

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 187/MP/2017**

**Coram:**

**Shri P.K. Pujari, Chairperson**

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

**Shri I.S Jha, Member**

**Date of Order: 7.10.2019**

**In the matter of:**

Relinquishment of 1100 MW of Long Term Access out of 1200 MW granted under the Bulk Power Transmission Agreement dated 7.1.2009 under Regulation 18 read with Regulation 32 of Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009 or otherwise, of the identified transmission system by Essar Power M.P. Limited (2x600 MW) having its Thermal Power Plant, near Village Bandhora, Post Karsualal, Tehsil Mada, Dist. - Singrauli, in the State of Madhya Pradesh.

**And in the matter of:**

Essar Power M.P. Limited  
Lower Ground Floor, Hotel Conclave Boutique,  
A-20, Kailash Colony, New Delhi-110048.

**...Petitioner**

**Vs**

1. Power Grid Corporation of India Limited  
B-9, Qutub Institutional Area,  
Katwaria Sarai, New Delhi-110016.

2. Central Electricity Authority  
Sewa Bhawan, Ramakrishna Puram,  
New Delhi-110016.

3. Essar Power Transmission Company Limited  
Lower Ground Floor, Hotel Conclave Boutique,  
A-20, Kailash Colony, New Delhi-110048.

**.....Respondents**

**Parties Present:**

Shri Prashanto Sen, Senior Advocate, EPMPPL

Shri Sumanta Nayak, Advocate, EPMPPL

Shri Venkat Poonia, Advocate, EPMPPL

Shri Aslam Ahmed, Advocate, EPMPPL

Ms. Kritika Angrish, Advocate, EPMPPL



Ms. Shruti Verma, EPMP  
Ms. Suparna Srivastava, Advocate, PGCIL  
Ms. Jyoti Prasad, PGCIL

### **ORDER**

The Petitioner, Essar Power M.P. Limited has filed the present Petition seeking relinquishment of Long Term Access (LTA) out of 1200 MW under Regulation 32 of Central Electricity Regulatory Commission (Grant of Connectivity, Long –term Access and Medium-term Open Access in inter- State Transmission and related matters) Regulations, 2009 (hereinafter referred to as Connectivity Regulations, 2009). The Petitioner has made the following prayers :

- a) Declare the events/circumstances as mentioned herein amounts to force majeure and/or impossibility of performance by Petitioner, thereby discharging the Petitioner from the obligations under the above said agreement for the relinquished quantity;
- b) Declare the allotted LTA quantum to be 1100 MW instead of 1200 MW and accordingly allow relinquishment of 1100 MW LTA instead of 1200MW without any liability for payment of relinquishment charges; and
- c) Declare that there is neither stranded capacity nor there is any loss suffered by PGCIL on account of relinquishment of the LTA.

### **Submissions of the Petitioner**

2. The Petitioner has submitted as under :
  - a) The Petitioner entered into a Memorandum of Understanding (MoU) dated 17.1.2007 with Government of Madhya Pradesh (GoMP) for establishing and operating a 1000 MW (+20%) thermal power Project in Phase I with an ultimate capacity of 2000 MW at Singrauli, Sidhi, Madhya Pradesh. It was mutually agreed that in the event the captive coal block is allocated to the Petitioner within the State of Madhya Pradesh, the Petitioner would provide 7.5 % of the net power to Government of Madhya



Pradesh(GoMP) or its nominated agency generated by the project on the energy (variable) charges basis as determined by the appropriate Commission or 5% (five) percent of the net power if the captive coal block is not allocated in the State of M.P.

b) The Petitioner vide its letter dated 13.2.2007 applied for grant of LTA quantum of 1100 MW for its 2 x 600 MW thermal power station and also informed PGCIL that the Petitioner has already made substantial progress regarding coal supply, water, land etc. and that it is likely to achieve financial closure by the end of March, 2007. The Petitioner also informed PGCIL that it has signed a MoU with GoMP for supply of 37.5% of the total electricity produced by the Generation Project to GoMP or its nominated agency and the balance power will be sold to Essar Steel India Ltd, Hazira, Surat, Gujarat for their usage as per terms of Power Purchase Agreement (PPA) signed between the Petitioner & Essar Steel India Ltd.

c) In reply to the Petitioner's letter dated 13.2.2007 for the grant of LTA, PGCIL vide its letter dated 17.10.2007 and 1.11.2017 requested the Petitioner to sign BPTA for sharing/incurred of Western Region transmission charges corresponding to 1200 MW power transfer. The Petitioner vide its letter dated 14.11.2007 informed PGCIL that the Petitioner had requested for the LTA quantum of 1100 MW and accordingly agreed to execute the BPTA corresponding to 1100 MW.

d) The Petitioner vide its letter dated 18.4.2008 explained to PGCIL that the gross capacity of the proposed project is 1200 MW and after accounting for auxiliary consumption, the net power available for sale to the beneficiaries would be about 1100 MW and that the Petitioner vide its letter dated



13.2.2007 applied for the LTA quantum of 1100 MW and not 1200 MW. The Petitioner requested PGCIL to confirm that LTA was granted for 1100 MW so that the Petitioner could undertake to make payments for transmission charges corresponding for 1100 MW.

e) PGCIL vide its letter dated 24.11.2008 informed the Petitioner about the revised LTA quantum from 1200 MW to 1100 MW and requested the Petitioner to execute the BPTA corresponding to 1100 MW. Further, PGCIL vide its another letter dated 23.12.2008 informed the Petitioner that it was agreed in 10<sup>th</sup> Meeting of WR Constituents that in case the generation project does not have any other drawl arrangement with STU network, except the dedicated transmission system from the generation switchyard, the entire capacity would be connected to the ISTS and the generator would be liable to share the respective regional transmission charges corresponding to gross project capacity. It was also stated by PGCIL that since the Petitioner does not have any alternative drawl arrangement available to evacuate power from its Project, the Petitioner must share the transmission charges corresponding to its gross capacity i.e. 1200 MW. PGCIL requested the Petitioner to sign the BPTA corresponding to 1200 MW capacity. Accordingly, the Petitioner entered into BPTA with PGCIL on 7.1.2009 corresponding to 1200 MW.

f) The Petitioner entered into a PPA dated 29.10.2010 with MPPTCL for supply of 150 MW power from its generating station. Further, the Petitioner also entered into Connectivity Agreement with PGCIL on 9.8.2011.

g) The Madhya Pradesh State Mining Corporation (MPSMC) vide its letter dated 16.9.2011 informed the Petitioner about allocation of 40% of the Amelia



Coal block on the condition that the Petitioner shall have to abide by the terms of the Implementation Agreement executed with the GoMP.

h) The Ministry of Power vide its letter dated 28.11.2011 directed the Petitioner to approach the Forest Advisory Committee (FAC) in order to procure forest clearances relating to Mahan Coal Block and stated that the MoEF will revert to the Petitioner regarding forest clearances after examination of the original Project. Thereafter the forest clearances will be decided on the basis of Go/No Go concept.

i) The Petitioner faced inordinate delay in receiving forest clearance from the State and Central Government for the captive coal mine i.e. Mahan Coal Block. The Petitioner had applied for forest clearance on 5.5.2006 but the final Stage-II forest clearance was granted by Ministry of Environment and Forest on 12.2.2014 with enormous delay. The delay in receiving the statutory clearance, restrained the Petitioner from developing the mine and thereby extracting coal from it, consequently delaying in generation of power and transmission of the same.

j) The Hon'ble Supreme Court in Writ Petition No.120 of 2012 (Manohar Lal Sharma v. The Principal Secretary and Ors) and other connected matters vide its Judgment dated 24.09.2014 de-allocated the coal blocks (including the coal block for supply of coal to the Petitioner). Consequently, the Petitioner lost its source of long term and short-term fuel. The Petitioner has submitted that its Project was dependent on the Mahan Coal Block and Amelia Coal Block for supply of fuel and the cancellation /de-allocation of the coal mines adversely affected the progress of the Generation Project to the extent that Petitioner was left with negligible source of coal supply that was



not sufficient for producing electricity from 1200 MW Generation Project. To address the shortage of coal, the Petitioner participated in auction of other coal blocks, but could only succeed to procure Tokisud (North) coal mine which would have sufficed only to meet a fraction of the total coal requirement of the Generation Project.

k) Subsequently, the Petitioner vide its letter dated 3.10.2014 informed MP Power Trading Company Limited (MPPTCL) that the supply of power from generation station to GoMP was premised on the captive coal block that has been cancelled by Hon'ble Supreme Court and therefore, the Petitioner would not be able to supply power to MPPTCL.

l) PGCIL vide its letter dated 15.4.2015, circulated the minutes of meeting of 8<sup>th</sup> JCC meeting dated 9.1.2015, wherein it has been recorded that the Petitioner apprised PGCIL that EPTCL (Respondent No.3) was taking all efforts within its means and control for construction of the transmission line and that the same was nearly 80% complete and that stringing was under process. During the previous meetings as well as in 11<sup>th</sup> and 12<sup>th</sup> JCC meeting held on 16.02.2016 and 10.06.2016 respectively, the Petitioner apprised PGCIL about the delay in commissioning of its Project for reasons beyond control of the Petitioner.

m) However, despite timely intimation to PGCIL about the delay in execution of construction work, it continued the process of preparing the system strengthening / augmentation at the same pace. The Petitioner has duly brought to the knowledge of PGCIL from time to time about the existence of each and every event as and when the same arose.



n) EPTCL vide its letter dated 22.11.2016 updated CEA that the work of construction of transmission line was delayed for the reasons beyond its control. EPTCL informed CEA about the delay due to forest clearances, ROW issues, conductor theft, heavy monsoon, unapproachable locations and financial stress.

o) The Petitioner vide its letter dated 22.12.2016 relinquished its LTA of 750 MW out of the total LTA of 1200 MW on account of inordinate delay in grant of necessary environment and forest clearances for captive coal mine (Mahan Coal Block) and clearances pertaining to the power project and de-allocation of the coal blocks by the Judgment of Hon'ble Supreme Court dated 24.9.2014. The Petitioner vide its letter dated 17.01.2017 reiterated surrender of 750 MW LTA as a consequence of the force majeure events and/or frustration of contract u/s 56 of the Indian Contract Act, 1872.

p) PGCIL vide its letter dated 31.01.2017 informed the Petitioner that the force majeure events as elaborated by the Petitioner does not fall under clause 9 of LTA Agreement executed between the Petitioner and PGCIL and therefore, the Petitioner's request to waive off the relinquishment charges pertaining to 750 MW is not acceptable.

q) The Petitioner vide its letter dated 7.4.2017 informed PGCIL about its WR beneficiary for operationalisation of LTA for 450 MW and requested for evacuation of electricity through LILO arrangement of Vindhyachal-Korba line as per the advice and discussion held in Standing Committee meeting on 21.12.2016. Petitioner in view of its PPA with Essar Steel India Ltd informed PGCIL that it would require only 450 MW LTA in WR. Thereafter Petitioner



vide its letter dated 10.04.2017 submitted the relinquishment request along with Undertaking as per prescribed format for relinquishment of 750 MW LTA out of the total of 1200 MW LTA in lieu of relinquishment request submitted to PGCIL dated 22.12.2016. The Petitioner vide its letter dated 10.4.2017, gave an undertaking for relinquishment of LTA corresponding to 750 MW. However, PGCIL vide its letter dated 19.5.2017 informed the Petitioner that the LTA of the Petitioner has been reduced from 1200 MW to 450 MW and that the Petitioner shall be liable for the LTA relinquishment charges for 750 MW as determined by the Commission in Petition No. 92/MP/2015.

r) The Petitioner vide letter dated 13.2.2018 issued a Show Cause Notice to Essar Steel India Limited (ESIL) for the termination of 450 MW PPA on account of Insolvency Resolution Process against ESIL. In response, ESIL vide letter dated 1.3.2018 informed the Petitioner that LTA has not been operationalised for ESIL. It further informed that the Resolution Professional appointed for ESIL, which is undergoing corporate insolvency resolution process since 2.8.2017, has not approved operationalization of the PPA and, therefore, the PPA may be treated as terminated. Accordingly, the Petitioner terminated the PPA with ESIL vide its letter dated 8.3.2018.

s) The Petitioner vide its letter dated 7.3.2018 requested PGCIL not to operationalize the LTA for 450 MW as ESIL is undergoing under insolvency proceeding since 2.8.2017. The Petitioner further informed PGCIL that the Petitioner is making all endeavours to enter into PPA with an interested party.

t) The Petitioner vide its letter dated 30.4.2018 informed PGCIL pertaining to relinquishment of 450 MW LTA on the ground that PPA with ESIL has been terminated with vide its letter dated 8.3.2018 addressed to





ESIL. The Petitioner vide its letter dated 30.4.2018 has given its undertaking, under protest, towards the relinquishment charges in accordance with the order of this Commission in Petition No. 92/MP/2015.

u) PGCIL while allowing the relinquishment for 750 MW and 450 MW of the LTA vide letters dated 19.05.2017 and 30.05.2018 respectively, sought by the Petitioner, had nowhere mentioned that because of the relinquishment of the Petitioner's LTA, it is going to suffer any stranded capacity, and accordingly there is no case made out for payment of relinquishment charges even otherwise.

3. The Petition was admitted on 26.4.2018 and notices were issued to the Respondents. PGCIL has filed its reply vide affidavit dated 25.7.2018 and the Petitioner has also filed its rejoinder vide affidavit dated 18.10.2018.

#### **Reply of the PGCIL**

4. PGCIL in its reply vide affidavit dated 25.7.2018 has submitted as under :

a) The LTA as requested for was granted to the Petitioner vide intimation dated 17.10.2007 read with the revised intimations dated 1.11.2007 and 24.11.2008, with a request to the Petitioner to sign the requisite BPTA for sharing of transmission charges corresponding to 1100 MW power transfer. The said LTA was granted subject to the availability, inter alia, of the dedicated system identified for implementation by the Petitioner and availability of the transmission system.

b) Subsequently, the issue of sharing of regional transmission charges corresponding to various IPPs including the Petitioner's 1200 MW generation project was deliberated in detail in the 10<sup>th</sup> Meeting of Western Region constituents held on 6.12.2008. It emerged during the said deliberations that in case a generation project did not have any other drawal arrangement with STU network except the dedicated



transmission system from the generation switchyard and if, the entire capacity was connected to the grid, the LTA applicant was required to share the respective regional transmission charges corresponding to gross project capacity. Accordingly, the LTA to the Petitioner was revised to 1200 MW vide letter dated 23.12.2008 as there was no other drawl arrangement at Mahan TPS at STU level except proposed Mahan TPS – WR Pooling Station near Sipat 400kV line. Accordingly, the Petitioner was informed about sharing of the Western Regional transmission charges corresponding to 1200MW capacity and earlier letter dated 24.11.2008 intimating LTOA for 1100MW was withdrawn.

c) The Petitioner has categorically agreed in the BPTA that any relinquishment or transfer of its rights and obligations specified in the Bulk Power Transmission Agreement shall be done with the approval of PGCIL and the Commission and subject to payment of compensation charges, as may be determined by the Commission.

d) The Commission, through its Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 (hereinafter, the “Sharing Regulations”) has enforced the Point of Connection (PoC) method for sharing of transmission charges for use of the ISTS wherein all entities that were physically connected with the ISTS were required to share the Yearly Transmission Charges (YTC) for existing lines determined by the Commission. The Sharing Regulations, thus, crystallized a “pooled” system in the entire meshed network of ISTS across the country where the rights and liabilities of all its users in the PoC pool and that of its licensees were inter-linked with one another and any default on part of a participant in that pool had a corresponding burdening effect on the remaining participants. Thus, any non-payment of relinquishment charges would



result in additional liability upon the remaining users of ISTS to service the transmission charges liability of the relinquishing LTA customer. Therefore, the Petitioner cannot be permitted to relinquish LTA without relinquishment charges.

e) There were no force majeure conditions agreed to or recorded under the BPTA with respect to the grant of open access which could relieve the Petitioner of performance of its obligations thereunder. The inter-se rights and obligations under the BPTA were with respect to providing of open access and payment of transmission charges from the agreed date that the open access had been made available, irrespective of the fact that power from the transmission system was actually being evacuated or not. There was no inter-se obligation agreed to or recorded in the BPTA as regards the Petitioner's power purchase arrangements with its beneficiaries or the implementation/ operation of its project through use of identified fuel. Thus, the BPTA cannot be said to be frustrated on that account as has wrongly been pleaded by the Petitioner.

f) As per BPTA, once the transmission assets qua the Petitioner's project had been implemented by PGCIL, the liability of the Petitioner to pay transmission charges and/or relinquishment charges for servicing the said assets becomes absolute. Thus, no force majeure conditions can be made applicable to the case of the Petitioner and consequently, the provisions contained in BPTA as regards payment/sharing of transmission charges by the Petitioner and the consequent liability to pay relinquishment charges upon LTA relinquishment, continued to be applicable irrespective of the occurrence of any alleged force majeure event. The liability to pay transmission/ relinquishment charges commenced as soon as the transmission system gets commissioned and the scheduled date of commissioning of



the Project as set out in the BPTA is over , even if the generating unit had not actually commissioned.

g) The Commission in its Order dated 31.5.2010 in Petition No.233/2009 has observed that 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. Accordingly, the progress of implementation of the Petitioner's project has regularly been monitored in the JCC Meetings wherein the Petitioner has in the JCC Meeting held on 29.6.2018 stated that commissioning of unit 2 is to take place matching with the completion of Mahan TPS – WR pooling station 400kV D/c line, which is expected to be completed by July, 2018. That being so, the Petitioner cannot be permitted to raise the plea of non-signing of long-term PPAs in the absence of fuel as a force majeure event relieving the Petitioner from discharging its contractual/statutory liability of payment of relinquishment charges.

h) The LTA quantum of 750 MW stands relinquished w.e.f. 12.4.2017 and 450 MW w.e.f. 4.5.2018, on the basis of undertakings by the Petitioner to pay relinquishment charges. Therefore, the entire LTA quantum of 1200 MW stands relinquished as on 4.5.2018.

i) The Commission in Petition No.293/MP/2015 (Jaiprakash Power Ventures Limited Vs. Power Grid Corporation of India Limited) has held that that cancellation of coal block by the Hon'ble Supreme Court cannot be treated as a force majeure event as the very basis of allocation of coal block to the allottees has been found to be illegal and hence terminated. The cancellation of coal block does not result in non-availability of coal and the Petitioner has to arrange coal from alternative sources to



generate and supply power. Further, the Petitioner is supplying power under short-term open access and hence, the plea of contract becoming frustrated is not tenable and is liable to be rejected.

5. The Petitioner, during the hearing dated 25.7.2018, sought permission of the Commission for filing IA seeking amendment of the Petition to incorporate necessary facts pertaining to relinquishment of the remaining 450 MW of LTA out of 1200 MW granted under BPTA dated 7.1.2009 and incorporation of other necessary facts pertaining to the unjust demands imposing relinquishment charges for the relinquishment of 450 MW by PGCIL and the same was granted by the Commission. Accordingly, the Petitioner filed I.A No. 76/2018 seeking amendment of the Petition. The Commission vide RoP dated 13.9.2018 allowed the amendment of the Petition and the Petitioner vide affidavit dated 26.9.2018 filed the amended Petition.

#### **Rejoinder of the Petitioner**

6. The Petitioner in its rejoinder vide affidavit dated 18.10.2018 has submitted as under :

a) A plain reading of Regulation 18 clearly indicates that any charges payable towards relinquishment charges is in the nature of compensation to PGCIL for any stranded capacity caused due to relinquishment of open access. Thus, in order to claim any relinquishment charges, PGCIL is required to demonstrate the existence of stranded capacity and the extent of loss caused thereby. In the present case where there is no stranded capacity to be caused due to relinquishment of LTA by the Petitioner, the question of payment of any charges does not arise.

b) It has become impossible for the Petitioner to avail the transmission lines and system for supply of power from its project in light of the fact that there are no long-term beneficiaries to off take power. Due to cancellation of the coal block, the Petitioner was completely deprived of the long-term source of fuel that is the



substratum of the Generation Project. Consequently, the Petitioner did participate in the auction of other coal blocks conducted by Ministry of Coal, Govt. of India and became successful bidder for Tokisud (North) coal mine. However, post auction of the coal blocks there was a change in the premise based on which the coal block was auctioned, by imposition of capping of fixed/ capacity charge by Ministry of Power on the bidders (with coal block) bidding for PPA/ sale of power tie up with Discoms. At present this dispute is sub-judice before the Delhi High Court. Thus, the Petitioner could not reap the benefit of the Tokisud coal mine as it has not started production. It may not be out of place to mention that the Mahan coal block has never been put for auctioning after it was de-allocated. Therefore, it is stated that Petitioner's agreements have suffered by force majeure and the conditions under section 56 of the Contract Act 1872 have prevailed, Therefore, it has become impossible for the Petitioner to perform its obligations under the said LTA agreement and to continue the operation of BPTA and was constrained to invoke force majeure clause accordingly. However, at present the Petitioner is supplying power in short term based on the coal procured from open market/ e-auction.

c) BPTA-EPMPL dated 7.1.2009 read with clause 12 of BPTA dated 31.3.1999, clearly demonstrates that, Force Majeure herein is an illustrative list and not an exhaustive list of events or circumstances. The criteria for force majeure are that, the events or circumstances should be beyond Petitioner's control which could not be foreseen or with a reasonable amount of diligence could not have been foreseen. The initial difficulties that delayed the commissioning of the Generation Project and thereafter cancellation/de-allocation of coal blocks by the Hon'ble Supreme Court and further non availability of the fuel to the Petitioner for the purpose of the Project despite the best endeavours of the Petitioner to try and get the same, are clearly beyond the control of the Petitioner and constitute *force*



*majeure* qua the Petitioner and therefore entitles the Petitioner to be released from performing its obligations under the BPTA-EPMPL.

7. During the hearing dated 11.12.2018, PGCIL informed the Commission that PGCIL is not filing reply to the amended Petition and requested to take on record the reply already filed.

### **Analysis and Decision**

8. We have considered the submissions of the Petitioner and the PGCIL and perused the documents available on record. Based on the Petition, replies, rejoinders and other materials placed on record, the following issues emerge for the consideration of the Commission :

**Issue No. 1: Whether the LTA quantum for the relinquishment to be considered as 1100 MW or 1200 MW?**

**Issue No. 2: Whether the Petitioner is affected by Force Majeure events as claimed and whether the Petitioner is entitled for any relief?**

**Issue No. 3: Whether the Petitioner is entitled to relinquish its access rights without any liability for payment of relinquishment charges under Regulation 18 of the Connectivity Regulations?**

**Issue No. 1: Whether the LTA quantum for the relinquishment to be considered as 1100 MW or 1200 MW**

9. The Petitioner has submitted that vide its letter dated 13.2.2007, the Petitioner had applied for grant of LTA quantum of 1100 MW for its 2 x 600 MW thermal power station. In reply to the Petitioner's letter dated 13.2.2007 for the grant of LTA, PGCIL vide its letter dated 17.10.2007 and 1.11.2017 requested the Petitioner to sign BPTA for sharing/incurred of Western Region transmission charges corresponding to 1200 MW power transfer. The Petitioner vide its letter dated 14.11.2007 informed PGCIL that the Petitioner had requested for the LTA quantum of 1100 MW and accordingly agreed to execute the BPTA corresponding to 1100 MW. PGCIL vide its letter dated 24.11.2008



informed the Petitioner about the revised LTA quantum from 1200 MW to 1100 MW and requested the Petitioner to execute the BPTA corresponding to 1100 MW. However, PGCIL vide its subsequent letter dated 23.12.2008 informed the Petitioner that it was deliberated in 10<sup>th</sup> Meeting of WR Constituents held on 6.12.2008 that in case the generation project does not have any other drawal arrangement with STU network, except the dedicated transmission system from the generation switchyard and the entire capacity would be connected to the grid, then the generator would be liable to share the respective regional transmission charges corresponding to gross project capacity. Since, the Petitioner does not have any alternative drawl arrangement available to evacuate power from its Project, the Petitioner must share the transmission charges corresponding to its gross capacity. PGCIL, therefore, requested the Petitioner to sign the BPTA corresponding to 1200 MW capacity. Accordingly, the Petitioner entered into BPTA for 1200 MW with PGCIL on 7.1.2009.

10. We have heard the submissions of the parties. It is noted that gross capacity of the Petitioner's generating station is 1200 MW. The Petitioner vide its application dated 13.2.2007 applied for the LTA quantum of 1100 MW. However, PGCIL vide its intimation letter dated 17.10.2007 granted LTA for 1200 MW and requested the Petitioner to sign requisite BPTA corresponding to 1200 MW power transfer. Since, the Petitioner had sought LTA quantum of 1100 MW, the Petitioner through its various correspondences requested PGCIL to correct injection capacity to 1100 MW instead of 1200 MW. Consequently, PGCIL vide its intimation letter dated 24.11.2008 revised the LTA quantum to 1100 MW.

11. However, PGCIL withdrew the revised intimation for 1100 MW dated 24.11.2008 vide its letter dated 23.12.2008 relying upon 10<sup>th</sup> meeting of Western Region constituents held on 6.12.2008, wherein following is recorded:





*“9. M/s Essar Power MP Ltd was earlier provided LTOA for 1100 MW power from their Mahan generation of 1200 MW Installed Capacity. PGCIL informed that Essar Power was insisting on BPTA corresponding to 1100 MW after accounting for auxiliary consumption.*

*After, deliberation, it was recorded that as the Generation project is not having any other drawal arrangement except the dedicated transmission system and entire capacity would be connected to the grid, accordingly, the applicant need to share the WR regional transmission charges corresponding to entire capacity i.e. 1200 MW.”*

12. PGCIL vide its letter dated 23.12.2008 informed that as there was no other alternative drawal arrangement available to evacuate the power from the generation project except the transmission line from generation switchyard for the entire capacity of the grid, the Petitioner should share the transmission charges corresponding to the gross capacity of 1200 MW.

13. The Petitioner was granted LTOA under the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2004. Regulation 2(b) of the Open Access Regulations, defines “allotted transmission capacity” as under:

*“2(b) Allotted transmission capacity means the power transfer in MW between the specified point (s) of injection and point (s) of drawal allowed to a long term customer on the Inter-State transmission system under normal circumstances and the expression “Allotment of transmission capacity” shall be construed accordingly”.*

As per the above provision, allotted transmission capacity means the power transfer allowed to a long term transmission customer between the specified point of injection and specified point of drawal on the inter-State transmission system under normal circumstances.

14. The Petitioner has stated that vide letter dated 18.4.2008, it explained to PGCIL that gross capacity of the project was 1200 MW and that after accounting for auxiliary consumption, the net power available for sale to the beneficiary would be about 1100 MW. It is not in dispute that the Petitioner in its LTA application had indicated 1100 MW as the capacity for which LTOA was required, after deducting auxiliary consumption of 100 MW. In fact, PGCIL had agreed to reduce the LTOA quantum from 1200 MW to



1100 MW in line with the LTOA application of the Petitioner. However, PGCIL subsequently, vide its letter dated 23.12.2008 informed the Petitioner that since, Generation project is not having any other drawal arrangement except the dedicated transmission system and entire capacity would be connected to the grid, accordingly, the Petitioner shall be liable to share the WR regional transmission charges corresponding to entire capacity i.e. 1200 MW.

15. The Petitioner and PGCIL executed the BPTA dated 7.1.2009 wherein following is recorded:

*Injection Utility*

*Name: Essar Power M.P Limited*

*Location: Nearest EHV Substation of Powergrid in MP*

*Region: Western Region*

*Capacity (MW) : 1100 MW (in phased manner)*

xxxxxxx

*“And Whereas Long term transmission customer has agreed to share and pay all the transmission charges of POWERGRID including FERV, incentive, income tax and any other charges and taxes etc. for the use of its Transmission System of Western Region including inter regional links/ULDC/NLDC charges and any additions thereof.*

*M/s. ESSAR POWER M.P. LTD. shall bear the applicable transmission charges of WR corresponding to 1200 MW from the said Generation project phased manner.”*

It can be inferred from above that BPTA is signed for 1100 MW in phased manner. However, it is also recorded in the recitals that the Petitioner shall bear the applicable transmission charges of WR corresponding to 1200 MW from the said Generation project in phased manner.

16. In a similar case in Petition No. 306/MP/2015 vide Order dated 16.3.2017, Commission has observed as follows:

*“16.The Petitioner was granted LTOA under the Open Access Regulations, 2004. Regulation 2(b) of the Open Access Regulations, 2014 defines “allotted transmission capacity” as under:*

*“2(b) Allotted transmission capacity means the power transfer in MW between the specified point (s) of injection and point (s) of drawal allowed to a long term customer*



on the Inter-State transmission system under normal circumstances and the expression "Allotment of transmission capacity" shall be construed accordingly".

*As per the above provision, allotted transmission capacity shall mean the power transfer allowed to a long term transmission customer between the specified point of injection and specified point of drawal on the inter-State transmission system under normal circumstances. The Petitioner had indicated 273 MW as the capacity for which LTOA was required. This figure has been arrived at after accounting for 9% auxiliary consumption. Since auxiliary consumption is consumed at the generating station, only the capacity net of auxiliary consumption can be scheduled between the point of injection and point of drawal. Therefore, allotment of transmission capacity under the LTOA should be net of auxiliary consumption, in the present case 273 MW. In fact, WRPC has agreed to reduce the LTOA quantum from 300 MW to 273 MW in line with the LTOA application of the Petitioner. The fact that as per the earlier decision of WREB, the Petitioner has entered into a BPTA for 300 MW cannot be held against the Petitioner and the anomaly that has been brought into the LTOA and BPTA by not granting the LTOA for the quantum applied for needs to be corrected.*

*17. In our view, the Petitioner had applied for LTOA for 273 MW after deducting the auxiliary consumption from the installed capacity of 300 MW of Pathadi TPS of LAPL which was overlooked at the time of granting LTOA. Since the Petitioner could inject power into ISTS for the capacity net of the auxiliary consumption, the Petitioner has been burdened with the transmission charges for the capacity corresponding to auxiliary consumption. We direct that the LTOA/LTA of the Petitioner be reduced from 300 MW to 273 MW."*

17. In the instant case, we observe that Petitioner had applied for LTA of 1100 MW and hence the Petitioner cannot be made liable to make the payment for the LTA quantum of 1200 MW in the absence of any LTA application..

18. Accordingly, we are of the view that the LTA granted to the Petitioner shall be considered as 1100 MW.

**Issue No. 2: Whether the Petitioner is affected by Force Majeure events as claimed and whether the Petitioner is entitled for any relief?**

19. The Petitioner has submitted that the petitioner took all steps which were necessary and were in its control well within time for the purposes of the development of its project, including securing long term fuel supply. The Petitioner applied for the Forest Clearance for Mahan Coal Block on 5. 5.2006, but the final Stage-II Forest Clearance was granted by Ministry of Environment and Forest (MoEF) only on 12.2.2014 after substantial delay. The Petitioner has kept PGCIL informed through its various



correspondences as well as through deliberations in JCC meetings in order to enable PGCIL to calibrate its actions to mitigate losses. The inordinate delay is beyond the control of the Petitioner and constitutes an event of force majeure.

20. The Petitioner has submitted that the 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 as many as 214 coal blocks (including the coal block for supply of coal to the Petitioner) and accordingly, the Petitioner lost its source of long term fuel. Further, the Project was dependent on the Mahan Coal Block (granted by Ministry of Coal) and Amelia Coal Block (granted by GoMP) for supply of fuel. The cancellation / de-allocation of the coal mines adversely affected the progress of the Project to the extent that Petitioner was left with negligible source of coal supply that was not sufficient for producing electricity from 1200 MW Project.

21. The Petitioner has submitted that thereafter, the Petitioner, vide its letter dated 10.4.2017 submitted a request for relinquishment of LTA of 750 MW out of the total of LTA of 1200 MW. However, along with the request for relinquishment, the Petitioner vide its letter dated 10.4.2017 also agreed under duress to bear relinquishment charges levied in terms of the decision of the Commission in Petition No. 92/MP/2015.

22. The Petitioner has further submitted that Petitioner is under obligation to supply power from its project to its single beneficiary i.e. Essar Steel India Limited (ESIL), Hazira, Gujarat in Western Region, for remaining LTA of 450 MW out of 1200 MW by virtue of PPA dated 29.5.2017. ESIL is undergoing corporate insolvency resolution process since 2.8.2017 and the Resolution Professional has not approved operationalisation of the PPA and hence, it is now impossible for the Petitioner to tie up the PPA as contemplated at the time of entering the BPTA. Therefore, the LTA of 450 MW under the BPTA itself has lost its relevance and is of no use to the Petitioner. The



Petitioner has terminated the PPA with ESIL vide its letter dated 8.3.2018 and accordingly, LTA of 450 MW has also lost its relevance.

23. PGCIL has submitted that there were no force majeure conditions in terms of provisions of the BPTA which could relieve the Petitioner of performance of its obligations there-under. Even otherwise, the inter-se rights and obligations under the BPTA were with respect to providing of open access and payment of transmission charges from the agreed date when the open access was made available, irrespective of whether power from the transmission system was actually being evacuated or not. There was no inter-se obligation agreed to or recorded in the BPTA as regards the Petitioner's power purchase arrangements with its beneficiaries or the implementation/operation of its project through use of identified fuel.

24. PGCIL has also submitted that in terms of the BPTA, once the transmission assets qua the Petitioner's project had been implemented, the liability of the Petitioner to pay transmission charges and/or relinquishment charges for servicing the said assets was absolute. Thus, no force majeure conditions is applicable to the case of the Petitioner and consequently, the provisions contained in BPTA as regards payment/sharing of transmission charges by the Petitioner and the consequent liability to pay relinquishment charges upon LTA relinquishment, continued to be applicable with irrespective of the occurrence of any alleged force majeure event.

25. We have considered the submissions of the Petitioner and PGCIL. The Petitioner has submitted that it has become impossible for the Petitioner to avail the services of transmission lines and system for supply of power from its project due to the occurrence of the following force majeure events :

- a) Delay in grant of forest clearance for the captive coal mine, Mahan Coal Block;
- b) Cancellation of coal blocks by the Hon'ble Supreme Court; and



c) Termination of PPA with ESIL.

26. The Petitioner has relied upon occurrence of the aforesaid force majeure condition under BPTA- EPMPPL dated 7.1.2009 read with clause 12 of BPTA dated 31.3.1999 executed between PGCIL and bulk power beneficiaries of WR as the same is the part of the BPTA dated 7.1.2009 vide clause 3.0.Clause 12 of the BPTA dated 31.3.1999 is reproduced as under :

*“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 terms of the Agreement to the extent that such a failure is due to force majeure events such as fire, rebellion, mutiny, civil commotion, riot, strike, lock-out, forces of nature, accident, act of god and any other reason beyond the control of concerned party. But any party claiming the benefit of the clause shall notify the other party of the existence of such an event promptly and give written notice within 30 days time to the other party to this effect. Transmission/drawal of power shall be started as soon as possible practicable by the parties concerned after such eventuality has come to an end or ceased to exist.”*

27. Clause 12 of the BPTA dated 31.3.1999 has similar provisions as Clause 9 of the LTA agreement in Petition No. 317/MP/2013. In the order dated 12.4.2017 in Petition No. 317/MP/2013, the Commission has interpreted the provision of clause 9 of the LTA Agreement as under:

*“19...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 from 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.”*

28. Accordingly, we are not inclined to grant any relief to the Petitioner owing to the claim of existence of force majeure events. The provisions of clause 12 of the BPTA dated 31.3.1999 does not permit a defaulting party to abandon the BPTA and therefore, the prayers of the Petitioner to relinquish the LTA without liability cannot be permitted in terms of clause 9 of the LTA agreement. The petitioner is contractually bound to discharge its obligations under the BPTA including the payment of the transmission charges after the COD of the transmission systems executed by PGCIL in terms of the



BPTA. Further, there is no provision to defer the operationalization of LTA and as soon as the transmission systems based on which LTA was granted are put under commercial operation, the generator shall be liable to pay the transmission charges. Accordingly, the prayer of the Petitioner in this regard is rejected.

29. The Petitioner has also relied upon Section 56 of Indian Contract Act, 1872 stating that the contract has become frustrated as it has become impossible for the Petitioner to perform its obligation on account of cancellation of coal block by the Hon'ble Supreme Court and termination of PPA with ESIL. Section 56 of the Indian Contract Act is reproduced as under :

*"56. Agreement to do impossible act - An agreement to do an act impossible in itself is void.*

*Contract to do act afterwards becoming impossible or unlawful. A contract to do an act which, after the contract made, becomes impossible or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful*

*Compensation for loss through non-performance of act known to be impossible or unlawful. Where one person has promised to do something which he knew or, with reasonable diligence, might have known, and which the promisee did not know, to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise."*

Doctrine of frustration as enshrined in Section 56 of the Indian Contract Act, 1872 deals with those cases where the performance of contract has been frustrated and the performance of it has become impossible to perform due to any unavoidable reason or condition.

30. The cancellation of coal block by the Hon'ble Supreme Court cannot be said to be event under Section 56 of the Indian Contract Act, 1872 which has made the performance of the obligation impossible as the Petitioner has the option to source coal from other sources, such as participation in the bidding process for allocation of coal block, e-auction and imported coal. The Commission vide its order dated 27.2.2018 in Petition No. 167/MP/2016, had observed as under:





*“34. We have considered the submissions of the Petitioner and the Respondent in the light of the provisions of Clause 9 of the BPTA above. In the present case, the Petitioner does not fulfil the conditions of Clause 9 of the BPTA due to following reasons:-*

*(a) Notice for Force Majeure as required under the BPTA has not been given by the Petitioner. Though the Petitioner is claiming Force Majeure on the basis of the Hon’ble Supreme Court’s judgement dated 24.9.2014 and Ordinance dated 21.10.2014 issued by the Govt. of India regarding allocation of coal mines, the Petitioner has not given any such notice as per the timeline laid down in the BPTA.*

*(b) Both units of the generating station of the Petitioner have been fully operational and the Petitioner has been using 200 MW LTA to supply 100 MW power to WBSEDCL and 100 MW power to TANGEDCO. **Cancellation of coal block by the Honble Supreme Court cannot be treated as Force Majeure event, since subsequent to the Supreme Courts judgment, the Central Government carried out auction of coal block and even though the Petitioner participated in the auction process but failed to secure the bid while on the basis of an e-Auction, GMR Chhattisgarh Energy Limited was allotted Ganeshpur Coal Block. As regards the balance requirement of coal, the Petitioner has other avenues such as import of coal, e-auction coal and participation in bidding process for allocation of new coal block. It is noted that the Petitioner is supplying 200 MW power to the States of Tamil Nadu and West Bengal for which the Petitioner is procuring coal. Therefore, cancellation of coal block has not resulted in non-availability of coal, as the Petitioner could have arranged coal from alternative source to produce power and supply the same.***

31. In line with our above decision, the cancellation of coal block by the Hon’ ble Supreme Court has not made the performance of the contract impossible as the Petitioner could have arranged the coal from other alternative sources to produce power and supply the same. Further, the Petitioner is already selling power under STOA and, therefore, it cannot be accepted on the part of the Petitioner that it has become impossible for the Petitioner to perform its obligation on account of cancellation of coal block by the Hon’ble Supreme Court.

32. Similarly, termination of PPA with ESIL is not an event which makes the performance of the obligation under the BPTA impossible as ESIL is a corporate debtor and acquired right to terminate the PPA. The said termination of PPA nowhere stopped the Petitioner from entering into PPA with the other interested parties. Therefore, we are not inclined to grant any relief in this regard.





**Issue No. 3: Whether the Petitioner is entitled to relinquish its access rights to without any liability for payment of relinquishment charges under Regulation 18 of the Connectivity Regulations?**

33. The Petitioner has submitted that it was impossible for the Petitioner to avail the services of the transmission lines and system for supply of power from the Generation Project especially in light of the fact that there were no beneficiaries for consumption of power. Petitioner's agreements have been affected by force majeure conditions attracting the provisions under section 56 of the Contract Act, 1872, and therefore, it has become impossible for the Petitioner to perform its obligations under the said LTA agreement. The Petitioner has submitted that relinquishment charges as envisaged under Regulation 18 of Connectivity Regulations are compensatory in nature and are meant to compensate for the losses to Respondent PGCIL due to any stranded capacity caused on account of relinquishment of LTA by any party and that PGCIL is required to prove the loss suffered as per the settled principles of law. The basic premise of Regulation 18 is based on the settled principle of contract laws relating to Section 73 and 74 of the Indian Contract Act, 1872 that states that payment of compensation by the defaulting party to another party in a contractual arrangement is payable, only to the extent of losses that are incurred and proved by PGCIL. In the instant case, PGCIL, while allowing the relinquishment for 750 MW and 450 MW of the LTA vide letters dated 19.5.2017 and 30.5.2018 respectively, sought by the Petitioner, had nowhere mentioned that because of the relinquishment of the Petitioner's LTA, it is going to suffer any loss due to any stranded capacity, and accordingly, no case has been made out for payment of relinquishment charges.

34. PGCIL has submitted that once a transmission line came into existence and became a part of the ISTS, it became liable to be included under the Sharing Regulations for computation of transmission charges for the meshed network of ISTS.



There were no force majeure conditions agreed to or recorded under the aforesaid BPTA with respect to the grant of open access which could relieve the Petitioner of performance of its obligations there-under. It has submitted that the inter-se rights and obligations under the BPTA were with respect to providing of open access by PGCIL and payment of transmission charges by the Petitioner from the agreed date, irrespective of whether the power was actually being evacuated or not, through its transmission system.

35. We have considered the submissions of the parties. The Petitioner has argued that due to reasons beyond its control it is not able to utilize the LTA under the BPTA. This argument cannot be accepted as the PGCIL has in no way contributed to the difficulties in performance of the contract. This issue has also been dealt with by the Appellate Tribunal in Appeal No. 197 of 2014 (Jayaswal Neco Urja Limited Vs Power Grid Corporation of India Ltd. & Another) as under :

*33. Assuming that the Appellant's contention about the existence of force majeure conditions is correct, so long as Respondent No.1 by its acts of omission or commission has not contributed to the Appellant's being unable to commence operation of its power plant, Respondent No.1 cannot be held responsible for it and encashment of Bank Guarantee cannot be faulted on that count."*

In view of the above finding of the Appellate Tribunal, as it cannot be said that PGCIL by its acts of commission or omission has contributed to the Petitioner's inability to utilize the LTA. Therefore, PGCIL cannot be held responsible for non- performance of the contract by the Petitioner.

36. The Respondent PGCIL has submitted that the grant of open access by the PGCIL to its system is contingent upon payment of transmission charges. When PGCIL has built a transmission line on the basis of the commitment of a long term open access customer, it becomes the obligation of the said open access customer to pay the transmission charges for the use of the transmission system and the transmission



system built or reserved for an open access customer remains unutilized on account of the relinquishment of open access by the open access customer, then the said open access customer also becomes liable to pay the transmission charges to the extent of stranded capacity. The payment of relinquishment charges for surrender of long term access is both a statutory requirement and a contractual obligation accepted by the Petitioner. The Petitioner, by having unequivocally accepted that it will be governed by the Connectivity Regulations and the provisions of the BPTA, cannot now take a position that the provisions of relinquishment charges are not sanctioned by the provisions of the Act.

37. We have observed that the Petitioner, vide its letter dated 22.12.2016, requested PGCIL to accept the request for the relinquishment of 750 MW out of 1200 MW LTA granted to the Petitioner and also agreed to pay the relinquishment charges upon the direction given by this Commission/ Appellate Tribunal/ Supreme Court. The relevant portion of the letter dated 22.12.2016 is reproduced as under :

*“ In consideration of your having at our request to consider our proposal dated 22.12.2016 for relinquishing Long- term Access (LTA) rights to your transmission system for transmission of electricity upto 750 MW under terms and conditions of the Agreement, we namely Essar Power M.P Limited hereby agrees and undertake with you, your successors and assigns as follows :*

*1. To may you on demand without any demur or protest such sum(s) of money towards relinquishment charges if the Central Electricity Regulatory Commission (CERC) or Appellate Tribunal for Electricity (APTEL) or, as the case may be, the Hon'ble Supreme Court of India, in exercise of appellate power, holds the same as payable.*

*2. For the removal of doubts, the Company hereby expressly declares that it has disputed its liability to pay any relinquishment charges to the Corporation due to (i) the occurrence of the Events of Force Majeure and its consequences and (ii) relinquishment of LTA by the Company under the Agreement has not resulted in any stranded capacity in the transmission system of the Corporation causing any loss to it.”*

Thus, we note that the Petitioner vide its letter dated 22.12.2016 informed the PGCIL about the relinquishment of LTA quantum of 750 MW without accepting any liability towards relinquishment charges.



38. The Petitioner vide its, another letter dated 17.1.2017, further informed PGCIL about relinquishment of LTA of 750 MW and further informed that the Petitioner shall file a Petition before the Commission seeking relief against payment of any relinquishment charges. The relevant extract of the said letter is extracted as under :

*“In the above connection , we state that since EPMPPL has surrendered to PGCIL the said LTA of 750 MW under the Agreement in consequence of the occurrence of the events of Force Majeure as specifically mentioned in our aforesaid letter 22.12.2016 and further having regard to the fact that the said surrender of LTA by EPMPPL is not going to create any stranded capacity for PGCIL. PGCIL cannot hold liable for payment of any relinquishment charges for the said surrender of LTA of 750 MW.*

*In view of the above, we shall be filing a petition to the Hon’ble Central Electricity Regulatory Commission, New Delhi for seeking reliefs, including the relief against payment of any relinquishment charges by EPMPPL to PGCIL as required under CERC (Grant of Connectivity, Long-term Access and Medium-term Access Open Access in inter-State Transmission and related matters) Regulations, 2009, which you may please note.*

39. PGCIL vide its letter dated 31.01.2017 informed the Petitioner that the force majeure events as elaborated by the Petitioner do not fall under clause 9 of LTA Agreement executed between the Petitioner and PGCIL and therefore, the Petitioner’s request to waive off the relinquishment charges pertaining to 750 MW is not acceptable.

40. The Petitioner further, vide its letter dated 10.4.2017, gave an undertaking to PGCIL to bear the relinquishment charges levied in terms of the decision of the Commission in Petition No. 92/MP/2015. In reply, PGCIL vide its letter dated 19.5.2017 accepted the Petitioner’s request for the relinquishment and informed the Petitioner that the LTA stands revised to 450 MW with effect from 12.4.2017. The relevant extracts of PGCIL’s letter dated 12.4.2017 is extracted as under :

*This is with reference to your letter ref no. EPMPPL/LA/39737/10 dated 10.5.2017 and letter ref no. EPMPPL/LA/3937/10 received on 11.4.2017 vide which the request for relinquishment in LTA quantum for 750 MW (WR- 750 MW and unequivocal consent for the payment of relinquishment charges as determined by CERC in Petition No. 92/MP/2015 has been given.*



41. We are of the view that the Petitioner vide its letter dated 22.12.2016 had made its intention clear to PGCIL about relinquishment of LTA quantum of 750 MW on account of occurrence of the force majeure event, without any liability to pay any relinquishment charges. However, the Petitioner has also agreed to pay the relinquishment charges upon the direction of this Commission/ APTEL/Supreme Court. Hence, we are of the view that LTA of 750 MW stands relinquished with effect from 22.12.2016.

42. Further, the Petitioner vide its letter dated 30.4.2018 conveyed its intention of relinquishing remaining LTA of 450 MW. An undertaking under protest was also given vide letter dated 30.4.2018 to bear the relinquishment charges. We are of the view that LTA of 450 MW also stand relinquished with effect from 30.4.2018.

43. Since, we have already considered LTA quantum as 1100 MW in Issue No.1, the LTA quantum of 750 MW relinquished on 22.12.2016 shall be taken as 686MW and LTA quantum of 450 MW relinquished on 30.4.2018, shall be taken as 414 MW.

44. The Petitioner has sought relinquishment without any liability towards relinquishment charges. Regulation 18 of the Connectivity Regulations provides for relinquishment of Access Rights. Regulation 18 reads as under:

“18. Relinquishment of access rights

(1) 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: -(1) A Long-term customer who has availed access rights for atleast 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." Under the above provisions, a long term customer may relinquish long term access rights fully or partly, before the expiry of full term of long term access, by making payment of compensation for stranded capacity as provided therein. Further, a long term customer has to give a notice of 1 year to the CTU for relinquishment of LTA and where it gives a notice of less than one year, it has to pay an amount equal to 66% of the estimated transmission charges (net present value) for the stranded capacity for the period falling short of a notice period of one year."

45. Under the above provisions, a long term customer may relinquish long term access rights fully or partly, before the expiry of full term of long term access, by making payment of compensation for stranded capacity as provided therein. Further, a long term customer has to give a notice of 1 year to the CTU for relinquishment of LTA and where it gives a notice of less than one year, it has to pay an amount equal to 66% of the estimated transmission charges (net present value) for the stranded capacity for the period falling short of a notice period of one year.



46. The Connectivity Regulations do not envisage any exemption from payment of relinquishment charges in case of relinquishment of LTA. The matter has been deliberated at length vide order dated 8.3.2019 in Petition No. 92/MP/2015, wherein it has been established that Regulation 18 requires that upon relinquishment, the transmission charges at the specified rates are payable for the stranded capacity. The relevant extracts of the order dated 8.3.2019 in Petition No. 92/MP/2015 are reproduced as under:

“99. 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 PGCIL 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. Some of the Respondents have argued that the relinquishment compensation is in the nature of penalty or damages and therefore, injury or actual losses have to be proved to claim the compensation. In our view, relinquishment compensation is neither in the nature of penalty nor damages and therefore, actual losses or damages are not required to be proved by PGCIL. Relinquishment of long term access rights is a statutorily permissible option which entails payment of compensation for the stranded capacity on account of such relinquishment. Since the compensation has been designated in the form of transmission charges (net present value) for the period of maximum 12 years if access rights is not availed or for the period falling short of 12 years where access rights is partially availed, compensation under Regulation 18 of the Connectivity Regulations is payment of the share of transmission charges by the long term customers to service the transmission assets comprised in the ISTS in terms of its long term access to the extent it remains stranded consequent to the relinquishment. Stranded Capacity has been defined in Regulation 2(1)(v) of the Connectivity Regulations as “the transmission capacity in ISTS which is likely to remain unutilized due to relinquishment of access rights by a Long Term Customer”. Therefore, relinquishment charges are in the nature of compensation which a long term customer is obliged to pay as transmission charges (net present value) in terms of the mechanism envisaged in Regulation 18 for relinquishment of the capacity out of its long term access rights to the extent such capacity is likely to remain unutilized. Payment of compensation for relinquishment of long term access rights is a statutory obligation on the part of long term customers relinquishing the access rights, subject to the determination of stranded capacity.”

47. In the aforesaid order dated 8.3.2019, CTU was directed to work out the stranded capacity based on the load flow studies and the compensatory relinquishment charges. The relevant portion of the Order is extracted as under:





*“161 (a) The transmission capacity which is likely to be stranded due to relinquishment of LTA shall be assessed based on load flow studies with clearly laid out assumptions. PGCIL is directed to calculate the stranded capacity and the compensation (relinquishment charges) payable by each relinquishing long term customer as per methodology specified in this Order respectively within one month of date of issue of this Order and publish the same on its website. The compensation shall be payable for the years of stranded capacity falling short of 12 years, subject to (g) below.*

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

The Petitioner shall be liable to pay the relinquishment charges in accordance with the above order.

### **Summary of Decisions**

48. In the light of the above discussion, the prayers of the Petitioner are disposed of as under:

a) With regard to first prayer seeking a declaration that the Petitioner is affected by force majeure events, the events cited by the Petitioner are not covered under relevant clause of BPTA and therefore, we are not inclined to grant any relief under force majeure.

b) With regard to second prayer seeking a declaration of LTA quantum to be 1100 MW instead of 1200 MW, we are of the view that since the Petitioner had applied for LTA of 1100 MW and therefore, LTA quantum stand revised to 1100 MW from 1200 MW. Further, out of 1100 MW, LTA quantum of 686 MW and 414 MW stand relinquished with effect from 22.12.2016 and 30.4.2018 respectively.

c) With regard to third prayer that there is neither stranded capacity nor there is any loss suffered by PGCIL on account of relinquishment of LTOA, we are not inclined to accept the contention of the Petitioner and the Petitioner is





liable to pay the relinquishment charges on account of relinquishment of LTA quantum of 1100 MW, in accordance with our order dated 8.3.2019 in Petition No. 92/MP/2015

49. Petition No. 187/MP/2017 is disposed of in terms of the above.

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

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

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

