

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.303/MP/2015

&

Petition No. 3/MP/2016

Coram:

Shri P.K. Pujari, Chairperson

Dr. M.K. Iyer, Member

Shri I.S Jha, Member

Date of Order: 5th of February, 2020

In the matter of

Petition for the relinquishment of the Long Term Open Access under the Bulk Power Transmission Agreement dated 05.01.2011 under Regulation 18 read with Regulation 32 of 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.

And

In the matter of

Petition for the relinquishment of the Long Term Open Access under the Bulk Power Transmission Agreement dated 5.7.2010 under Regulation 18 read with Regulation 32 of 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

And

In the matter of

M/s. Vedanta Limited (Formerly Sesa Sterlite Limited)
Sesa Ghor, 20 EDC Complex
Patte, Panaji
Goa-403001

.....Petitioner

Vs.

1. Power Grid Corporation of India Limited, "Saudamini", Plot No. 2, Sector – 29, Gurgaon – 122 001
2. Central Electricity Authority
Sewa Bhawan,
Sector-1, R.K.Puram,
NewDelhi-110066

.....Respondents



Parties Present:

For Petitioner:

Shri Sanjay Sen, Senior Advocate, Vedanta Limited & Others
Shri Matrugupta Mishra, Advocate, JITPL
Shri Oman Wazir, Advocate, JITPL
Shri MD Aman Shezikh, Advocate, JITPL
Shri Hemant Singh, Advocate, Vedanta Limited & Othrs.,
Shri Lakshyajit Singh, Advocate, Vedanta Limited & Othrs
Shri Ali Moid, Advocate, Vedanta Limited, CEPL, SEL & SPGCL

For Respondent:

Shri Puneet S. Bindra, Advocate, Resolution Professional of EPJL
Ms. Simran Jeet, Advocate, Resolution Professional of EPJL
Shri Akash Singh, Advocate, Resolution Professional of EPJL
Ms. Suparna Srivastava, Advocate, PGCIL
Shri Sitesh Mukherjee, Advocate, PGCIL
Ms. Nehul Sharma, Advocate, PGIL
Shri Karan Arora, Advocate, PGCIL
Dr. V.N. Paranjape, PGCIL
Ms. Jyoti Prasad, PGCIL

ORDER

The Petitioner, M/s. Vedanta Limited (formerly Sesa Sterlite Limited) has filed the present Petition under the Regulation 18 read with Regulation 32 of 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 (Connectivity Regulations) seeking relinquishment of the Long-term Access (LTA) of 1000 MW granted to the Petitioner under the Bulk Power Transmission Agreement (BPTA) dated 5.1.2011 and LTA of 400 MW under BPTA dated 5.7.2010.

Brief Facts of the Case

2. The Petitioner has set up a Thermal Power Plant (hereinafter called 'the Project') having capacity of 2400 MW (4X 600 MW) in the District Jharsuguda in the State of Odisha. For the purpose of evacuation of power, the Petitioner applied for and was granted two Long Term Access for 400 MW and 1000 MW, respectively.



Subsequent to grant of LTA, the Petitioner entered into Bulk Power Transmission Agreement (BPTA) dated 5.7.2010 for 400 MW and another BPTA dated 5.1.2011 for 1000 MW with Power Grid Corporation of India Limited/Central Transmission Utility ('PGCIL/CTU'),. For the BPTA dated 5.7.2010, the target regions were Western Region: 200 MW and Northern Region: 200 MW. For the BPTA dated 5.1.2011, the target regions were 400 MW: Western Region, 400 MW: Northern Region and 200 MW: Eastern Region.

3. Unit-II of the Project was commissioned on 10.11.2010 and is connected to the State Grid. Units-I, III and IV of the Project were commissioned on 30.3.2011, 19.8.2011 and 26.4.2012 respectively and are connected to the ISTS. As per the terms of the BPTA, the Petitioner was required to construct a dedicated transmission line i.e. Sterlite-Jharsuguda 400 kV D/C line with the scheduled commissioning date as September 2011. CTU was required to build the common transmission system for the Project of the Petitioner and other generation developers as per Annexure-III of the BPTAs. The Petitioner did not construct its dedicated transmission line and continued to use the interim arrangement/loop-in and loop-out arrangement agreed under the Connection Agreement dated 22.12.2010 and 29.6.2012. The Petitioner vide letter dated 5.9.2013 relinquished its 1000 MW LTA (vide BPTA dated 5.1.2011) citing three events of force majeure namely, lack of long term power procurement processes initiated by the distribution licensees in the target region, non-availability of committed supply of coal and non-commissioning of the transmission systems while retaining 400 MW of LTA. The Petitioner vide said letter (dated 5.9.2013) requested CTU to maintain proposed connectivity at Jharsuguda pooling station of CTU. The matter was discussed in the Standing Committee Meeting on Power System Planning in Eastern Region held on 2.5.2014 and after detailed deliberation, the Petitioner was informed that surrender of LTA would be associated with relinquishment charges as per the



regulations of the Commission. The Petitioner was suggested that it may approach the Commission for relinquishment of 1000 MW LTA.

4. The Petitioner has filed Petition No. 303/MP/2015 with the following prayers:

- “(a) Hold and declare that the LTA of 1000 MW under BPTA dated 05.01.2011 stands relinquished with effect from 5.9.2013, without any liability to the Petitioner;
- (b) Direct Respondent No. 1, being PGCIL, to return the bank guarantee bearing no. 099961BG0000357 dated 13.04.2011 for an amount of Rs. 50,00,00,000/(Rupees Fifty Crores only) issued by IDBI Bank Limited, on behalf of the Petitioner;
- (c) Pass any order and/or any such orders as this Hon'ble Commission may deem fit and proper under the facts and circumstances of the present case and in the interest of justice.”

5. CTU vide its letter dated 17.7.2015 directed the Petitioner to open a letter of credit for Rs. 15.49 crore. Subsequently, CTU filed Petition No. 229/RC/2015 seeking appropriate direction for non-opening of LC by the project developers including the Petitioner. The Petitioner vide its letter dated 31.12.2015 informed the CTU that commissioning of the Odisha Phase I transmission system had been inordinately delayed. In the meanwhile, the Hon'ble Supreme Court vide its judgement dated 25.8.2014 and order dated 24.9.2014 in Manohar Lal Sharma Vs the Principal secretary & others set aside the coal blocks allocated by Government of India to various allottees including that of the Petitioner. Consequently, the Petitioner initiated process before the Odisha Electricity Regulatory Commission for conversion of its power project to a captive power plant. Accordingly, the Petitioner sought to relinquish 400 MW w.e.f. 31.12.2015 (under the BPTA dated 5.7.2010) on account of force majeure and requested CTU to release the BG of Rs.20 crores. CTU in its letter dated 2.2.2016 did not accept the request of the Petitioner to relinquish 400 MW without paying the relinquishment charges and advised the Petitioner to exercise its option to relinquish the LTA on payment of relinquishment charges as may be decided by the Commission in Petition No.92/MP/2015.



6. The Petitioner has filed Petition No. 3/MP/2016 seeking the following reliefs:

- “(a) hold and declare that the LTA of 400 MW under BPTA dated 05.07.2010 stands relinquished with effect from 31.12.2015, without any liability to the Petitioner;
- (b) direct Respondent No. 1, being PGCIL, to return the bank guarantee bearing no. 2010004IBGP0509 dated 01.07.2010 for an amount of Rs. 20,00,00,000/- (Rupees Twenty crores only) issued by IDBI Bank Limited, on behalf of the Petitioner; and
- (c) pass any order and/or any such orders as this Hon'ble Commission may deem fit and proper under the facts and circumstances of the present case and in the interest of justice.”

Submission by the Petitioner (M/s Vedanta Limited)

7. The Petitioner in support of its contention and prayers in both the petitions has submitted as under:

(a) Pursuant to the execution of the BPTAs, the petitioner did not find any opportunity to enter into long term PPAs as there were hardly any long term bids that were invited by the utilities. Accordingly, the petitioner vide its letter dated 5.9.2013 requested PGCIL to relinquish its 1000 MW and demanded return of the Bank Guarantee. Further, Hon'ble Supreme Court vide its judgment dated 24.09.2014 in Writ Petition No.120 of 2012 (Manohar Lal Sharma vs. The Principal Secretary and Ors) de-allocated the coal block for supply of coal to the Petitioner and accordingly, the Petitioner lost its source of long term fuel. The cancellation/de-allocation of the coal mines adversely affected the progress of the Project to the extent that Petitioner was left with no source of coal supply.

(b) Due to prospective demand of power by VAL-II (Aluminium smelter owned and operated by M/s Vedanta Aluminium Limited and non-availability of economically feasible source to meet such demand, the Petitioner initiated steps towards converting Units I, III and IV from IPP to CPP.



(c) CTU has not implemented all the transmission system within its scope as per Annexure-2 of the BPTA. As per the said annexure, the transmission system for Odisha Phase-I IPPs was to be commissioned by PGCIL in March 2013; however, CTU has failed to stick to the said commissioning schedule.

(d) In view of the reasons beyond the control of the Petitioner as mentioned above, the Petitioner was constrained to relinquish 1400 MW of LTA capacity. There would be no stranding of capacity on account of the relinquishment of the LTA as a number of IPPs have been connected to the transmission system which would utilize the said capacity. Furthermore, the question of stranded capacity on account of the exit of the Petitioner from the transmission corridor did not arise as the Phase II of the Odisha project was still at the inception stage.

(e) Under Regulation 18 of the Connectivity Regulations, the Petitioner has a statutory right to relinquish the Long Term Access before the expiry of the full term LTA subject to payment of compensation towards the stranded capacity resulting from such relinquishment in the manner provided in the said regulation. The question of stranded capacity in the present case does not arise as per the Connectivity Regulations read with the BCD Procedure since the LTA granted to the Petitioner cannot be implemented in the absence of adequate number of long term power procurement exercise being conducted by the Discoms and consequently, no relinquishment charges are payable by the Petitioner.

(f) From a conjoint reading of Regulation 2(v) and Regulation 18 of the Connectivity Regulations, it becomes evident that the relinquishment charges/compensation sought to be levied are based on the capacity which



remain stranded in the transmission system in the event of relinquishment of LTA quantum by an LTA customer. Since there is no methodology in existence for working out the stranded capacity on account of relinquishment of LTA quantum, any relinquishment charges calculated and subsequently imposed by CTU would amount to an arbitrary and misguided imposition.

(g) The moment the Petitioner served Respondent No. 1 its letter dated 5.9.2013 seeking relinquishment of the LTA, PGCIL cannot raise any invoices pertaining to transmission charges on account of commissioning of the transmission lines. The only thing left to be decided is whether or not the Petitioner is liable to pay any relinquishment charges as per Regulation 18 of the Connectivity Regulations.

(h) The generators have been facing constraints in evacuation of power mainly due to the delay in the completion of the 765 kV transmission lines in Odisha. It is too early to ascertain whether upon completion of the transmission system, there will still be a constraint or it will be adequate or there will be stranded capacity.

(i) PGCIL being at the helm of the affairs in so far as the planning and co-ordination of transmission in the country is concerned, shall have to undertake a systematic study of the future demand in a particular region to plan its transmission network accordingly. It gives rise to a substantial question of law that PGCIL contemplation of laying of transmission lines or taking steps towards system strengthening are not on the basis of its independent study of the particular region or sector, but on the basis of the applications received towards grant of LTA.



8. During the hearing on 8.3.2016, learned counsel for the petitioner further submitted that the petitioner is ready to relinquish entire capacity under LTA subject to outcome of the recommendation of the Committee constituted in Petition No. 92/MP/2015 for assessment/determination of stranded transmission capacity with regard to relinquishment of LTA right by a long term customers. The Commission observed that in the present case, since the petitioner is ready to relinquish entire capacity under LTA, the capacity should be utilized for granting the LTA to the pending applications so that capacity does not remain unutilized. The assessment/determination of stranded transmission capacity and the liability for relinquishment charges of the petitioner will be decided in terms of the order in Petition No.92/MP/2015. With the consent of the Petitioner to pay the relinquishment charges as per the decision in 92/MP/2015, the Commission directed CTU to initiate action to allot relinquished LTA to other applicants in accordance with prevailing Regulations. The Commission directed the petitioner to keep the Bank Guarantee alive till the issue of relinquishment charges is decided.

Reply of the Respondent, PGCIL

9. The Respondent, (PGCIL/CTU) vide affidavit dated 21.6.2016 in Petition No.303/MP/2015 and vide affidavit dated 27.6.2016 in Petition No. 3/MP/2016 has submitted as under:

(a) The Petitioner can claim "force majeure" only if the events or circumstances wholly or partly prevents or causes unavoidable delays in the performance of the Petitioner's obligation under the BPTA. In the present matter, the Petitioner's inability to sign long term PPA has not rendered the BPTA impracticable of performance. In fact it can at the most be a commercial hardship and the same is not covered force majeure in terms of Clause 9 of the BPTA.



(b) The conversion of Units I, III and IV of the Petitioner's power project from IPP to CPP and subsequently the Petitioner seeking annulment of its LTA on the grounds of conversion of its Project from IPP to CPP due to non-availability of economically feasible power to meet demands of its subsidiary company (VAL-II) does not amount to force majeure in terms of Clause 9.0 of the BPTA.

(c) The Petitioner has willfully and intentionally taken steps to convert the status of its Project from IPP to CPP. Further, the Petitioner has willfully and intentionally increased the consumption for the captive use from the power project in order to qualify as a captive generating plant in terms of Rule 3(9) of the Electricity Rules, 2005 read with section 2(8) of the Act which prescribes that (i) not less than twenty six per cent of the ownership is held by the captive user(s), and (ii) not less than fifty one per cent of the aggregate electricity generated in such plant, determined on an annual basis, should be consumed for the captive use in order to qualify as a captive generating plant.

(d) The Petitioner has deliberately concealed certain vital material facts with regard to progress of the transmission system. The Petitioner is aware that the implementation of associated transmission system takes a minimum of 3-4 years after the approval. Further, the Petitioner was required to develop a dedicated transmission line under the BPTA. Despite the Project being commissioned in April 2012, the Petitioner has still not constructed the dedicated transmission line and is connected to ISTS through an interim arrangement by way of LILO of a 400 kV Double Circuit for evacuation of power through short term open access ("STOA") / medium term open access ("MTOA") till such time the system could be implemented for evacuation of power under the LTA. The Petitioner has also



availed MTOA through the interim arrangement on at least two occasions (40.6 MW from February 2012 to May 2012, and 100 MW from June 2013 to May 2014.

(e) The transmission system required for the LTA granted to the Petitioner is being implemented partly by PGCIL and partly under tariff based competitive bidding route (TBCB route). Further, for the IPPs that have actually commissioned their generation in the vicinity of the Petitioner's Project, even the already commissioned transmission systems would be able to meet the evacuation requirement of the those generation project and that of Petitioner's LTA. Therefore, the contention of the Petitioner that it is relinquishing the LTA because of non-commissioning of the transmission system as per the BPTA is without any basis. CTU revised the intimation letter of the Petitioner on account of failure of two LTA applicants to meet the regulatory requirement of signing of BPTA. As per *Annexure 2 and 3* of the BPTA dated 05.01.2011, CTU reviewed the transmission system based on the share of power to be drawn by all the generators, and based on mutual consent, revised the transmission system and commercial operation date for the same.

(f) The Petitioner requested for 'annulment of LTA' whereas Regulation 18 of the Connectivity Regulations provide for 'relinquishment of LTA'. Under Regulation 18 of the Connectivity Regulations, the Petitioner may relinquish LTA fully or partly, before the expiry of full term of its LTA, by payment of relinquishment charges. Regulation 18 of the Connectivity Regulations imposes strict liability to pay relinquishment charges irrespective of any force majeure conditions faced by the party so relinquishing the LTA. In the present matter, the Petitioner is seeking to relinquish its LTA without paying compensation on account of occurrence of force



majeure event which is contrary to the provisions of the Regulations, thereby trying to evade from its regulatory obligations. In the present matter, the system to which LTA was sought by the Petitioner was a part of the common transmission system. Therefore, if the project developers are allowed to relinquish their LTA without any liability, then the transmission planning cannot be effectively done and the transmission capacity will remain underutilized. Therefore, the Petitioner is liable to pay for the relinquishment charges in accordance with the Clauses 5 and 6 of the BPTAs.

(g) The petitioner sought annulment of its LTA on 05.09.2013 which is prior to the cancellation of coal blocks vide order dated 24.09.2014 by the Hon'ble Supreme Court in Manohar Lal Sharma v. The Principal Secretary, [(2014)9SCC614]. Therefore, the arguments now being advanced by the Petitioner that cancellation of coal blocks as a force majeure event are merely after-thought and hence, the Petitioner cannot plead force majeure. The relinquishment of the LTA due to a) de-allocation and cancellation of Coal block, b) conversion of Units I, III and IV of the Petitioner's Project from IPP to CPP and c) inability of PGCIL to implement the transmission system are unfounded. The reasons for relinquishment do not amount to force majeure events in light of Clause 9 of the BPTA and the stranded capacity due to relinquishment of 1000 MW LTA is wrong and denied.

Rejoinder by the Petitioner

10. The Petitioner in its rejoinder filed vide affidavits dated 27.7.2016 in Petition No.303/MP/2015 and Petition No.3/MP/2016 has mainly reiterated its submissions made in the main petitions. The Petitioner has additionally submitted the following:



(a) The Commission vide its order dated 2.12.2013 in Petition No. 244/MP/2012 has held that "the execution of long-term PPA is envisaged for availing long-term access". This finding makes a long term PPA as the most critical component of availing/operationalizing/utilizing the BPTA/LTA. Execution of long term PPAs is in the control of the respective Discoms in NR and WR in where the Petitioner was granted BPTA/LTA. In the event the said Discoms have not come forward for execution of long term PPAs, and the utilization/operationalization of the said BPTA becomes absolutely impossible on account of factors beyond the control of the Petitioner.

(b) Since the year 2009, there have been very less successful long-term bids floated by the Discoms till December 2015 in the target regions in which the LTA has been granted to the Petitioner. The total quantum of power requisitioned under the said long-term bids is hopelessly inadequate qua the generation capacity that has come up within the said period. Such occurrence of Force Majeure events renders the BPTAs impossible to perform, thereby absolving the Petitioner from any liability qua the BPTAs, including any payment of relinquishment charges.

(c) The provisions of the Connectivity Regulations qua LTA including Regulation 18 are implemented through the BPTA which PGCIL executes with the generators. Therefore, the right of collection of relinquishment charges has been subjected to the BPTA/ LTA Agreement. A Force Majeure event resulting in frustration of the BPTA/LTA Agreement, as also mentioned in clause 9, absolves the generator from any liability including payment of relinquishment charges.

Submissions during the hearing

11. During the hearing of the petition, learned senior counsel for the Petitioner submitted as under:-

(a) Once a contract has been entered into on account of provisions in the statute or regulations and the principles in the regulations have been incorporated in the contract, it cannot be said that the regulation will operate independent of the contract. Since the incident of relinquishment charge is on account of a contract executed in terms envisaged under Regulation 15 of the Connectivity Regulations, Regulation 18 would then be required to be applied in a manner envisaged by the parties in the contract/BPTA. Accordingly, Clauses 5 and 9 of the BPTA becomes relevant and would control the obligations of the parties.

(b) The Commission in Petition No. 69/MP/2014 (Aryan MP Power Generation Pvt. Ltd. Vs. PGCIL) and in Petition No. 317/MP/2013 (Navbharat Power Pvt. Ltd. Vs. PGCIL) and other orders has interpreted Clause 9 of the BPTA to cover a temporary phase when the project developer is unable to utilize the transmission system or when the licensee is unable to make its transmission system available due to any force majeure event and has held that the said provision cannot be used for making an exit from BPTA. Force Majeure cannot be of “temporary nature” for the reason that the definition of force majeure includes war, rebellion, mutiny, fire, flood, change in law etc. and some of these events creates a permanent disability to jeopardize the ability of the Petitioner to start operation again. Therefore, Clause 9 of the BPTA is without any limitations as to the time for which force majeure period can be claimed.

(c) Clauses 1 to 11 of the BPTA unambiguously provide that the obligation contained under the terms relating to payment of transmission charges (Clause 2) and relinquishment charges (Clause 5) shall stand discharged in the event of occurrence of force majeure situation (Clause 9). Therefore, Clause 9 is an omnibus clause that cuts right through the agreement and includes the failure to carry out the obligation to pay the transmission charges and relinquishment charges as envisaged in Clauses 3 and 5 of the BPTA. The functional basis of a power project is long term PPAs and if the same are not executed due to reasons not attributable to the project developer, the existence of force majeure events as provided in Clause 9 cannot be denied. Further, Clause 6 of the BPTA has no application to the present case as this is not a case of exit/abandonment of the project.

(d) The event narrated by the Petitioner i.e. non-availability of long term PPA is an event of force majeure within the meaning of Clause 9 of the BPTA and on occurrence of such force majeure event, the obligation to pay the relinquishment charges under Regulation 18(1) of the Connectivity Regulations stands extinguished. An analysis of the various provisions of the BPTA would show that the statutory right of CTU to collect transmission charges was made in terms of the contract/BPTA. As per the minutes of the 37th and 40th Reports of the Parliamentary Standing Committee issued in March 2018 and August, 2018 respectively, there was no possibility of signing of PPAs which resulted in the assets being stranded/stretched and several companies being declared NPAs. Lack of agreement for supply of power between generators and distribution licensees is an event of force majeure which is recognized by the Central Government.

12. Learned Counsel for CTU submitted as under:
- a) The Commission in its order dated 8.3.2019 in Petition No. 92/MP/2015 has decided the issue of stranded capacity and payment of relinquishment charges. The Commission has held that Regulation 18 of the Connectivity Regulations was in conformity with the provisions of the Act and in advancement of the objects of the Act with regard to Open Access. Further, the Commission has held that the Relinquishment Charges were in the nature of the compensation which a long term customer was obliged to pay as transmission charges in accordance with the mechanism envisaged in the Regulation 18 of the Connectivity Regulation. Therefore, the issue as regards the liability of payment of relinquishment charges has been settled by the Commission which is binding on the petitioner being a party in the Petition No. 92/MP/2015.
 - b) In line with the direction of the Commission in order dated 8.3.2019 in Petition No. 92/MP/2015, CTU has computed the stranded capacity and relinquishment charges of the various generators including the Petitioner. The Petitioner is liable to pay Rs. 44.12 Crs. as Relinquishment Charges.
 - c) The allegations made by the Petitioner as regards the responsibility of the CTU to execute the transmission corridors taking into account the actual long term PPAs entered by the Petitioner has been dealt with by the Commission in Para 94 of the Order dated 8.3.2019 in the Petition No. 92/MP/2015. Since, signing of the PPAs is not a pre-condition for implementation of transmission corridors, the same cannot be pleaded as a Force Majeure event relieving the Petitioner from paying the relinquishment/transmission Charges under the BPTA.

- d) The Commission in the Order dated 8.3.2019 in Petition No. 92/MP/2015 has held that since BPTA is in terms of the Connectivity Regulations, it is in the nature of a statutory contract. The relationship between the CTU and the LTA customer being statutory in nature has to be governed by the provisions of the Connectivity Regulations. Further, the liability for payment towards the relinquishment charges is to be determined based on Regulation 18 of the Connectivity Regulations. Since, the issue as regards the applicability of the Regulation 18 in the context of BPTA stands adjudicated, the submission of the Petitioner in this regard is liable to be rejected.
- e) Under Clause 5.0 of the BPTA, the obligation to pay the transmission charges under the BPTA is absolute and the Petitioner cannot transfer/relinquish its rights and obligations without the prior approval of the Commission. Since, the relinquishment is to be upon the payment of necessary compensation in accordance with the regulations, Regulation 18 of the Connectivity Regulation has been included as an operating contractual provision under the express terms of Clause 5.0 of the BPTA. Therefore, the inter argument of the statute ousting the Regulation is of no consequence.
- f) While interpreting a contract what is of essence is the intention of the parties in the context which it appears and the nature of the rights and obligations agreed there under`. As such the Force Majeure Clause under BPTA must be construed accordingly and cannot be given a wider area of applicability than what has been intended by the parties. The BPTA is a contract for use of transmission line of a transmission licensee by a DIC wherein the DIC agrees to bear the transmission charges as a consideration for use of the said transmission lines irrespective of the actual power flow. In other words, so long as a DIC is connected to the transmission lines of the licensee and

retains the rights to access the system, it is liable to pay transmission charges to the licensee. It is in this context that Clause 9 of the Connectivity Regulations provides for an exclusion Clause in the nature of the force majeure event which temporarily absolves the parties from any liabilities arising from a breach of contract. This is evident from the last sentence of the Clause 9 which says that power flow should be started as soon as the force majeure event is over. Therefore, Clause 9 of the BPTA being temporary in nature and being restrictive in application cannot be relied upon by the Petitioner to contend that the entire BPTA including Clause 5.0 of the BPTA ceases to operate as between the parties. The liabilities under Clause 5 of the BPTA and Regulation 18 of the Connectivity Regulations must be distinguished from the liabilities under Clause 9 of the BPTA. Clause 9 of the BPTA only provides for a departure of payment from the transmission charges and by no means can provide for departure from obligation under the Clause 5 of the BPTA.

- g) As per the findings of the Commission in various cases and of the Appellate Tribunal in Appeal No. 54 of 2014, the absence of long term PPA cannot be construed as a force majeure event. The Petitioner is accordingly liable to pay the Relinquishment Charges.

13. Learned Senior Counsel for the Petitioner has submitted as under:

- (a) Relinquishment Charges have been made part of the contractual obligations under Clause 5 and therefore, the same is amenable to the Clause 9 of the BPTA. While the relinquishment charges can be computed in terms of the protocol provided under Regulation 18, levy of the same is subject to the terms and subject of the BPTA. Further, the BPTA does not contain any



exception or non obstante clause specifying that the relinquishment charges will be levied as per the Connectivity Regulations. In the absence of such stipulations, CTU cannot argue that the compensation for relinquishment is a statutory charge which is payable de-hors the provisions of the BPTA.

- (b) The argument by PGCIL that PPA is not at all relevant while considering the LTA application is fundamentally flawed. Regulation 12 of the Connectivity Regulations provides that an agreement for sale/purchase of power is a consideration at the time of applying for LTA. Clause 22.7 of the Detailed Procedure under the Connectivity Regulation casts an obligation on an LTA customer to confirm the exact details of the PPA executed 3 years prior to the intended date of operationalization of the LTA. Clause 7.1 of the BCD Procedure provides that an LTA cannot be operational in the event firm long term PPA is not available. Regulation 15-B of the Connectivity Regulations provides that LTA can only be availed by having a contract of above one year. In view of the above provisions, the Commission is precluded from taking a view that non- availability of long term PPAs as a result of non-initiation of a long term power purchase processes by the distribution licensees will have no impact on the BPTAs.
- (c) Ministry of Power issued the guidelines for procurement of power under Design, Build, Finance, Own and Operate (DBFOO) basis on 8.1.2013. As per DBFOO, coal cost is a pass through in certain scenarios which relate to the source of coal. For example, if the bids are called for scenarios relating to domestic coal linkage or from domestic coal mines, then power plants based on imported coal cannot participate in such bids. The said stipulation is a departure from the earlier Case 1 bidding regime where coal source



was at the discretion of the bidders. This factor has materially affected the Petitioner from entering into long term PPA. The aforesaid reason cannot be ignored by the Commission and in the event of relinquishment of BPTA/LTA on account of the said force majeure reasons, no relinquishment charges can be levied.

(d) The BPTA is not an underlying contract for underwriting the costs of PGCIL.

Where a generator is not able to evacuate power on account of reasons which are beyond its control, the said generator cannot be made liable to underwrite the cost of PGCIL on account of non-usage of the transmission system. As per Section 38(2)(b) of the Act, CTU is required to effectively coordinate the construction of transmission systems with various entities including the generators. It follows therefrom that when the generators have raised their concerns pertaining to non-evacuation of power on account of reasons beyond their control, CTU cannot just proceed with the transmission corridors only on the basis of BPTAs being signed with the generators. As per Para 5.3.2 of the National Electricity Policy, CTU is required to undertake network expansion after identifying requirements in consultation with the stakeholders and taking up the execution after the due regulatory approval. When PGCIL develops transmission corridors without execution of contracts/BPTA with the beneficiaries, the risks in developing the transmission network cannot be entirely attributable to the LTA customers. CTU has to take the risk of developing transmission infrastructure in the event of occurrence of any unforeseeable or uncontrollable event.

(e) CTU's interpretation of clause 9 of the BPTA is only applicable to the extent of "transmission of electricity in a transmission system", and not for the



purpose of injection or withdrawal of power is completely erroneous. After injection of power by the generator from its generating station, it has no role qua such generation of power. If the force majeure clause is interpreted as per the argument of CTU, then it will be applicable for the benefit of CTU, and for no other entity. Any issues qua the flow of power in the transmission system can only be attributable to CTU and in such an event, any benefit of force majeure will always be availed by CTU. The above interpretation will render clause 9 as otiose as only CTU can invoke the said clause since the generator does not have any role after injection of power in the transmission system from its power plant.

Analysis and Decision

14. We have considered the submissions of the Petitioner and Respondents and perused the relevant documents on record and the regulations of the Commission and the orders issued by the Commission having bearing on the adjudication of disputes raised in the petition. The following issues arise for our consideration:

- (a) Issue No. 1: Whether Clause 9 of the BPTAs dealing with force majeure is an omnibus provision cutting across all provisions of the BPTAs including clause 3 and 5 and in the event force majeure is proved, relieves an affected party from its liability to pay the transmission charges or relinquishment charges as the case may be, or is a standalone provision applicable for disruption in injection/supply of power of temporary nature?**
- (b) Issue No. 2: Whether the case of the Petitioner is covered under clause 9 of the BPTAs?**
- (c) Issue No. 3: What is the implication of non-commissioning of the identified transmission systems with respect to relinquishment?**
- (d) Issue No. 4: Issue No.4: What should be the dates of relinquishment of the LTAs granted under BPTAs dated 5.7.2010 and 5.1.2011?**
- (d) Issue No. 5: What are the reliefs admissible to the Petitioner in terms of its prayers in the Petitions?**

These issues have been dealt with ad seriatim in the succeeding paragraphs of



this order.

Issue No. 1: Whether Clause 9 of the BPTAs dealing with force majeure is an omnibus provision cutting across all provisions of the BPTAs including clause 3 and 5 and in the event force majeure is proved, relieves an affected party from its liability to pay the transmission charges or relinquishment charges as the case may be, or is a standalone provision applicable for disruption in injection/supply of power of temporary nature?

15. The Petitioner has entered into two BPTAs i.e. BPTA dated 5.7.2010 for LTA of 400 MW and BPTA dated 5.1.2011 for LTA of 1000 MW. The Petitioner has sought relinquishment of the LTAs for 1400 MW on the ground that it is affected by force majeure on account of: (a) lack of long term bids by the distribution companies; (b) cancellation of the Petitioner's captive coal blocks on the order of the Hon'ble Supreme Court; (c) conversion of the Unit-I, III and IV of the power project of the Petitioner to captive power plant on account of non-availability of economical power for its captive use; and (d) delay in commissioning of the transmission system within the scope of PGCIL.

16. CTU has submitted that the inability of the petitioner to execute a long-term agreement shall not render the BPTA impracticable of performance, as it can at the most be a commercial hardship and the same is not covered even under Clause 9 of the BPTA as the BPTA was not premised on the ability of the Petitioner to enter into a long term PPAs. CTU has further submitted that the conversion of the power project of the Petitioner from IPP to CPP does not amount to force majeure under Clause 9 of the BPTA which provides for force majeure on account of events which include strikes, act of god, change in law and any other reasons beyond the control of the concerned party. CTU has submitted that the Petitioner has willfully and intentionally taken steps to convert the status of its power project from IPP to CPP which cannot be covered under force majeure. CTU has further submitted that the cancellation of coal block is not covered under force majeure in terms of Clause 9 of the BPTA.



17. The Petitioner has submitted that CTU accorded long term access in terms of the Connectivity Regulations. The Petitioner and CTU entered into BPTA as required under Regulation 15 of the Connectivity Regulations for payment of transmission charges (Clause 2 of the BPTA). Clause 5 of the BPTA recognized the ability to relinquish or transfer obligations specified in the BPTA subject to approval of CTU and the Commission and further subject to payment of compensation. In terms of Clause 9 of the BPTA, the parties have agreed to limit their liability for loss or damage arising out of failure to carry out the terms of the agreement if such loss or damage is on account of force majeure. Further, force majeure has been defined in broad terms to include change in law or any other cause beyond the control of the defaulting party. Therefore, the statutory right of CTU to collect the transmission charges was made in terms of the contract/BPTA. The Petitioner has submitted that the agreed terms of the BPTA, being Clauses 1 to 11 are unambiguous which provide that the obligations contained under the terms relating to payment of transmission charges (Clause 2) and relinquishment charges (Clause 5) shall stand discharged in the event of occurrence of force majeure situation (Clause 9). The Petitioner has submitted that Clause 9 is an omnibus clause that cut right through the agreement since it provides that “no party is liable to any claim for any loss or damages whatsoever arising out of the failure to carry out the terms of this Agreement”. The Petitioner has submitted that use of the phrase “this agreement” includes the failure to pay the transmission charges and relinquishment charges as envisaged in Clauses 3 and 5 of the agreement. The parties entering into contract are fully aware of the nature of the contract including the contingencies (i.e. Clause 9 of the BPTA) and it would not be proper if any other interpretation or meaning is given to the same which is contrary to the original intention of the parties i.e. in spite of occurrence of force majeure events under clause 9, the contractual obligations under Regulation 5 to pay the relinquishment charges continues to be alive.

18. Learned Senior Counsel for the Petitioner submitted that a question which needs to be considered is whether the Petitioner would be liable for payment of relinquishment charges in



terms of Regulation 18 of Connectivity Regulations read with the order dated 8.3.2019 in Petition No.92/MP/2015 irrespective of whether the Petitioner has demonstrated existence of force majeure events. The Petitioner has submitted that once a contract has been entered into on account of provisions in the statute/regulations and the principles in the regulations have been incorporated in the contract, it cannot be said that the regulation will operate independent of the contract. The Petitioner has submitted that the incident of relinquishment charge is on account of the contract executed in terms envisaged under Regulation 15 and hence Regulation 18 would require to be applied in a manner envisaged by the parties in the BPTA. It is in this context that Clauses 5 and 9 become relevant and would control the obligations of the parties, irrespective of whether such obligation has reference to determination made under the regulations.

19. CTU has submitted that the issue regarding liability of payment of relinquishment charges and method of determination of stranded capacity has been settled by the Commission in order dated 8.3.2019 in Petition No.92/MP/2015 and is binding on the Petitioners who were also parties in the said proceedings (subject to order in the appeals). The Petitioners cannot now be heard to contend that they are not liable to make payment of the compensation in the manner provided under Regulation 18 of the Connectivity Regulations. CTU has submitted that the Petitioner in terms of Clause 2.0 of the BPTA has undertaken to share and pay to the CTU the transmission charges in accordance with the Regulations/Tariff orders of the Commission. Further, Clause 6 of the BPTA have bound the generators to pay the transmission charges when they are abandoning the project or making an exit. CTU has emphasized that it is in pursuance of the said provision that the Petitioner has furnished to the CTU the bank guarantee corresponding to the LTAs granted to them which can be encashed by the CTU in case of any adverse progress of the generating unit assessed in the Coordination Meeting. CTU has further submitted that Clause 5.0 of the BPTA prevents the Petitioner to relinquish or transfer its rights and obligations specified in the BPTA without the prior approval of the Commission and CTU and subject to payment of compensation in



accordance with the regulations of the Commission issued from time to time. Therefore, Regulation 18 has been included as an operating contractual provision under the express terms of Clause 5.0 of the BPTA and therefore, the entire argument of the contract ousting the regulation is of no consequence. CTU has submitted that the contention of the Petitioner that the right to claim relinquishment charges based upon exit/surrender/relinquishment of LTA is subject to provisions of BPTA which has become frustrated on account of force majeure event, already stands adjudicated in order dated 8.3.2019 in Petition No.92/MP/2015 wherein the Commission has held that BPTAs or LTA Agreements are in accordance with the Connectivity Regulations and they are in the nature of statutory contract and are to be governed by the provisions of Connectivity Regulations. CTU has submitted that the interpretation supplied by the Petitioner to Clause 9 of the BPTA so as to broaden its applicability to situations which were never intended to be covered, is absolutely erroneous and has occurred on account of the unwarranted comparison by the Petitioner of the force majeure clause in the BPTA with the force majeure clause in the Power Purchase Agreement between the generating companies and distribution licensees. CTU has submitted that the force majeure clause in the BPTA must be interpreted on the principle of interpretation of contract i.e. the intention of the parties, the context in which they appear and the nature of rights and obligations agreed thereunder and cannot be given a wider area of applicability than what has been intended by the parties. CTU has submitted that the BPTA is a contract for use of transmission lines of a transmission licensee by a DIC wherein the DIC agrees to bear the transmission charges as a consideration for use of the said transmission lines irrespective of the actual power flow, meaning thereby that so long as a DIC is connected to the transmission lines of the licensee and retains the right to access the system, it is liable to pay the transmission charges to the licensee. It is in this context that Clause 9 provides for an exclusion clause in the nature of force majeure which temporarily absolves the parties from any liability arising out of the breach of contract if the same has occurred on account of force majeure which prevents the use of the transmission lines and suspends the power flow. That is why the clause says that power flow is to be started as soon as force majeure event is over. CTU has submitted that clause 9 of the BPTA being



temporary in nature and restrictive in its application cannot be relied upon by the Petitioner to contend that once it becomes applicable, the entire BPTA including clause 5.0 ceases to operate between the parties. CTU has emphasized that the applicability of Clause 9 cannot be extended to matters which are beyond the eventualities affecting “transmission/drawal of power”. CTU has submitted that the attempt of the Petitioner to misinterpret the provisions of Clauses 9 and 5 of the BPTA read with Regulation 18 of the Connectivity Regulations so as to evade its liability of payment of relinquishment charges at the time of relinquishment of the LTA, is also negated by the clear language of Clause 9 of the BPTA.

20. We have considered the submissions of the Petitioner and CTU. The main contention of the Petitioner is that once the BPTA has been signed as required under Regulation 15 of the Connectivity Regulations, the rights and liabilities of the parties to the BPTA shall be governed by the provisions of the BPTA and not in accordance with the provisions of the Connectivity Regulations. To be specific, the Petitioner’s contention is that the relinquishment charges determined under Regulation 18 of the Connectivity Regulations cannot be levied if the Petitioner is excused for performance on account of force majeure in terms of Clause 9 of the BPTA. Therefore, the question for consideration is whether the relinquishment charges are statutory or contractual in nature. The Commission has dealt with the issue in its order dated 8.3.2019 in Petition No.92/MP/2015. Relevant observations and findings of the Commission in the said order are extracted as under:

“97. We have considered the submissions of the parties. Long Term Access rights have been granted to the LTA customers under provisions of Regulation 12 of the Connectivity Regulations and such access rights carry with itself the corresponding commitment under Regulation 26 to pay the transmission charges for the transmission systems included in the LTA grants. Further, in terms of the Connectivity Regulations, the LTA customers have signed the Bulk Power Transmission Agreements or Long Term Access Agreement making unconditional commitment to pay the transmission charges throughout the term of the LTA. Regulation 18 deals with the relinquishment of long term access rights by the LTA customers. Regulation 18 provides for an exit provision for the long term customers to relinquish the LTA rights subject to payment of transmission charges for a maximum period of 12 years with a notice period of one year or payment of transmission charges in lieu thereof. Since BPTA or LTA Agreements are in terms of the Connectivity Regulations, they are in the nature of statutory contract. Therefore, the relationship between the CTU and the LTA customers are basically statutory in nature and has to be governed by the provisions of the Connectivity Regulations. As a corollary, the relinquishment of access rights of the LTA customers has to be strictly construed in

terms of the provisions of the Connectivity Regulations.

98. Regulation 18 which deals with the relinquishment of long term access rights by LTA customers is extracted as under:

“18. Relinquishment of access rights

(1) A long-term customer may relinquish the long-term access rights fully or partly before the expiry of the full term of long-term access, by making payment of compensation for stranded capacity as follows:-

(a) Long-term customer who has availed access rights for at least 12 years

(i) Notice of one (1) year – If such a customer submits an application to the Central Transmission Utility at least 1 (one) year prior to the date from which such customer desires to relinquish the access rights, there shall be no charges.

(ii) Notice of less than one (1) year – If such a customer submits an application to the Central Transmission Utility at any time lesser than a period of 1 (one) year prior to the date from which such customer desires to relinquish the access rights, such customer shall pay an amount equal to 66% of the estimated transmission charges (net present value) for the stranded transmission capacity for the period falling short of a notice period of one (1) year.

(b) Long-term customer who has not availed access rights for at least 12 (twelve) years – such customer shall pay an amount equal to 66% of the estimated transmission charges (net present value) for the stranded transmission capacity for the period falling short of 12 (twelve) years of access rights:

Provided that such a customer shall submit an application to the Central Transmission Utility at least 1 (one) year prior to the date from which such customer desires to relinquish the access rights;

Provided further that in case a customer submits an application for relinquishment of long-term access rights at any time at a notice period of less than one year, then such customer shall pay an amount equal to 66% of the estimated transmission charges (net present value) for the period falling short of a notice period of one (1) year, in addition to 66% of the estimated transmission charges (net present value) for the stranded transmission capacity for the period falling short of 12(twelve) years of access rights.

(2) The discount rate that shall be applicable for computing the net present value as referred to in sub-clause (a) and (b) of clause (1) above shall be the discount rate to be used for bid evaluation in the Commission’s Notification issued from time to time in accordance with the Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees issued by the Ministry of Power.

(3) The compensation paid by the long-term customer for the stranded transmission capacity shall be used for reducing transmission charges payable by other long-term customers and medium-term customers in the year in which such compensation payment is due in the ratio of transmission charges payable for that year by such long term customers and medium-term customers.”

99. Regulation 18 provides for relinquishment of access rights fully or partly before expiry of the full term of long term access by making payment of compensation for the stranded capacity. The regulation has fixed a period of maximum of 12 years for the purpose of compensation for access rights even though the tenure of the LTA is 25 years. Further,



the compensation has been fixed at an amount of 66% of the transmission charges (net present value) for the stranded transmission capacity for a period falling short of 12 years. In other words, the long term customers relinquishing the access rights are exempted from paying 34% of the transmission charges (net present value) for a period falling short of 12 years. Thus on account of the exit of a long term customer through relinquishment, the entire transmission charges from 13th year to 25th year and 34% of the transmission charges from 1st year to 12th year for the relinquished capacity has to be borne by other long term customers and medium term customers. This aspect becomes clear from Regulation 18(3) which provides that the compensation received on account of relinquishment shall be applied for reducing the transmission charges of other long term and medium term customers which are required to bear the additional transmission charges which would have been borne by the relinquishing long term customers but for the relinquishment of long term access rights. Therefore, Regulation 18 statutorily provides for a compensatory mechanism for relinquishment of access rights by long term customers by apportioning the risks between the relinquishing long term customers and the other long term and medium term customers keeping in view the likely utilization of the relinquished transmission assets. It is pertinent to mention that neither BPTA nor Long Term Access Agreements between the long term customers and CTU provide for any compensatory mechanism but only mention that it shall be determined as per the regulations of the Commission. In other words, the compensatory mechanism for long term access rights is statutory in nature. Therefore, the Commission does not agree with the contention of relinquishing long term customers that the compensation on account of relinquishment of long term access rights shall have to be decided on the principles of section 73 and 74 of the Indian Contract Act, 1872.....”

In the light of the above findings of the Commission, the issue whether the relinquishment charges shall be governed by the Connectivity Regulations or the provisions of the BPTA stands settled. Since appeals have been filed against the said order, it is needless to say that the above findings are subject to the decision of the Appellate Tribunal. As the matter stands today, the issue is settled and cannot be reopened in the present proceedings.

21. Another argument of the Petitioner is that Clause 9 of the BPTA is an omnibus clause that cut right through the agreement and the use of the words “this agreement” includes the failure to carry out the obligation to pay the transmission charges and relinquishment charges, as envisaged in Clauses 3 and 5 of the BPTA. The Petitioner has submitted that the Commission has taken a view qua Clause 9 in Aryan Coal and other related matters that the said clause provides temporary amnesty and appeals are presently pending against these orders. Despite being aware that the Commission has become functus officio qua the interpretation of Clause 9 of the BPTA, the Petitioner has urged the Commission to take an independent view on account of the submissions made in the petition. Therefore, without any prejudice to our findings in our earlier order, we are examining the submissions of the



Petitioner.

22. The relevant provisions of the BPTAs dated 5.7.2010 and 5.1.2011 between the Petitioner and CTU are quoted hereunder:

“1.0 In accordance with Central Electricity Regulatory Commission Regulations, 2009 and Electricity Act 2003 (including there amendment, if any) and in accordance with the term mentioned above, POWERGRID agrees to provide such open access required by these Long Term Transmission Customers from the date and in the manner mentioned in the Annexure 1, Annexure 2 , Annexure 3 and Annexure 4 of this agreement for a period of 25 years from the schedule date of open access of individual long-term open access customers (as specified in Annexure I).

2.0 (a) Long term transmission customer shall share and pay the transmission charges in accordance with the regulation/tariff order issued by Central Electricity Regulatory Commission from time to lime of POWERGRID transmission system of concerned applicable Region i.e, Northern Region, Western Region, Southern Region including charges for inter-regional links/ULDC/NLDC charges and any additions thereof. These charges would be applicable corresponding to the capacity of power contracted from the said generation project through open access from the, scheduled date of commissioning of generating projects as indicated at Annexure-I irrespective of their actual date of commissioning.

(b) Long term transmission customer shall share and pay the transmission charges of the transmission system detailed in Annexure-3 in accordance with tile sharing mechanism detailed in Annexure-4. In case, in future, any other long-term transmission customer(s) is/are granted open access through the transmission system detailed at Annexure-3 (subject to technical feasibility), he/they would also share the applicable transmission charges.

(c)Each Long transmission customer (including its successor/assignee) shall pay the applicable transmission charges from the date of commissioning of the respective transmission system which would not be prior to the schedule commissioning date of generating units as indicated by the respective developer as per Annexure-I. The commissioning of transmission system would be preponed only if the same is agreed mutually by concerned parties.

(d) In addition to opening of LC for 105% of estimated average monthly billing for charges mentioned at 2(a) and 2(b) above, Long-Term Transmission customer would provide security in the form of irrevocable Bank Guarantee (BO), in favor of POWER GRID, equivalent to two months estimated average monthly billing, three months prior to the scheduled date of commissioning of generating units as indicated at Annexure-I. Initially the security mechanism shall be valid for a minimum period of three (3) years and shall be renewed from time to time till the expiry of the open access.

3.0 POWERGRID agrees to provide Long Term Access required by Long term transmission customer as per the details mentioned above and in accordance with the Regulations under the Central Electricity Regulatory Commission (Open Access in Interstate Transmission) Regulations 2009 and conditions specified by the CERC from time to time.

However, during the tenure of this agreement if any of the covenants and conditions recited in this agreement including agreements at Annexure- A, Band C found



inconsistent with the provisions of the Electricity Act 2003 and/or applicable notifications/rules/regulations issued either by CERC or by GOI as per the provisions of the Electricity Act, then notwithstanding anything contained in the agreement referred to above, the said rules and regulations shall prevail.

5.0 The Long term transmission customer shall not relinquish or transfer its rights and obligations specified in the Bulk Power Transmission Agreement, without prior approval of POWERGRID and CERC and subject to payment of compensation in accordance with the CERC Regulations issued from time to time.

6.0 (a) In case any of the developers fail to construct the generating station or dedicated transmission system 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. The developer shall furnish a Bank guarantee from a nationalised bank for an amount which shall be equivalent to Rs.5 (five)Lakhs/MW to compensate such damages. The bank guarantee format is enclosed as Annexure-Y. The details and categories of bank would be in accordance with clause 2 (h) above. The Bank guarantee would be furnished in favour of POWERGRID in accordance with the time frame agreed during the meeting held at CEA on 1.2,2010.

(b) This bank guarantee would be initially valid for a period upto six months after the expected date of commissioning schedule of generating units) mentioned at Annexure-I (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 I), The bank guarantee would be encashed by POWER GRID in case of adverse progress of individual generating units assessed during coordination meeting as per para 7 below. However, the validity should be extended by the concerned Long Term transmission customer(s) as per the requirement to be indicated during co-ordination meeting.

(c) The POWERGRID shall build transmission system included at Annexure-3 keeping view of various commissioning schedules, however, till the completion of identified transmission elements the transfer of power will be based on the availability of system on short term basis.

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

9.0 The parties shall ensure due compliance with the terms of this Agreement. However, no party shall be liable for any claim for any loss or damage whatsoever arising out of failure to carry out the terms of the Agreement to the extent that such a failure is due to force majeure events such as war, rebellion, mutiny, civil commotion, riot, strike, lock out, fire, flood, forces of nature, major accident, act of God, change of law and any other cause," beyond the control of the defaulting party. But any party claiming the benefit of this clause shall satisfy the other party of the existence of such an event and give written notice of 30 days to the other party to this effect. Transmission/drawal of power shall be started as soon as practicable by the parties concerned after such eventuality has come to an end or ceased to exist.



10. In the event of finalisation of beneficiaries by the developers the applicable transmission charges and other charges covered under this agreement would be payable by the concerned beneficiary. These charges would be effective only from the date of signing of agreement by concerned beneficiary with POWERGRID for the validity period of open access.”

23. Perusal of the above provisions makes the scheme envisaged in the BPTA clear. As per Clause 1, CTU has agreed to grant long term access to the Petitioner in accordance with the Act and Connectivity Regulations from the date and in the manner mentioned in Annexure 1 to 4 of the BPTA for a period of 25 years from the scheduled date indicated in Annexure 1. According to Clause 2, the Petitioner is under obligation to pay the transmission charges in accordance with the regulations and tariff order of the Commission issued from time to time. The applicable charges are payable by the Petitioner from the date of commissioning of the transmission system which should not be prior to the scheduled date of commissioning of the generating station irrespective of actual date of commissioning of the generating station. Further Clause 2 (d) provides for opening of LC and BG as security. As per Clause 3, CTU has agreed to provide the long term access as per the BPTA in accordance with the regulations and conditions as specified by the Commission from time to time. During the tenure of the agreement, if any of the covenants and conditions recited in the agreement are found inconsistent with the provisions of the Act or applicable notification, rules/regulations issued by the Commission or by GOI as per the provisions of the Act, then the said rules and regulations shall prevail. Therefore, the parties to the BPTA have expressly agreed that the provisions of the applicable notification/rules/regulations issued by GOI or the Commission shall prevail over any covenant or conditions of the BPTA. Clause 5 enjoins upon the Petitioner not to relinquish or transfer its rights and obligations under the BPTA without prior approval of CTU and the Commission and subject to compensation determined in accordance with the regulations of the Commission issued from time to time. This means that the BPTA incorporates the relinquishment charges determined under Regulation 18 of the Connectivity Regulation as compensation for relinquishment in terms of Clause 5 of the BPTA. Clause 6 deals with four eventualities attributable to the Petitioner i.e. failure to construct the generating station, failure



to construct the dedicated transmission system, exit from the project or abandonment of the project, on occurrence of which CTU has the right to collect the transmission charges and/or damages in accordance with the regulation/notification issued by the Commission from time to time. For compensating the damages, the Petitioner is required to give a bank guarantee @Rs.5 lakh/MW which could be encashed on account of adverse progress of the individual generating units assessed during the coordination meeting as per Clause 7. Clause 9 enjoins upon both parties to ensure due compliance of the terms of the agreement. However, a party is discharged from its liability for claim for any loss or damages if it fails to carry out the terms of the agreement to the extent such failure is due to force majeure events. There is also provision for notice by the party claiming force majeure to the other party. The Clause further enjoins on the parties to resume transmission/drawal of power as soon as practicable by the parties concerned after the eventuality ceased to exist or come to an end.

24. Learned senior counsel for the Petitioner and learned counsel for CTU have argued at length with regard to applicability of force majeure clause in case of relinquishment of LTA and liability of parties to pay the relinquishment charges. It is a settled principle that while interpreting the contract, the intention of the parties, the context in which they appear and the nature of rights and obligations agreed thereunder are relevant considerations which should be kept in view. Therefore, Clause 9 of the BPTA has to be interpreted with due consideration of the above principle of construction. Different elements of Clause 9 are as under:

- (a) The parties shall ensure due compliance with the terms of the agreement.
- (b) No party shall be liable for any claim of damages or loss arising out of failure to carry out the terms of the agreement.
- (c) The party shall be relieved of the liability to the extent that such a failure is due to force majeure events such as war, rebellion, mutiny, civil commotion, riot, strike, lock out, fire, flood, forces of nature, major accident, act of God, change of law and any other cause beyond the control of the defaulting party.
- (d) The defaulting party shall satisfy the other party of the existence of such an event

and give a written notice of 30 days.

(e) Transmission/drawal of power shall be started as soon as practicable by the parties concerned after such eventuality has come to an end or ceased to exist.

It is evident from the above that the intention of the parties is to ensure due compliance of the terms of the BPTA. BPTA is a contract for use of the transmission lines of a transmission licensee by a long term customer wherein the transmission licensee agrees to provide open access to its transmission lines and the long term customer agrees to pay the transmission charges as a consideration of use of the said transmission lines. In other words, so long as the long term customer is connected to the transmission lines of the licensee and retains the right to access to the system, it is liable to pay the transmission charges irrespective of actual power flow. Clause 9 provides for an exclusion in the form of force majeure which absolves a party from its liability to any loss or damages arising out of its failure to carry out the terms of the BPTA if it has occurred on account of force majeure which prevents the use of the transmission lines by the long term customer and suspends the power flow. The clause does not visualize the failure to be of permanent nature, It says that as soon as the event ceases to exist, the transmission/drawal of power shall be started as soon as practicable, meaning thereby that the clause is envisaged to be applicable for a temporary period. Therefore, Clause 9 of the BPTA covers situation of temporary in nature and has a restrictive application. The scope of the said clause cannot be given wider application to cover the cases under Clause 5 wherein the long term customer has an option to relinquish the LTA on payment of compensation in accordance with the regulations issued from time to time. We are of the view that Clause 9 of the BPTA cannot be considered as an omnibus provision to cover under its sweep clause 5 which deals with relinquishment of the LTA. Therefore, the Petitioner cannot escape its liability to pay the relinquishment charges under Clause 5 of the BPTA and Regulation 18 of the Connectivity Regulations by resorting to Clause 9 of BPTA.

25. The Commission in its order dated 31.10.2017 in Petition No.69/MP/2014 (Aryan MP Power Generation Pvt Limited Vs. Powergrid Corporation of India Ltd) has dealt with clause 9



of the BPTA in the context of force majeure as under:

“18. Next we consider whether the Petitioner is entitled to be discharged from its liability to pay the transmission charges on account of force majeure under clause 9 of the BPTA. Clause 9 of BPTA says that no party shall be liable to any claim for any loss or damage arising out of the failure of the other party to carry out the terms of the agreement to the extent such failure is on account of force majeure events such as war etc. and any other causes beyond the control of the defaulting party. In our view, losses or damages referred to in clause 9 of the BPTA shall not cover the liability of payment of transmission charges. In this connection, clause 6 of the BPTA is relevant which is extracted as under:

“6.0 (a) In case any of the developers fail to construct the generating station/dedicated transmission system 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.....”

Thus clause 6 says about both transmission charges and damages. Therefore, if a project developer is affected by force majeure, it will only be discharged from paying the damages only and not the transmission charges. Further, Clause 9 of the BPTA cannot be used to relinquish the LTOA under the BPTA. It is clear from the last sentence of the said clause which says that “Transmission/drawal of power shall be started as soon as practicable by the parties conferred after such eventuality has come to an end or ceased to exist.” Therefore, the situation covered under clause 9 of the BPTA covers a temporary phase when the project developer is unable to utilise the transmission system or the when licensee is unable to make its transmission system available due to any force majeure event. It cannot be used for making an exit from BPTA which is governed in terms of clause 6.0 of the BPTA.”

Further in order dated 14.7.2017 in Petition No.317/MP/2013 (Navbharat Power Private Limited Vs. Power Grid Corporation of India Ltd & Another), the Commission has treated clause 9 of the BPTA as providing temporary amnesty and not for seeking an exit from the LTA. Relevant portion of the order is extracted as under:

“19. The Petitioner has abandoned the project for the purely commercial reasons and the Petitioner cannot be said to be affected by reasons beyond its control. The Petitioner has relied upon the findings of the Hon“ble Appellate Tribunal for Electricity dated 4.2.2014 in Appeal No. 123 of 2012. In the said case, the Appellate Tribunal held that the approval under the Bombay Tenancy and Agricultural Land (Vidarbha Region and Kutch Area) Act,1958 and for water source under the Environment Protection Act,1986 and CRZ Regulations are statutory/ legal approvals under the PPA and accordingly, it fall under *force majeure* events and the period of delay is required to be suspended or excused and to that extent the period of Commercial Operation Date, Date of construction default and Scheduled Commercial Operation Date were to be extended under the LTA Agreement. In the present case, the Petitioner has abandoned the project on account of delay in obtaining clearances and is seeking to wriggle out of the LTA Agreement. From the analysis of Clause 9 of the LTA Agreement, it clearly emerges that the said clause is for providing temporary amnesty to the parties affected by force majeure in order to make their agreement work. The provision of Clause 9 of the LTA Agreement does not permit a defaulting party to abandon the LTA which is evident form the last sentence of the said



clause which states that drawal/transmission of power shall be started as soon as practicable by the parties concerned after such eventuality has come to an end or ceased to exist.”

26. In the light of the analysis on the issue and our findings in the orders as quoted above, we hold that Clause 9 of the BPTAs dated 5.7.2010 and 5.1.2011 gives a temporary amnesty from the compensation for loss or damages to the party affected by force majeure and cannot be used for evading relinquishment charges on account of relinquishment of LTA. Clause 5 of the BPTA and Regulation 18 of the Connectivity Regulations require that in case of relinquishment of LTA, the Petitioner is required to pay the relinquishment charges. Since CTU has determined the liability of the Petitioner for relinquishment charges pursuant to the order of the Commission dated 8.3.2019 in Petition No.92/MP/2015, the Petitioner is liable to pay the relinquishment charges.

Issue No.2: Whether the case of the Petitioner is covered under force majeure in terms of clause 9 of the BPTAs?

27. The Petitioner has submitted that pursuant to the execution of the BPTA, it made best efforts to enter into PPA with the distribution companies in the Western Region and Northern Region but could not succeed. Since the long term power procurement in the regions is substantially disproportionate to the commissioned IPPs, the situation is beyond the control of the Petitioner. The Petitioner has submitted that its inability to enter into long term PPA is an event of force majeure rendering the LTA impossible to perform and therefore, the Petitioner be allowed to relinquish the LTA of 1000 MW and 400 MW under the BPTAs dated 5.1.2011 and 5.7.2010 respectively without any liability for relinquishment charges. CTU has submitted that nowhere in the BPTA, there is any reference to the PPA to be executed by the LTA Customers.

28. The Petitioner has submitted that PPA became a material requirement while granting as well as operationalizing the LTA. Therefore, absence of PPA resulted in frustration of the LTA. The Petitioner has quoted the following provisions of the Regulations, Procedures and orders of the Commission in support of its contention:



(a) Regulation 12 of the Connectivity Regulations requires the applicant for long term access to indicate the entity to whom power is to be supplied or procured and the quantum of power to be supplied or procured and therefore, the agreement for sale/purchase of power is a consideration at the time of applying for LTA.

(b) Para 22.7 of the Detailed Procedure issued under the Connectivity Regulations requires the LTA Customer to confirm to CTU with the exact details of the PPA executed by the said customer, three years prior to the intended operationalization of the LTA.

(c) Clause 7.1 of the BCD Procedure provides that LTA cannot be operationalized in the event a firm long term PPA is not available.

(d) The Commission in order dated 2.12.2013 in Petition No.244/MP/2012 relying on Clause 7.1 of the BCD Procedure has held that execution of long term PPA is a necessary condition for availing long term access.

(e) The Commission after recognizing the impossibility of availing LTA on account of lack of long term PPA inserted Regulation 15B through 6th amendment of the Connectivity Regulations and provided that LTA can be availed by having a contract of above one year.

(f) Even under Shakti Scheme, it was mandated that coal could be provided only for those generating companies who have long term or medium term PPA.

(g) Ministry of Power issued the guidelines for procurement of power under Design, Build, Finance, Own and Operate (DBFOO) basis on 8.1.2013. As per DBFOO, coal cost is a pass through in certain scenarios which relate to the source of coal. For example, if the bids are called for scenarios relating to domestic coal linkage or from domestic coal mines, then power plants based on imported coal cannot participate in such bids. This factor has materially affected the Petitioner from entering into long term PPA.

(h) The 37th and 40th Parliamentary Standing Committee Reports recognized the issue of lack of long term PPAs with distribution licensees being uncontrollable.



29. The Petitioner has submitted that non-availability of long term PPA has close link with the utilisation of the LTA and therefore, lack of long term PPA is a force majeure condition which is beyond the control of the Petitioner.

30. We have considered the submissions of the Petitioner and Respondent CTU. The subject transmission system based on which LTA was granted to the Petitioner were executed on the basis of the regulatory approval granted by the Commission vide its orders dated 26.3.2010 and 31.5.2010 in Petition No.233/2009. The Petitioner was a party to the said petition. The issue of signing of the PPA was considered at the time of according regulatory approval. Relevant para of the order dated 26.3.2010 is extracted as under:

“17. As regards the requirement for signing of PPAs with the beneficiaries, we observe that the IPPs have not been able to come forward to sign the PPAs, primarily because the States have not yet gone ahead with the bidding process for evacuation of power. However, linking the signing of the PPAs with regulatory approval will hamper the progress of the transmission projects. The Tariff Policy issued vide Govt. of India in para 7.1.4 does not make it mandatory for network expansion by the CTU/STU. The said para reads as under:

“In view of the approach laid down by the NEP, prior agreement with the beneficiaries would not be a pre-condition for network expansion. CTU/STU should undertake network expansion after identifying the requirements in consonance with the National Electricity Plan and in consultation with stakeholders, and taking up the execution after due regulatory approvals.”

In view of the above mandate of the Tariff Policy, we are of the view that the CTU should carry out consultation with the stake holders and satisfy itself about the bonafide nature of generation projects which are likely to materialize during the next three years and submit the detailed report about such projects, including the physical progress made wherever feasible and approach the Commission by first week of April, 2010.”

Therefore, the Petitioner is aware that the regulatory approval was granted to the Petitioner on the basis of the LTA and without linking it to PPAs. It was left to the Project Developer for tie-up with the beneficiaries for PPA. When availability of PPA was not a condition precedent either for applying for LTA or for regulatory approval, therefore, it cannot be pleaded at this stage that PPA is a necessary pre-condition of the LTA and hence its absence cannot be considered as force majeure frustrating the operation of the LTA.



31. As regards the reasons adduced by the Petitioner to prove that the existence of long term PPA is a necessary condition for availing the LTA and absence of long term PPA has led to frustration of the LTA, we are of the view that these provisions in the Connectivity Regulations and Detailed Procedure have been specified to cater to different requirements and cannot be pleaded as the basis for grant of LTA in the absence of which LTA stands frustrated. Regulation 12 requires an applicant for long term access to indicate the entity from which power is to be procured or supplied and the quantum of power to be supplied. But the first proviso provides that where the source or quantum has not been fixed up, then the applicant has to indicate the quantum of power alongwith the name of the region where the electricity to be interchanged. Thus, PPA is not an essential condition for applying for LTA. Para 22.7 of the Detailed Procedure requires the LTA Customer to give details of the PPA three years prior to operationalization of LTA, the purpose being that the last mile connectivity could be planned and implemented. As regards Clause 7.1 of the BCD Procedure, scheduling can be done against the LTA quantum when there is long term, medium term and short term PPA. This provision is regarding scheduling and from the said provision, inference cannot be drawn that in the absence of long term PPA, LTA would be frustrated. In fact, Regulations allow for scheduling of medium term and short term power against the LTA quantum and offset is allowed. Regulation 15B of the Connectivity Regulations facilitates operationalization of LTA with PPA of the duration of more than one year. In other words, if the LTA Customer is able to make a medium term PPA of more than one year, it can schedule its power under MTOA. This provision does not support the case of the Petitioner that in the absence of long term PPA, LTA stands frustrated. The requirement for participating in Shakti Scheme or procurement under DBFOO or the observation of the Parliamentary Standing Committee cannot absolve the Petitioner from its liability towards LTA under the BPTA. In our view, the Petitioner had applied for and was granted LTA in the absence of long term Power Purchase Agreements and the Petitioner has taken the business risk by entering into BPTA in the absence of long term PPA. Failure of the Petitioner to enter into long term or medium term PPA for 816 MW cannot be



considered as the reasons beyond the control of the Petitioner and hence, is not covered under Clause 9 of the BPTA. The other reasons given by the Petitioner i.e. cancellation of coal block or conversion of three units of the power project of the Petitioner from IPP to CPP cannot result in frustration of the LTA as the parties to the BPTA had never envisaged these factors to affect the subsistence of the BPTA. Non-availability of coal linkage is a commercial risk of the Petitioner and cannot affect the interest of the CTU to collect the transmission charges or relinquishment charges in the event the LTAs under the BPTAs are relinquished. The conversion of the power project of the Petitioner from IPP to CPP is a commercial decision of the Petitioner to optimize utilization of its generation capacity and cannot be considered as a factor beyond the control of the Petitioner to relieve it from its liability for payment of relinquishment charges in terms of Clause 9 of the BPTAs.

Issue No.3: What is the implication of non-commissioning of the identified transmission systems with respect to relinquishment?

32. The Petitioner has submitted that it has been constrained to relinquish its LTA of 1000 MW under BPTA dated 5.1.2011 due to inability of PGCIL to implement the transmission system as contemplated under the BPTA, apart from other issues mentioned.

33. CTU has submitted that the transmission system required for the LTA granted to the Petitioner is being implemented partly by PGCIL and partly under tariff based competitive bidding route (TBCB route). Further, in the context of the IPPs that have actually materialized in the vicinity of the Petitioner's power project, even the already commissioned transmission system shall be able to meet their evacuation requirement. Therefore, the contentions of the Petitioner that it is relinquishing the LTA because CTU has not commissioned the transmission system provided in the LTA intimation are baseless. CTU is stated to have revised the intimation letter of the



Petitioner on account of failure of two LTA applicants to meet the regulatory requirement of signing of BPTA. As per Annexure 2 and 3 of the BPTA dated 5.1.2011, CTU reviewed the transmission system based on the share of power to be drawn by all the generators and based on mutual consent revised the transmission system and commercial operation date for the same. CTU has submitted that as the associated transmission system was already under implementation stage and the generation project was about to be commissioned, an interim arrangement on its request of the Petitioner was made by CTU by connecting the power project switchyard with the regional grid through LILO of one circuit of Rourkela- Raigarh 400 kV D/C (2nd line) at the project site. The issue was also extensively discussed in 1st Standing Committee Meeting on Power system planning in ER held in NRPC, New Delhi on 2.5.2014.

34. We have considered the submission of the petitioner and CTU. It is noted that the Petitioner was granted Connectivity/LTA for 1000 MW along with the other IPPs for their generating units implemented under the Phase-II IPPs in Orissa. It is further observed that the instant LTA covered under BPTA dated 5.1.2011 is squarely related to the implementation stage for associated transmission system of Orissa Phase-II of IPPs in *inter alia* including 1000 MW which were yet to be initiated by the Empowered group of Committee. However, Unit I, III and IV of the Petitioner's power project were commissioned on 30.03.2011, 19.08.2011 and 26.04.2012 respectively and are connected to CTU network. The Petitioner's power plant was connected to 400/220 kV Rourkela Sub-station and Raigarh sub-stations using the transmission and communication system of CTU through LILO of one circuit of 400 kV D/C Rourkela-Raigarh as interim arrangement. Further, as a final arrangement, it was agreed to

connect the switchyard of the Petitioner directly to the Jharsuguda pooling Station 400 kV D/C with associated line bays to be developed by the Petitioner.

35. We observe that as per LTA grant letter dated 3.1.2011, the Petitioner was granted LTA subject to commissioning of the generation project and availability of the transmission system at Annexure-3. As per Annexure-1 of the LTA grant letter, the commencement of petitioner (Sterlite Energy Ltd.) date of LTA was mentioned as September 2011. The relevant extract is given as under:

9a	Date from which LTA is granted	As per Annexure-1 (subject to commissioning of the generation project and availability of the Transmission System at Annexure-3)
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36. Further, it is noted that in the revised LTA grant intimation dated 8.4.2013, which has been marked to the Petitioner also, the LTA commencement was mentioned from the date of actual commissioning schedule of the ISTS transmission system given at Annexure-2 & 3 and respective commissioning schedule mentioned at Annexure-1, whichever is later. As regards the contention of the Petitioner that it is not liable to bear the transmission charges due to non-commissioning of transmission system as per BPTA, it is observed that these scenarios have already been covered by the Commission in the Order dated 8.3.2019 in Petition No. 92/MP/2015. The relevant part is extracted as under:

“(a)LTA relinquishment prior to date of start of LTA

Suppose, Customer A's scheduled date of start of LTA was 1.1.2014. However, the associated transmission system was commissioned on 1.12.2014. So, the effective date of start of LTA is 1.12.2014. Customer A issues notice to CTU on 1.4.2013 relinquishing its entire LTA without specifying any notice period. Thus, the notice date is 1.4.2013. However, relinquishment charges shall be calculated only from 1.12.2014, as on the effective date of start of LTA. In such case, since the transmission charge liability for such customer does not arise till date effective date of LTA i.e. 1.12.2014, no transmission charges shall be paid for the notice period falling short of 1 year i.e. for 1.4.2013 to 31.3.2014. Relinquishment charges shall be calculated from 1.12.2014 as per the specified methodology in this Order.”



In view of above, Petitioner shall be liable to pay the transmission charges from the date of commissioning of transmission system.

Issue No.4: What should be the dates of relinquishment of the LTAs granted under BPTAs dated 5.7.2010 and 5.1.2011?

37. The Petitioner has prayed that LTA of 1000 MW under BPTA dated 5.1.2011 stands relinquished with effect from 5.9.2013 and LTA for 400 MW under BPTA dated 5.7.2010 stands relinquished from 31.12.2015.

38. CTU has submitted that the Petitioner on 5.9.2013 requested CTU for cancellation of its 1000 MW LTA due to various reasons including non-commissioning of the transmission system. Further, the Petitioner's request for cancellation of 1000 MW LTA was discussed in the meeting of Standing Committee on Power System Planning in Eastern Region held on 2.5.2014. During the meeting, PGCIL had indicated that any cancellation or exit shall attract relinquishment charges.

39. We have considered the submissions of Petitioner and Respondent. It is noticed that CTU on its website has uploaded date of relinquishment and relinquishment charges payable for all concerned entities as per our directions vide Order dated 8.3.2019 in Petition No. 92/MP/2015. As per the uploaded document, CTU has considered the date of relinquishment as 31.3.2019 for the LTA quantum of 1000 MW under BPTA dated 5.1.2011 and as 23.2.2016 for LTA quantum of 400 MW covered under the BPTA dated 5.7.2010.

40. The Commission vide Order dated 8.3.2019 in Petition No. 92/MP/2015 directed as follows with respect of date of relinquishment:

“161.....(b) Notice period for relinquishment shall be considered from the date the application was made to CTU for relinquishment and if no application was made, the date from which the Commission directs the CTU to accept the relinquishment.”



41. We are of the view that since the Petitioner vide letter dated 5.9.2013 relinquished LTA of 1000 MW and vide its letter dated 31.12.2015 relinquished the capacity of 400 MW, these dates shall be considered as the date of relinquishment for respective capacity, in terms of our Order dated 8.3.2019 in Petition No. 92/MP/2015.

Issue No.5: What are the reliefs admissible to the Petitioner in terms of its prayers in the Petitions?

42. The first prayer of the Petitioner is for a declaration that LTA of 1000 MW under BPTA dated 5.1.2011 (in Petition No. 303/MP/2015) and LTA for 400 MW under BPTA dated 5.7.2010 (in Petition No. 3/MP/2016) stand relinquished with effect from 5.9.2013 and 31.12.2015 respectively without payment of any relinquishment charges. The prayers are decided in terms of para 41 above.

43. In the second prayer, the Petitioner has prayed for return of BG for amount of Rs. 50 crore in Petition No.303/MP/2015 and Rs. 20 crore in Petition No. 3/MP/2016. We are of the view that since the Petitioner has to make payment of relinquishment charges as calculated by CTU in terms of this Order and Order in Petition No. 92/MP/2015, BG shall be kept alive by the petitioner till it makes payment of relinquishment charges as calculated by CTU. In case the Petitioner does not make payment of relinquishment charges to CTU in accordance with timeline provided in order dated 8.3.2019 in Petition No. 92/MP/2015, CTU shall encash the BG and adjust the same against relinquishment charges and return the balance amount, if any, to the Petitioner.

44. Petition Nos. 303/MP/2015 and 3/MP/2016 are disposed of in terms of the above.

**sd/-
(I.S. Jha)
Member**

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

**sd/-
(P.K. Pujari)
Chairperson**

