contrary to the entire concept of grant of LTA and the process of system planning that has been laid down by the Commission in consultation with the Central Electricity Authority. Such a contention of PGCIL is completely erroneous since LTA granted by PGCL is not contingent to system margins, rather it is the basis on which system planning and development is undertaken by the CTU and CEA. It is a firm commitment which is never contingent upon system margins. Therefore, the scheduled commencement of LTA granted to the Petitioner (i.e. August 2013) should have very much taken into consideration by PGCIL during implementation of the downstream transmission system.
- (j) If the commissioning of the transmission system Orissa IPPs was delayed, then it is not understood as to why, PGCIL did not follow the same approach for the Petitioner. Evidently, PGCIL has been following pick and choose policy since in the present case, PGCIL for purely commercial gains, proceeded to operationalize the Connectivity (although disregarding regulations) knowing well that the LTA will be delayed.
- (k) For the sake of argument, even if such a contention of PGCIL is to be accepted then, such LTA granted on system margins by PGCIL to any generation project(s) do not warrant any relinquishment charges upon relinquishment of LTA by such any generation project(s). Ironically, PGCIL has taken a complete contradictory stand in the issue of relinquishment charges, wherein PGCIL itself has advocated that grant of LTA is not contingent upon system margins and



rather grant of LTA is the very basis for transmission system planning and development by PGCIL.

(l) PGCIL itself has acknowledged that the subject Bank Guarantee was submitted by the Petitioner for both Connectivity and LTA granted to it. Further, PGCIL, vide its reply has itself stated that the validity of the subject Bank Guarantee is till commissioning of the transmission system constructed by PGCIL for connectivity of the Generation Project of the Petitioner. By making these submissions, PGCIL itself has expressed its concurrence to the Petitioner's contentions that the subject Bank Guarantee has long outlived the purpose for which it was submitted and the same becomes liable to be returned to the Petitioner once the Connectivity and LTA granted to the Petitioner gets operationalized by PGCIL.

(m) PGCIL has acknowledged a delay in commissioning of the associated transmission system for affecting the granted Connectivity. PGCIL has invariably defaulted all the scheduled timelines under the LTA Agreement and Transmission Agreement with respect to its obligation to timely operationalize LTA and Connectivity.

(n) Clause 1.0 of the Annexure 1 of the LTA Agreement clearly specifies the scheduled commencement date of LTA as August 2013. Therefore, PGCIL was clearly obliged to operationalize the granted LTA of 392 MW by August 2013, irrespective of the actual commissioning of the associated generation units of the Generation Project of the Petitioner. Further, despite Generation Project of the Petitioner having achieved COD on 20.5.2015, the LTA of 392 MW was operationalized by PGCIL only on 26.8.2015, i.e. after a delay of 2 years from the scheduled date of LTA operationalization of August 2013 and a delay of more



than 3 months (98 days) after COD of Unit-1 of the Generation Project of the Petitioner. This delay in operationalization of LTA by PGCIL has caused an irreparable financial damage amounting to almost Rs. 125 crore to the Petitioner in terms of non-recovery of capacity charges under the long term PPA with Uttar Pradesh. However, despite suffering such an enormous financial loss of Rs. 125 crore, the Petitioner is only seeking a claim of reverse transmission charges from PGCIL in terms of compliance of the Commission's order dated 15.12.2017 in Petition No 141/TT/2015.

(o) Another issue raised by PGCIL is with respect to the commissioning schedule of Gwalior-Jaipur 765 kV S/c transmission line, which is a part of downstream transmission system for operationalization of LTA granted to the Petitioner. The highhandedness and arbitrary conduct of PGCIL is evident from the fact that, in order to avoid rightful payment of reverse transmission charges to the Petitioner, it is now on attempting to misguide the Commission. PGCIL alleged that the commissioning schedule of the G-J Line was as per the BPTA signed with IPPs in Orissa for HCTC-I and subsequently, the commissioning schedule of the G-J Line was revised to December 2015 with IPPs in Orissa and consequently, the Petitioner could not be permitted to seek operationalization of its LTA prior to December 2015. PGCIL also alleged that the Petitioner was aware that the system will be developed in phased manner and the commissioning scheduled for the transmission system strengthening for the Petitioner's LTA was to be "As per the BPTA signed with IPPs in Orissa for HCPTC-1". It appears that PGCIL is suggesting that the Petitioner had the knowledge that the LTA will not be operationalized prior to December 2015, which is factually incorrect, absolutely baseless and devoid of any merits in light of the following facts:



(i) The alleged BPTA signed with IPPs in Orissa for HCPTC-I has never been shared by PGCIL with the Petitioner. If the alleged operationalization of LTA granted to the Petitioner was to be contingent upon such BPTA, a copy of BPTA with signed with IPPs in Orissa for HCPTC-I should have been made an integral part of the LTA Agreement signed by PGCIL with the Petitioner. However, the LTA Agreement document containing only 4 annexures and it does not contain any annexure/enclosure in terms of BPTA with signed with IPPs in Orissa for HCPTC-I.

(ii) As per the agreed terms of the LTA Agreement, any revision to the date of LTA could have been only achieved on mutual consent. The Petitioner was never once consulted or given an opportunity to express its concerns on such unilateral revision/amendment in the scheduled commencement date of LTA from August 2013 to December 2015. Further, such a revision in LTA commencement schedule warrants amendment in the Annexure-1 of the LTA Agreement. However, there has been no amendment to the LTA Agreement dated 17.6.2011 to this effect.

(iii) After signing PPA with UP Discoms, the Petitioner had been repeatedly requesting PGCIL to operationalize LTA in a timely manner. In response to these requests, PGCIL/CTU vide its letter dated 16.1.2015 has acknowledged that the G-J Line was facing severe ROW issues and the LTA granted to the Petitioner could not be operationalized in a timely manner. It is to be noticed that no reference with respect to revision in commissioning schedule of the G-J Line has been made by the Petitioner in PGCIL's letter dated 16.1.2015.



(iv) The Commission in its order dated 25.4.2016 in Petition No. 422/TT/2015 has duly observed that scheduled date of commissioning of G-J Line was 1.4.2014, against which it was actually declared commercial operation on 13.8.2015 and therefore, there is delay/ time over-run of 16 months and 12 days. Hence, PGCIL has already itself acknowledged that the commissioning schedule of G-J Line was 1.4.2014 and has further accepted that there has been a delay/ time over run of 16 months and 12 days in its commissioning by PGCIL.

(v) Further, the fact that the initial date of supply of power by the Petitioner to UP Discoms under PPA was 30.10.2016 which has no relevance, as PGCIL was under contractual, regulatory and legal obligation to operationalize LTA by 1.8.2013 without making the same contingent upon any PPA(s) and/or any specific power supply date mentioned in such PPA(s). The date of supply under PPA was subsequently pre-poned to 1.3.2015 by Uttar Pradesh and the same was duly informed by the Petitioner to PGCIL well in advance.

(p) PGCIL is trying to cover-up its delay in operationalization of LTA granted to the Petitioner by making baseless allegations with malafide intent to evade its contractual, regulatory and legal obligations. PGCIL's stand that G-J Line was commissioned behind its commissioning schedule in order to match its progress with the associated generation projects of the IPPs in Orissa and citing same the reason for the delay in operationalization of the LTA of the Petitioner is in stark contradiction to the stand taken by PGCIL with respect to commissioning of 400 kV Annapur-Jabalpur transmission line i.e. Connectivity line for the Generation



Project of the Petitioner. PGCIL has itself alleged commissioning of 400 kV Anupur- Jabalpur transmission line as 8.8.2014 i.e. almost 10 months prior to commissioning of Unit-1 of the Generation Project (20.5.2015) of the Petitioner which is in complete disregard to matching the progress of the associated Generation Project of the Petitioner.

(q) PGCIL has acknowledged that the Bank Guarantee of Rs.60 crore was required to be kept valid only for a period up to 6 months after the expected date of commissioning of generating units. PGCIL in blatant disregard to the contractual and legal framework has been withholding the Bank Guarantee for almost of 3 years now.

(r) PGCIL has yet again attempted to mislead by raising unrelated issues of payment of IDC and IEDC by the Petitioner. The issue of payment of IDC and IEDC from the period 8.8.2014 till 24.2.2015 and transmission charges from the period 25.2.2015 till 19.5.2015, has been challenged by the Petitioner before the Appellate Tribunal for Electricity, vide Appeal No. 73 of 2018 which is pending adjudication and raising such issues by PGCIL in the current Petition only goes on to demonstrate its malafide intentions to mislead the Commission.

(s) PGCIL has referred to the Petitioner's PPA with Uttar Pradesh dated 20.1.2014 as per which the initial date for commencement of power supply to UP Discoms was mentioned as 30.10.2016, which was later revised to 1.3.2015. By referring the PPA, PGCIL is attempting to evade its legal, regulatory and contractual obligation to operationalize the LTA granted to the Petitioner in a timely manner. The basic issue at hand is whether operationalization of any LTA by PGCIL is contingent upon any PPA or power delivery date mentioned in the PPA and in



absence of any PPA whether PGCIL shall not operationalize the LTA and commenced the corresponding billing thereof. If such is the stand of PGCIL, then there is absolutely no rationale in PGCIL's ongoing practice of operationalization of LTA granted on Target Region (without any PPA) and its monthly billing and PGCIL shall be made liable to return the sum of money billed for LTA without PPA to the respective Long Term Transmission Customers (LTTCS).

- (t) PGCIL's responsibility to operationalize the LTA does not get hindered with the contract entered into by the power generating company with its procurer. The *interse* obligation of provision of LTA between PGCIL and the Petitioner is governed by the LTA Agreement as per which PGCIL was obliged to operationalize the LTA granted to the Petitioner by August 2013 or latest by May 2015 (i.e. Commissioning of the Generation Project of the Petitioner)
- (u) Although, upon request of the Petitioner preponing of the LTA date, PGCIL did by way of its letter dated 16.1.2015 responded. However even in that letter it fails to mention that the commissioning of the LTA was stated to be December 2015. The reasons for not preponing the LTA at the request of the Petitioner was given as "severe right to ways issues being suffered" while developing the G-J Line.
- (v) The submission made by PGCIL that G-J Line was commissioned in August 2015 much before its schedule commissioning in December 2015, is in teeth of the admitted facts and the Commission records in Petitioner No. 422/TT/2015, where it has been categorically mentioned that the said line was scheduled to be commissioned on 1.4.2014 and there has been a delay/ time over-run of 16 months and 12 days in its commissioning. PGCIL in order to avoid payment of



reverse transmission charges to the Petitioner is making false statements which are both un-desirous and unexpected out of a statutory body such as PGCIL.

(w) PGCIL has alleged that issues of operationalization of Connectivity and LTA granted to the Petitioner are unrelated. Such an allegation of PGCIL is completely misplaced and merits no consideration of the Commission. Therefore, right from the beginning, PGCIL was aware that both Connectivity and LTA were required from a specific date and both of these cannot be viewed in isolation especially when the associated transmission systems for both Connectivity and LTA were to be implemented by PGCIL only. While LTA cannot be operationalized without having Connectivity in place similarly standalone Connectivity, in absence of operational LTA cannot serve its intended purpose. It is to be appreciated that Connectivity and LTA are tools for evacuation, transmission and flow of power from the Generation Project of the Petitioner and in absence of one tool, the other will not serve its intended purpose. Therefore, right from the grant of Connectivity and LTA to the Petitioner on 19.4.2011, PGCIL was under obligation for synchronous implementation of the transmission system(s) associated with both Connectivity and LTA. There has been a time gap of more than 12 months in operationalization of Connectivity (allegedly operationalized by PGCIL on 8.8.2014) and LTA (operationalized by PGCIL on 26.8.2015), which is in complete disregard to principles of matching the progress of associated transmission systems.

(x) PGCIL after having agreed to the finality of the Commission's findings in the order dated 15.12.2017 in the Petition No. 141/TT/2015, is now, making frivolous arguments, to avoid payment of the same. In this regard it may be noted that in



compliance to the above referred order dated 15.12.2017 of the Commission, a claim of ₹25,10,43,783/- towards the reverse transmission charges has been made by the Petitioner against PGCIL vide its letter dated 16.3.2018 and the same is pending and alive as on date.

(y) There is no regulation/ law which allows PGCIL to withhold the subject Bank Guarantee of ₹60 crore submitted by the Petitioner once the Generation Project of the Petitioner became operational and both Connectivity and LTA were operationalized by PGCIL and the adequate payment security mechanism in terms of LCs have already been established by the Petitioner in favor of PGCIL. Since, all these conditions have been long met by the Petitioner in August 2015, PGCIL is liable to immediately return the subject Bank Guarantee to the Petitioner along with compensation of ₹3.5 crore incurred till date by the Petitioner towards the unlawful and unwarranted extension of the validity period of the subject Bank Guarantee post August 2015.

8. The Petitioner, vide affidavit dated 23.10.2018 has, filed written submission and has reiterated the submissions made in the Petition and rejoinder and has mainly submitted as under:

(a) PGCIL cannot raise any claim/dispute/averment pertaining to its delay since the same has already been adjudicated by the Commission. The re-agitation of the said issue is prohibited in law by virtue of the doctrine of res judicata. The well settled principle of res judicata provides that a matter/issue that has already been adjudicated upon cannot be raised again, before the same court or before a different court. The doctrine of res judicata was conceptualized and evolved in legal jurisprudence on considerations of public policy to prevent multiplicity of litigation. The principle is based on the need of giving finality to judicial decisions.



In the Satyadhyan Ghosal matter, the Supreme Court observed that when a matter has been decided- whether on question of fact or a question of law- has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken or because no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvas the matter again.

(b) Further, in the matter of State of U.P. v. Nawab Hussain, it was further observed by the Supreme Court that the doctrine of res judicata is based on two theories: “(i) the finality and conclusiveness of judicial decisions for the final termination of disputes in the general interest of the community as a matter of public policy, and (ii) the interest of the individual that he should be protected from multiplication of litigation. It, therefore, serves not only a public but also a private purpose by obstructing the reopening of matters which have once been adjudicated upon. It is thus not permissible to obtain a second judgment for the same civil relief on the same cause of action, for otherwise the spirit of contentiousness may give rise to conflicting judgments of equal authority, lead to multiplicity of actions and bring the administration of justice into disrepute. It is the cause of action which gives rise to an action, and that is why it is necessary for the courts to recognize that a cause of action which results in a judgment must lose its identity and vitality and merge in the judgment when pronounced. It cannot, therefore, survive the judgment or give rise to another cause of action on the same facts. This is what is known as the general principle of res judicata.”

(c) The issue of operationalization of LTA cannot be adjudicated upon in the present Petition, since the same has already been adjudicated by the Commission in



Petition No. 141/TT/2015 vide order dated 15.12.2017 and the order to such extent has achieved finality.

(d) The Commission in its order dated 15.12.2017 in Petition No. 141/TT/2015 decided the substantive issues, namely: (i) The liability to pay IDC, IEDC and Transmission Charges by MB Power to PGCIL for the period between 8.8.2014 till 19.5.2015; and (ii) treatment of delay in operationalization of LTA by PGCIL from 20.5.2015 to 26.8.2015. With respect to (i) above, this has been challenged by the Petitioner before the Appellate Tribunal, vide Appeal No. 73 of 2018. The Appellate Tribunal vide its interim order dated 17.8.2018 directed both parties to refrain from taking any coercive steps.

9. PGCIL vide affidavit dated 30.10.2018 has filed written submission and has reiterated the submissions made in its reply and has mainly submitted as under:

(a) In a Tariff Petition [Petition No.141/TT/2015], COD of the connectivity transmission system was approved as 26.2.2015 from when the asset had been put to regular use and the said system had been ready on 8.8.2014 but could not be declared commercial operation due to non-availability of bays at the Petitioner's end. Therefore, the Commission directed the Petitioner to pay IDC and IEDC to PGCIL for the period from 8.8.2015 to 24.2.2015. Accordingly, PGCIL raised invoice dated 5.3.2018 in the sum of Rs.159,822,718.60 for IDC and invoice dated 4.5.2018 in the sum of Rs.142,945,631.50 for IEDC. Instead of making the payments, the Petitioner filed Appeal before the Appellate Tribunal, which is presently pending adjudication. Consequently, the IDC and IEDC in the cumulative sum of Rs.30 crore (approx.) is yet to be paid by the Petitioner with respect to the connectivity system (subject to the outcome of pending Appeal)



and for which the Bank Guarantee of Rs.30 crore has been directed by the Commission to be kept available with PGCIL. Considering that connectivity is an instrument which is distinct and separate from long-term access and for which charges are payable irrespective of the grant or operationalization of LTA, the Petitioner cannot be heard to contend that since the generation project and transmission system are commissioned, its bank guarantee is liable to be returned by PGCIL.

(b) In so far as the Petitioner's LTA is concerned, the grant dated 19.4.2010 had been made "subject to availability of identified system strengthening scheme at Annexure-I". At the time of LTA grant, the Petitioner had been unequivocally informed that the LTA was being granted with the HCPTC corridor for Orissa IPPs and could be operationalized only when the said HCPTC was commissioned. In the BPTA dated 17.6.2011, it was clearly stated [in annexure 4] that the commissioning schedule of the common transmission system to be shared by the Petitioner was "As per the BPTA signed with IPPs in Orissa for HCTC-I".

(c) This scheme of transmission system strengthening for the Petitioner's LTA duly noted by the Commission in para 32 of order dated 15.12.2017 in Petition No.141/TT/2015. For the Gwalior-Jaipur 765 kV S/C line which was a part of the aforesaid system, the revised agreed schedule as per the BPTA signed with the IPPs in Orissa was December, 2015 as against the original agreed schedule of April, 2016. Therefore, in terms of the LTA grant and the BPTA, the Petitioner could not be permitted to seek operationalization of its LTA prior to December, 2015.



(d) The Commission thus left it to the parties to settle the issue of delay in LTA operationalization. There was no “adjudication” of PGCIL’s liability to pay “reverse transmission charges” to the Petitioner as has wrongly been contended by it. For the aforesaid reasons, the Petitioner’s claims as made in the present Petition are not admissible.

Analysis and Decision:

10. We have considered the submissions of the Petitioner and the Respondent. The following issues arise for our consideration:

- (a) **Issue No.1: Whether the condition as regards availability of PPA three years prior to operationalization of LTA applicable in the present case?**
- (b) **Issue No.2: What was the scheduled commissioning of the transmission system from which the LTA was granted by PGCIL to the Petitioner?**
- (c) **Issue No 3: Whether there is any delay in operationalization of LTA by PGCIL and the obligations on PGCIL for such delay in LTA operationalization?**
- (d) **Issue No 4: When should the Bank Guarantee have been returned as per the provisions of the Detailed Procedure notified under the Connectivity Regulations and in terms of the agreements signed between PGCIL and the Petitioner? And whether any direction is required to be issued for refund/ extension of Bank Guarantee in the instant case? Also whether any direction is required to be issued to the Petitioner for payment of charges as determined by the Commission in Order dated 15.12.2017 in petition no. 141/TT/2015?**
- (e) **Issue No.5: Whether any direction is required to be issued for reimbursement of the costs incurred in extension of validity of Bank Guarantee by the Petitioner?**

The above issues have been dealt with in the succeeding paragraphs.



Issue No.1: Whether the condition as regards availability of PPA three years prior to operationalization of LTA applicable in the present case?

11. PGCIL has contended that LTA was granted to the Petitioner vide LTA intimation letter dated 19.4.2010 and the start date of LTA was 1.8.2013 (for a period of 25 years). At the time when the Petitioner had applied for the LTA, the Regulation 12 of the Connectivity Regulations required that the exact source of supply or destination of off-take was to be firmed up and notified to PGCIL 3 years prior to the intended date of availing LTA to facilitate transmission system augmentation and the Petitioner was necessarily required to firm up PPAs for at least for 50% of the LTA quantum for 3 years prior to the intended date of availing LTA (i.e. by 1.8.2010) and intimate the same to PGCIL.

12. Per contra, the Petitioner has submitted that PGCIL itself has acknowledged that though the scheduled start date of LTA of 392 MW granted to the Petitioner was 1.8.2013, it itself has delayed operationalization of LTA granted to the Petitioner by more than 2 years i.e. from the scheduled LTA operationalization date of 1.8.2013 to 26.8.2015. The Petitioner has also submitted that if firming up of at least 50% of PPA was a must, then why did PGCIL proceed with Investment Approval of the transmission system without such firming up of the PPA by the Petitioner. The Petitioner has further submitted that PGCIL's contention of requirement to firm up PPA for at least 50% of the LTA quantum three years prior to the scheduled LTA commencement date flows from the erstwhile Regulation 12 (1) of the Connectivity Regulations. However, this requirement has been amended by the Commission through Second Amendment to the Connectivity Regulations on 21.3.2012. Therefore, the only requirement on the part of the Petitioner was to notify PGCIL after signing of the PPA and the Petitioner has submitted that it has diligently ensured compliance of this regulatory requirement. The



Petitioner has submitted that it had executed a long term PPA with Uttar Pradesh discoms (through a back-to-back PPA with PTC India Ltd.) on 20.1.2014 and had duly notified the same to PGCIL/ CTU vide its letter dated 21.1.2014.

13. We observe that the requirement of firming up of PPA for at least 50% of the LTA quantum three years prior to the scheduled LTA commencement date flows from the Regulation 12(1) of the Connectivity Regulations dated 7.8.2009. However, Regulation 12(1) of the Connectivity Regulations was amended vide Second Amendment to the Connectivity Regulations on 21.3.2012. Regulation 12(1) as amended, provides as under:

Regulation # 12 (1) of the Connectivity Regulations dated 7.8.2009	Amended Regulation # 12 (1) as per the Second Amendment to Connectivity Regulations dated 21.3.2012
"Provided also that the exact source of supply or destination of off-take, as the case may be, shall have to be firming up and accordingly notified to the nodal agency at least 3 years prior to the intended date of availing long-term access, or such time period estimated by Central Transmission Utility for augmentation of the transmission system, whichever is lesser, to facilitate such augmentation"	"Provided that a generating company after firming up the beneficiaries through signing of long term Power Purchase Agreement(s) shall be required to notify the same to the nodal agency along with the copy of the PPA."

14. In view of the above, we observe that requirement of firming up of PPA three years prior to operationalization of LTA was in force till issuance of Second Amendment to the Connectivity Regulations i.e. till 21.3.2012 and this regulatory requirement ceased to exist thereafter. In the present case, the Petitioner's dispute regarding delay in LTA operationalization by PGCIL is for the period from May 2015 to August 2015, during which period there was no such regulatory requirement of firming up of PPA three years prior to operationalization of LTA. The only regulatory requirement on the part of the



Petitioner was to notify PGCIL after signing of PPA which was duly complied by the Petitioner. The Petitioner had executed a long term PPA with Uttar Pradesh (through a back-to-back PPA with PTC India Ltd.) on 20.01.2014 and duly notified the same to PGCIL vide its letter dated 21.01.2014.

15. Accordingly, we observe that requirement of firming up of PPA is not a condition for operationalisation of LTA after the above amendment to the 2009 Connectivity Regulations.

Issue No. 2: What was the scheduled commissioning of the transmission system from which the LTA was granted by PGCIL to the Petitioner?

16. PGCIL has contended that LTA was granted to the Petitioner on margins of HCPTC for IPPs in Orissa and operationalization of the same was subject to commissioning of system strengthening lines. Commissioning schedule for the transmission system strengthening for the Petitioner's LTA was to be "*As per the BPTA signed with IPPs in Orissa for HCPTC-I*". PGCIL has further contended that the transmission system for the Petitioner's LTA became available in August 2015, much before its revised scheduled commissioning date of December 2015 and PGCIL operationalized LTA vide its letter dated 19.8.2015.

17. The Petitioner has submitted that the alleged BPTA signed with IPPs in Orissa for HCPTC-I has never been shared by PGCIL with the Petitioner. If the alleged operationalization of LTA granted to the Petitioner was to be contingent upon such BPTA, a copy of BPTA signed with IPPs in Orissa for HCPTC-I should have been made an integral part of the LTA Agreement signed by PGCIL with the Petitioner. However, the LTA Agreement document contains only 4 annexures and it does not contain any annexure/ enclosure in terms of BPTA with signed with IPPs in Orissa for HCPTC-I.



18. The Petitioner has further submitted that the pace of development of Orissa IPPs cannot be a pre-condition commissioning schedule for the transmission system strengthening for the Petitioner's LTA . Even if the agreements with Orissa IPPs were to be considered, then the LTA commencement date should not have been mentioned as August 2013 in the LTA Agreement. With respect to PGCIL's contentions that LTA was granted to the Petitioner on margins of HCPTC for IPPs in Orissa, the Petitioner has submitted that such a contention of PGCIL is contrary to the entire concept of grant of LTA and the process of system planning that has been laid down by the Commission in consultation with the Central Electricity Authority. The Petitioner has submitted that such a contention of PGCIL is completely erroneous since LTA granted by PGCIL is not contingent to system margins, rather it is the basis on which system planning and development is undertaken by the CTU and CEA. It is a firm commitment which is never contingent upon system margins. Therefore, the scheduled commencement of LTA granted to the Petitioner i.e. August 2013 should have been taken into consideration by PGCIL for implementation of the downstream transmission system.

19. The Petitioner has submitted that for the sake of argument, even if such a contention of PGCIL is to be accepted then, such LTA granted on system margins by PGCIL to any generation project(s) do not warrant any relinquishment charges upon relinquishment of LTA by such any generation project(s). Ironically, PGCIL has taken a complete contradictory stand in the issue of relinquishment charges, wherein PGCIL itself has advocated that grant of LTA is not contingent upon system margins and rather grant of LTA is the very basis for transmission system planning and development by PGCIL.



20. The Petitioner has submitted that Gwalior-Jaipur 765 kV S/c transmission line (G-J Line) is a part of downstream transmission system for, operationalization of LTA granted to the Petitioner. The Petitioner has submitted that in a Petition filed by PGCIL for determination of transmission tariff of G-J line, PGCIL itself has mentioned its scheduled commissioning date as 1.4.2014. Further if PGCIL has revised the schedule commissioning date to December 2015, it should have informed the Petitioner. However, PGCIL has never consulted to the Petitioner and it was an unilateral decision on part of PGCIL. Therefore, PGCIL cannot now claim that the commissioning schedule of this line was December 2015.

21. We have considered the submissions of the Petitioner and PGCIL. It is noticed that as per the LTA grant letter dated 19.4.2010, the start date for LTA was given as 1.8.2013. Further, the Annexure-1 of the LTA Agreement dated 17.6.2011 provides for commencement of 392 MW LTA from August 2013. Since in the instant case, LTA was granted with the system strengthening, PGCIL should have planned the commissioning schedule of system strengthening line as per the LTA commencement date granted to the Petitioner as per the LTA Agreement. Therefore, we are not inclined to accept the contentions of PGCIL.

22. Further, with regard to the scheduled commissioning of the transmission system associated with LTA granted by PGCIL to the Petitioner, we observe that Gwalior-Jaipur 765 kV S/c transmission line (G-J Line) is a part of downstream transmission system for operationalization of LTA granted to the Petitioner. We further observe that the Commission, in its order dated 25.4.2016 in Petition No. 422/TT/2014, determined the tariff for the Gwalior-Jaipur 765 kV transmission line and recorded the Schedule commissioning date of the line as 1.4.2014 and not December 2015 as contended by



PGCIL, against the scheduled commissioning date of 1.4.2014, the line was commissioned only on 13.8.2015, with a time-overrun of 16 months and 12 days. The relevant portion of the order dated 25.4.2016 is extracted as under:

“Time Over-run

16. As per the investment approval dated 17.3.2011, the project was scheduled to be commissioned within 36 months from the date of investment approval. Hence, the assets were to be commissioned progressively upto 1.4.2014. The details of the actual date of commercial operation and time over-run in case of the instant assets is given below:-

<i>Assets Name</i>	<i>SCOD as per IA dtd 17.3.2011</i>	<i>Actual date of commercial operation</i>	<i>Delay in months</i>
<i>Asset-I</i>	<i>1.4.2014</i>	<i>1.4.2015</i>	<i>12 months</i>
<i>Asset-II</i>		<i>2.8.2014</i>	<i>4 months</i>
<i>Asset-III</i>		<i>24.11.2014</i>	<i>7 months and 23 days</i>
<i>Asset-IV</i>		<i>13.8.2015</i>	<i>16 months and 12 days</i>
<i>Asset-V</i>		<i>7.5.2014</i>	<i>1 month and 6 days</i>

23. From the above, it can be seen that Asset-IV (765 kV S/C Gwalior-Jaipur 2nd circuit transmission line and bay extension of 765/400 kV Phagi (RVPN-Jaipur) Sub-station) was commissioned on 13.8.2015 with a delay of 16 months and 12 days. We observe that PGCIL signed revised BPTA with revised schedule of commissioning with IPPs of Odisha only when such system was linked with other generators. PGCIL should have signed the revised schedule with the Petitioner or such other generators who have been granted access through the said system, in terms of the agreement entered between them. PGCIL cannot unilaterally revise the date when the Petitioner has been granted LTA from the above transmission line.

24. In view of the above, we observe that PGCIL was required to commission the downstream transmission system associated with LTA granted to the Petitioner not later



than 1.4.2014 and that there has been delay by PGCIL in commissioning of the transmission system from which the LTA was granted by PGCIL to the Petitioner.

Issue No 3: Whether there is any delay in operationalization of LTA by PGCIL and the obligations on PGCIL for such delay in LTA operationalization.

25. We have perused the LTA Agreement dated 17.6.2011 signed between PGCIL and the Petitioner. Annexure-I of this LTA Agreement provides the quantum of LTA and date of Commencement of the LTA as under:

SI No	Applicant	Gen. Project Capacity (MW)	LTA Applied for (MW)	Commencement of LTA	Location	Time Frame (Unit Wise)	Long Term Access granted (Target Regions)		Period Of Long Term Access
							WR	NR	
1	MB Power (Madhya Pradesh) Limited	1200	392	Aug. 2013	District- Anuppur, State- Madhya Pradesh	Unit#1: 600 MW: Aug'13 Unit#2: 600 MW: Dec 13	200	192	25 years

26. We have also perused the LTA intimation for grant of LTA FORMAT-LTA-5. The relevant extract is extracted as under:

<i>"9 Transmission System for LTA</i>	<i>Details of transmission system enclosed at Annexure-1.</i>
<i>9a Date from which LTA is granted</i>	<i>01.08.2013*</i>
<i>9b Date upto which LTA is granted</i>	<i>31.07.2038</i>
<i>9c Implementing Agency for transmission system required for LTA</i>	<i>CTU i.e. POWERGRID</i>

27. We observe that under the LTA Agreement and LTA intimation letter, commencement date of LTA of 392 MW by PGCIL was August 2013. However, PGCIL



was obliged to operationalize this 392 MW LTA not later than 1.4.2014 i.e. scheduled commissioning date of Gwalior-Jaipur 765 kV transmission line. In view of the above and also in accordance with our conclusions in the Issue No. 1 and Issue No 2 above, we observe that there has been delay in operationalization of LTA of 392 MW granted by PGCIL to the Petitioner.

28. Having observed that there had been a delay by PGCIL in operationalization of 392 MW LTA granted to the Petitioner, we now proceed to decide whether PGCIL is obliged to pay any charges to the Petitioner for such delay in operationalization of LTA of 392 MW granted to the Petitioner.

29. The Commission in Para 33 of the Order dated 15.12.2017 in Petition No. 141/TT/2015 has dealt with this issue as under:

“33. In terms of Clause 6(d) of the LTA Agreement dated 17.6.2011 and Annexure-4, the petitioner is required to make alternative arrangement for despatch of power from the generating station and in the event of delay in commissioning of the concerned transmission system from its schedule, transmission charges proportionate to the concerned LTA shall be paid by the petitioner. It is accordingly, directed that the petitioner and MBPL shall settle the issue of delay in operationalisation of LTA on account of delay in COD of the transmission lines covered under Annexure 4 of the LTA in terms of the LTA Agreement.”

30. Clause 6(d) of the LTA Agreement dated 17.6.2011 provides as under:

“6(d) In the event of delay in commissioning of the concerned transmission system from its schedule, as indicated in the Annexure-4 POWERGRID shall pay proportionate transmission charges to the concerned Long Term Transmission Customer proportionate to its commissioned capacity (which otherwise would have been paid by the concerned Long Term Transmission Customer to POWERGRID) provided generation is ready and POWERGRID fails to make alternate arrangement for dispatch of power”

31. According to the Petitioner, as per the Commission’s directions in 141/TT/2015, it has raised a claim of ₹25,10,43,783/- against PGCIL. However, PGCIL refused to pay the amount and comply with the directions of the Commission.



32. We notice that the Unit-1 (600 MW) of the Petitioner's Generation Project was ready as on 20.5.2015. However, PGCIL operationalized the LTA of 392 MW only on 26.8.2015. Thus, there has been a delay on the part of PGCIL from 20.5.2015 to 26.8.2015. Accordingly, we direct PGCIL to pay the applicable transmission charges for LTA of 392 MW from 20.5.2015 to 26.8.2015 to the Petitioner in terms of the Clause 6(d) of the LTA Agreement as directed by the Commission in its order dated 15.12.2017 in Petition No. 141/TT/2015. This Order not having been challenged by PGCIL has attained finality. We direct PGCIL to make payments within 15 days of issue of this Order.

Issue No. 4: When should the Bank Guarantee have been returned as per the provisions of the Detailed Procedure notified under the Connectivity Regulations and in terms of the agreements signed between PGCIL and the Petitioner? And whether any direction is required to be issued for refund/ extension of Bank Guarantee in the instant case? Also whether any direction is required to be issued to the Petitioner for payment of charges as determined by the Commission in Order dated 15.12.2017 in petition no. 141/TT/2015?

33. We note that in the instant case, Transmission Agreement was signed for grant of Connectivity and LTA Agreement was signed for grant of LTA. As per Clause 7.3 of the Detailed Procedure issued by the Commission on 31.12.2009, a single Bank Guarantee @ Rs 5 Lakhs/MW is required to be furnished for both Connectivity and LTA. The relevant provisions of Agreements and Regulations are extracted below.

34. Clause 7.3 of the Detailed Procedure made under Connectivity Regulations provides as under:

"7.3. In all the cases where dedicated transmission system up to point of connection is to be undertaken by CTU / Inter-State Transmission licensee, the applicant after grant of connectivity shall sign transmission agreement as per the format given at FORMAT-CON-8 within one month of the grant of connectivity. Further applicant shall furnish Bank Guarantee (BG) for the amount EITHER (a) at the rate of Rs. 2.5 lakhs/MW (or such amount as amended from time to time, with the approval of the Commission)) if the connectivity requires transmission lines upto 20 kms OR (b) at the rate of Rs. 5



lakhs/MW (or amount as amended from time to time in the Regulations if the connectivity requires transmission lines more than 20 kms. The BG as per format given at FORMAT-CON-7 should be made in favour of CTU / Transmission licensee within one month of signing of transmission agreement with validity upto commissioning of above transmission system.

In case application for Grant of Connectivity and Grant of Long Term Access are made concurrently or after a time gap, then the requirement of submission of above BG should be read in conjunction with the clause for Bank Guarantee of Rs. 5 lakhs per MW for construction/ augmentation of transmission system under "Procedure for Grant of Long Term Access". In such cases the total BG required to be submitted for both the construction of dedicated line as well as for augmentation of transmission system together, at any time, shall not exceed Rs. 5 Lakhs per MW."

35. As per the above provision, the applicant after grant of connectivity is required to sign Transmission Agreement and furnish Bank Guarantee at the rate of Rs. 2.5 lakh/MW for transmission lines up to 20 kms or at the rate of Rs. 5 lakh/MW for transmission lines greater than 20 kms. In case application for grant of Connectivity and grant of Long Term Access are made concurrently or after a time gap, the applicant is required to furnish Bank Guarantee at the rate of Rs. 5 lakh per MW for construction/ augmentation of transmission system. Further, it states that such Bank Guarantee shall be valid till commissioning of transmission system.

36. Clause 5(b) and 5(c) of Transmission Agreement dated 14.6.2010 signed between PGCIL and the Petitioner provides as under:

"(b) In case MBPMPL fails / delays to utilize the connectivity provided or makes an exit or abandon its project. POWERGRID shall have the right to collect the transmission charges and/ or damages as the case may be in accordance with the notification/regulation issued by CERC from time to time. MBPMPL shall furnish a Bank guarantee from a nationalized bank for an amount which shall be equivalent to Rs.5 (five) Lakhs/MW as mentioned in the Detailed Procedure approved by the Commission, to partly compensate such damages. The bank guarantee format is enclosed as per FORMAT CON-7. The details and categories of bank would be in accordance with clause 2 (f) above. The Bank guarantee would be furnished in favour of POWERGRID within 1 (one) month of signing of this Agreement.

(c) This bank guarantee would be initially valid for a period upto six months of the scheduled date of commissioning of the Transmission system indicated at Annexure-2. The bank guarantee would be encashed by POWERGRID in case of adverse progress assessed during coordination meeting as per para 6 below.



However, the validity should be extended by MBPMPL as per the requirement to be indicated during co-ordination meeting.”

37. As per the above provisions, the Bank Guarantee furnished at the rate of Rs. 5 lakh/MW would be used to partly compensate for delay in utilizing the Connectivity provided or if the generator makes an exit or abandons its project. Further, Bank Guarantee was to be initially kept valid for a period of up to six months from scheduled date of commissioning of the Transmission system.

38. Clause 6(b) of the LTA Agreement dated 17.6.2011 signed between MBPMPL and PGCIL provides as under:

“(b)This bank guarantee would be initially valid for a period up to six months after the expected date of commissioning schedule of generating unit(s) mentioned at Annexure-1 (however, for existing commissioned units, the validity shall be the same as applicable to the earliest validity applicable to the generator in the group mentioned at Annexure-1). The bank guarantee would be encashed by POWERGRID in case of adverse progress of individual generating unit(s) assessed during coordination meeting as per para 7 below. However, the validity should be extended by concerned Long Term transmission customer(s) as per the requirement to be indicated during co-ordination meeting.”

39. As per above provisions, the Bank Guarantee is to be initially valid for a period up to six months after the expected date of commissioning schedule of generating unit(s).

40. From above, it is seen that following conditions are to be fulfilled for return of Bank Guarantee:

- a) As per Clause 7.3 of the Detailed Procedure, Bank Guarantee shall be valid till commissioning of transmission system. Thus, it can be inferred that Bank Guarantee shall be returned to the applicant after commissioning of transmission system.



b) As per clause 5(c) of the Transmission Agreement dated 14.6.2010, the Bank Guarantee is to be kept valid initially for a period of up to six months from scheduled date of commissioning of the associated Transmission system. Thus, it can be inferred that the Bank Guarantee shall be returned to the applicant after six months to the commissioning of the associated Transmission system.

c) As per Clause 6(b) of the LTA Agreement dated 17.6.2011, the Bank Guarantee is to be kept valid initially for a period of six months after the expected date of commissioning schedule of generating unit. Thus, it can be inferred that after six months of commissioning of the generating unit, the Bank Guarantee shall be returned to the applicant.

41. It is observed that Clause 7.3 of the Detailed Procedure and Clause 5(c) of the Transmission Agreement pertain to Connectivity. Clause 6(b) of the LTA Agreement pertains to LTA. The Connectivity line i.e. MB TPS-Jabalpur Pooling Station 400 kV D/c transmission line was ready on 8.8.2014 and commissioned on 25.2.2015. Unit-1 of the Generation Project was commissioned on 20.5.2015 and the LTA was operationalized with effect from 26.8.2015. From the conjoint reading of all these clauses, it can be inferred that Bank Guarantee should have been returned by PGCIL to the Petitioner latest by six months after commissioning of Unit-1 of the Generation Project i.e. by 20.11.2015.

42. The Commission vide RoP dated 3.9.2015 in Petition No. 203/MP/2015 has observed as under:

“4. The Commission observed that the amount of BGs submitted by the petitioner is more than required LC and directed PGCIL to return the excess amount of ₹17.50 crore to the petitioner immediately. The remaining amount of BG shall be returned to the petitioner after opening of LC for operationalization of LTA. The Commission further directed the petitioner to open required LC for operationalization of LTA within one week and PGCIL to operationalize LTA of



the petitioner within one week thereafter. The Commission directed the petitioner and the respondent to submit a report with regard to return of BG and opening of LC within three weeks thereafter....”

43. From the above, it can be seen that the Commission had held that once the LC has been opened for the LTA granted, then the Bank Guarantee shall be returned. The applicant is not required to furnish Bank Guarantee and open LC for the same LTA quantum at the same time. Once the LTA is operationalized and LC is opened, the Bank Guarantee is required to be returned to the applicant.

44. We note that in Petition No.141/TT/2015 filed by PGCIL (the Respondent herein), the Commission vide its Order dated 15.12.2017 has held that the IDC and IEDC for the period from 8.8.2014 to 24.2.2015 shall be borne by MBPMPL, since the line despite being ready from 8.8.2014, could not be put to commercial operation due to non-availability of bays at MBPMPL end. In the same Order, the Commission has further held that the transmission charges for the period 25.2.2015 to 19.5.2015 shall be borne by MBPMPL. MBPMPL has stated that the decision of the Commission that MBPMPL would bear IDC and IEDC for the period from 8.8.2014 to 24.2.2015 and transmission charges for the period 25.2.2015 to 19.5.2015 has been appealed before the APTEL and the same is pending decision.

45. The Respondent, PGCIL has stated that it has retained the BG due to non-payment of these charges by the Petitioner amounting to about Rs. 30 crore and that if the Petitioner provides the payment security for this amount, PGCIL would release the BG of Rs. 60 crore after following the due process.

46. We have already observed above that PGCIL should have returned the BG latest by six months after commissioning of associated generation project i.e. by 20.11.2015. We note that the Order in Petition No.141/TT/2015 where the Commission has held that



the IDC and IEDC for the period from 8.8.2014 to 24.2.2015 and transmission charges for the period 25.2.2015 to 19.5.2015 shall be borne by the Petitioner, has been issued only on 15.12.2017. In view of this, we do not find any merit in the contention of PGCIL that it has held the BG that was to be released by 20.11.2015 in view of an Order of the Commission which came more than two years later on 15.12.2017.

47. We, therefore, reject the contention of PGCIL and direct PGCIL to return the Bank Guarantee to the Petitioner within 15 days of issue of this order.

48. With regard to PGCIL's contention that the Petitioner is liable to pay it around Rs. 30 crore on account of IDC, IEDC and Transmission Charges for the period 8.8.2014 to 19.5.2015 as decided by the Commission in its order dated 15.12.2017 in Petition No. 141/TT/2015, it is noted that the Petitioner has challenged the above order before the Appellate Tribunal vide Appeal No. 73 of 2018, which is pending for adjudication. Further, the Appellate Tribunal, by way of its interim order dated 17.8.2018 has issued the following order :

“Order

In the meanwhile, both the parties are directed not to precipitate in the matter till the next day of hearing i.e.03.12.2018.”

49. In view of the above, we are not inclined to issue any direction with regard to the Petitioner's liability of Rs. 30 crore on account of IDC, IEDC and Transmission Charges for the period 8.8.2014 to 19.5.2015.

Issue No.5: Whether any direction is required to be issued for reimbursement of the costs incurred in extension of validity of Bank Guarantee by the Petitioner?

50. The Petitioner has submitted that it has incurred additional cost of around Rs 3.5 crore till June 2018 towards bank charges for extension of validity of Bank Guarantee.



The Petitioner has submitted that as per clause 6(b) of the LTA Agreement, Bank Guarantee is required to be kept valid for a period up to six months after the date of declaration of commercial operation of the generating units. The Petitioner has submitted that Unit -1 was declared under commercial operation on 20.5.2015 and the Petitioner has been supplying power to its beneficiaries i.e. UP Discoms under the PPA w.e.f. 26.8.2015 using the associated transmission system constructed by PGCIL. The Petitioner has submitted that it has established adequate payment security mechanism in terms of LCs in favour of PGCIL. Therefore, there was no occasion for PGCIL to withhold Bank Guarantee once the Generation Project commenced utilization of such transmission system. Accordingly, the Petitioner in its prayer (d) has prayed to direct PGCIL to reimburse the costs incurred by the Petitioner in extending the validity of the Bank Guarantee from 1.9.2015 onwards i.e. bank charges towards extension of validity period of the Bank Guarantee plus interest on the margin money kept with the bank for issuance of the Bank Guarantee.

51. We have considered the submission of the Petitioner and PGCIL. The Petitioner has submitted that insistence of PGCIL to keep extending BGs is illegal whereas PGCIL has contended that BG needs to be kept alive in view of various liabilities of the Petitioner towards grant of connectivity and LTA. We have already concluded that PGCIL should have returned the BG latest by 20.11.2015. We have held that such demand of PGCIL was against the provisions of the Connectivity Regulations and the Detailed Procedure framed thereunder. The Petitioner had to pay bank charges in keeping the BG alive only because of insistence of PGCIL to extend the BGs. Having declared that the BGs should have been returned by 20.11.2015 by PGCIL, we find merit in contention of the Petitioner that the charges borne by it for extension of the BGs should be reimbursed by PGCIL. Hence, PGCIL is directed to reimburse bank charges



towards extension of validity period of the Bank Guarantee kept with the bank for issuance of the Bank Guarantee paid by the Petitioner beyond 20.11.2015 till the date of release of BG. The Petitioner, MBPMPL may claim the payment from PGCIL upon furnishing of documentary proof in this regard to PGCIL. PGCIL shall make payment within one month of receipt of claim.

52. Summary of decisions are as under:

a. PGCIL is directed to make payment of transmission charges to the Petitioner corresponding to LTA 392 MW for the period from 20.5.2015 (COD of Unit-1) till 26.8.2015 (date of operationalization of said LTA 392 MW) in terms of order dated 15.12.2017 in Petition No. 141/TT/2015.

b. PGCIL is directed to return BG of Rs. 60 crore held by it within 15 days of issue of this Order.

c. No direction is issued with regard to the PGCIL's request to direct the Petitioner to clear the liability on account of IDC, IEDC and Transmission Charges in view of the interim order of the APTEL dated 17.8.2018 in Appeal No. 73 of 2018, which is pending for adjudication.

d. PGCIL is directed to reimburse bank charges towards extension of validity period of the Bank Guarantee kept with the bank for issuance of the Bank Guarantee paid by the Petitioner, MBPMPL beyond 20.11.2015 till the date of release of BG.

53. The Petition No. 96/MP/2018 is disposed of in terms of the above.

sd/-
(Dr. M.K.Iyer)
Member

sd/-
(P. K. Pujari)
Chairperson

