

**Central Electricity Regulatory Commission
New Delhi**

Petition No. 94/MP/2017

Along with IA No. 22/2017

Coram:

Shri P.K. Pujari, Chairperson

Dr. M. K. Iyer, Member

Shri I.S. Jha, Member

Date of Order: 28th of May, 2019

In the matter of:

Petition under Section 79 (1)(f) of the Electricity Act, 2003 read with the relevant provisions of CERC (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 for seeking quashing of notices dated 16.3.2017, 24.3.2017, 6.4.2017 and email dated 19.4.2017 sent by the PGCIL and refund of the payments made under protest by the petitioner against the impugned invoices.

And

In the matter of

Bharat Aluminum Company Ltd.

Registered office at:

Core-6, Scope Office Complex,
Lodi Road, New Delhi-110 003

....Petitioner

Versus

1. Power Grid Corporation of India Limited

Registered Office:

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

2. Vandana Vidhyut Limited

Vandana Bhawan, M.G.Road
Raipur-492001, Chattisgarh

....Respondent



Parties present:

Shri Hemant Singh, Advocate, BALCO
Shri Shariq Ahmed, Advocate, BALCO
Ms. Ranjitha Ramachandran, Advocate, PGCIL
Ms. Poorva Saigal, Advocate, PGCIL
Shri K.K. Jain, PGCIL
Shri Anita A. Srivastava, PGCIL

ORDER

The present petition has been filed by Petitioner i.e. Bharat Aluminum Company Ltd. (hereinafter also referred to as BALCO) seeking quashing of notices dated 16.3.2017, 24.3.2017, 6.4.2017 and e-mail dated 19.4.2017 issued by PGCIL (Respondent No. 1) vide which the petitioner has been called upon to make payment of transmission charges and surcharge for the period of October 2011 - March 2012 and for seeking direction to PGCIL to refund the amount which has already been paid by the petitioner.

Background:

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

(a) The Petitioner is a generating company and has a generating station of 810 MW (4X67.5 MW & 4X135 MW) and 1200 MW (4X300 MW) at Balco Nagar, Korba, Chhattisgarh in Western Region.

(b) The Petitioner and Vandana Vidyut Ltd (hereinafter referred as "VVL") are long term transmission customers of PGCIL. Bulk Power Transmission Agreements (BPTAs) were executed between the parties on 24.2.2010 for evacuation of 200 MW and 265 MW power from their respective generating stations. For the purpose of evacuation of power, there were requirements of laying down dedicated transmission



system (by the Petitioner and VVL), interim LILO arrangement (by the Petitioner and VVL) and laying down of transmission line (by PGCIL). The interim LILO arrangement was required for drawing startup power through LILO of Korba-Birsinghpur 400 kV D/c line till commissioning of their (BALCO and VVL) dedicated transmission system. Accordingly, PGCIL executed a Transmission Service Agreement (TSA) dated 15.7.2011 with the Petitioner and VVL.

(c) PGCIL vide letter dated 3.10.2011 informed the Petitioner that part of the Korba – Birsinghpur transmission line from Korba gantry to Location No. 179/2 has been commissioned successfully for the temporary connectivity and hence, the monthly transmission charges of this part till commissioning will be payable by the Petitioner from 1.10.2011 as per the TSA.

(d) PGCIL vide letter dated 1.3.2012 informed the Petitioner that part of the Korba – Birsinghpur transmission line from Location No. 176/0 to Birsinghpur has been commissioned successfully and in operation from 29.2.2012 and hence, the monthly transmission charges of entire Korba-Birsinghpur Transmission line will be payable from 1.3.2012 by the concerned DICs as per the 2010 Sharing Regulations.

(e) By the above letter, PGCIL declared commissioning of the said line w.e.f. 29.2.2012 at 16.11 hours. But it tripped at 17.20 hours and was again charged at 17.33 hours on the same day i.e. 29.2.2012. It further tripped on 2.3.2012 at 16.50 hours, which got finally charged in May 2012. Therefore, there can be no liability whatsoever ensuing out of the charging or the commissioning of the Asset contemplated under the letter dated 1.3.2012.

(f) PGCIL on 13.4.2012, raised an invoice for an amount of Rs. 97,72,944/- against the differential bill for Korba-Birsinghpur transmission line. Subsequently, the



Petitioner on 2.6.2012 paid the billed amount of Rs. 97,72,944/- to PGCIL against the said invoice. At the time when the aforesaid invoice was raised, the same was paid under an impression that PGCIL would provide details against which the said amount was being asked for and as a matter of general practice and in good faith, the petitioner believed that in case excess payments are released, the same would be adjusted in future by the PGCIL. However, PGCIL has failed in providing the breakup and has also not done reconciliation of accounts with the Petitioner.

(g) The Petitioner vide its letter dated 20.8.2012 informed PGCIL that after the commissioning of the transmission lines on 29.2.2012, injection from the Petitioner plant was zero as there was no charge in the line and the transmission line was not stable for three months i.e. during period of March 2012 to May 2012. PGCIL was further requested to stabilize Korba-Birsinghpur line since the Petitioner was concerned with regard to evacuation of power from its 1200 MW unit. Reference may also be made to the letter dated 6.6.2012 issued by SLDC, Jabalpur to the Petitioner wherein the former had shown concern about the issue of reliability of Korba-Birsinghpur line. SLDC requested the Petitioner to take up the matter with PGCIL for possible strengthening of the system so that the total power evacuation from generating station of the Petitioner can take place.

(h) PGCIL on 11.9.2012 issued a letter wherein it revised the declaration of commercial operation of part of 400 kV Korba-Birsinghpur. PGCIL intimated that the Korba-BALCO to Birsinghpur (First Circuit) achieved its commercial operation on 1.3.2012 and Korba-Birsinghpur (Second Circuit) achieved its commercial operation on 1.4.2012.



(i) The Commission vide order dated 19.5.2014 had determined the tariff of the following assets:

Sl. No	Name of Asset	Line length (km)
1.	Korba - BALCO (Loc 179/2) 400 kV D/C transmission line – First ckt (Asset I)	7.454
2.	BALCO (179/2) – Vandana (176/0) 400 kV D/C transmission line – First ckt (Asset II)	22.08
3.	Korba - Vandana (176/0) 400 kV D/C transmission line – Second ckt (Asset III)	
4.	BALCO (179/2) – Birsinghpur 400 kV D/C transmission line – First Ckt (Asset IV)	211.874
5.	Vandana (176/0) – Birsinghpur 400 kV D/C transmission line – Second ckt (Asset V)	211.847

(j) Vide para 52 of the Tariff Order, the Commission has concluded that the Petitioner and VVL were required to pay the transmission charges prior to 1.4.2012 as provided under the TSA and w.e.f. 1.4.2012, the transmission charges were to be shared in accordance with the 2010 Sharing Regulations. There has been an aberration to the Arrangement-1 and Arrangement-2 contemplated under the TSA as drawn at Page 4 of the said Agreement. Arrangement-2 has never come into existence. Therefore, the Petitioner has requested the Commission to look into the actual implementation of the assets qua the TSA and requested that consequential liability of the Petitioner towards transmission charges thereof may be fixed.

(k) PGCIL vide memo dated 19.2.2015 raised a non-POC bill for bilateral arrear for the Korba-Birsinghpur transmission line amounting to Rs. 76,39,249. The said bill is for the period from December 2011 to March 2012 for Assets I, II, III and IV.

(l) The Petitioner vide letter dated 16.3.2015 disputed the above invoice dated 19.2.2015 to the extent that as per the TSA, the Petitioner was liable to pay transmission charges for part of 400 kV transmission line i.e. for the line connecting the generating station with substation at Korba. Hence, it is liable to pay transmission



charges for Asset-I only i.e. Korba-BALCO (LOC 179/2) 400 kV Transmission Line. The Petitioner requested PGCIL to revise the non-POC bills stating that it should be billed for Asset-I only.

(m) PGCIL vide its reply dated 22.4.2015 stated that the invoice dated 19.2.2015 has been raised as per the TSA and that it is in accordance with the order dated 19.5.2014 passed by the Commission in Petition No. 107/TT/2012.

(n) PGCIL vide letter dated 30.4.2015 again called upon the Petitioner to make the payment of the transmission charges against the bill dated 19.2.2015 and 22.4.2015 stating that the same was in accordance with the TSA and Order passed by the Commission.

(o) PGCIL vide letter dated 30.7.2015 informed the Petitioner that an amount of Rs. 1,38,14,145 was pending against the transmission charges. The Petitioner issued a letter dated 17.9.2015 to PGCIL, wherein the Petitioner while reiterating the contents of the previous letters issued to PGCIL, informed that as per the TSA and order dated 19.5.2014 passed by the Commission, the Petitioner is liable to pay transmission charges only for Asset-I for the period October 2011-March 2012.

(p) PGCIL issued another invoice dated 27.9.2016 of non-POC bill to the Petitioner amounting to Rs. 16,07,402 payable for the transmission charges. PGCIL vide letter dated 3.2.2017 informed the Petitioner that the total outstanding as against the transmission charges was Rs. 1.54 crores excluding the applicable surcharge. Thereafter, the Petitioner issued a letter dated 7.3.2017 apprising the Respondent about the liability of the Petitioner qua the alleged invoices raised and also requested to the Respondent to provide an appointment to resolve the dispute qua the alleged invoices.



(q) Thereafter, PGCIL issued impugned notice dated 16.3.2017 to the Petitioner calling upon the Petitioner to clear the outstanding dues of Rs. 1.54 crores along with surcharge @ 18% per annum by 24.3.2017 and that failure to make payments will lead to curtailment of the short-term open access (STOA) by National Load Dispatch Centre/ Western Region Load Dispatch Centre.

(r) On 23.3.2017, the Petitioner replied to the impugned notice dated 16.3.2017 issued by PGCIL, thereby making another request to PGCIL to settle the billing dispute amicably and give an opportunity to the Petitioner to represent and explain the issue qua billing dispute. The Petitioner vide the said letter dated 23.3.2017 also requested PGCIL to withhold the decision of curtailment of STOA.

(s) On 24.3.2017, PGCIL issued impugned notice dated 24.3.2017, in complete disregard of the request made by the Petitioner vide its letter dated 23.3.2017, thereby again threatening the Petitioner to curtail STOA w.e.f. 26.3.2017 in case of non-payment of the outstanding dues by 24.3.2017.

(t) Being constrained by the circumstances created by PGCIL, the Petitioner vide letter dated 25.3.2017 stated that, in the given circumstance the Petitioner is left with no other option but to agree to pay under protest, the disputed dues of bilateral billing (non-POC bill) of Korba-Birsinghpur transmission line for the duration from October 2011 to March 2012. The Petitioner also requested PGCIL to grant time till 5.4.2017 for making payment stating that payment will be made by the Petitioner under protest, thereby reserving its right to challenge the same. The Petitioner further requested PGCIL that access to the network for STOA may not be curtailed and be continued till 5.4.2017.



(u) On 5.4.2017, the Petitioner issued a letter to PGCIL, whereby the Petitioner stated that payment of Rs. 1,51,13,116/- along with TDS deduction of 2% i.e. Rs. 3,08,431/- was made by it under protest in order to circumvent any coercive action from PGCIL. The Petitioner on the same breath has also saved its right to move before the Commission for the redressal of its grievances.

(v) On 6.4.2017, the Respondent issued the impugned notice dated 6.4.2017, along with a bill for miscellaneous Charges, to the Petitioner calling upon the Petitioner to pay an amount of Rs.47,67,607/- towards surcharge.

(w) On 19.4.2017, the Respondent sent an e-mail to the Petitioner calling upon the Petitioner to make the surcharge payment immediately and failure to the same will lead to curtailment of STOA.

(x) The Petitioner is liable to pay only for the Asset-I for the period from October 2011 to March 2012 on account of the fact that Asset-II and Asset-IV (BALCO-Birsinghpur line) after operationalizing on 29.2.2012 (charged at 16.11 hours, tripped at 17.20 hours and again charged at 17.33 hours), The line further tripped on 2.3.2012 at 16.50 hours and was never charged till May 2012. The Petitioner has also stated that the Asset-III was exclusively utilized by VVL. Hence, the impugned notices along with the invoices are ex facie arbitrary and also violative of the TSA and the Tariff Order.

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

a) *Quash the impugned notices dated 16.03.2017, 24.03.2017, 06.04.2017 and email dated 19.04.2017 issued by PGCIL to the Petitioner, without any liability to the Petitioner;*

b) *Direct the Respondent/ PGCIL to refund the amount of Rs.1,54,21,547/-along with interest, illegally collected by Respondent/ PGCIL, against the transmission charges for the period October 2011 to March 2012;*



c) *Direct the Respondent/ PGCIL to recalculate the amount payable by Petitioner, against the bill dated 13.04.2012 raised by the Respondent /PGCIL for an amount of Rs.97,72,944/- and refund the excess amount to the Petitioner along with interest;*

d) *grant an ad interim stay of the operation of the impugned notice dated 06.04.2017 and an e-mail dated 19.04.2017 issued by the Respondent to the Petitioner and direct the Respondent not to take any coercive steps qua the Petitioner till the pendency of the present petition; and*

e) *Pass any other or further order as this Hon'ble Commission may deem fit and proper in the fact and circumstances of the present case.*

4. The Petitioner has also filed IA No.22/2017 with the following Prayers:

a) *grant an ad interim stay of the operation of the letter dated 01.05.2017 (annexed as Annexure A) issued by the Respondent to the Petitioner and direct the Respondent not to take any coercive steps qua the Petitioner including but not limited to curtailment of STOA of the petitioner till the pendency of the present petition;*

b) *grant an ad interim stay of the operation of the impugned notice dated 06.04.2017 and an e-mail dated 19.04.2017 issued by the Respondent to the Petitioner and direct the Respondent not to take any coercive steps qua the Petitioner till the pendency of the present petition; and*

c) *Pass any other or further order as this Hon'ble Commission may deem fit and proper in the fact and circumstances of the present case.*

5. Petition was heard on 9.5.2017 and notices were issued to the respondents to file their replies. PGCIL has filed its reply and Petitioner has filed rejoinder to the same.

Reply of PGCIL:

6. PGCIL vide its reply dated 6.7.2017 has submitted as under:

a) The amount claimed by PGCIL from petitioner is as per the Order dated 19.5.2014 passed by the Commission in Petition No. 107/TT/2012. The relevant part of the Order dated 19.5.2014 is as under:

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Sharing of Transmission Charges

52. The connectivity to ISTS linking BALCO and Vandana generating stations to



Korba by commissioning part of the transmission line was approved in the 14th meeting of WR Constituents regarding Connectivity/ Open Access Application and it was agreed that transmission charges for part section of the transmission line shall be borne by BALCO and Vandana till the Commissioning of the transmission line and thereafter the same shall be shared on regional basis. Accordingly, the petitioner has signed Transmission Service Agreement with BALCO and Vandana on 15.07.2011. Accordingly, prior to 1.4.2012 the transmission charges have to be paid by BALCO and Vandana and from 1.4.2012 the transmission charges shall be shared in accordance with the Central Electricity Regulatory Commission (Sharing of inter-state transmission charges and losses) Regulations, 2010, as amended from time to time.”

- b) Petitioner was Respondent No. 9 in the above petition No. 107/TT/2012. Petitioner did not file any appeal or otherwise challenged the Order dated 19.5.2014 passed by the Commission. The Order of the Commission in so far as the directions contained in Para 52 relating to the sharing of transmission charges has become final and binding on BALCO.
- c) In the present petition, the petitioner in effect is seeking to reopen the issues decided by the Commission in the above-mentioned Order dated 19.5.2014 which is impermissible. The amount which the PGCIL has claimed from petitioner including the amount which petitioner has paid to PGCIL are fully in accordance with the above Order dated 19.5.2014.
- d) Petitioner has approached the Commission concealing that the loop in and loop out arrangement of one circuit of Korba-Birsinghpur 400kV D/c line at their generation project had continued till June 2016. The 1st circuit of the 400 kV D/c line from generation switchyard to Dharamjaygarh was completed on 14th June 2016 while 2nd circuit was completed on 16th June 2016.as follows:
- e) The loop in loop out arrangement was restored on 20 June 2016. In this manner, the loop in & loop out arrangement of Korba-Birsinghpur 400kV D/c line was



utilized by petitioner till 20th June 2016. In the meanwhile, petitioner has also availed the LTA of total 200 MW, with Tamil Nadu as its beneficiary, as follows:

- i. LTA Commenced on 3rd September 2015 to TN: 56 MW initially and 100 MW from 5th October 2015
- ii. LTA Commenced on 19th December 2015 to TN: 100MW

Thus, a total LTA of 200 MW was availed by BALCO with Tamil Nadu as its beneficiary.

f) In view of the above, there is absolutely no merit in the claim made by petitioner that PGCIL should have any discussion or deliberation with petitioner on the extent of the transmission charges payable or that the PGCIL should not claim any surcharge or that the Respondent is not entitled to claim any transmission charges from petitioner qua the transmission line considered in the order dated 19.5.2014.

g) The amount claimed by PGCIL from petitioner in terms of the notices dated 16.3.2017, letter dated 24.3.2017 and other communications for the period from October 2011 to march 2012 as well as the Bill dated 13.4.2012 and 6.4.2017 raised by PGCIL on petitioner and e-mail dated 19.4.2017 sent by PGCIL to petitioner are all consistent with the Order dated 19.5.2014 passed by the Commission. There is no merit in the claim of petitioner that any of such communication or bill need to be set aside. Petitioner is raising such claims as an afterthought to avoid delayed payment surcharge after having duly paid the principal amount. Further, in its letter dated 29.4.2015 petitioner's stand had been as under:

“BALCO agree to pay transmission charges for the Asset-I, Asset-II & Asset-III as per Transmission agreement & as per CERC order for the duration October 2011 to March 2012. However, the Bill no: 92100037 dated 19.02.2015 has been prepared considering Asset-I, Asset-II, Asset-III & Asset-IV BALCO request your good office to kindly revised bill considering Asset-I, Asset-II & Asset-III as per Transmission agreement & CERC order.”



h) Thus, petitioner had admitted its liability to pay the transmission charges for Assets I, II and III till 30.3.2012. The dispute was raised by petitioner only in regard to Assets-IV and Asset-V. The Asset-V was commissioned on 1.4.2012 and, therefore, there cannot be an issue in regard to the same. Asset-IV was commissioned on 1.3.2012, and the same has been taken note of by the Commission in the order dated 19.5.2014. The Commission has not made any exclusion of Asset-IV in the operative part of the order at Para 52. The said Asset-IV is also for use of petitioner. There is, therefore, no basis for the claim made by petitioner in the petition filed. The claim made by petitioner is vague, devoid of particulars and rather frivolous.

i) As stated above, petitioner is liable to pay the transmission charges in respect of the transmission system referred to in the Order dated 19.5.2014 for the period from the date of their respective commissioning. It is wrong and denied that the Order dated 19.5.2014 providing for an obligation on the part of petitioner to pay the transmission charges till 1.4.2012 was restricted to Asset-I as alleged by the petitioner. The Order of the Commission in Para 52 clearly provides the extent of the obligation of petitioner. In terms of the above, petitioner has to bear the transmission charges for that section of the transmission line until the entire transmission line has been completed. Furthermore, the Commission has also referred to the date of 1.4.2012 as the Cut Off Date. Accordingly, all transmission charges in respect of the transmission asset completed and declared COD prior to 1.4.2012 was required to be borne by petitioner in so far as such transmission lines were with respect to petitioner's generating station.



Rejoinder by the Petitioner:

7. The Petitioner, vide its rejoinder dated 26.7.2017 to the reply of PGCIL, has additionally submitted as under:

a) It is liable to pay only for the Asset-I for the period from October 2011 to March 2012 on account of the fact that Asset-II and Asset-IV after being operationalized on 29.2.2012 tripped on the same date, not once but twice and further tripped on 2.3.2012 only to be charged again in May 2012 and that the Asset-III was exclusively utilized by VVL.

b) Repeated submissions, of PGCIL that the invoices were raised in accordance with the tariff order is tantamount to misinterpretation and misconstruction of tariff order by PGCIL. Nowhere under the tariff order, it was stated that PGCIL can claim and raise transmission charges without even operationalizing the transmission assets.

c) Further, para 52 of the tariff order categorically mentions the TSA, which was not implemented by PGCIL in the manner prescribed. Therefore, the reference to the tariff order in the manner suggested is wrong and misconstrued.

d) As regards the averments made pertaining to the letter dated 29.4.2015, it is submitted that notwithstanding repeated request being made by the Petitioner, PGCIL did not clarify as to the basis on which the bills have been raised. Since in each and every invoice PGCIL was referring to all the assets, the response to such invoices have been made accordingly by the Petitioner by making reference to all the assets. Hence, admission or denial on the part of the Petitioner for that matter any beneficiary, shall not determine such statutory claims, rather law shall take its own



course and the liabilities shall devolve as per the principle of law laid down in the statute or the orders passed by the Commission.

e) PGCIL has very conveniently precluded itself from responding as to whether TSA was implemented in the manner prescribed or not. Further, it may not be lost sight of the fact that para 52 of the tariff order also makes reference to the TSA and arrangement contemplated under the TSA is the basis on which liability of the parties have flown. Therefore, there can be no interpretation of TSA de hors the tariff order, rather the tariff order shall have to be read taking into consideration not only the letters of TSA but also the factual implementation of TSA, on the basis of which the transmission charges are supposed to be raised.

f) It is wrong to submit that the Petitioner has abused the process of law, rather by the present petition, the Petitioner seeks to ascertain as to the basis on which the illegal invoices have been raised by PGCIL. PGCIL cannot be allowed to hide behind the tariff order.

Report of the Chief (Engineering), CERC:

8. The Commission vide RoP dated 22.8.2017 directed the Chief (Engineering) of the Commission to examine the issue in consultation with the representatives of the petitioner and the respondent and submit a report on it. Chief (Engineering) of the Commission had meeting with the Petitioner and respondents on 8.9.2017 and 19.9.2018. Chief (Engineering) submitted its report to Commission on 13.11.2018. The finding and recommendation of the report submitted by Chief (Engineering) are as under:

“31. Asset-wise liability for payment of transmission charges is decided as under:



a) *Asset-I:- There is no issue, BALCO has agreed for its liability for payment of transmission charges for the period October, 2011 to March, 2012.*

b) *Asset-III: It is noted that BALCO has agreed to share the transmission charges for Arrangement II under TSA. However, as Arrangement – II was not implemented as per TSA i.e. the loop connecting Korba-BALCO-VVL-Korba was not implemented. BALCO has contended that Arrangement-II was not executed due to non-completion of LILO portion by VVL. VVL has not disputed this during meeting held at CERC on 8.9.017. Therefore, Asset-III was not utilized by BALCO and its liability for transmission charges should not arise. In view of above, the transmission charges should be paid exclusively by VVL till 31.3.2012 post which should be considered as regional system as directed in 107/TT/2012.*

c) *Asset-IV: The Asset is Balco- Birsingpur section of Korba-Birsingpur line. With commissioning of this part, entire Korba-Birsingpur line (one circuit of the D/C line) was commissioned. We observe that as per TSA, BALCO and VVL agreed to pay transmission charges for Korba-Balco-VVL-Korba Loop till commissioning of Korba-Birsingpur line. However vide Order dated 19.5.2014 in 107/TT/2012, Commission directed to bill charges towards all assets covered in the Petition i.e Asset-I to Asset-IV from Balco and VVL till 31.3.2012 as per their TSA beyond which they shall be considered as regional system. Since as on 1.3.2012, entire Korba-Birsingpur line was commissioned, the Assets-I,II,IV should be considered under regional system.*

d) *Asset-II: BALCO's contention is that it is not liable to pay for the period October, 2011 to March, 2012 since Arrangement-II was not in place. We have suggested that COD of Asset-II should be taken as 1.3.2012 at Issue No.1. Further Asset-II should be considered under regional system from 1.3.2012."*

Recommendations of the report:

32. Following is concluded and submitted for consideration of the Commission:

a) *The CoD of Asset-II may be revised as 1.3.2012.*

b) *The liability to pay transmission charges should be as under:*

<i>Asset</i>	<i>Date of COD</i>	<i>Liability to pay transmission charges</i>
<i>I</i>	<i>1.10.2011</i>	<i>BALCO- from 1.10.2011 to 29.2.2012 and Under POC from 1.3.2012 onwards</i>
<i>II</i>	<i>1.3.2012</i>	<i>Under regional system -under POC from 1.3.2012</i>
<i>III</i>	<i>1.12.2011</i>	<i>VVL- from 1.12.2011 to 31.3.2012 and Under POC from 1.4.2012 onwards.</i>
<i>IV</i>	<i>1.3.2012</i>	<i>Under regional system - Under POC from 1.3.2012</i>



Comments of the Petitioner and the Respondent on the Report:

9. A copy of the report of the Chief (Engineering) was provided to the petitioner and the respondents and were asked to submit their comments, if any. In response, PGCIL and Petitioner have submitted its comments mentioned in subsequent paragraphs.

10. PGCIL vide affidavit dated 10.1.2019 has filed its reply on the report of the Chief (Engineering) as under:

- a) In the report following aspects are relevant. They are:
 - i) Bharat Aluminium Company Limited (BALCO) being held responsible for payment of the transmission charges in respect of Asset-I;
 - ii) Vandana Vidyut Limited (VVL) being held responsible for payment of the transmission charges for Asset-III;
 - iii) Shifting of the Date of Commercial Operation of Asset-II from 1.12.2011 to 1.3.2012;
 - iv) Asset-I and Asset-II being in POC from 1.3.2012.

- b) On the first two aspects of petitioner or VVL being held responsible entirely for Asset-I or Asset-III, as the case may be, PGCIL does not have any objection. It has, however, submitted that as per the Order dated 19.5.2014 passed by the Commission in Petition No. 107/TT/2012, PGCIL had billed the transmission charges for Asset-I as well as Asset-III on sharing basis between petitioner and VVL. In case the Asset-I and Asset-III have to be considered as exclusively for petitioner and VVL respectively, this would require re-allocation and adjustment of payments accordingly.

- c) As regards shifting of the CoD for Asset-II from 1.12.2011 to 1.3.2012 is concerned, admittedly, Asset-II could not be put into regular service on account of the



fact that LILO Line (which was the obligation of petitioner and VVL) was not complete. Any issue between petitioner and VVL on the work to be done for Arrangement-2 does not affect the liability of petitioner and VVL towards PGCIL. However, the report proceeds on the basis that petitioner was not responsible for the LILO. In that case, the line was not in service on account of the reasons solely attributable to VVL.

d) In the event the Commission proceeds on the report of the Chief (Engineering), CERC in regard to Asset-II affected by non-availability of LILO portion of VVL, the consequences should be that VVL would be required to pay the entire transmission charges for the period from 1.12.2011 to 1.3.2012. VVL participated in the proceeding with Chief (Engineering), CERC and hence, VVL should also be impleaded in the present Petition as there are issues concerning them.

e) The relief should not be by way of shifting the CoD from 1.12.2011 to 1.3.2012. PGCIL had undertaken its part of the work of Asset-II. The same could not be put to regular use on account of the reasons attributable to VVL (in case it is held that petitioner was not responsible) as per the report. PGCIL was not in any manner responsible for the non-availability of the LILO Line. The CoD of Asset-II was duly decided as 1.12.2011 in the Order dated 19.5.2014 passed by the Commission in Petition No. 107/TT/2012. The said Order has become final. This was not challenged by petitioner or any other entity in any review petition or appeal. It cannot be open to petitioner to raise any issue on the CoD in the present collateral proceedings. Further, the entire financials of PGCIL had been worked out on the basis of the CoD of Asset-II as 1.12.2011. Any modification of the Date of CoD at this stage will have serious consequences for PGCIL including the need to rework the tariff in detail and



requirement to make various adjustments. The Respondent has requested that the Commission may not shift the CoD of Asset-II from 1.12.2011 to 1.3.2012.

11. Petitioner vide affidavit dated 22.1.2019 has filed rejoinder to the reply of PGCIL as under:

a) PGCIL in its submissions has submitted that the COD of Asset-II may not be shifted from 1.12.2011 to 1.3.2012. PGCIL has overlooked the settled principles of law wherein the requirement for declaring COD of the transmission line is provided. In this Context, reference may be made to the judgment dated 2.7.2012 passed by the Appellate Tribunal for Electricity (APTEL) in Appeal No. 123 of 2011. The said judgment passed by APTEL has been upheld by the Hon'ble Supreme Court vide its order dated 3.3.2016. The APTEL in its judgment has held that the transmission line could be declared as having attained COD if the following conditions are met:

- i. The line has been charged successfully,
- ii. Its trial operation has been successfully carried out, and
- iii. It is in regular service.

b) PGCIL in its submission has itself admitted that Asset-II could not be put into regular service on account of the LILO being incomplete. Further, the APTEL has also held that all the elements of transmission line are required to be commissioned for declaring COD of a transmission asset and part of the transmission line cannot be declared to have attained COD if the said line cannot be put to regular service. Hence, the submission of PGCIL for not shifting the COD of Asset-II from 1.12.2011 to 1.3.2012 is completely baseless and devoid of any merit.

c) The aforesaid submission made by the Petitioner is without prejudice to the stand of the Petitioner that Asset-II and Asset-IV were not available for service till the



end of May 2012. Therefore, the COD of Asset-II and Asset-IV is required to be revised from the date it was available to be put into regular service. PGCIL failed to demonstrate, either through any documentary evidence or otherwise the dates when the Asset-II and Asset-IV were put in regular service.

d) As regards PGCIL's suggestion that VVL should be impleaded in the present petition as there are issues concerning them, the Petitioner has already impleaded VVL as a respondent in the present petition pursuant to the directions issued by the Commission vide the RoP for the hearing held on 13.9.2018.

12. The Petitioner vide affidavit dated 25.3.2019 has filed written submission and reiterated the submissions made in the petition. Respondent, PGCIL has made written submission vide affidavit dated 29.3.2019. The respondent has submitted as under:

a) PGCIL had filed an appeal with regard to non-allowance of delay for Asset-IV and Asset-V which was remanded back by APTEL vide Order dated 15.3.2017 in Appeal No. 127 of 2015. In the remand Order dated 15.11.2017, this Commission has reiterated the earlier determined COD:

"2. The said assets were scheduled to be put into commercial operation on 1.8.2010. However, assets I to V were put into commercial operation on 1.10.2011, 1.12.2011, 1.12.2011, 1.3.2012 and 1.4.2012 respectively....."

b) Even in the said Remand Order dated 15.11.2017, it was noted that the present Petition relates only to sharing of transmission charges and not in relation to COD:

"14. BALCO has filed Petition No.94/MP/2017 regarding sharing of transmission charges of the assets covered in the instant petition and the same is being considered by the Commission. The transmission charges revised in the instant order shall be subject to the outcome of Petition No.94/MPP/2017 with regard to sharing of transmission charges."



c) Even assuming but not admitting the contention of petitioner or the Report that the COD has been decided erroneously, the same is nevertheless binding. It is not open for the Commission to reopen an issue which has attained finality, even to correct an erroneous decision. In this regard, PGCIL relies on the following decisions of the Hon'ble Supreme Court:

i. State of West Bengal Vs. Hemant Kumar Bhattacharjee and Ors. 1963 Supp (2) SCR 542

"15. Before proceeding, with these arguments in detail, we can dispose of second contention very shortly. This argument proceeds on a fundamental misconception, as it seeks to equate an incorrect decision with a decision rendered without jurisdiction. A wrong decision by a court having jurisdiction is as much binding between the parties as a right one and may be superseded only by appeals to higher tribunals or other procedure like review which the law provides. The learned Judges of the High Court who rendered the decision on 4-4-52 had ample jurisdiction to decide the case and the fact that their was on the merits erroneous as seen from the later judgment of this Court, does not render it any the less final and binding between the parties before the Court. There is, thus, no substance in this contention. The decision of the High Court dated 4-4-52 bound the parties and its legal effect remained the same whether the reasons for the decision be sound or not."

ii. Mohanlal Goenka v. Benoy Kishna Mukherjee AIR 1953 SC 65

"22. There is ample authority for the proposition that even an erroneous decision on a question of law operates as res judicata between the parties to it. The correctness or otherwise of a judicial decision has no bearing upon the question whether or not it operates as res judicata. A decision in the previous execution case between the parties that the matter was not within the competence of the executing court even though erroneous is binding on the parties."

iii. Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman, (1970) 1 SCC 670

"6. A court executing a decree cannot go behind the decree: between the parties or their representatives it must take the decree according to its tenor, and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties."

d) Petitioner has sought to rely on inherent powers of this Commission. There can be no inherent power for this Commission to amend or otherwise modify even



erroneous orders. It was open to petitioner to challenge the Orders of this Commission, but having failed to do so, it is not open for petitioner to seek modification of the order by way of inherent powers. The inherent powers cannot be exercised to render the provisions of Appeal and Review redundant.

e) In any case, admittedly, Asset-II could not be put into service on account of the LILO Line (which was the obligation of BALCO and VVL) being not complete. PGCIL had completed the work within its scope and its transmission line was capable of regular service. The requirement of the Regulations is not that it should be put to regular service rather the requirement is that it should be capable of regular service. The contention of petitioner is not that PGCIL had not completed the line but that LILO was not completed which was within the scope of petitioner and VVL. Further the said LILO is not part of the transmission line to be constructed by PGCIL. Therefore, the completion or non-completion of the LILO does not affect the readiness of transmission line.

f) Petitioner has sought to contend that Arrangement-2 was not complete. PGCIL is not responsible for completion of any arrangement other than the transmission lines which have been completed. It was petitioner and VVL which had to make the arrangements. Any issue between petitioner and VVL on the work to be done for Arrangement-2 does not affect the liability of petitioner and VVL towards PGCIL. However, the report of the Chief (Engineering) of CERC proceeds on the basis that LILO was within the scope of VVL. In that case, the line was not in service on account of the reasons solely attributable to VVL. Therefore, between petitioner and VVL, petitioner can claim such transmission charges related to Asset-II from VVL.



g) As per the Order dated 19.5.2014, PGCIL had shared the transmission charges for all the Assets between petitioner and VVL. However, it is now being submitted and accepted in the report with regard to Asset-I and Asset-III that petitioner and VVL may be held responsible entirely for Asset-I or Asset-III respectively. In this regard, PGCIL may not have any objection. The internal sharing between the petitioner and VVL is not relevant for PGCIL. However, in case the above is held, this would require re-allocation and adjustment of payments accordingly. Petitioner has paid only part of the charges for Asset-I and part of charges for Asset-III and would now have to pay exclusively the charges for Asset-I.

h) The earlier order dated 19.5.2014 referred to charges being shared up to 1.4.2012 and thereafter to be included in POC. In the Report, the reference is to Asset-I to III being in POC from 1.3.2012. The Commission may consider whether such change is permissible. PGCIL has currently billed the transmission charges to petitioner and VVL for Asset-I to Asset-IV until 1.4.2012 as per Order dated 19.5.2014 and thereafter included the same in POC. In case the Commission holds that the Assets are to be in POC from 1.3.2012, suitable adjustment would have to be carried out by PGCIL for inclusion of the charges from 1.3.2012 to 1.4.2012 in the POC.

Analysis and Decision:

13. The Petitioner is a generating company and has generating stations of 810 MW and 1200 MW at Korba, Chattisgarh. The Petitioner has filed instant petition for quashing of notice dated 16.3.2017, 24.3.2017, 6.4.2017 and e-mail dated 19.4.2017 issued by PGCIL for making payment of transmission charges for the period from October 2011 to March 2012. The issue being raised by the petitioner in the instant petition is related to Petition



No. 107/TT/2012 in which the Commission vide order dated 19.5.2014 has determined the tariff for various assets forming part of the 400 kV Korba-Birsinghpur D/c Transmission line.

14. The Petitioner has contended that it is liable only for payment of transmission charges for Asset-I for the period from October 2011 to March 2012 on account of the fact that Asset-II and Asset-IV after being operationalized on 29.2.2012, tripped twice on the same date only to be charged again in May 2012 and that the Asset-III was exclusively utilized by VVL. However, Petitioner has contended that in disregard to the Order of the Commission and the provisions of the TSA, the PGCIL has raised bills for Assets I, II, III and IV. Hence, it has submitted that the impugned notices dated 16.3.2017, 24.3.2017 and 6.4.2017 along with the invoices are arbitrary and violative of the TSA and the Commission's order dated 19.5.2014 in Petition No. 107/TT/2012.

15. The Respondent's main contention is that the amount claimed by it is as per the Order dated 19.5.2014 passed by Commission in petition No. 107/TT/2012.

16. The Commission vide record of proceedings directed Chief (Engineering) of the Commission to examine the issue in consultation with Petitioner and respondents and to submit a report on it. Chief (Engineering) has submitted its report to Commission. The report submitted by the Chief (Engineering) was shared with the Petitioner and Respondents for their comments. They have submitted their comments.

17. Based on the pleadings in the petition, submissions during the hearing, report of the Chief (Engineering), comments on report of the Chief (Engineering) and other documents on record, we proceed to dispose of the petition. The following issues arise for our consideration:



(a) **Issue No.1: Who should be liable to pay transmission charges for each asset as per CERC's Order in Petition No.107/TT/2012 read with TSA between BALCO, VVL and PGCIL?**

(b) **Issue No.2: Whether any direction needs to be issued with regard to prayers of Petitioner for quashing of notices dated 16.3.2017, 24.3.2017, 6.4.2017 and email dated 19.4.2017 issued by PGCIL and refund of amount along with interest to the petitioner?**

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

Issue No.1: Who should be liable to pay transmission charges for each asset as per CERC's Order in Petition No.107/TT/2012 read with TSA between BALCO, VVL and PGCIL?

18. The Commission vide order dated 19.5.2014 determined the tariff of the following assets:

Name of Asset	Line length (km)	COD
Asset I: Korba - BALCO (Loc 179/2) 400 kV D/C transmission line – First ckt	7.454	01.10.2011
Asset II: BALCO (179/2) – Vandana (176/0) 400 kV D/C transmission line – First ckt	22.08	01.12.2011
Asset III: Korba - Vandana (176/0) 400 kV D/C transmission line – Second ckt		01.12.2011
Asset IV: BALCO (179/2) – Birsinghpur 400 kV D/C transmission line – First Ckt	211.874	01.03.2012
Asset V: Vandana (176/0) – Birsinghpur 400 kV D/C transmission line – Second ckt	211.847	01.04.2012

19. There is no dispute as regards Asset-I of the transmission line and the Petitioner has agreed to pay transmission charges for this asset as per bills raised by PGCIL. Therefore, there is no requirement of deliberating on this matter.

20. Similarly, there is no dispute as regards Asset-V since the Asset is under regional system from the date of COD from 1.4.2012.



21. The dispute in the present petition is with regards to Asset-II, Asset-III and Asset-IV. The Petitioner's contention is that although COD for Asset-II and Asset-IV were approved as 1.12.2011 and 1.3.2012 respectively, the actual commissioning of the said line took place only w.e.f. 29.2.2012 at 16.11 hours. The Petitioner has stated that this line was not operating till May 2012. Hence, the Petitioner has submitted that transmission charges for this asset cannot be levied upon the Petitioner. The Petitioner has stated that PGCIL has raised the transmission charges for the complete 400 kV line even though the line was not available due to tripping on account of over-voltage and that the breaker was kept on open condition.

22. Petitioner has contended that even otherwise it is not liable to pay any charges for Asset-II since Arrangement-2 as per TSA never came into being. Hence, no charges towards Asset-II and Asset-IV can be levied on petitioner. Petitioner has further stated that Asset-III was exclusively for use by VVL and hence petitioner should not be levied any charges for same.

23. On the other hand, PGCIL has submitted that non-payment of transmission charges by petitioner on account of line outage is not envisaged in the regulations. PGCIL has further contended that the bills raised by PGCIL from petitioner is as per the Order dated 19.5.2014 passed by the Commission in Petition No. 107/TT/2012 and in line with TSA signed on 15.07.2011 between the Petitioner, VVL and PGCIL.

24. PGCIL has submitted that under clause 2 of the TSA, petitioner has agreed to bear full transmission charges for Arrangement-1 and further, under clause 3, Petitioner has agreed that Petitioner and VVL would share the transmission charges for Arrangement-2.



Having agreed to bear these charges in the TSA and the same having been accounted for in the Order of the Commission dated 19.5.2014, the Petitioner cannot argue now that it is not liable to pay these transmission charges.

25. The Chief (Engineering) of CERC was directed to convene a meeting of the Petitioner and Respondents. A report has been submitted in this regard wherein recommendations, inter-alia, have been made to revise COD of Asset-II from 01.12.2011 to 01.03.2012. The report has also made recommendations as to the sharing of the liability of transmission charges from COD of respective assets (Asset-I, Asset-II, Asset-III and Asset-IV) till COD of the 400kV Korba-Birsinghpur D/c transmission line.

26. PGCIL has submitted that the suggestion to shift COD in the report is against settled principles of law since declaration of COD has attained finality and cannot be tinkered at this stage. PGCIL has further submitted that the COD has been affirmed by the Commission in its Order dated 15.11.2017 upon remand of the matter from APTEL. It has also stated that shifting COD would have financial implications on PGCIL, VVL and other DICs. PGCIL has also contended that amending the sharing for different elements from the one decided in Order of the Commission dated 19.5.2014 may not be appropriate.

27. As regards Petitioner's contention that BALCO-Birsinghpur line was in open condition till May 2012 and charges for Asset-II and Asset-IV should not be levied on the Petitioner, we have perused Appendix-IV of the 2009 Tariff Regulations which provides as follows:

"5. The transmission elements under outage due to following reasons shall be deemed to be available:



i. Shut down availed for maintenance or construction of elements of another transmission scheme. If the other transmission scheme belongs to the transmission licensee, the Member-Secretary, RPC may restrict the deemed availability period to that considered reasonable by him for the work involved.

ii. Switching off of a transmission line to restrict over voltage and manual tripping of switched reactors as per the directions of RLDC.”

28. PGCIL has submitted that BALCO-Birsinghpur line was kept in open condition due to over-voltage and hence stated that the transmission line was deemed available. In light of this, we are of the view that the contention of the Petitioner that the transmission line was not available up to May 2012, is not tenable. Any liability to pay transmission charges shall be from the COD and not from the day when it became available after overcome outage.

29. The recommendation of the Chief (Engineering) of shifting the COD of Asset II does not seem to be an appropriate solution in view of the submissions of Powergrid.

30. Having rejected the recommendation to shift the COD, other suggestions relating to Asset-2 made in the report related to sharing of transmission charges do not hold ground. We also observe that the report has made recommendations as regards change in sharing of transmission charges from the one decided in the Order dated 19.5.2014. We are of the view that it is not possible at this stage to look into veracity and correctness of the Order dated 19.5.2014 of the Commission. The decision in this petition has to be on basis of the order dated 19.5.2014 only and no part of the order can be altered by the Commission through order in the instant petition. We, therefore, proceed to decide on the prayers of the Petitioner based on our Order dated 19.5.2014 and the provisions of the TSA.



31. The Commission in order dated 19.5.2014 has held as under as regards sharing of transmission charges:

“Sharing of Transmission Charges

52. The connectivity to ISTS linking BALCO and Vandana generating stations to Korba by commissioning part of the transmission line was approved in the 14th meeting of WR Constituents regarding Connectivity/ Open Access Application and it was agreed that transmission charges for part section of the transmission line shall be borne by BALCO and Vandana till the Commissioning of the transmission line and thereafter the same shall be shared on regional basis. Accordingly, the petitioner has signed Transmission Service Agreement with BALCO and Vandana on 15.07.2011. Accordingly, prior to 1.4.2012 the transmission charges have to be paid by BALCO and Vandana and from 1.4.2012 the transmission charges shall be shared in accordance with the Central Electricity Regulatory Commission (Sharing of inter-state transmission charges and losses) Regulations, 2010, as amended from time to time.”

32. Further, TSA provides as follows:

Page 5 of TSA

“2. Whereas Balco shall pay the transmission charges as determined by CERC including any other charges, for the part section of Korba-Birsinghpur 400 kV D/c line required for temporary interconnection of the generating unit of BALCO (i.e. Arrangement -1) to the ISTS from its actual date of commissioning. However, the date of commissioning of this (i.e. Arrangement-1) Korba-Birsinghpur section mentioned above shall not be prior to 1st August 2011.

3. Whereas Balco and VVL shall share and pay the full transmission charges as determined by CERC including any other charges, for the complete loop KORBA-BALCO-VVL-KORBA of Korba-Birsinghpur 400 KV D/c section required for temporary interconnection of the Generating Unit of BALCO and VVL (i.e. Arrangement-2) to the ISTS from its actual date of commissioning. However, the date of commissioning of this (i.e. Arrangement-2) Korba-Birsinghpur section mentioned above shall not be prior to 1st December 2011.

4. BALCO and VVL shall share and pay the total transmission charges in the ratio of contract Long Term capacity (MW) from the date of commissioning of the part of Korba-Birsinghpur 400 k/v/ d/c line as indicated in arrangement-2 above.”

Page 3 of TSA provides as under

“After the commissioning of Korba-Birsinghpur 400kV D/C line, BALCO/VVL shall pay the then applicable transmission charges for the use of ISTS as per CERC Regulations.”

33. The diagram of Assets given under TSA and diagram of actual implementation of Assets are as under:



Fig (a): Diagram of Assets as per TSA.

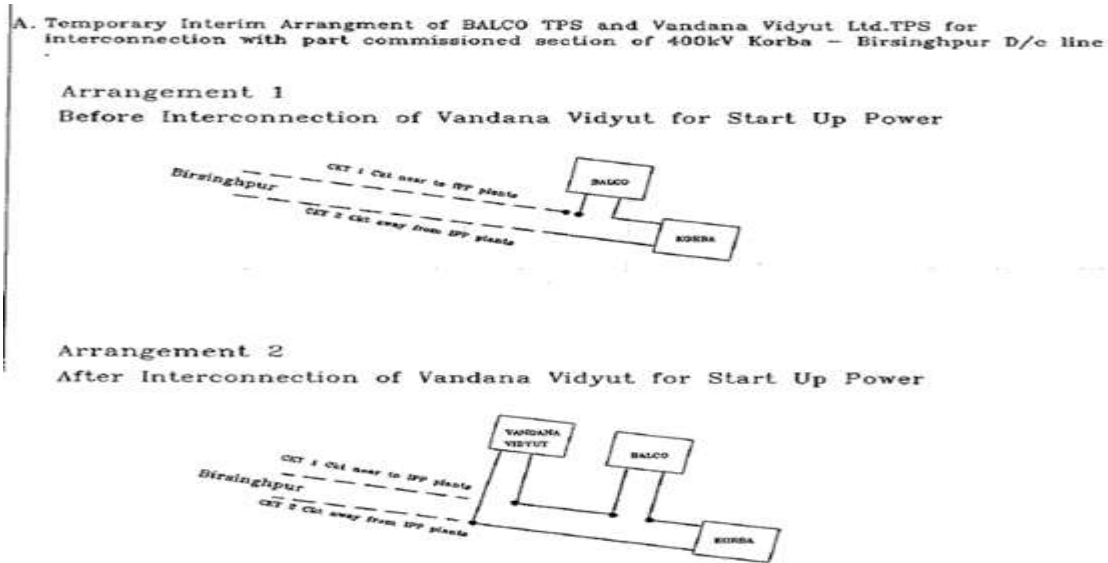
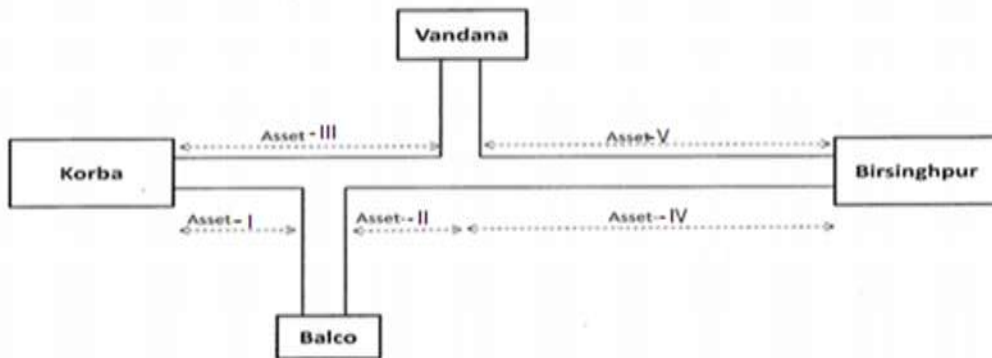


Fig (b): Diagram of actual implementation of Assets.



34. As per Order of the Commission on 19.5.2014, the following are relevant as regards the issue of sharing of transmission charges:

i. Transmission charges for part section of the transmission line would be borne by BALCO and VVL till the Commissioning of the 400 kV Korba-Birsinghpur D/c transmission line;

ii. After the Commissioning of the 400 kV Korba-Birsinghpur D/c transmission line, the charges would be shared on regional basis (i.e. through POC mechanism in terms of the CERC 2010 Sharing Regulations);

iii. For sharing of transmission charges, BALCO, VVL and PGCIL have signed a TSA dated 15.7.2011; and

iv. The COD of last element of the 400 kV Korba-Birsinghpur D/c transmission line (Asset-V) was declared on 01.04.2012. Therefore, the above-stated transmission charges have to be borne by BALCO and VVL up to 01.04.2012 based upon the TSA dated 15.7.2011. After 01.04.2012, the transmission charges have to be shared in terms of 2010 Sharing Regulations;

35. Similarly, relevant points that emerge from the TSA as regards sharing of transmission charges are:

i. BALCO would pay transmission charges (as determined by CERC) including any other charges for Arrangement-1 from its Commissioning.

ii. BALCO and VVL would share and pay the full transmission charges (as determined by CERC) including any other charges, for Arrangement-2 from its Commissioning.

iii. The sharing in respect of Arrangement-2 between BALCO and VVL would be in the ratio of contract Long Term capacity (MW).

36. The Commission, in its Order dated 19.5.2014, had decided that *"...and it was agreed that transmission charges for part section of the transmission line shall be borne by BALCO and Vandana till the Commissioning of the transmission line and thereafter the same shall be shared on regional basis. Accordingly, the petitioner has signed*



Transmission Service Agreement with BALCO and Vandana on 15.07.2011....". A combined reading of this Order and the provisions of the TSA conveys that the Petitioner shall be liable to bear charges for Arrangement-1 from its COD and share charges (with VVL) for Arrangement-2 from its Commissioning. No other charges can be imposed upon the Petitioner apart from these.

37. As per TSA, Arrangement-1 is "*part section of Korba-Birsinghpur 400 kV D/c line required for temporary interconnection of the generating unit of BALCO*". As per single line diagram above, this is nothing but Asset-I (as far as bearing transmission charges is concerned) and as we have already held before, there is no dispute as regards this asset.

38. As per TSA, Arrangement-2 is "*the complete loop KORBA-BALCO-VVL-KORBA of Korba-Birsinghpur 400 KV D/c section required for temporary interconnection of the Generating Unit of BALCO and VVL*". As per single line diagram, this arrangement consists of Asset-II and Asset-III along with LILO arrangement to be constructed by VVL. As per TSA, the Petitioner has agreed to share the transmission charges for Arrangement-2. However, the Petitioner as well as PGCIL have submitted that the Arrangement-2 was not implemented as per TSA due to non-completion of LILO portion by VVL.

39. Petitioner has submitted that due to non-execution of LILO by VVL, Arrangement-2 envisaged in the TSA was not given effect to. It has requested that Arrangement-2 of the TSA not having been implemented, the Petitioner should not be made to bear transmission charges for Arrangement-2. On the other hand, PGCIL has stated that construction of LILO was a matter between VVL and the Petitioner and that PGCIL has nothing to do with it. It has submitted that irrespective of the fact that the Arrangement-2 of the TSA coming into



execution, the Petitioner has liability to pay the transmission charges. We note that TSA was signed amongst PGCIL, VVL and the Petitioner. Therefore, we do not accept the argument of PGCIL that LILO was a matter only between VVL and the Petitioner.

40. However, we also observe that though LILO was not executed by VVL, the PGCIL has constructed its part of the transmission line (Asset-II and Asset-III) and based on application of PGCIL, the Commission has declared COD of the transmission line as per Regulations of the Commission. The Commission has also decided upon the sharing methodology for the transmission line in terms of the TSA. We note that the TSA requires that the Petitioner and VVL are to share transmission charges for Arrangement-2 till COD of the 400kV Korba-Birsinghpur D/c transmission line. In our view, this provision has been made in the TSA so as to ensure that the beneficiaries of the line (VVL and the Petitioner) pay for its use and other DICs are not unnecessarily burdened with transmission charges. PGCIL having constructed Asset-2 and Asset-3, we are of the view that VVL and the Petitioner should share the transmission charges as agreed in the TSA irrespective of the fact that the LILO has not been constructed. This sharing of transmission charges from COD of 01.12.2011 till 31.03.2012 shall be in the ratio of their contract long-term capacity (MW).

41. As regard the liability of the Petitioner to pay transmission charges for Asset- IV, PGCIL has contended that the billing for Asset-IV has been done to the petitioner as per Commission's Order dated 19.5.2014. The Commission has held that "*.... transmission charges for part section of the transmission line shall be borne by BALCO and Vandana...*" for which "*.... the petitioner has signed Transmission Service Agreement with BALCO and Vandana on 15.07.2011....*". It is thus clear that the transmission charges have to be levied



for part section of the transmission line and that it has to be in accordance with the provisions of TSA. We have discussed about the part section described through Arrangement-1 and Arrangement-2 in the TSA in preceding paragraphs. Asset-IV is not covered in either arrangement and, therefore, no charges can be levied upon the Petitioner for that asset. The Order dated 19.05.2014 as regards sharing of transmission charges before COD of the 400 kV Korba-Birsinghpur D/c transmission line by BALCO/VVL is concerned, related only to part transmission tariff for Arrangement-1 and Arrangement-2. In our view, it is implicit in that Order that for Asset-IV (neither a part of Arrangement-1 nor a part of Arrangement-2), the transmission charges have to be shared as per the provisions of the Sharing Regulations with effect from the COD of the Asset-IV i.e from 1.3.2012.

42. In view of the above discussion, the Asset-wise liability for payment of transmission charges is as under:

a) Asset-I: Petitioner has the liability for payment of transmission charges of the asset for the period from 01.10.2011 (i.e. COD of the Asset-I) to 31.03.2012. With effect from 01.04.2012, the recovery is in terms of provisions of the 2010 Sharing Regulations. Petitioner has not raised any dispute in this regard.

b) Asset-II and Asset-III: Petitioner and VVL shall share transmission charges from COD of the assets i.e. 01.12.2011 to 31.3.2012 in terms of the TSA.

c) Asset-IV: The Petitioner has no liability to bear transmission charges for the asset, as transmission charges from COD i.e. 01.03.2012 shall be shared as per provisions of the 2010 Sharing Regulations.



d) Asset-V: There is no dispute regarding sharing transmission charges by the Petitioner since COD of the asset has been declared on 01.04.2012.

Issue No.2: Whether any direction needs to be issued with regard to prayers of Petitioner for quashing of notices dated 16.3.2017, 24.3.2017, 6.4.2017 and email dated 19.4.2017 issued by PGCIL and refund of amount along with interest to the petitioner?

43. Petitioner has submitted that PGCIL has issued impugned notice dated 16.3.2017 and 24.3.2017 to clear the outstanding dues of Rs. 1.54 crores along with surcharge @ 18% per annum by 24.3.2017 and threatened that failure to make payments will lead to curtailment of the STOA by NLDC/ WRLDC. The Petitioner has submitted that it has paid the dues under protest for the period October 2011 to March 2012. Further, PGCIL has issued impugned notice dated 6.4.2017 along with a bill for miscellaneous Charges, to the Petitioner calling upon the Petitioner to pay an amount of Rs.47,67,607/- towards surcharge. On 19.4.2017, the Respondent sent an e-mail to the Petitioner calling upon the Petitioner to make the surcharge payment immediately and failure to the same will lead to curtailment of STOA.

44. PGCIL has submitted that the amount claimed from petitioner in terms of the notices dated 16.3.2017; letter dated 24.3.2017; other communications for the period October 2011 to march 2012; Bill dated 13.4.2012 and 6.4.2017; and e-mail dated 19.4.2017 are consistent with the Order dated 19.5.2014 passed by the Commission. There is no merit in the claim of petitioner that any of such communication or Bill needs to be set aside.

45. We have already decided in para 41 above the liability of payment of transmission charges by the Petitioner in respect of various assets from their respective COD. We direct



PGCIL to raise adjustment bill towards transmission charges in respect of the petitioner as directed above within one month of issue of this Order.

46. Necessary adjustment in the bills raised by PGCIL be made alongwith applicable interest as per Tariff Regulations.

47. Further, the Petitioner has filed IA for seeking interim relief for stay of operation of the letter dated 1.5.2017 issued by PGCIL for curtailment of STOA and interim stay of notice dated 6.4.2017 and an email dated 19.4.2017 issued by PGCIL. We note that during the pendency of the petition, no coercive steps have been taken by PGCIL. Hence, no direction is required to be issued in this regard.

48. The Petition No. 94/MP/2017 along with IA No. 22/2017 is disposed of in terms of the above.

Sd/-
(I.S.Jha)
Member

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

Sd/-
(P. K. Pujari)
Chairperson

