

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 326/MP/2018

Coram:

Shri P.K.Pujari, Chairperson

Dr. M. K. Iyer, Member

Shri I.S.Jha, Member

Date of Order: 9th of October, 2019

In the matter of

Petition under Section 79 (1) (c) and (f) of the Electricity Act, 2003 for declaration that the factor/event, namely, delay in obtaining forest clearance for implementing the "Additional System Strengthening Scheme for Chhattisgarh IPPS - Part B", is a force majeure event under the TSA dated 19.5.2015 and further seeking extension of time period for achieving the commercial operation date of project and other consequential reliefs under the TSA dated 19.5.2015.

And

In the matter of

Raipur Rajnandgaon Warora Transmission Limited
C 105, Adani House
Anand Niketan
New Delhi-110021

....Petitioner

Vs

- 1) Maharashtra State Electricity Distribution Co. Ltd.
Prakashgad, 5th Floor
Station Road, Bandra (E)
Mumbai- 400051
- 2) Gujarat Urja Vikas Nigam Limited
Sardar Patel Vidyut Bhawan
Race Course
Vadodara-390007
- 3) Chhattisgarh State Power Distribution Co. Ltd.
4th Floor, Vidyut Seva Bhawan
Daganiya, Raipur
Chhattisgarh-492013
- 4) M.P. Power Management Company Ltd.
Shakti Bhawan, Vidyut Nagar
Jabalpur, Madhya Pradesh- 482008
- 5) Goa Electricity Department

Government of Goa
3rd Floor, Vidhyut Bhawan
Panji-403001

- 6) DNH Power Distribution Corporation Limited
Dadar Nagar Haveli, Vidhyut Bhawan
66 kV Road, Near Secreteriate
Amli, Silvassa-396230
- 7) Electricity Department Daman & Diu
Plot No. 35 OID Complex, Near Fire Station
Somnath, Daman-396210

...Respondents

The following were present:

Shri Buddy A. Ranganadhan, Advocate, RRWTL
Shri Raunak Jain, Advocate, RRWTL
Shri Zeeshan Alam, Advocate, RRWTL
Shri M.G. Ramachandran, Senior Advocate, WKTL
Shri Shubham Arya, Advocate, WKTL
Ms. Poorva Saigal, Advocate, WKTL
Shri G. Umapathy, Advocate, MSEDCL
Shri Ravin Dubey, Advocate, MPPMCL

ORDER

The Petitioner, Raipur Rajnandgaon Warora Transmission Limited (RRWTL), has filed the present Petition seeking declaratory relief under the Transmission Services Agreement (TSA) dated 19.5.2015 on account of force majeure event which has adversely affected the construction of the project. The Petitioner has made the following prayers:

- "a) Allow the Petition and declare that the event factors/events, namely, the non- grant of Forest Clearance and the delay caused in such non-grant which is still continuing, constitute Force Majeure as per the TSA;*
- b) Grant extension in the Scheduled Commercial Operation Date to allow 6 months time from receipt of final Stage II clearance to achieve CoD and waive any penalties or any other consequences thereof under the TSA; and*
- c) Direct the Respondents not to take any coercive steps including encashment of Bank Guarantees against the Petitioner considering the present SCOD of 23.11.2018 as the Project will likely get delayed beyond 23.11.2018 due to Force Majeure event;*

2. The Petitioner is a fully owned subsidiary of Adani Transmission Limited (ATL) through Adani Power Limited (APL) which was selected as a successful bidder through the tariff based competitive bidding under Section 63 of the Electricity Act, 2003 (hereinafter referred to as the Act) to establish Transmission System for “Additional System Strengthening for Chhattisgarh IPPs -Part-B” on Build, Own, Operate and Maintain (BOOM) basis. The Petitioner is required to provide transmission service to the Long Term Transmission Customers (LTTCS) of the Project which requires establishing the transmission system comprising of the following transmission lines and substations:

S.No	Name of the Transmission Element	Completion Target	Conductor per Phase
1.	Raipur Pool–Rajnandgaon 765kV D/C Line	36 Months	Hexa Zebra ACSR Conductor or equivalent
2.	Rajnandgaon–New Pooling Station near Warora 765 kV D/C Line		AAAC. The transmission lines to be designed for a maximum operating conductor temperature of 85deg C for both ACSR as well as AAAC.
3.	Establishment of new switching station near Ranjnandgaon 765kV i.Line bays-6 nos. ii.Bus reactor: 3x110 MVAR iii.Bus reactor bay-1no. iv. Line reactors: 7x110 MVAR (1 unit spare) (switchable for Warora line) v. for 765kV bays-4 nos. vi.Space for 765kV ICT bays-3 nos. 400kV i.Space for 400kV ICT bays- 3 nos. ii. Space for 400kV bays– 4 nos.		

3. The Petitioner entered into a Transmission Service Agreement (TSA) with the Respondents, namely Long Term Transmission Customers (LTTCS) on 19.5.2015. Maharashtra State Electricity Distribution Company Limited (MSEDCL) has been appointed as the Lead LTTTC to represent all the LTTCS for discharging

the rights and obligations under the TSA. In accordance with the bidding documents, the selected bidder (APL), through its investing affiliate (ATL), acquired 100% shareholding in the Petitioner company from the Bid Process Coordinator (BPC), PFC Consulting Limited (PFCCL) on 23.11.2015. The Commission in its order dated 29.2.2016 in Petition No. 287/TL/2015 granted transmission licence to the Petitioner for inter-State transmission of electricity.

4. As per the TSA, the transmission lines were to be completed and commissioned within 36 months from the effective date. Effective date has been defined as the later of the dates of (i) the execution of the TSA, (ii) acquisition of the SPV by the selected bidder, and (iii) submission of Contract Performance Guarantee on behalf of the TSP. Accordingly, the effective date is the date of signing of the Share Purchase Agreement i.e. 23.11.2015 and scheduled COD is 23.11.2018. The Petitioner has submitted that it has been developing the project and the detailed construction progress has also been reported on a monthly basis to the Central Electricity Authority (CEA) and LTTCs. However, due to delay in obtaining Forest Clearance from Ministry of Environment, Forest & Climate Change, Government of India (MoEFCC) as well as Forest Department, State of Maharashtra, the construction work of Rajnandgaon-Warora 765 kV D/C line has been affected and there is resultant delay in implementation of the project. The Petitioner has submitted that the delay caused in grant of Forest Clearance by the Government Authorities constitute a Force Majeure event under Article 11.3 of the TSA dated 19.5.2015.

Submission of the Petitioner

5. The Petitioner has mainly submitted as under:

(a) The total length of Rajnandgaon-Warora 765 kV D/C line is 266 km (532 ckm) and the said line traverses through the States of Chhattisgarh and Maharashtra.

(b) Forest area of around 10.0555 Ha in the State of Chhattisgarh and 284.2797 Ha in the State of Maharashtra has been encountered for construction of Rajnandgaon-Warora 765 kV D/C line.

(c) The Petitioner submitted applications to the designated nodal officers seeking Forest Clearance as per Rule 6 of the Forest (Conservation) Rules, 2003 on 15.4.2016 to MoEF&CC and to the Forest Department, State of Maharashtra for obtaining the Forest Clearance for constructing the Rajnandgaon-Warora 765 kV D/C line.

(d) As per Article No. 3.1.3 of the TSA, project execution schedule was submitted to CEA and all LTTCs vide letter No. RRWTL/LTTC/15-16/1 dated 21.3.2016, wherein timeline for obtaining Forest Clearance was envisaged from February 2016 to January 2018. In the project execution schedule, about 135 days were envisaged for preparation of Forest Clearance proposal on account of collection of huge amount of documents and furnishing large amount of data. Most of the activities could be initiated only after finalization of the detailed survey of the entire route. Rajnandgaon – Warora transmission line being 266 km long, the minimum time to complete the detailed survey was estimated as three months.

(e) While the detailed survey was being carried out, for the portion where such survey is over, collection of village maps, marking of route on village

maps, digitization of village maps, collection of topomaps, marking of route on topomaps, plotting the line route on forest division-wise, verification of the land title from the respective circle office were planned to be done in parallel to minimize the time for preparation of the proposal. There has been involvement of a total of 167 villages en route this line for which the maps were collected and ownership established, which gives a glimpse of the quantum of work involved. Since the collection of the requisite details is time consuming, proposals were submitted on 15.4.2016 for both Chhattisgarh and Maharashtra portion.

(f) A detailed comparison of actual time taken to complete various activities for grant of forest clearance, original schedule submitted to CEA/LTTCs and reference timeline of MoEFCC for both Chhattisgarh and Maharashtra portions, is submitted with the Petition.

(g) The proposals have been submitted on the same time frame for Chhattisgarh and Maharashtra portion with anticipated approval in 590 days for Chhattisgarh portion (10.0555 ha) and 730 days for Maharashtra portion (284.2797 ha) as per execution plan submitted to CEA and LTTCs. However, there was enormous time consumed in various activities by Govt. authorities which are beyond the Petitioner's control.

(h) There is involvement of 5 Forest Divisions in Maharashtra and it consumed enormous time in site inspection, receipt of FRA certificate after clearance of 61 Gram Sabha, as compared to Chhattisgarh portion. Even though the Petitioner has been following both the proposals continuously,

there was additional time of 234 days consumed in receipt of FRA certificate and recommendation by DCF in case of Maharashtra proposal.

(i) After issuance of Stage-I clearance in Chhattisgarh portion, it took about 7 days in achieving the compliances after issuance of demand note by the Forest authorities. Whereas, the same process took about 111 days in case of Maharashtra portion. This was primarily due to delay in handing over of CA land on account of digitization drive for land revenue, district revenue authorities getting pre-occupied on issues like agitation on Maratha Reservation and the farmers' agitation for milk procurement prices during this period.

(j) The Petitioner has been regularly submitting monthly progress report to all LTTCs and CEA, wherein the Petitioner has, from time to time, informed the progress of the Project and has been requesting Respondents' intervention in expediting the forest clearances. As per the reports, the Petitioner has already completed about 80% foundations, 75% erections and 40% of stringing, but the work was further stuck up due to non-availability of forest clearance.

(k) Non-availability of forest clearance has affected the stringing activities more due to the fact that the forest area is distributed in several patches. Based on the construction progress submitted, it may be noted that the Petitioner has completed the work outside the forest affected area to the extent feasible and the progress has dipped/ became standstill since the clearance could not be issued as envisaged in January 2018. It may be noted that the other two elements of RRWTL project have been completed

way ahead of schedule. The construction of 765 kV D/C Raipur-Rajnandgaon line was completed in December 2017 and construction of new 765 kV Switching station at Rajnandgaon was completed in November 2017.

(l) The parent company of the Petitioner i.e. Adani Transmission Ltd. (ATL) was also awarded two other projects, namely, Sipat Transmission Ltd. (STL) and Chhattisgarh-WR Transmission Ltd. (CWRTL) through Tariff Based Competitive Bidding along with RRWTL. The construction work for most of the elements of both these projects have been completed well ahead of Schedule Commercial Operation date (SCOD).

(m) Despite submitting the application for obtaining Forest Clearance to the Forest Department, State of Maharashtra on 15.4.2016 and sufficiently addressing the queries raised by the Nodal Officer, Forest Department, State of Maharashtra in all respects, the Petitioner did not receive the Forest Clearance within 365 days i.e. the time period stipulated for providing such Forest Clearance by the competent authorities under the Forest (Conservation) Rules, 2003 as amended from time to time. In the above context, the Petitioner has written letters dated 22.6.2016 and represented to the designated Nodal Officers to expedite forest clearance since the project was being held up and was of national importance.

(n) Since forest clearances were still not completely granted and the project was being held up, the Petitioner sent a Force Majeure Notice dated 31.1.2018 to the LTTCs under Article 11.3 of the TSA on account of delay in receipt of forest clearance from Forest Department, Government of Maharashtra. The Petitioner further invoked Article 4.2.1 of the TSA and requested the LTTCs to extend support to the Petitioner to obtain the forest

clearances and to minimise the effect of delays in obtaining the Forest Clearance.

(o) M.P. Power Management Company Limited, vide its letters date 7.2.2018 and 23.4.2018, denied the claim of the Petitioner stating that the delay in receiving forest clearance from the Forest Department, Government of Maharashtra is not a Force Majeure event.

(p) On 26.3.2018, MoEFCC granted Stage-I forest clearance (in-principle approval) in respect of diversion of 284.2979 ha of forest land in the State of Maharashtra.

(q) In continuation to Force Majeure Notice submitted earlier, the Petitioner vide letter dated 12.6.2018 informed the Respondents that it has received Stage-I Forest Clearance (in-principle approval). However, Stage-II forest clearance is still awaited even after more than 2 years of acknowledgement by Nodal Officer. The Petitioner yet again invoked Article 4.2.1 of the TSA and requested the LTTCs to extend support to the Petitioner and provide letters of recommendation to the concerned Indian Govt. Instrumentalities to issue the Stage-II forest clearance on war footing to the Petitioner at the earliest so that the work on the Rajnandgaon-Warora 765 kV D/C line could be further undertaken.

(r) The Petitioner has not received any further response from any other party and no support as envisaged under Article 4.2.1 of the TSA. Aggrieved by the above action of MPPMCL and rejection of Petitioner's claim for Force Majeure, the Petitioner through the present Petition has sought approval of delay in forest clearance as a force majeure event under the TSA dated

19.5.2015 and extension of date of commercial operation of the project along with consequential reliefs under the TSA.

(s) On account of delay in obtaining forest clearance, the implementation of the Project is bound to extend beyond the present SCOD, i.e. 23.11.2018. However, the said delay is not attributable to the Petitioner but solely due to delay caused in grant of Stage-I forest clearance by the Forest Department, Government of Maharashtra over 14 months from the date of application in May 2016. In fact, the Stage-II forest clearance is still pending with MoEFCC as well as Forest Department, State of Maharashtra though Petitioner has complied with all prescribed requirements long back and nothing is pending at the Petitioner's end. This delay in receipt of Stage-II clearance is in addition to the delay of 14 months already occurred in receipt of Stage-I clearance.

(t) The delay caused in grant of forest clearance by the Government Authorities undoubtedly constitute a Force Majeure event under Article 11.3 of the TSA dated 19.5.2015.

(u) The Commission has already examined the issue of non-grant/ delay in grant of forest clearance as force majeure event in Petition No. 73/MP/2014 (Jabalpur Transmission Company Limited Versus Adhunik Power & Natural Resources & Ors), Petition No. 32/MP/2014 (East North Interconnection Company Limited versus Jodhpur Vidyut Vitran Nigam Limited & Ors) and Petition No. 216/MP/2016 (Bhopal Dhule Transmission Company Ltd Versus Chhattisgarh State Power Trading Company Limited & Ors).

(v) The Appellate Tribunal for Electricity (APTEL) vide its Judgment dated 4.2.2014 in Appeal No. 123 of 2012 titled “Gujarat Urja Vikas Nigam Limited vs Gujarat Electricity Regulatory Commission & Ors.”, has upheld the decision of the Gujarat Electricity Regulatory Commission, that the delay caused due to obtaining the permission/ approval for land and water which are pre-requisites for the project, would undoubtedly fall under the category of Force Majeure event. The case of the Petitioner is squarely covered by the aforesaid judgment of the APTEL.

6. The Petition was admitted on 15.11.2018 and notice was issued to the Respondents to file their replies. Reply to the Petition has been filed by the Maharashtra State Electricity Distribution Company Ltd. (MSEDCL) vide affidavit dated 15.5.2019 and M.P. Power Management Company Ltd. (MPPMCL) vide affidavit dated 16.7.2019. The Petitioner vide its affidavit dated 15.6.2019 has filed rejoinder thereof.

Reply by Respondents

7. Maharashtra State Electricity Distribution Company Ltd. (MSEDCL) vide its reply dated 15.5.2019 and M.P. Power Management Company Ltd. (MPPMCL) vide reply dated 16.7.2019 have raised similar contentions and have mainly submitted as under:

(a) The claim of the Petitioner that Rajnandgaon-Warora 765 kV D/C line is delayed on account of delay in obtaining forest clearance is totally misconceived and is contrary to the express provision of the TSA.

(b) The Petitioner has failed to establish that the delay in obtaining forest clearance has been due to any of the conditions laid down in Article 11 of TSA. The key reasons for delay are attributable to the Petitioner such as late preparation and submission of the forest clearance proposal to the concerned authorities.

(c) Clause 1.5.11 of the RfQ specified the TSP scope of work for the project which included arrangement of necessary consents, clearances and permits (way leave, environment & forest, civil aviation, railway/ road/ river/ canal/ power crossing/ PTCC, etc.). Similar construction responsibilities have been provided in Article 5.1 of the TSA. Clause 5 of the RfQ provided the Grid Map of proposed Rajnandgaon-Warora 765 kV D/C line. Therefore, the Petitioner was fully aware of the geographical conditions of the route of proposed line and was its responsibility to obtain all the necessary consents, clearance and permits. It is, therefore, the sole responsibility of the Petitioner to obtain all the required consents/ clearances, including forest clearance necessary in timely manner for completing the project in agreed timeframe of 36 months.

(d) The Petitioner submitted applications to the designated Nodal Officers seeking forest clearance on 15.4.2016 i.e. after a period of 143 days (145 days as per MPPMCL) from the date of acquisition of 100% equity shareholding of PFCCL i.e. 23.11.2015. Further, the Petitioner submitted the proposal about 74 days (81 days as per MPPMCL) behind its own project execution schedule submitted vide letter dated 21.3.2016. In its own schedule,

the Petitioner had envisaged the time line for obtaining forest clearance from February 2016.

(e) The Petitioner prepared the project execution schedule after studying the provisions of relevant Indian laws and regulations which the Petitioner could not follow and now, to hide its inefficiency has given justification of collection of huge number of documents and furnishing large amount of data. The delay of 74 days may not be condoned due to lethargic approach of the Petitioner in approaching the Forest Department for survey and permission. In this regard, reliance has been placed on the Commission order dated 21.3.2016 in Petition No. 142/TT/2014 wherein the Commission denied condonation of delay of 62 days on account of delay in filing of application for forest clearances.

(f) As per Article 4.4.2 of the TSA, the Force Majeure notice has to be served to the LTTCs and further extension of time has to be agreed by the parties. The notice of Force Majeure is claimed to have been served on 31.1.2018 by the Petitioner and no efforts were made to approach the LTTCs for time extension in any of the case. The dispute has to be resolved in accordance with Article 16 of the PPA wherein efforts for settlement have to be undertaken. The Petitioner has approached the Commission in haste without adhering to the process laid down in Article 16 of TSA.

(g) The Petitioner is wholly responsible for delay and LTTCs should be permitted to charge and recover liquidated damages as per Article 6.4 of TSA in accordance with the decision of the Commission in order dated 24.1.2019 in Review Petition No. 4/RP/2014 in Petition No. 419/MP/2014.

Rejoinder by the Petitioner

8. The Petitioner, vide its rejoinder dated 15.6.2019 to reply filed by MSEDCL and rejoinder dated 30.7.2019 to reply filed by MPPMCL, has submitted as under:

(a) Under Article 11.3 of the TSA, the definition of Force Majeure event is inclusive i.e. the events indicated in the said definition are only indicative, and not exhaustive. For an event/ circumstance to fall under Force Majeure, it should satisfy the following ingredients:(i) It should wholly or partly prevent or unavoidably delay the affected party in the performance of its obligations; (ii) the events and circumstances should not be within the reasonable control directly or indirectly of the Affected Party; and (iii) The Affected Party should have taken reasonable care or complied with Prudent Utility Practices.

(b) It is not at all disputed that the Petitioner under the bid documents, was responsible for the establishment of the Project along with obtaining necessary consents, clearances and permits, including the forest clearance from the competent authorities. The bid has been submitted by the Petitioner after familiarizing itself with all the necessary laws, transmission line routes and other conditions, permits and sanctions required.

(c) However, the issue that is required to be considered is whether the time taken by the Forest Department, Government of Maharashtra for granting the forest clearances, beyond the period of 365 days i.e. the time period stipulated for providing such forest clearance under the Forest (Conservation) Rules, 2003 as amended from time to time, would be considered under Force Majeure under Article 11.3 of the TSA dated 19.5.2015 or not.

(d) The Petitioner in para 9 of the Petition has clearly explained that about 135 days were envisaged for preparation of the forest clearance

proposal since it involves collection of huge amount of documents and furnishing large amount of data.

(e) MSEDCL in its reply has factually and erroneously stated that the Petitioner submitted the forest proposal about 74 days (81 days as per MPPMCL) behind its schedule. Whereas, 135 days, if reckoned from 23.11.2015 i.e. date of acquisition of 100% equity shareholding of the Petitioner from PFCCL, would expire on or around 6.4.2016, while the Petitioner has submitted the proposal on 15.4.2016 i.e. with a meager delay of about 10 days. The Petitioner at pages 19 and 26 of its Petition, S. No. 1 of the respective tables, has given explanation for the delay of 10 days in submission of proposal for forest clearance.

(f) The Petitioner has from time to time submitted the Monthly Progress Reports regarding the progress made on the various elements involved in the Project. Neither MSEDCL nor any of other LTTCs have ever objected to the progress of the Project or its schedule. There is neither any lethargy, nor inefficiency on the part of the Petitioner in implementing the Project.

(g) There was enormous time consumed in various activities by Govt. Authorities, which are beyond the Petitioner's control. Therefore, the facts and circumstances of the Petitioner in Petition No. 142/TT/2014 differ from the present Petition and the Order dated 21.3.2016 would be inapplicable in the case of the present Petition.

(h) The contentions of MSEDCL regarding violation of TSA provisions are misconceived and based on an incorrect understanding of the terms of the TSA. MSEDCL failed to respond to the force majeure notice dated 31.1.2018 sent by the Petitioner and further failed to extend support to the Petitioner as envisaged under Article 4.2.1 of the TSA despite the Petitioner specifically

requesting for the same. Only Respondent No. 4, MPPMCL responded to the above notice of the Petitioner by rejecting its request for consideration as Force Majeure. In terms of Article 4.4.2, the SCOD could be extended on day-to-day basis for a maximum period of 180 days only if the parties agree. However, MPPMCL declined to extend the same by not treating it as a Force Majeure event. In these circumstances and considering that SCOD of the Project was approaching on 23.11.2018, the Petitioner was constrained to approach the Commission on 23.10.2018 by filing the present Petition. Hence, the question of approaching the LTTCs again for further time extension beyond 180 days, while the Force Majeure event was still continuing, and thereafter, refer dispute for resolution under Article 16 as per Article 4.4.3, does not arise at all.

(i) The Commission`s order in Review Petition No. 4/RP/2014 in Petition No. 419/MP/2014 cited by the Respondent, MSEDCL hinges on the factum of breach of contract by the defaulting party where pre-estimate of loss could be claimed by the non-defaulting party. However, there is no such breach of contract in the present case by the Petitioner as the delay in achieving COD, beyond the SCOD as per the TSA is required to be considered under Force Majeure period.

Additional Submission by the Petitioner

9. The Petitioner, vide its additional affidavit dated 16.5.2019, has made the following submissions:

(a) With the efforts of the Petitioner, the Stage-II Clearance has been received on 7.1.2019 from the Ministry of Environment, Forest and Climate

Change under Section 2 of the Forest (Conservation) Act, 1980 for portion of R-W Line passing through the State of Maharashtra.

(b) Pursuant to receipt of aforesaid Stage-II clearance for Maharashtra portion, the Petitioner commenced the work for construction of R-W Line in full swing on war footing and sent a Notice of Cessation of force majeure event to the Respondents on 2.3.2019.

(c) Thereafter, in accordance with Article 6.2.1 of the TSA, the Petitioner vide its e-mail dated 1.3.2019 sought charging instruction for all the elements of the Project from CTU. However, the charging instructions were issued only on 15.3.2019. Accordingly, the Petitioner vide its letter dated 26.3.2019 intimated CTU about achieving Deemed CoD w.e.f. 16.3.2019 in accordance with Article 6.2.1 of the TSA.

(d) Further, in accordance with Article 6.2.1 of the TSA, the Petitioner completed the trial run of 72 hours of all three elements of its project on 31.3.2019 at 17:56 hours. WRLDC has also issued the Certificates dated 23.4.2019, 6.5.2019 and 7.5.2019 in accordance with Regulation 6.3 A (5) of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 as amended from time to time, certifying the successful trial operation of all the transmission elements of the Petitioner's Project. Accordingly, vide its letter dated 9.5.2019, the Petitioner has informed the Respondents, LTTCs regarding the COD of the Petitioner's project on 31.3.2019 at 17:56 hours for immediate billing purpose without prejudice to the claim of the Petitioner for deemed COD on 16.3.2019.

(e) In view of the commissioning of the project on 31.3.2019 at 17:56 hours, the delay of approximately 128 days, i.e. from date of SCOD (23.11.2018) till date of actual COD (31.3.2019), is required to be considered by the Commission under 'force majeure' period. The delay in receipt of Stage-II clearance is in addition to the delay of 14 months already occurred in receipt of Stage-I clearance.

(f) The Petitioner had sought charging permission from WRLDC after the charging instructions were issued by CTU on 15.3.2019. However, WRLDC issued charging permission only for R-R Line and Rajnandgaon sub-station. The permission was withheld for R-W line, due to lack of readiness of associated line rectors being installed by Warora Kurnool Transmission Limited (WKTL, a subsidiary of Essel Infraprojects Ltd.) at Warora end, which is beyond the control of the Petitioner.

(g) The Petitioner has sought declaration of deemed COD on 16.3.2019 and actual COD of the Project on 31.3.2019 at 17:56 hours without any penal consequences for not commissioning the project as per SCOD of 23.11.2018 due to occurrence of force majeure events under the TSA which were beyond the control of the Petitioner.

10. In response to the Petitioner's additional affidavit dated 16.5.2019, MPPMCL vide its affidavit 26.7.2019 has reiterated that there is no event of Force Majeure as defined in the Transmission Service Agreement (TSA) and the delay, if any, in obtaining Forest Clearance from MoEFCC was due to poor project planning and lack of risk mitigation measures on part of the Petitioner, which were already known to all the bidders. It has been further contended that there is no valid "Notice of

Force Measure” and consequently no valid “Notice of Cession of Force Measure” Dated 2.3.2019. MPPMCL has pointed out that the Petitioner served Notice of Cessation of Force Majeure to the Respondents on 2.3.2019 i.e. after lapse of about two months of the receipt of Stage-II clearance on 7.1.2019. It has been contended that this conduct of the Petitioner shows the Petitioner’s non-serious approach to the issue of forest clearance for the said Project and timely execution of the Project. Therefore, the request of the Petitioner for extension of Scheduled COD ought to be rejected as the delay, if any, is entirely due to the inaction/ lethargy on part of the Petitioner.

11. The Petitioner vide its rejoinder dated 9.8.2019 to MPPMCL reply dated 26.7.2019 has reiterated its earlier submissions. As regards contention of MPPMCL that the Petitioner did not seek extension of SCOD on daily basis in terms of Clause 4.4.2 of the TSA, the Petitioner has submitted that the SCOD could be extended on day-to-day basis for a maximum period of 180 days if the parties agree. However, MPPMCL declined to extend the same by not treating it as a Force Majeure event. As regards delay in intimation of cessation of Force Majeure, the Petitioner has submitted that it can be seen from the copy of the Stage-II clearance dated 7.1.2019 received by the Petitioner from MoEFCC that the ‘User agency’ specified at the bottom of the last page was wrongly specified as ‘Power Grid Corporation of India’ instead of the Petitioner. Hence, the Stage-II clearance dated 7.1.2019 was earlier not even marked to the Petitioner and neither received by the Petitioner. Later on, when this inadvertent error came to the knowledge of the Petitioner, it took up the task of getting the said error corrected from the Ministry of Environment, Forest and Climate Change. The said error was corrected and the Stage-II clearance dated 7.1.2019 was re-issued to the ‘User agency’ i.e. the Petitioner and

communicated to the Petitioner only around 3.2.2019. Further, the Petitioner received the final diversion order from the Maharashtra Government only on 2.3.2019. Therefore, upon receipt of corrected copy of Stage-II clearance dated 7.1.2019 and final diversion order dated 2.3.2019 from the State of Maharashtra, the Petitioner immediately sent a Notice of Cessation of force majeure event to the Respondents on 2.3.2019 along with the corrected copy of the Stage-II clearance dated 7.1.2019 issued by MoEFCC. Hence, there is absolutely no substance in the contention of MPPMCL that the Petitioner has taken unusually long time to serve Notice of Cessation of force majeure event to the LTTCs.

12. The Petition was heard on 21.8.2019. The Commission directed the Petitioner and Respondents to file their written submissions, on or before, 30.8.2019.

13. The Petitioner, vide its affidavit dated 27.8.2019, has reiterated its earlier submission. The Petitioner has additionally submitted that the Forest Authorities took about 778 days for Chhattisgarh (on 2.6.2018) and 997 days for Maharashtra (on 7.1.2019) in granting the final Forest Clearance to the Petitioner. Therefore, there is a delay of approximately 483 days and 602 days in granting the Forest Clearance for Chhattisgarh portion and Maharashtra portion respectively by the Forest Authorities without any default on part of the Petitioner. The Petitioner has clarified that it has neither included the 145 days period of preparation and submission of forest proposal in the claim for force majeure nor has it accounted for the same while calculating the delay of 483 and 602 days in obtaining the Forest Clearances from the Forest Authorities under the Forest (Conservation) Rules, 2003 as amended from time to time from Chhattisgarh and Maharashtra Forest Authorities respectively. Further, the Petitioner has prayed to treat the period of 128

days i.e. time taken beyond SCOD of 23.11.2018 to complete the Project till date of actual COD i.e. 31.03.2019 under force majeure.

14. The Respondents, MPPMCL vide its affidavit dated 30.8.2019 and MSEDCL vide its affidavit dated 28.8.2019, have reiterated their earlier submissions. MSEDCL has additionally submitted that as per Article 11.5 of PPA, the affected party is required to give notice as soon as reasonably practicable but not later than 7 days after the date on which such party knew or should reasonably have known of the commencement of the event of Force Majeure. The Petitioner issued force majeure notice only on 31.1.2018; nearly 10 months after the time period for obtaining forest clearance expired on 15.4.2017. MSEDCL has also contended that the Petitioner's reliance on the decisions cited are wholly misplaced as in Petitions No. 73/MP/2014 and 216/MP/2016, there was a change in the forest guidelines by MoEFCC, on account of which the Petitioners could not obtain forest clearance within the time stipulated. In Petition No. 32/MP/2014, there was a categorical denial in the RFP document that there was no forest clearance involved and the requirement of forest clearance had emerged after award of the project and hence the delay in obtaining clearance was beyond the Petitioner's control.

Analysis and Decision

15. We have considered the submissions of the Petitioner, MSEDCL and MPPMCL, and perused the documents on record. The following issues arise for our consideration:

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

Issue No. 2: Whether the Petitioner's case for delay in grant of forest clearance is covered under force majeure provision of the TSA? and

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

The above issues have been dealt with in succeeding paragraphs.

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

16. The Petitioner has claimed relief under Article 11 (Force Majeure) of the TSA.

Article 11.5 of the TSA provides as under:

“11.5 Notification of Force Majeure Event

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

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

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

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

18. The Petitioner gave notice dated 31.1.2018 to the LTTCs under Article 11 of the TSA on account of delay in receipt of forest clearance for the Maharashtra segment of the project. Further, the Petitioner gave notice of Cessation of force majeure event to the Respondents on 2.3.2019. In response, MPPMCL by letters dated 7.2.2018 and 23.4.2018 responded by denying the claim of Force Majeure event stating that the delay caused due to non-receipt of forest clearance from the Forest Department, Government of Maharashtra is not a Force Majeure event. No other LTTC responded to the Force Majeure notice served by the Petitioner. In their written submissions, MSEDCL and MPPMCL have contended that no efforts were made by the Petitioner to approach the LTTCs for time extension in terms of Article 4.4.2 of the TSA which provides as under:

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

4.4.3 If the Parties have not agreed, within thirty (30) days after the affected Party's performance has ceased to be affected by the relevant circumstance, on how long the Scheduled COD should be deferred by, any Party may raise the Dispute to be resolved in accordance with Article 16.”

19. It has been further contended by both the Respondents that the dispute has to be resolved in accordance with Article 16 of the TSA wherein efforts for settlement have to be undertaken. It has been further submitted that the Petitioner in haste approached the Dispute Review Authority i.e., the Commission, without adhering to the process laid down in Article 16 of TSA.

20. We have gone through Article 4 and Article 16 of the TSA. It is noted that while the Respondents are now seeking resolution through amicable settlement

under the above provisions of the TSA, in reality, MPPMCL denied the claim of Force Majeure and other Respondents including MSEDCL did not respond to the Force Majeure notice of the Petitioner. The Petitioner had also invoked Article 4.2.1 of the TSA and requested the LTTCs to extend support to the Petitioner to obtain the forest clearances. However, no response was received from the LTTCs in this regard. After rejecting claim of force majeure (MPPMCL) and not responding to the Petitioner's request (MSEDCL), it is incorrect on part of the Respondents to now state that the Petitioner should have tried to resolve the dispute in terms of provisions of Article 16 of the TSA. In these circumstances, the Petitioner was constrained to approach the Commission as the SCOD was in the month of November 2018. In our view, the Petitioner has complied with the requirement of TSA regarding prior notice to the LTTCs before approaching the Commission.

Issue No.2: Whether the Petitioner's case for delay in grant of forest clearance is covered under force majeure provision of the TSA?

21. The Petitioner has submitted that the application for approval of Forest Clearance was submitted to MoEFCC on 15.4.2016 as per Rule 6 of the Forest (Conservation) Rules, 2003 for forest area of 10.0555 ha in the State of Chhattisgarh and 284.2797 ha in the State of Maharashtra falling on the route of Rajnandgaon-Warora 765 kV D/C line. As per execution plan submitted to CEA and LTTCs, the Petitioner anticipated approval in 590 days for Chhattisgarh portion (10.0555 ha) and 730 days for Maharashtra portion (284.2797 ha). However, the Forest Authorities took about 778 days for Chhattisgarh portion and 997 days for Maharashtra portion in granting the final Forest Clearance to the Petitioner. Therefore, there is a delay of approximately 483 days and 602 days in granting the forest clearance as against the timelines stipulated in the guidelines for

Chhattisgarh portion and Maharashtra portion respectively by the Forest Authorities without any default on part of the Petitioner. The Petitioner has submitted that the delay in receiving forest clearance has led to delay of approximately 128 days in achieving COD of the project from the SCOD of 23.11.2018. The Petitioner vide its letter dated 9.5.2019 informed the Respondents, LTTCs regarding the COD of the project on 31.3.2019 at 17:56 hours for immediate billing purpose. However, the Petitioner has also claimed deemed COD on 16.3.2019.

22. The Petitioner has submitted that there is involvement of 5 Forest Divisions in Maharashtra which consumed enormous time in site inspection, receipt of FRA certificate after clearance of 61 Gram Sabha, as compared to Chhattisgarh portion. Further, after the issuance of Stage-I clearance in Chhattisgarh portion, it took about 7 days in achieving the compliances after issuance of demand note by the Forest authorities.

23. The Respondents, MSEDCL and MPPMCL have contended that the main reason for delay is late submission of the forest clearance proposal to the concerned authorities. The Respondents have contended that the Petitioner submitted its proposal for forest clearance on 15.4.2016 i.e. after a period of 143 days (145 days as per MPPMCL) from the date of acquisition of 100% equity shareholding of PFCCL i.e. 23.11.2015 which was about 74 days (81 days as per MPPMCL) behind its own project execution schedule submitted vide letter dated 21.3.2016 to LTTCs and CEA. The Respondents have invoked the provisions of the bid documents to argue that it was the sole responsibility of the Petitioner to make itself fully aware of the geographical conditions of the route of proposed line, provisions of Indian law and Regulations and obtain all the required consents/

clearances, including necessary forest clearance in timely manner for completing the project in agreed timeframe of 36 months. The Respondents have argued that the delay of 74 days may not be condoned due to lethargic approach of the Petitioner in approaching the Forest Department for survey and permission.

24. We have considered the submissions of the Petitioner and the Respondents. The Petitioner submitted application to the designated Nodal Officers seeking forest clearance as per Rule 6 of the Forest (Conservation) Rules, 2003 for both Chhattisgarh (10.0555 ha) portion and Maharashtra (284.2797 ha) portion on 15.4.2016. It is observed that the Petitioner received the forest approvals as per details given below:

	Date of submission of forest proposal	Stage-I Approval granted	Stage-II Approval granted
Chhattisgarh	15.4.2016	7.7.2017	2.6.2018
Maharashtra	15.4.2016	26.3.2018	7.1.2019

25. On receipt of approval as above, the Petitioner had declared COD of the project on 31.3.2019 to LTTCs for immediate billing purpose. As per the Transmission Service Agreement, the Scheduled Commercial Operation Date (SCOD) is 36 months from the effective date. The term "effective date" has been defined under Article 2.1 of the TSA which is later of the three dates, namely, date of execution and delivery of the TSA by the parties, the date of acquisition of the SPV by the successful bidder, date of providing contract performance guarantee by the successful bidder. Accordingly, the effective date is the date of signing of the Share Purchase Agreement in the present case i.e. 23.11.2015 and the date of scheduled COD is 23.11.2018. As against the SCOD, the actual COD for RRWTL

system is 31.3.2019 which the Petitioner declared to LTTCs for immediate billing purpose with a claim of deemed COD on 16.3.2019. Therefore, the delay in COD is 128 days from the SCOD of 23.11.2018.

26. A comparison of the time frame stipulated in the project execution schedule, as per the Forest (Conservation) Rules, 2003 and actual time taken for grant of forest clearance based on the submission of the Petitioner is as under:

	Project Execution Schedule	Forest (Conservation) Rules	Actual time taken in obtaining forest clearance	Delay compared to execution schedule	Delay as compared to Forest Rules
Chhattisgarh	590 days	295 days	778 days	188 days	483 days
Maharashtra	730 days	395 days	997 days	267 days	602 days

27. There has been considerable delay in grant of forest clearance for Maharashtra segment by the authorities beyond the stipulated period of 395 days as per the Forest (Conservation) Rules, 2003. The delay in grant of forest clearance has resulted in delay of 128 days from the SCOD (23.11.2018) to COD claimed by the Petitioner (31.3.2019). Late submission of proposal (by 74 days as per MSEDCL or 81 days as per MPPMCL) as contended by the Respondents has no relationship with delay in grant of forest clearance by MoEFCC/ State Forest authorities. It is erroneous to state that had this delay of 74/ 81 days not occurred in submission of documents by the Petitioner, the forest authorities would have granted clearance on time. The delay in grant of forest clearance is counted from the day the application is submitted and the day when the clearance is granted and has nothing to do with delay in submitting the application in the first place. In light of this, the contention of the Respondents that 74 days delay in preparation and submission of forest proposal from its own schedule is attributable to lethargic

approach of the Petitioner has no merit. The Petitioner has submitted that delay in submission of documents was on account of requirement of submission of voluminous documents since Rajnandgaon- Warora transmission line, being 266 Kms long, required collection of huge number of documents and furnishing large amount of data for preparation of forest proposal. Since it has no bearing on delay in grant of forest clearance and that the delay in forest clearance is more than delay in commissioning the Project, we don't find a need to discuss this issue.

28. TSA defines the term "Force Majeure" as under:

11.3 Force Majeure

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

(a) Natural Force Majeure Events:

act of God, including, but not limited to drought, fire and explosion (to the extent originating from a source external to the Site), earthquake, volcanic eruption, landslide, flood, cyclone, typhoon, tornado, or exceptionally adverse weather conditions which are in excess of the statistical measures for the last hundred (100) years,

(b) Non-Natural Force Majeure Events

i. Direct Non-Natural Force Majeure Events

- Nationalization or compulsory acquisition by any Indian Governmental Instrumentality of any material assets or rights of the TSP; or*
- the unlawful, unreasonable or discriminatory revocation of, or refusal to renew, any Consents, Clearances and Permits required by the TSP to perform their obligations under the RFP Project Documents or any unlawful, unreasonable or discriminatory refusal to grant any other Consents, Clearances and Permits required for the development operation of the Project, provided that a Competent Court of Law declares the revocation or refusal to be unlawful, unreasonable and discriminatory and strikes the same down; or*
- any other unlawful, unreasonable or discriminatory action on the part of an Indian Governmental Instrumentality which is directed against the Project, provided that a Competent Court of Law declares the action to be unlawful, unreasonable and discriminatory and strikes the same down.*

ii. Indirect Non ~ Natural Force Majeure Events

- *act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action: or*
- *radio active contamination or ionising radiation originating from a source in India or resulting from any other Indirect Non Natural Force Majeure Event mentioned above, excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Site by the Affected Party or those employed or engaged by the Affected Party; or*
- *industry wide strikes and labour disturbances, having a nationwide impact in India.*

11.4 Force Majeure Exclusions

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

- (a) Unavailability, late delivery, or changes in cost of the machinery, equipment, materials, spare parts etc. for the Project;*
- (b) Delay in the performance of any Contractors or their agents;*
- (c) Non-performance resulting from normal wear and tear typically experienced in transmission materials and equipment;*
- (d) Strikes or labour disturbance at the facilities of the Affected Party;*
- (e) Insufficiency of finances or funds or the Agreement becoming onerous to perform; and*
- (f) Non-performance caused by, or connected with, the Affected Party's:*
 - i. negligent or intentional acts, errors or omissions;*
 - ii. failure to comply with an Indian Law; or*
 - iii. breach of, or default under this Agreement or any Project Documents*

29. Thus, Force Majeure means any event or circumstance or combination of events and circumstances which wholly or partly prevents or unavoidably delays an Affected Party in the performance of its obligations under the TSA. An Affected Party has been defined in the TSA as “any of the Long Term Transmission Customers or the TSP whose performance has been affected by an event of Force Majeure”.

30. In the present case, there was a considerable delay in grant of Stage-I forest clearance for Maharashtra portion of the Transmission Line. As pointed out by the Petitioner in its comparison of timelines, the following milestone took 438 days to complete against the guidelines of 60 days:

“DFO to process and forward the application involving Forest Land upto 40 Ha. to the Conservator of Forest (CF) and District Collector to complete vesting of Forest Rights for entire Forest Land, obtain consent of each Gram Sabha, compensatory & amelorative measures, and forwarding along with recommendation to CF”.

31. In the present case, there was a considerable delay in grant of Stage-I forest clearance for Maharashtra segment. The Petitioner has submitted that Maharashtra segment had 5 forest divisions and there was long delay in processing of file by DCF, Gondia, which hampered the movement of complete file from the rest balance four divisions to CF. The Petitioner has contended that even though it had been following up for both proposals continuously, there was considerable delay in receipt of FRA certificate and recommendation by DCF in case of Maharashtra proposal. The Petitioner has submitted that it had no role in this stage of the process. The Petitioner has contended that after issuance of Stage-I forest clearance, there was considerable delay in issuance of demand note by the Forest authorities, generation of challan and transfer of land by the revenue authorities in favour of Forest Department in case of Maharashtra. It has been stated by the Petitioner that this was primarily due to delay in handing over of CA land on account of digitization drive for land revenue, district revenue authorities getting pre-occupied on issues like agitation on Maratha Reservation and the farmers' agitation for milk procurement prices during this period.

32. In our view, the Petitioner was prevented from discharging its obligations under the TSA on account of delay in grant of forest clearance and therefore, the delay beyond one year in grant of forest clearance is covered under force majeure.

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

33. The Petitioner has sought extension in the scheduled COD of the project on account of delay in grant of forest clearance. We have already held above that the delay in getting forest clearance is an event of force majeure which has affected the execution of the project. Therefore, the Petitioner is entitled for relief under force majeure. Article 11.7 of the TSA provides for relief for force majeure events which is extracted as under:

“11.7 Available Relief for a Force Majeure Event

Subject to this Article 11

(a) no Party shall be in breach of its obligations pursuant to this Agreement except to the extent that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure Event;

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

Further, Article 4.4 provides for extension of time.

“4.4. Extension of time:

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

34. We have already observed in earlier paragraphs that the delay in grant of forest clearance for Maharashtra portion with respect to the original project execution schedule is 267 days while the total delay from the SCOD (23.11.2018)

to COD claimed by the Petitioner (31.3.2019) is 128 days. In light of the above provisions of the TSA, and after considering the delay in grant of forest clearance, we allow extension of SCOD from 23.11.2018 till 31.3.2019.

35. The Petitioner vide its affidavit dated 16.5.2019 has submitted that after receipt of Stage-II clearance on 7.1.2019, the Petitioner vide its e-mail dated 1.3.2019 sought charging instruction for all the elements of the Project in accordance with Article 6.2.1 of the TSA. However, the charging instructions were issued only on 15.3.2019. Thereafter, the Petitioner sought charging permission from WRLDC after the charging instructions were issued on 15.3.2019. However, WRLDC issued charging permission only for R-R Line & Rajnandgaon S/S. It has been stated that the permission was withheld for R-W line, due to lack of readiness of associated line reactors being installed by Warora Kurnool Transmission Limited (WKTL, a subsidiary of Essel Infraprojects Ltd.) at Warora end, which is beyond the control of the Petitioner. The Petitioner vide its letter dated 26.3.2019 intimated CTU about achieving deemed CoD w.e.f. 16.3.2019 in accordance with Article 6.2.1 of the TSA. Further, the Petitioner completed the trial run of 72 hours of all three elements of its project on 31.3.2019 at 17:56 hours. Based on the WRLDC certificates, the Petitioner vide its letter dated 9.5.2019 informed the LTTCs regarding the COD of the project on 31.3.2019 at 17:56 hours for immediate billing purpose without prejudice to the claim of the Petitioner for deemed COD on 16.3.2019. Accordingly, the Petitioner has sought declaration of deemed COD as on 16.3.2019.

36. During the hearing held on 21.8.2019, learned senior counsel appearing on behalf of Warora Kurnool Transmission Ltd.(WKTL) requested to implead WKTL as necessary party to the Petition and to direct PGCIL in regard to the payment to

WKTL as per the TSA from the deemed COD. The Commission had observed that WKTL may file a separate Petition in accordance with law, if they so desire. Since WKTL was not a Respondent in the present Petition and was not impleaded as a party, we are not inclined to deal with the issue of deemed COD in this Petition.

37. The Petitioner has further prayed to direct the Respondents not to take any coercive steps including encashment of bank guarantees against the Petitioner considering the present SCOD of 23.11.2018 as the Project will likely get delayed beyond 23.11.2018 due to Force Majeure event. The Commission vide Record of Proceedings for Hearings dated 15.11.2018 and 17.7.2019 had directed the Respondents not to take any coercive measure till the next date of hearing. Since, in this order, we have already held that the delay beyond one year in grant of forest clearance is covered under force majeure and considering the delay in grant of forest clearance, we have already allowed the extension of SCOD from 23.11.2018 till 31.3.2019, the issue of bank guarantees shall be dealt with by the parties as per the provisions of the TSA.

38. The Petition No. 326/MP/2018 is disposed of in terms of the above.

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

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

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