

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.264/MP/2020

**Coram:
Shri P.K.Pujari, Chairperson
Shri I.S.Jha, Member
Shri Arun Goyal, Member**

Date of Order: 29th January, 2021

In the matter of

Petition under Section 63 and Section 79 (1) (c) and (d) of the Electricity Act, 2003 read with Regulation 86 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 for providing relief under Change in Law, Article 12.2 of the Transmission Service Agreement, for transmission system associated with Gadawara Super Thermal Power Station (2x800 MW) of NTPC (Part-B).

And

In the matter of

Powergrid Parli Transmission Limited
(formerly known as Gadawara (B) Transmission Limited)
B-9, Qutab Institutional Area,
Katwaria Sarai, New Delhi-110 016

....Petitioner

Vs

1. Maharashtra State Electricity Distribution Company Limited
Prakashgad, 4thFloor,
Bandra (East), Mumbai-400051.

2. M.P. Power Management Company Limited
Block No-11, Ground floor,
Shakti Bhawan, Vidhyut Nagar, Rampur,
Jabalpur – 482008, Madhya Pradesh.

3. Chhattisgarh State Power State Distribution Co. Limited
P.O Sunder Nagar, Dangania,
Raipur- 492013, Chhattisgarh.

4. Gujarat Urja Vikas Nigam Limited
Vidhyut Bhawan, Race Course,
Vadodara-390007.

5. Electricity Department, Govt. of Goa,
Curti-Ponda, Goa- 403401.

6. Electricity Department, Dadar and Nagar Haveli,

Administration of Dadar Nagar Haveli, 66kV, Amla Road,
Silvassa-396230.

7. Electricity Department, Administration of Daman & Diu,
Plot No.- 35, OI DC Complex, Near Fire Station, Somnath,
Daman-396210.

8. Chief Engineer (PSPM)
Central Electricity Authority,
PSPM Division, Sewa Bhawan,
R.K.Puram, New Delhi-110 066.

9. Chief Operating Officer, CTU Planning
Power Grid Corporation of India Limited.
Saudamini, Plot No.2, Sector-29,
Gurgaon-122001.

.....**Respondents**

The following were present:

Shri M. G. Ramachandran, Sr. Advocate, PPTL
Ms. Ranjitha Ramachandran, Advocate, PPTL
Shri BVR Mohan, PPTL
Shri V. C. Sekhar, PPTL
Shri Shashwat Kumar, Advocate, MSEDCL
Ms. Himangini Mehta, Advocate, MSEDCL
Shri Rahul Chouhan, Advocate, MSEDCL
Shri Manoj Dubey, Advocate, MPPMCL
Shri Rajeev Gupta, MPPMCL

ORDER

The present Petition has been filed by Powergrid Parli Transmission Limited (PPTL) under Section 63 and Section 79(1)(c) and (d) of the Electricity Act, 2003 (hereinafter referred to as 'the Act') seeking compensatory and declaratory relief under Article 12 of the Transmission Service Agreement (in short 'TSA') dated 9.2.2015 on account of Change in Law events, which has adversely affected the construction of the Project. The Petitioner has made the following prayers:

"a) Admit and entertain the present Petition under Section 63 read with Section 79 (1) (c) and (d) of the Electricity Act, 2003 for declaration of the Project being affected by Change in Law events for providing relief under Article 12.2 of the Transmission Service Agreement as set out hereinabove;

(b) Declare that the Petitioner shall be entitled to get the increase in cost of Project amounting to Rs. 71.54 crore during execution and completion of transmission Project.

(c) Declare that the Petitioner shall be entitled to increase in adopted non-escalable charges by 3.03% on account in increase in aforementioned cost of project due to Change in Law.....”

2. The Petitioner, a fully owned subsidiary of Power Grid Corporation of India Limited (in short ‘PGCIL’), was selected as a successful bidder through the tariff based competitive bidding under Section 63 of the Act to establish “Transmission System associated with Gadarwara STPS (2X800 MW) of NTPC (Part-B)” (in short, ‘the Project’) on Build, Own, Operate and Maintain (BOOM) basis. The Petitioner is required to provide transmission service to the Long-Term Transmission Customers (in short ‘LTTCs’) (arrayed as Respondents 1 to7) of the Project which requires establishing the transmission system comprising of the following transmission lines and sub-stations:

S. No.	Scheme/Transmission Works	Completion Target	Actual Commercial Operation Date
1	Warora (Pooling Station)-Parli (New) 765kV D/C line	34 Months (January 2018)	4.6.2018
2	Parli (New)- Solapur 765 kV D/C line	34 Months (January 2018)	27.4.2018
3	Parli (New)-Parli (PG) 400 kV D/C (Quad) line	34 Months (January 2018)	27.4.2018
4	Establishment of 2X1500 MVA 765/400kV Parli (New) S/S <ul style="list-style-type: none"> • 765 kV ICTs :7X500MVA 765/400kV (One Spare Unit) ICT Bays: 2 Nos. Line Bays: 4 Nos. Bus Reactor : 3X110 MVAR Bus Reactor Bays: 1 Nos. Line Reactors : 7X110 MVAR (one spare unit) along with associated NGR and its auxiliaries (for Warora PS-Parli (New) 765 kV D/C line) Space for 765kV Bays: 4 Nos. • 400kV ICT Bays: 2 Nos. Line Bays: 2 Nos. Spare for 400kV Bays : 4 Nos.	34 Months (January 2018)	27.4.2018

3. The Petitioner was incorporated as a special purpose vehicle (SPV) by Bid Process Coordinator (in short, 'BPC'), namely, REC Transmission Projects Company Limited (in short 'RECTPCL'). PGCIL participated in the competitive bidding process conducted by RECTPCL and emerged as a successful bidder. Letter of Intent (LoI) was issued by RECTPCL to PGCIL on 11.3.2015. In accordance with the bidding documents, PGCIL acquired 100% of the shareholding in the Petitioner Company by executing a Share Purchase Agreement with RECTPCL on 24.4.2015. The Petitioner entered into TSA with LTTCs on 9.2.2015. Under the TSA, Maharashtra State Electricity Distribution Company Limited (MSEDCL) has been appointed as the lead LTTC to represent all the LTTCs for discharging the rights and obligations as specified therein. The Commission in its order dated 10.7.2015 in Petition No. 128/TL/2015 granted transmission licence to the Petitioner for inter-State transmission of electricity and vide order dated 23.6.2015 in Petition No.127/ADP/2015 adopted the transmission charges of the Petitioner.

4. As per the TSA, the Project was to be completed and commissioned by 31.1.2018. However, the implementation of the Project was affected due to various Force Majeure and Change in Law events encountered during construction of the Project and its elements and led to certain delay in achieving the Commercial Operation date (in short 'COD').

Submissions by the Petitioner

5. The Petitioner has submitted that the matter of extension of Scheduled Commercial Operation Date (in short 'SCOD') owing to various Force Majeure events was taken up with LTTCs in accordance with Article 4.4.2 of the TSA and joint coordination meeting was held between the Petitioner and the LTTCs on 28.9.2018 to discuss the extension of time for the Project. As an outcome of the said

discussion, the lead LTTC, MSEDCL vide its letter dated 5.3.2019 requested the Petitioner to submit its consent in writing confirming that there will not be additional tariff burden on the LTTCs pursuant to the extension of SCOD. Accordingly, considering the request of LTTC, the Petitioner vide its letter dated 29.3.2019 has undertaken that no tariff burden shall be levied on the LTTCs pursuant to the extension of SCOD owing to the Force Majeure events. Consequently, Supplementary TSA was signed between the Petitioner and LTTCs on 20.1.2020 providing extension of time from SCOD to actual COD. Therefore, the issue regarding time over-run and time extension for the Project from SCOD to actual COD has been duly settled with LTTCs and the Petitioner is not seeking relief on account of Force Majeure events that resulted into time overrun for the Project.

6. The Petitioner has submitted that construction of the Project has been affected on account of the following Change in Law events:

- (a) Increase in acquisition price of Special Purpose Vehicle by BPC,
- (b) Notification of Good and Service Tax (in short 'GST') Laws by Government of India, and
- (c) Notification of payment of land compensation for tower base as well as corridor of transmission line by Government of Maharashtra.

7. The Petitioner has submitted following details regarding the increase in total Project cost under each of the above heads.

Increase in acquisition price of Special Purpose Vehicle by BPC

8. The Petitioner has submitted that prior to submission of bid, BPC vide its letter dated 12.12.2014 had intimated to the bidders the acquisition price payable by the selected bidder for acquisition of 100% equity shareholding of PPTL along with its related assets and liabilities as Rs. 18,28,22,000/-. However, subsequent to bidding,

BPC vide its letter dated 24.3.2015 informed the successful bidder about final acquisition price as Rs.18,66,83,074/-. This increase in acquisition price by Rs. 38.61 lakh constitutes a Change in Law event covered under Article 12.1.1 of the TSA as it has occurred after seven days prior to the bid deadline.

Notification of GST Laws by Government of India

9. The Petitioner has submitted that introduction of GST Laws by the Parliament after the cut-off date (7 days prior to the bid deadline) i.e. 12.2.2015 qualifies to be a Change in Law. The Petitioner has further submitted that the Commission in its order dated 17.12.2018 in Petition No. 1/SM/2018, *inter-alia*, has already held that the introduction of GST and subsuming/ abolition of specific taxes and duties, etc. in the GST constitute Change in Law. The Petitioner's claim on account of introduction of GST Laws is Rs. 22.02 crore.

Notification of payment of land compensation for tower base as well as corridor of transmission line by Government of Maharashtra

10. The Petitioner has submitted that the Government of Maharashtra vide its Policy dated 31.5.2017 has notified payment of land compensation for tower base as well as for corridor of transmission line to the land owners. This Policy is covered under Change in Law. The Petitioner has further submitted as under:

(i) Since the above Policy was issued after seven days of cut-off date i.e. 12.2.2015 (7 days prior to bid deadline), it qualifies as Change in Law event in terms of Article 12.1.1 of the TSA.

(ii) The notification issued by the Government of Maharashtra requires compensation to be made to the land owners so as to obtain consent and clearances for execution of the Project and as such fulfils the requirement of the provisions of Article 12.1.1 of the TSA.

(iii) Additional expenditure incurred and anticipated to be incurred by the Petitioner on this account is Rs. 45.04 crore.

11. The Petitioner has submitted that due to reasons of above Change in Law, the over-head cost of the project has increased. The Petitioner, therefore, has submitted that in terms of Article 12.2 (Relief for Change in Law) of the TSA, the impact of Change in Law for the construction period is to be given as an increase in the cost of the Project, including increased over-head cost. The cost of the Project or the Project cost refers to and encompasses within its scope all costs in regard to the establishment of the Project incurred by the entity i.e. not only the hard cost of the capital assets (i.e. plant, machinery and equipment, etc.) installed in the Project but also the interest cost, finance charges during construction and other soft costs related to the establishment of the Project.

12. The Petitioner has submitted that the scope of Project cost can be understood with reference to the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (in short, 'the 2014 Tariff Regulations'), which deal with various components of capital cost. As per the scheme of Tariff Regulations, 2014, Interest During Construction (IDC), which essentially comprises of the interest payable on debt part, is allowed to be capitalized along with other hard costs. The total expenditure incurred in the Project including on account of time overrun is capitalized along with IDC as an additional cost to the extent of 70% of the increased Project cost and the balance 30% of the increased Project cost is serviced as equity providing for return of 15.5% post-tax.

13. The Petitioner has submitted that for competitively bid transmission projects, increase in Project cost on account of Change in Law events need to be fully

serviced, namely, the cost overrun in regard to increase in the Project cost on account of Change in Law and funding during the construction period. The entire increase in the Project cost (100%) on account of capital expenditure incurred by the Petitioner on account of Change in Law as well as the funding and financing cost of such capital expenditure, in full, during the construction period need to be serviced by increased transmission charges payable over and above the quoted transmission tariff during the entire period of the TSA in order to enable the Petitioner to compensate the impact of Change in Law events. Therefore, the compensation/relief should not be restricted to only the capital expenditure incurred but should also include funding and financing cost as well as the overheads.

14. The Petitioner has summarized the increase in the cost of Project on account of Change in Law events along with funding cost and overhead cost as under:

(Rs. in crore)					
S. No.	Reason for cost increase	Basic amount	Associated increase in funding costs	Associated increase in overhead costs	Increase in project cost on account of Change in Law
1.	Increase in acquisition price by BPC	0.39	0.14	0.02	0.55
2.	Notification of GST laws by Government of India	22.02	0.07	1.16	23.25
3.	Notification of payment of land compensation by Government of Maharashtra.	45.04	0.04	2.66	47.74
	Total impact on Project cost	67.45	0.25	3.83	71.54

Hearing dated 26.5.2020

15. The Petition was admitted on 26.5.2020 and notices were issued to the Respondents to file their reply. The Respondents, M.P. Power Management Company Limited and (MPPMCL) and Maharashtra State Electricity Distribution Company Limited (MSEDCL) have filed their reply and the Petitioner has filed rejoinders to the same.

16. Vide Record of Proceedings (RoP) for the hearing dated 26.5.2020, the Petitioner was directed to file the following information:

(a) Reasons for increase in acquisition price by BPC;

(b) Whether notices for revision of tax and rates have been issued to the LTTCs in terms of the TSA;

(c) Auditor certified calculation (in comparison with original tax estimations based on original estimated project cost) of amount claimed due to introduction of GST mentioning the adjustment of service tax and other such taxes/duties which were earlier envisaged in the project cost estimations, however, subsumed in GST in reconciliation with the amount specified in the auditor certificate submitted with the Petition along with supporting documents. Details of reduction in the rate of any other taxes, if any, contributing in reduction of capital cost during construction period separately;

(d) Auditor certified calculation of funding cost separately for cost of debt and return on equity, claimed under land compensation, GST introduction and acquisition price difference together with the Auditor's certificate clearly mentioning the actual capital cost and actual Debt & Equity during the relevant construction period;

(e) Details in support of claim of increase in actual land compensation/ RoW payments over those prevailing as on cut-off date; and

(f) How additional overheads have been incurred due to more amount of GST/ taxes paid to Government, RoW payments made to the land owners and higher acquisition price paid to BPC;

17. The Petitioner vide its affidavit dated 26.6.2020 has filed the information called for vide Record of Proceedings (RoP) for the hearing dated 26.5.2020.

Replies of MPPMCL

18. MPPMCL in its reply dated 8.6.2020 has submitted as under:

(a) The Petitioner has not placed on record the copy of the TSA dated 9.2.2015 entered into with LTTCs.

(b) BPC in its letter dated 12.12.2014 had clarified that the acquisition price of Rs. 1828.22 lakh was subject to adjustment based on the audited account of SPV (the Petitioner) as on the closing date. Since the instant case is that of a competitively bid Project, it should be assumed that PGCIL has quoted all-inclusive transmission charges and was expected to factor in all unforeseen and contingent expenditure including increase in acquisition price of SPV (the Petitioner) as indicated by BPC in its letter dated 12.12.2014 in the quoted transmission charges while submitting the bid. Therefore, additional expenditure to the tune of Rs. 39 lakh incurred to settle the increase in acquisition price does not constitute Change in Law event and any claim in this regard is not admissible.

(c) The Petitioner's claims towards above 'overheads' and 'funding cost' are specifically opposed for the same were not envisaged in the bid documents or in the TSA. Reliance placed by the Petitioner on the 2014 Tariff Regulations is misconceived as these Regulations are not applicable in present case.

(d) With regard to the Petitioner's claims of Rs. 22.02 crore as additional impact on account of imposition of GST Laws, the Petitioner has suppressed exhibition of clear and one to one correlation between the Project, the supply of goods and services and the invoices raised for supply of goods and services backed by an independent and competent Auditor's certificate. The certification to the effect that all the norms as per GST Laws have been complied with by the Petitioner and the claim of the amount being made by the Petitioner are correct as per the effective taxes in pre and post GST regime were neither ever before made available to MPPMCL nor are now present on records of the present case.

(e) The Auditor certificate dated 8.2.2020 submitted by the Petitioner does not meet the mandates as specified by the Commission in its order dated 17.12.2018 in Petition No. 1/SM/2018. Moreover, the Petitioner is solely responsible at his own cost and risk for designing, constructing, erecting, commissioning, completing and testing the transmission project in accordance

with the prudent utility practices. Therefore, it is the duty of the Petitioner to prudently incur expenditure and mitigate the effect.

(f) GST Laws provide for a tax slab (previously exempted) of 5% to 28% with respect to goods and services required for execution, construction and operation of transmission projects w.e.f. 1.7.2017. The goods and services in the context of the present Petition can be broadly categorized under two heads, namely, EPC stage i.e. construction stage which is covered under 'goods', and (b) O & M stage i.e. post construction stage which is covered under 'services'. Under GST Laws, it has been provided that if point of taxation of goods/services is before implementation of GST Laws, it will be taxed under the earlier law. Therefore, GST will not be applicable. Only that portion of supply whose point of taxation is after implementation of GST Laws will be taxed under GST. The time of supply of goods/services shall be the earlier of the date of issuing invoice (or the last day by which invoice should have been issued) or the date of receipt of payment whichever is earlier. As per the GST Laws, in cases where the invoice is raised or consideration for the goods/supply of services have been received before 1.7.2017 and tax has already been paid under the earlier law, GST will not be applicable in such cases.

(g) In the absence of the component-wise details of the Project and respective percentage share of each such components in the overall capital cost of the competitively bid Projects, the reliance could be placed on the Commission's order dated 23.3.2016 in Petition No. 17/SM/2015 for the purpose of determining the 'weightage of components of capital cost' and the percentage impact of the taxation due to enactment of GST Laws for the purpose of calculation.

(h) The Petitioner may be directed to make available to the Respondents all relevant documents exhibiting clear and one to one correlation between the projects and the supply of goods or services, duly supported by relevant invoices and Auditor's certificate in order to enable the Respondents to reconcile the claims for Change in Law on receipt of the relevant documents.

(i) The Petitioner is not entitled for Rs. 1.16 crore and Rs. 0.07 crore towards overhead costs and funding costs respectively on account of impact of GST.

(j) The document quoted by the Petitioner and issued by the Government of Maharashtra is not the 'notification' as claimed by the Petitioner. It is general Guidelines issued by the Government of Maharashtra for determining the compensation to be paid to the land owners on the basis of the Guidelines issued by Ministry of Power (in short 'MoP') dated 15.10.2015. Therefore, it cannot be considered as Change in Law. The Petitioner is required to follow the process laid down under Section 164 of the Act for securing the Right of Way (in short 'RoW') for building foundations and erecting towers. The instant Project being competitively bid Project, it should be assumed that the Petitioner has quoted all inclusive transmission charges and the Petitioner was also expected to factor all unforeseen and contingent expenditure on account of settlement of RoW while submitting the bid. Therefore, the additional expenditure incurred by the Petitioner to settle the issue of RoW with land owners does not constitute Change in Law event.

Replies of MSEDCL

19. MSEDCL in its reply dated 20.6.2020 has submitted as under:

(a) Based on the letters of BPC, it is understood that the final acquisition price of SPV is increased by Rs. 38.61 lakh. However, it is not clear that which parameters have led to this increase in the acquisition price as the details about the same along with reasons have not been provided by the Petitioner. The Commission vide its RoP for the hearing dated 26.5.2020 had directed the Petitioner to submit the '*Reasons for increase in acquisition price by BPC*'. Accordingly, the claim of the Petitioner on this count may be allowed after prudent check.

(b) In terms of the Commission's order dated 17.12.2018 in Petition No. 1/SM/2018, the Commission has held the differential between the taxes subsumed in GST and the rates of GST on various items as admissible under Change in Law and the TSPs are accordingly directed to provide the details of increase or decrease in the tax liability in respect of introduction of GST to

LTTCs duly supported by the Auditor's certificate. However, the Petitioner in the Auditor's certificate has directly provided the total differential amounts on account of Change in Law for different financial years without details of calculations for differential tax liability. It is also not clear whether the impact of taxes subsumed in GST is considered or not while deriving the differential tax liability.

(c) As per the Auditor's certificate, the Petitioner has calculated the overhead cost @5% plus applicable taxes as per the Consultancy Agreement executed with PGCIL for execution of the Project. However, no such Agreement has been placed on record. It is also not clear as to how the overhead cost has been incurred by the Petitioner towards payment of such differential tax.

(d) From the figures mentioned in the Auditor's certificate towards land compensation, it is not clear whether it is a differential amount towards land compensation or total amount for land compensation. The details such as compensation amount for land acquisition payable prior to the Policy issued by the Government of Maharashtra and the amount that became payable after issuance of Policy has not been provided. Accordingly, the claim of the Petitioner regarding impact of Policy for land compensation may be allowed after prudence check.

(e) There might be certain taxes whose tax rates might have reduced during the construction period from the date of the submission of bid. Accordingly, the Petitioner ought to provide the impact of the same on capital cost of the Project or to certify that there is no reduction in tax rate after cut-off date for any of the taxes considered while evaluating the capital cost of the Project.

Rejoinders of Petitioner to Replies of MPPMCL and MSEDCL

20. The Petitioner in its rejoinder dated 30.6.2020 to the reply filed by MPPMCL has submitted as under:

(a) The Petitioner has placed on record the copy of TSA dated 9.2.2015 entered into with LTTCs along with its reply dated 26.6.2020 filed pursuant to the RoP for the hearing dated 26.5.2020.

(b) Cost incurred towards increase in acquisition price of SPV constitutes Change in Law event as recognized in the 6th bullet of Article 12.1.1 of TSA dealing with Change in Law. The acquisition price is indicated by BPC and the Petitioner has no control over the same. The Petitioner was required to include the acquisition price as specified to it as on cut-off date in the quoted transmission charges and there was no requirement to anticipate any possible increase in acquisition price and include it in the price quoted.

(c) It is wrong and denied that the Petitioner is not entitled to overhead and/or funding cost. In case of increase in Project cost, there is an associated funding cost and overhead cost which is also considered as part of the Project cost. In the present case, increase in Project cost is identified pertaining to Change in Law events and the associated funding cost and overhead cost is claimed as part of the increased Project cost on account of Change in Law. The funding and overhead costs would not have burdened the Petitioner had the increase in Project cost not occurred on account of Change in Law. TSA recognizes relief for increase in cost of Project on account of Change in Law. Since such funding and overhead costs are on account of Change in Law event, the same ought to be allowed.

(d) The Petitioner has provided a detailed break-up of implication of GST vis-à-vis the taxes applicable prior to introduction of GST on each package of the transmission project implemented by the Petitioner vide its affidavit dated 26.6.2020 and Auditor certificate in this regard. As certified by the Auditor, the claim is made only with regard to GST liable/paid for supply of goods or services after its introduction (i.e. 1.7.2017) and the taxes paid as per pre-GST rates are not being claimed.

(e) The claim of MPPMCL on reduction in impact of GST by means of procurement at lower rates is unsubstantial and vague. MPPMCL has not provided any rationale or basis to claim that taxes could have been lower. In any case, the Petitioner had executed contracts for packages and the prices are to be paid as per the applicable tax rate. The impact of GST on each such contract value has been furnished by the Petitioner.

(f) Reliance placed by MPPMCL on the Commission`s order dated 23.3.2016 in Petition No. 17/SM/2015 for component and percentage is also

misplaced. The said order relates to solar PV projects and thermal generation projects. There is also no question of any agreement on mechanism or annuity when TSA itself provides for formula/methodology for Change in Law for payment of increase in Project cost.

(g) MPPMCL's contention that the Policy issued by the Government of Maharashtra dated 31.5.2017 does not constitute Change in Law event is erroneous. MPPMCL's attempt to categorize it as general Guidelines which have been issued in pursuance to the Guidelines dated 15.10.2015 issued by MoP and, therefore, claiming that it is not a Change in Law, is misconceived.

(h) Undisputedly, MoP's Guidelines dated 15.10.2015 and Government of Maharashtra's Policy dated 31.5.2017 have been issued after the cut-off date i.e. 12.2.2015 and the Petitioner was required to make additional payments for land compensation. Therefore, irrespective of whether the Policy dated 31.5.2017 of Government of Maharashtra is a law, it constitutes Change in Law event for the Petitioner's Project. If the notification of the State Government had no relevance or value, the same would not have been required to be issued.

(i) The Government of Maharashtra and its Ministry/ Department falls within the definition of 'Indian Governmental Instrumentality' as provided in the TSA and the Policy dated 31.5.2017 issued by the Industry, Power and Labour Department, Government of Maharashtra qualify as Change in Law which includes any statute, ordinance, rule, regulation, notification, order or code. The said order have been implemented by the revenue authority of Maharashtra for raising demand for such compensation on the Petitioner and the Petitioner was required to make payment as per the same.

(j) As per Section 164 of the Act, Appropriate Government may impose restrictions and conditions and the Government of India recognizes that since land acquisition is State subject, the State Government would issue directions in this regard. Thus, there can be no dispute that the State Government has the power to issue directions on land acquisition including compensation. Hon'ble Supreme Court in Energy Watchdog v. Central Electricity Regulatory Commission and Ors. [(2017) 14 SCC 80] has recognized the Policy and letter issued by Government as having force of law.

(k) The Petitioner is not asking for any amount which it had factored at the time of submission of bid. The subsequent Change in Law events, including change in land compensation/RoW due to decisions of the Government of Maharashtra have been agreed to in the TSA executed between the Petitioner and LTTCs to provide relief to the Petitioner if encountered with such events.

21. The Petitioner in its rejoinder dated 30.6.2020 to the reply filed by MSEDCL has submitted as under:

(a) Information as sought by MSEDCL has been filed by the Petitioner in its affidavit dated 26.6.2020. Pursuant to RoP for the hearing dated 26.5.2020, the Petitioner vide letter dated 3.6.2020 requested BPC to provide the reason for increase in acquisition price. In response, vide letter dated 16.6.2020, BPC has submitted its response, which has been placed on the records of the Petition.

(b) A detailed break-up of implications of GST vis-à-vis the taxes applicable prior to introduction of GST related to the various packages covered in the transmission Project implemented by the Petitioner has been provided in the additional affidavit dated 26.6.2020 along with Auditor certificate in this regard. Also, the Consultancy Agreement entered into by the Petitioner with PGCIL has also been provided. The overhead cost includes the consultancy charges along with applicable taxes paid by the Petitioner to PGCIL as per the agreement. The overhead cost is calculated @5% of Project cost + applicable taxes and since Change in Law increases the Project cost, consequently overhead cost also increases.

(c) Details of expenditure incurred under land compensation as per new Government GR issued by the Government of Maharashtra vis-à-vis earlier Government's GR has been furnished along with additional affidavit dated 26.6.2020.

(d) Auditor certificate to the extent that there is no reduction in the rate of other taxes/duties which contributed in reduction of capital cost during the construction period has already been furnished.

Hearing dated 25.8.2020

22. The matter was heard at length on 25.8.2020. During the course of hearing, learned senior counsel for the Petitioner and learned counsel for the Respondent, MSEDCL reiterated the submissions made in their respective pleadings, which are not repeated herewith for the sake of brevity. Learned counsel for MSEDCL referring to the details of land compensation paid and claimed by the Petitioner submitted that there is no clarity in the justification furnished by the Petitioner towards such claims. He added that even considering the increases in land compensation for tower base to twice the ready reckoner/market rate vide Government Policy dated 31.5.2017, the substantial increase in the expenditure incurred by the Petitioner is not tenable. In response, learned senior counsel for the Petitioner submitted that the land compensation indicated by the Petitioner is the actual paid amount as certified by the Auditor. He added that as per the Government of Maharashtra's Resolution No. Sankirna 021/Pra.Kra.29/Urja-4 dated 1.11.2010 (in short, GR, 2010), as prevalent on the cut-off date, land compensation for tower base was categorized into 4 types of depending upon the type of land varying from 25% for dry irrigated land to 65% for non-agricultural land. However, in the Policy dated 31.5.2017, land compensation for tower base has been increased to twice the ready reckoner/market rate.

23. Vide Record of Proceedings for hearing dated 25.8.2020, the Petitioner was directed to provide the following details/information:

- (a) Copy of the orders of district administration for payments towards land compensation to the Respondents for the respective States;
- (b) An affidavit to the effect that payment towards land compensation has been made as per the orders of the State Government and district administration;

- (c) Auditor certificate certifying year-wise land compensation amount paid, prior to financial year 2017-18; and
- (d) Copy (with English Translation) of the Government of Maharashtra's GR, 2010.

24. The Petitioner vide its affidavit dated 14.9.2020 has furnished the details/information called for. The Petitioner has stated that comprehensive orders issued by district administration for payment towards land compensation during implementation of transmission lines related to the Project has been forwarded to the respondents including the lead LTTC i.e. MSEDCL. The Petitioner has submitted that prior to financial year 2017-18, no orders for payment of land compensation were issued by State Government and district administration. Accordingly, no land compensation was paid by the Petitioner prior to financial year 2017-18. In this regard, the Petitioner has placed on record the Auditor's certificate. The Petitioner has submitted that only the usual crop compensation for the damages assessed during the construction of the transmission lines was paid, which is not being claimed in the instant Petition.

Analysis and Decision

25. We have considered the submissions of the Petitioner, MSEDCL and MPPMCL, and perused the documents on record. Based on the above, 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 claims of the Petitioner are covered under Change in Law in terms of the TSA?, and

Issue No. 3: What reliefs, if any, should be granted to the Petitioner in the light of the answers 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?

26. The Petitioner has claimed relief under Article 12 (Change in Law) of the TSA.

Article 12.3.1 of the TSA provides as under:

“12.3 Notification of Change in Law Event

12.3.1 If the TSP is affected by a Change in Law in accordance with Article 12.1 and wishes to claim relief for such Change in Law under this Article 12, it shall give notice to Lead Long Term Transmission Customer of such Change in Law as soon as reasonably practicable after becoming aware of the same.

12.3.2 The TSP shall also be obliged to serve a notice to Lead Long Term Transmission Customer even when it is beneficially affected by a Change in Law.

12.3.3 Any notice served pursuant to Articles 12.3.1 and 12.3.2 shall provide, amongst other things, precise details of the Change in Law and its effect on the TSP.”

27. Under Article 12.3 of the TSA, if the TSP is affected by a Change in Law in accordance with Article 12.1 and wishes to claim relief for such Change in Law, it shall give notice to the lead LTTC of any event of Change in Law as soon as reasonably practicable after being aware of the same. It further provides that any notice served pursuant to Articles 12.3.1 and 12.3.2 of the TSA shall provide amongst other things, precise details of Change in Law and its effect on the TSP.

28. With regard to notice, no objections have been raised by the Respondents in this regard. It is noticed that the Petitioner gave notices to the LTTCs dated 5.6.2017 regarding payment of compensation for transmission lines due to introduction of land compensation for transmission lines in the State of Maharashtra and dated 7.7.2017 regarding introduction of GST with effect from 1.7.2017. However, no response was received from the lead LTTC. As regards increase in the acquisition price of SPV, while the Petitioner has not placed any notice intimating the LTTCs about the aforesaid Change in Law, it has been pointed out that all the LTTCs were duly informed by the Petitioner regarding increase in the acquisition price of SPV by BPC in Petition No. 127/ADP/2015 filed by the Petitioner under Section 63 of the Act for

adoption of tariff and also served copies of the Petition *inter-alia* stating reimbursement of increased acquisition price of SPV, on the LTTCs including the BPC. Perusal of the records reveals that the Petitioner had in fact indicated/intimated the LTTCs about the increase in the acquisition price of SPV in the aforesaid Petition filed by the Petitioner after the selected bidder (PGCIL) acquired the SPV as per the bid process, which in our view suffices the requirement of notice to LTTCs. Through Petition No. 127/ADP/2015, LTTCs were made aware about increase in acquisition price by BPC. Accordingly, in our view, the Petitioner has complied with the requirement of TSA regarding prior notice to the lead LTTC regarding occurrence of Change in Law before approaching the Commission.

Issue No. 2: Whether the claims of the Petitioner are covered under Change in Law in terms of the TSA?

29. The provisions of the TSA with regard to Change in Law are extracted as under:

“12.1 Change in Law

12.1.1 Change in Law means the occurrence of any of the following after the date, which is seven (7) days prior to the Bid Deadline resulting into any additional recurring/non-recurring expenditure by the TSP or any income to the TSP:

- The enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law;*
- A change in the interpretation or application of any Law by Indian Governmental Instrumentality having the legal power to interpret or apply such Law, on any Competent Court of Law;*
- The imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier:*
- A change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents Clearances and Permits;*
- Any change in the licensing regulations of the Appropriate Commission, under which the Transmission License for the Project was granted if made applicable by such Appropriate Commission to the TSP:*
- any change in the Acquisition Price; or*
- any change in tax or introduction of any tax made applicable for providing Transmission Service by the TSP as per the terms of this Agreement.*

30. Perusal of the above provisions of Article 12 in the TSA reveal that for an event to be 'Change in Law', its occurrence has to be after the seven days prior to the bid deadline and result into any additional recurring/non-recurring expenditure by TSP or any income to TSP. The events broadly covered under Change in Law are following:

- (a) Any enactment, coming into effect, adoption, promulgation, amendment, modification or repeal, of any Law;
- (b) Any change in interpretation of any Law by a Competent Court of law, or Indian Governmental Instrumentality having the legal power for such interpretation; or
- (c) Imposition of a requirement for obtaining any consents, clearances and permits which was not required earlier;
- (d) A change in terms and conditions prescribed or inclusion of any new terms and conditions for obtaining consents, clearances and permits or the inclusion of new terms and conditions for obtaining such consents, Clearances and Permits;
- (e) Any change in the Commission`s Transmission Licence Regulations;
- (f) Any change in the Acquisition price;
- (g) Any change in tax or introduction of any tax made applicable for providing transmission service by the TSP as per the terms of the agreement.

31. The Petitioner has submitted that as per Article 12 of the TSA, an event constitutes a Change in Law if it occurred after the date which is seven days prior to the bid deadline which was 19.2.2015. Therefore, cut-off date for considering the claims under Change in Law will be 12.2.2015. In the light of the above provisions of Change in Law, the claims of the Petitioner which have occurred after cut-off date during the construction and operating period have been examined as under:

(a) Increase in acquisition price of BPC

32. The Petitioner has submitted that prior to submission of bid, BPC vide its letter dated 12.12.2014 had intimated to the bidders the acquisition price payable by the selected bidder for acquisition of 100% equity shareholding of SPV, 'Gadarwara (B) Transmission Limited' along with all its related assets and liability as Rs.18,28,22,000/-. However, subsequent to bidding, BPC vide its letter dated 24.3.2015 intimated the successful/selected bidder the final acquisition price as Rs. 18,66,83,074/-. The Petitioner has submitted that increase of Rs. 38.61 lakh in the acquisition price of SPV is Change in Law event in terms of Article 12.1.1 of TSA and accordingly, the same may be allowed.

33. MPPMCL has submitted that BPC vide its letter dated 12.12.2014 had intimated that the acquisition price of Rs.1828.22 lakh was subject to the adjustment based on the audited accounts of SPV as on the closing date. Therefore, in the competitive bid Project, the Petitioner ought to have quoted all-inclusive transmission charges factoring into all unforeseen and contingent expenditure including increase in the acquisition price of SPV as indicated in BPC's letter dated 12.12.2014. Therefore, the additional expenditure incurred by the Petitioner towards acquisition price of SPV does not constitute Change in Law and any claim made thereunder is not admissible.

34. MSEDCL has submitted that the Petitioner has not provided the requisite details/reasons as to which parameters have resulted into increase in the acquisition price and the claim of the Petitioner on this count may be allowed after prudence check.

35. *Per contra*, the Petitioner has submitted that cost incurred towards increase in acquisition price of SPV clearly constitutes a Change in Law event as per the 6th

bullet of Article 12.1.1 of the TSA dealing with Change in Law. It has been submitted that the Petitioner was only required to include the acquisition price as specified to it by BPC as on the cut-off date in the quoted transmission charges and there was no requirement for the Petitioner to anticipate any possible increase therein and include in the quoted charges. This is the very reason for inclusion of any change in acquisition price under Article 12.1.1 of the TSA. The Petitioner has placed on record the letter dated 16.6.2020 of BPC indicating the reasons for increase in the acquisition price.

36. We have considered the submissions made by the parties. In the present case, BPC vide its letter dated 12.12.2014 had informed all the bidders about the acquisition price payable for acquiring 100% equity shareholding of SPV, Gadawara (B) Transmission Limited as Rs. 18,28,22,000/-. Subsequently, the BPC vide its letter dated 24.3.2015 intimated the successful bidder the final acquisition price as Rs. 18,66,83,074/-. Vide RoP for the hearing dated 26.5.2020, the Petitioner was directed to furnish the '*Reasons for increase in acquisition price by BPC*'. Pursuant to the said direction, the Petitioner wrote to BPC on 3.6.2020 seeking reason for increase in acquisition price. In response, BPC vide its letter dated 16.6.2020 has submitted the reason for increase in the tentative acquisition price from Rs. 1828.23 lakh as intimated to the bidders vide its letter dated 12.12.2014 and the final acquisition price of Rs.1866.83 lakh as intimated to the selected bidder after conclusion of the bidding vide its letter dated 24.3.2015. The details of increase in the acquisition price as provided by BPC are as under:

Particulars		(Rs. in lakh)	
		Final Acquisition Price intimated after bidding vide letter dated 24.3.2015	Tentative Acquisition Price intimated before bidding vide letter dated 12.12.2014
1	Professional Fee	1500.00	1500.00
2	Reimbursement of Expenses	155.00	118.28
3	Interest on Expenses	2.02	0.01

	Total of 1, 2 and 3 without service tax	1657.02	1618.29
	Service Tax	204.81	204.94
4	Share Capital	5.00	5.00
	Total 1, 2,3 & 4 with Service tax	1866.83	1828.23

37. Perusal of above details reveals that the increase of Rs.38.61 lakh is due to increase in expenses, interest and payment of service tax to the Government of India. As per Article 12.1.1 of the TSA, 'Change in Law' means the occurrence of any of the events after the date which is seven days prior to the bid deadline resulting into any additional recurring/non-recurring expenditure by the TSP or any income to it. Since one such event for operation of Change in Law (sixth bullet under Article 12.1.1 of the TSA) is 'any change in the acquisition price', such change in the acquisition price by BPC after the cut-off date i.e. 12.2.2015 being after the cut-off date and resulting into additional recurring or non-recurring expenditure to TSP constitutes a Change in Law event. Therefore, the contention of MPPMCL that the Petitioner ought to have factored into its bid the possible increase in the acquisition price of SPV in terms of BPC's letter dated 12.12.2014 is not tenable. It is noticed that in terms of the bid documents, BPC is required to intimate the bidders about the acquisition price to be payable by the selected bidder thirty days prior to bid deadline to enable them to factor such price while submitting their bids. However, the TSA itself provides for an eventuality of 'any change in the acquisition price by BPC' after the cut-off date and specifically makes it an event for operation of Change in Law. If the argument of MPPMCL that the bidders were also required to envisage any change in the acquisition price of SPV is to be accepted, it would lead to the 6th bullet of Article 12.1.1 redundant, which cannot be the case. The provisions of the bid documents as well as TSA do not require the bidders to anticipate and factor into possible changes in the acquisition price of the SPV.

38. In view of the above, the Petitioner is entitled to increase in transmission charges on account of increase in acquisition price in accordance with Article 12.1.1 of the TSA.

(b) Notification of Goods and Service Tax Act, 2017 by Government of India w.e.f. 1.7.2017.

39. The Petitioner has submitted that the Goods and Service Tax Act, 2017 has been notified by the Ministry of Finance, Government of India with effect from 1.7.2017, which is after the cut-off date, i.e. 12.2.2015 and, therefore, constitutes a Change in Law event. The Petitioner has further submitted that the Commission in its order dated 17.12.2018 in Petition No. 1/SM/2018 has held that the introduction of GST w.e.f. 1.7.2017 constitutes a Change in Law and that the differential between the taxes subsumed in GST and the rates of GST on various items shall be admissible under Change in Law and also that the TSPs shall work out and provide the details of increase/decrease in the tax liability in respect of introduction of GST to the LTTCs duly supported by Auditor's certificate. The Petitioner has claimed the additional expenditure incurred by it on account of introduction of GST Laws as Rs. 18.97 crore.

40. MPPMCL has submitted that the Petitioner has not exhibited clear and one to one correlation between the Project, the supply of goods or services and invoices raised by the supplier for goods and services backed by the Auditor's certificate. The Auditor's certificate dated 8.2.2020 furnished by the Petitioner does not meet the requirement of the Commission's order dated 17.12.2018 in Petition No. 1/SM/2018 inasmuch as the said certificate does not provide (i) the differential between the taxes subsumed in GST and the rates of GST on various items, and (ii) worked out details of increase or decrease in tax liability in respect of introduction of GST. Also, implication of GST Laws will be applicable only if the point of taxation occurs on or

after 1.7.2017 and not for period prior to 1.7.2017, in which case the taxes shall be payables under pre-GST Laws. As a prudent utility, the Petitioner ought to have considered the reduction in the impact of GST by arranging to buy assets as a part of transmission system at the cost of paying the GST at a lower rate instead of purchasing it individually by paying higher GST.

41. MSEDCL has submitted that the Petitioner has directly provided total differential amount in the Auditor's certificate on account of Change in Law for the different financial years and has not furnished the details of calculations for the differential tax liability. In such case, it is not clear whether the impact of taxes subsumed in GST is considered or not while deriving the differential tax liability. It has been further submitted that the Petitioner ought to have also provided the details of taxes which might have reduced during the construction period from the time of bidding and would have benefitted to the Petitioner else the Petitioner should certify that there is no reduction in taxes after cut-off date for any of the taxes considered while evaluating capital cost of the Project.

42. *Per contra*, the Petitioner has submitted that it has provided a detailed break-up of implication of GST vis-à-vis taxes applicable prior to introduction of GST on each package of the Project vide its affidavit dated 26.6.2020 along with Auditor's certificate. The Petitioner has also submitted that the claim is made only with regard to GST liable/paid for supply of goods and services after its introduction i.e. 1.7.2017 and taxes paid as per pre-GST Laws are not being claimed. MPPCL's contention regarding reduction in impact of GST by means of procurement at lower rates is unsubstantial and without any basis. The Petitioner had entered into contracts for packages and the prices are to be paid as per the applicable tax rate. The impact of GST Laws on each such contract value has also been provided vide its affidavit

dated 26.6.2020. It has been submitted by the Petitioner that MPPMCL's reliance on the order dated 23.3.2016 in Petition No. 17/SM/2015 for components and its percentage weightage is also misplaced as the said order relates to solar PV and thermal generation Projects. The Petitioner has clarified that there is no reduction in the rate of other taxes/duties which contributed in the reduction of capital cost during the construction period.

43. We have considered the submissions made by the Petitioner and the Respondents, MSEDCL and MPPMCL. Change in Law has been defined in Article 12.1.1 as *"the occurrence of any of the following after the date, which is seven days prior to the bid deadline resulting into any additional recurring/non-recurring expenditure by the TSP or any income to the TSP"*. Thus, any event specified in the bullets under Article 12.1.1 which have occurred after the date which is seven days prior to the bid deadline and which result into any additional recurring or non-recurring expenditure to the TSP or income to the TSP shall be covered under Change in Law. The Commission in its order dated 17.12.2018 in Petition No. 1/SM/2018 in the matter of *'Additional tax burden on transmission licensees on introduction of Goods and Service Tax compensation cess'* has held that the introduction of GST with effect from 1.7.2017 shall constitute a Change in Law event. In the said order, the Commission has also directed that TSPs shall work out and provide the details of increase or decrease in the tax liability in respect of the introduction of GST to the LTTCs duly supported by the Auditor's certificate and the additional expenditure on account of GST shall be reimbursed by the LTTCs as per the relevant provisions of the TSA. The relevant extract of the order dated 17.12.2018 in Petition No. 1/SM/2018 is reproduced below:

"27. From the forgoing, it is observed that due to varied nature of such taxes, duties and cess etc. that have been subsumed/abolished on introduction of GST, it is not possible to quantify the resulting impact in a generic manner for all the TSPs. The

abolition of taxes, duties, cess, etc. on the introduction of GST are "Change in Law" events and the savings arising out of such "Change in Law" should be passed to the beneficiaries of the TSPs. Similarly, the introduction of GST has also resulted in imposition of new or increase in existing taxes, duties, cess etc. which constitute "Change in Law" events and accordingly the additional impact due to introduction of GST shall be borne by the beneficiaries. The details of the increase or decrease in the taxes, duties, cess etc. shall be worked out by the TSPs and the beneficiaries. The TSPs should provide the details of increase or decrease in the taxes, duties, cess etc. supported by Auditor Certificate and relevant documents to the beneficiaries and refund or recover the amount from the TSPs due to the decrease or increase in the taxes, duties, cess etc. as the case may be. Since the GST liveable on the transmission licensees pertain to the construction period, the impact of GST shall be disbursed by the beneficiaries to the transmission licensees in accordance with the provisions in the TSA regarding relief for Change in Law during construction period. In case of any dispute on any of the taxes, duties, cess etc., the beneficiaries may approach the Commission.

Summary

28. Summary of our decision in the order is as under:-

(a) Introduction of GST with effect from 1.7.2017 shall constitute a Change in Law event if the cut-off date (7days prior to the bid deadline) as per the relevant TSA falls on or after 1.7.2017.

(b) The differential between the taxes subsumed in GST and the rates of GST on various items shall be admissible under Change in Law.

(c) The TSPs shall work out and provide the details of increase or decrease in the tax liability in respect of introduction of GST to the beneficiaries/Long Term Transmission Customers duly supported by Auditor's Certificate.

(d) The additional expenditure on account of GST shall be reimbursed by the beneficiaries/Long Term Transmission Customers as per the relevant provisions of the TSA regarding Change in Law during the construction period or operating period, as the case may be.

(e) In case of dispute, either party is at liberty to approach the Commission in accordance with law."

44. In the present case, as on cut-off date i.e. 12.2.2015, there was no GST. Subsequently, the Parliament and State Legislative Assemblies, in order to introduce a unified indirect tax structure, have introduced a fresh set of taxation laws, which has replaced various Central and State level taxes, through various enactments collectively referred to as the GST Laws which came into effect from 1.7.2017. Since the additional recurring and non-recurring expenditure which has been incurred by the Petitioner is through an Act of Parliament after the cut-off date, i.e. 12.2.2015, the same is covered under Change in Law. The relief for additional expenditure incurred by the Petitioner due to introduction of GST shall be admissible on the capital

expenditure incurred as on the commercial operation of the Project within the original scope of work.

45. The Petitioner has submitted that the total impact on account of the enactment of GST Laws amounts to Rs.22.02 crore and in support, the Petitioner has placed on record the Auditor certificate. However, the Respondents, MSEDCL and MPPMCL have contended that the said certificate does not provide the requisite details/workings of the differential between the taxes subsumed in GST and the rates of GST on various items. Vide RoP for the hearing dated 26.5.2020, the Petitioner was directed to furnish the detailed calculation regarding its claim on account of introduction of GST Laws with Auditor certificate. The Petitioner vide its affidavit dated 26.6.2020 has furnished the Auditor certified calculations of amount claimed due to introduction of GST in comparison with tax based on original estimated Project cost. The Petitioner has submitted that for implementation of the Project, it had entered into contracts for the various packages and prices are to be paid as per the applicable tax rates and that the Petitioner has indicated impact of GST on each of such contract values. The Petitioner has further clarified that its claim is only with regard to GST liable/paid for supply of goods and services after its introduction i.e. 1.7.2017 and not for the taxes paid as per pre-GST. In addition, the Petitioner has placed on record the Auditor certificate stating that there is no reduction in the rate of other taxes/duties which contributed in the reduction of capital cost during construction period.

46. In view of the above, the Petitioner is entitled to increase in transmission charges on account of introduction of GST Laws in accordance with Article 12.1.1 of the TSA.

(c) Notification of payment of land compensation for tower base as well as corridor of transmission line by Government of Maharashtra.

47. The Petitioner has submitted that Government of Maharashtra vide its Policy dated 31.5.2017 has notified payment of land compensation for tower base as well as for corridor of transmission line, to the land owners. According to the Petitioner, this notification, which has been enacted after the cut-off date, required the Petitioner to pay land compensation for tower base as well as the corridor of transmission line, qualifies as Change in Law in terms of Article 12.1.1 of the TSA. The Petitioner has submitted that the additional expenditure incurred and anticipated to be incurred by the Petitioner is Rs.45.04 crore.

48. MPPMCL has submitted that the document quoted by the Petitioner and issued by the Government of Maharashtra is not the 'notification' as claimed by the Petitioner. It is general Guidelines for determining the compensation to be paid to the land owners. Therefore, the Policy issued by the Government of Maharashtra cannot be considered as Change in Law. Also, in the competitively bid project, the Petitioner ought to have quoted all-inclusive transmission charges factoring into all unforeseen and contingent expenditure on account of Right of Way settlement while submitting its bid. Accordingly, the additional expenditure incurred by the Petitioner to settle the issues of RoW with land owners does not constitute Change in Law event and any claim on this ground cannot be admissible.

49. MSEDCL has submitted that it is not clear from the figures indicated in Auditor's certificate as to whether it is a differential amount towards land compensation or total amount for land compensation. The Petitioner has not provided the details such as compensation amount for land acquisition payable prior to the Policy of Government of Maharashtra dated 31.5.2017 and amount that became payable after notification of the above Government Policy. MSEDCL has

submitted that the claims of the Petitioner regarding impact of the said Resolutions for land compensation may be allowed after prudence check.

50. *Per contra*, the Petitioner has submitted that MPPMCL's attempt to categorise the Policy of Government of Maharashtra as 'general Guidelines' issued in pursuance of the MoP's Guidelines dated 15.10.2015 is misconceived. The Guidelines dated 15.10.2015 issued by MoP and Policy dated 31.5.2017 issued by the Government of Maharashtra which have been issued after the cut-off date and require the Petitioner to make additional payments for land compensation, constitute Change in Law event. In the Guidelines dated 15.10.2015, MoP has recognized that the issue of land acquisition was a State subject and requested the State Government to implement or adopt the recommendation contained in the said Guidelines. In pursuance thereto, Government of Maharashtra has issued the Policy dated 31.5.2017 regarding payment of land compensation. The Government of Maharashtra and its Ministry/Department falls within the definition of 'Indian Governmental Instrumentality' and the Policy issued by them under the definition of 'Law' in the TSA. It has been further stated that under Section 164 of the Act, the State Government has power to issue direction on land acquisition including compensation. The Hon'ble Supreme Court in its judgment in the Energy Watchdog case has recognized that the Policies and letters issued by Government have force of law. The Petitioner has submitted that it is not asking for any amount which had been factored at the time of submitting the bid and has provided the details of expenditure incurred under the land compensation as per the Policy dated 31.5.2017 vis-à-vis earlier Resolutions passed by the Government of Maharashtra.

51. We have considered the submissions made by the parties. According to the Petitioner, Policy issued by Industry, Power & Labour Department, Government of

Maharashtra, vide Government Order No. Dhoran-2016/Pra.Kra.520/Urja-4 dated 31.5.2017 as well as MoP's Guidelines dated 15.10.2015, whereby the payment of land compensation for tower base and corridor for transmission line to the land owners has been notified, constitute a Change in Law in terms of Article 12.1.1 of the TSA. On other hand, MPPMCL has submitted that such document is not the 'notification' as claimed by the Petitioner and it is general Guidelines issued by the Government of Maharashtra for determining the compensation to be paid to the land owners.

52. It is noted that Ministry of Power, Government of India vide its letter dated 15.10.2015 issued Guidelines for payment of compensation towards damages in regard to Right of Way for transmission lines. In the said Guidelines, Ministry of Power *inter alia* also requested all the States/UTs to take suitable decision regarding adoption of the Guidelines for determining the compensation for land considering that the acquisition of land is a State subject. On the basis of the said Guidelines, Department of Industry, Power and Labour, Government of Maharashtra issued Policy dated 31.5.2017 for payment of compensation for the land lying/coming under the transmission lines and increase in the rate of compensation for the land covered by the towers to be erected/constructed for installation of high tension transmission line of 66 kV or more.

53. At the outset, it is noticed that issue as to whether the 'Guidelines' dated 15.10.2015 issued by the Ministry of Power for compensation towards damages in regard to RoW for transmission line constitutes a Change in Law or not had come up for the consideration of the Commission in Petition No. 195/MP/2017 (NRSS XXXI

(B) Transmission Limited v. UPPCL and Ors.). In this case, the Commission in its order dated 29.3.2019 observed as under:

“(iii) Change in guidelines issued by MoP for compensation towards damages in regard to Right of Way (RoW) for transmission line

.....

81. We have considered the claim of the Petitioner. We understand that the Petitioner had followed the process laid down under Section 164 of the Act for securing the RoW for building foundations and erecting towers. It is observed that the document quoted by the Petitioner is not a Notification as claimed by the Petitioner. It is general guidelines issued by the Ministry of Power, Government of India for determining the compensation to be paid to the land owners. This letter of Ministry of Power cannot be considered as “Change in Law” as claimed by the Petitioner.

82. As regards the additional expenditure incurred by the Petitioner on account of right of way, we make it clear that the case at hand is a competitive bidding project and we are of the view that the Petitioner has quoted all-inclusive transmission charges and the Petitioner was also expected to factor all unforeseen and contingent expenditure on account of right of way settlement in the quoted transmission charges while submitting the bid. Therefore, the additional expenditure incurred by Petitioner to settle the issues of RoW with land owners does not constitute a Change in Law event and any claim under this is not admissible.”

54. In the above order, the Commission observed that the ‘Guidelines’ dated 15.10.2015 as relied upon by the Petitioner therein was not a notification but merely a general Guidelines issued by MoP for determination of compensation to be paid to the land owners and that the said letter of MoP cannot be considered as ‘Change in Law’ as claimed by the Petitioner therein. These Guidelines are recommendatory in nature and the States were requested to take suitable decision on the adoption of the said Guidelines considering that the acquisition of land is a State subject. The relevant extract of the MoP’s Guidelines dated 15.10.2015 reads as thus:

“4. All the State/UTs etc. are requested to take suitable decision regarding adoption of the guidelines considering that acquisition of land is a State subject.”

55. In other words, even after the issuance of the aforesaid Guidelines by MoP, the applicable land compensation for the tower base and transmission line corridor continued to be governed by the respective State Policies. It was only upon either the State adopting the aforesaid Guidelines, formulating its own Guidelines and issuance

of orders by any Government instrumentality by district authorities on the above basis, it would have resulted into a change in the land compensation Policy.

56. In the present case, the Petitioner has, apart from guidelines of MoP dated 15.10.2015, also relied upon the Policy issued by the Government of Maharashtra after the cut-off date which provides for rate of land compensation to the land owners for transmission tower base and for RoW corridor under the transmission line. According to the Petitioner, the Policy issued by the 'Indian Governmental Instrumentality' qualifies as 'Law' under the TSA and that this Policy has been implemented by the revenue authorities of Government of Maharashtra for raising demand for compensation on the Petitioner requiring the Petitioner to make payment as per the same. It would be apt to quote the translated version of above Policy issued by the Government of Maharashtra submitted by the Petitioner:

"Policy to be adopted for payment of compensation for the land laying/coming under the transmission lines and increase in the rate of compensation for the land covered by the towers to be erected/constructed for the installation of the High-Tension transmission lines of 66 kv or more"

State of Maharashtra
Industry, Power & Labour Department
Govt. Order No. :Dhoran-2016/Pra.Kra.520/Urja-4
Ministry, Mumbai – 400 032.
Date : 31 May, 2017

Reference: 1) Govt. Order No.: Sankirna 0210/Pra.Kra.29/Urja-4 Dt.01/1/2010
2) Central Govt. Letter No. 3/7/2015-Prareshan, Dt. 15/10/2015.
3) Govt. Letter, Industry, Power & Labour Deptt. Kra. Sankirna-2015/pra.kra.398/Urja-4 Dt. 25/08/2015.
4) Mahapareshan Co. letter no. mravipakam/sanka/13279 Dt. 16/12/2016

Preface:

Under section 164 of India Electricity Act 2003 as well as u/s 10(D) of Telegraph Act 1885 and also as per Maharashtra Govt. Order No.06/CR 312/4, dt. 24/08/2006, the High Power Transmission Company has the powers for lying of transmission lines and erection of towers for the same. Moreover, while exercising

this powers there are provisions also for payment of compensation to those to whom damages have been caused due to lying of transmission lines an erection of towers.

There are number of government and private transmission companies and license holders who are engaged in the business of lying of transmission lines of 66 kv or more which are entrusted with the job of looking after the transmission and repairs and Renovation etc. While during practical work of installation of transmission lines and renovation of existing lines there is a protest by the farmers and landowners for the compensation from whose lands these transmission lines are passing. At present in accordance with the state order dt. 1/11/2010 and decision therein the compensation for the land covered under the towers is given to the farmers and landowners. However, there is a consistent demand by the farmers and landowners to the state government for increase in the compensation as well as compensation for that land also which is coming under the installation line. Therefore this demand by the farmers and landowners was under consideration by the state government. In this respect after taking into consideration the guidelines issued by the state government as per Ref. no.2 above and also as per the direction given in the meeting of Hon. Chief Minister and the minister (Power) the High Transmission Company had submitted the proposal to the state government as per Ref. no.4 above then after at the meeting held with the Chief Minister on 16/5/2017 and as per the decision taken thereat, for taking a policy decision, a note was produced on 22/5/2017 in the cabinet meeting and as per the decision arrive there at the policy is decided as hereunder as per the decision of the state government while Ref. no. 1 above.

The Decision of the State Government:

Maharashtra State Transmission Company and all other license holders companies are hereby permitted to pay compensation for the land taken for installation of towers for transmission lines (without acquiring the said land).

- 1. The compensation of the area covered under the High Tension tower should be given in accordance with the State Ready Reckoner prevalent/ in force in the said area as implemented /decided by the state level committee from time to time which should be double the valuation of the Ready Reckoner.*
- 2. The compensation for the land area below the very heavy tension line (wire corridor) will be paid 15% of the Ready Reckoner fixed by the State government which is prevalent in the said area from time to time.*
- 3. The compensation for the damages to the crops, fruits and other trees if any shall be paid in accordance with the policy prevalent at that time.*
- 4. This compensation policy shall be applicable to the Maharashtra Rajya Vidhyut Transmission Company – MARYA, Power Grid Corporation of India Limited, other government and private transmission license holders who are erecting transmission line of 66 kv and of more capacity such as High Tension HVC /DC transmission lines also.*
- 5. This compensation policy shall be applicable to all the area of the Maharashtra state except Bruhan Mumbai Mahanagar Palika and its suburban area. So far as the compensation for the land of the city area upon which High Tension Transmission lines are to be laid is concerned the Central government vide its letter dt. 11/8/2016 has constituted a committee at the central level. After receipt of the necessary guidelines from the said committee the policy for Bruhan Mumbai Mahanagar Palika and its suburban area will be made applicable.*
- 6. In the city area where it is not possible to construct traditional towers thereat if technically possible, monopole tower, narrow base tower, Bahu path tower, special tower should be erected and high ampacity conductor and also new technology for cable utilization should be used.*

2. Date of implementation:

This new policy is applicable and implemented from the date of decision taken by the state.

3. Implementation Committee at district level:

3.1 The district collector shall constitute a committee in accordance with the government letter no. sankirna-2015/pr.a.kra.398/Urja-4, dt.25/08/2015 for deciding the compensation of the land which is covered under the high tension tower and the land below the transmission line

Sr. No.	Officer	Designation
1.	Dy. Division Officer (District Officer)	President
2.	Dy. Supdt. land Revenue	Member
3.	Town/Dist. Agriculture officer	Member
4	The Representative of the concerned transmission license holder company (high transmission, power grid, Maharashtra Eastern grid power trans. Co. E.)	Member

3.2 The said committee shall, within its division shall conduct the admeasurement of the land covered by the tower and also of the land coming below the transmission line and decide the valuation thereof and decide the amount of compensation.

3.3 If the compensation decided by the committee is not agreeable to the concerned land owner, he shall be entitled to lodge an appeal to the district collector. If the district collector is satisfied that the appeal is reasonable, he shall ask/order the committee for revaluation. In this matter all the powers shall vest in the collector.

4. Procedure for implementation of Policy.

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6. Procedure for payment of compensation:

6.1 Procedure for compensation of the land lying below the tower and the transmission lines:

The compensation for the land covered under the tower shall be paid in two instalments. The first instalment shall be paid after lying foundation (plinth) and second will be paid after the erection of tower. The land from which transmission line is laid, the third instalment compensation should be paid of the land below the wires only after physical and actual installation of such line.

6.2 The compensation only for the land below the transmission wires:

The land from which only the transmission wire has passed, the compensation for land below such wires will be paid only after physical and actual installation for this purpose the procedure is specified in the annexure herewith.

6.3 Compensation for Crops/Fruits & Trees :

Over and above the compensation, the damages caused to the crops/ fruits and trees and other trees whatever during the laying foundation (plinth) of the tower, construction and transmission line installation, shall be paid in two instalments.

7. *In case of transfer/ change of ownership of the land the new owner shall not be entitled to any compensation whatsoever.*

8. *State government, local self government, local authority, municipality, municipal corporation, MMRDA, State sponsored public projects, national highway authority, public park, amusement centre, mithagare, special economic zones, main/small ports, rivers& beaches, sports centre, granted and non-granted institutions, etc. are not entitled to be any compensation for the land covered by the tower and land under the transmission lines. Only under exceptional circumstances the concerned transmission company shall be able to take the decision. In the same way the compensation for the land under the central government or under the railway authority should be paid in accordance with the rules and procedures of the concerned ministry.*

9. *In case of enhancement in the capacity of the existing transmission lines or renovation thereof, the compensation should be paid only after the land below the tower and for additional land occupied below the transmission line.*

10. *For settlement and solution of any problems in implementation of this decision or if any clarification arises, a committee under the chairmanship of chief secretary (power) should be constituted for settlement of the same. The rep. of Transmission Company and Power Grid Co. of India should be included in the said committee. The chief engineer, state transmission (project) shall be the chief secretary and member of the committee.*

11. *This order of the state government is issued after consultation and concurrence of the town planning department, revenue, forest and finance department and in response to the concerned given by the finance department vide its ref. no.122/2017 dt.19/4/2017 and is hereby issued.*

This decision of the Maharashtra government's is available on the www.maharashtra.gov.in and its code is 201706011123568510. This order is generated though digital signature.

Under name and order of the Governor of Maharashtra.

.....”

57. In the present case, as on cut-off date, the prevalent Policy governing the land compensation for laying of transmission line in the State of Maharashtra was the GR of 2010 dated 1.11.2010 issued by Industry, Power & Labour Department, Govt. of Maharashtra. According to the said GR of 2010, compensation for tower base was categorized into four categories, namely, 25% of market value for dry irrigated lands, 50% of market value for wet irrigated lands, 60% of market value for irrigated and fruit bearing land and 65% of market value for non-agricultural land, but there was no provision for land compensation along the corridor of transmission line. However, as per new Policy dated 31.5.2017 issued by Industry, Power & Labour Department,

Government of Maharashtra, compensation for tower base is required to be paid as twice the total amount of ready reckoner rate/market rate irrespective of type of land and in addition, 15% of the total amount of ready reckoner rate/market rate for the transmission line corridor (except for the Brihan Mumbai Municipal corporation and its suburban area).

58. MPPMCL has submitted that the document of the Government of Maharashtra relied upon by the Petitioner is not a 'notification' and that it cannot qualify to be a 'Law' under the TSA and also that it is merely a general Guidelines. Perusal of Policy dated 31.5.2017 issued by the Government of Maharashtra vide Government Order No. Dhoran-2016/Pra.Kra.520/Urja-4 reveals that it is a direction of the State Government which is binding on the State authorities for determination of compensation for RoW of transmission lines. 'Indian Government Instrumentality', as defined in the TSA is as under:

“Indian Governmental Instrumentality’ shall mean Government of India, Government of any State in India or any ministry, department, board, authority, agency, corporation, commission under direct or indirect control of the Government of India or any State Government or both, any political sub-division of any of them including any court or Appropriate Commission or tribunal or judicial or quasi-judicial body in India but excluding TSP and Long Term Transmission Customers;”

59. Further, 'Law' has been defined in the TSA as under:

“Law’ or ‘Laws’ in relation to this Agreement, shall mean all laws including electricity laws in force in India and any statute, ordinance, rule, regulation, notification, order or code, or any interpretation of any of them by an Indian Governmental Instrumentality having force of law and shall include all rules, regulations, decisions and orders of the Appropriate Commission;”

60. Thus, 'Law' under TSA includes any statute, ordinance, rule, regulation, notification, order or code or any interpretation of any of them by an Indian Governmental Instrumentality having force of law. Therefore, the Policy dated 31.5.2017 issued by Industry, Power & Labour Department, Government of

Maharashtra vide an order bearing No.:Dhoran-2016/Pra.Kra.520/Urja-4 dated 31.5.2017 would qualify as 'Law' under the TSA and its introduction/implementation being after the cut-off date in the present case, qualify it as a Change in Law event in terms of Article 12.1.1 of the TSA.

61. In contrast with MoP's Guidelines, Policy of the Government of Maharashtra is not merely recommendatory, leaving any scope/discretion with the transmission licensee to act otherwise in the matters regarding compensation. The compensation rates as provided in the Policy are not recommendatory or advisory in nature but are to be applied by the State authority mandatorily as per the direction of the State Government. In other words, the Policy issued by the State Government prescribing the rates of land compensation for laying of transmission lines have clearly force of law.

62. One can argue that even prior to issuance of the Policy by the Government of Maharashtra, the district administration was awarding the land compensation for tower base and line corridor to the land owners and that the Petitioner could or ought to have factored into such scenario while submitting its bid. However, it cannot be disputed that the Change in Law in this case has only taken place upon the issuance of the aforesaid Policy by Government of Maharashtra. Consequently, the Petitioner shall be entitled to get relief to the extent of incremental amount paid as compensation.

63. In light of the above, we are of the view that Policy issued by the Government of Maharashtra regarding land compensation constitutes Change in Law in terms of the TSA and accordingly, the Petitioner is entitled to increase in transmission

charges on account of additional expenditure incurred towards payment of land compensation in terms of the above Policy.

(d) Increase in the over-head cost on account of Change in Law events.

64. The Petitioner has submitted that in terms of Article 12.2.1 of the TSA, the impact of Change in Law during the construction period of the Project is to be given as an increase in the cost of the Project and the expression cost of Project or Project cost during the construction period also refers to and encompasses within its scope, all costs in regard to the establishment of Project incurred by entity, which not only includes the hard cost of capital assets (plant, machinery and equipment, etc.) but also the interest cost, finance charges during construction and other soft costs related to establishment of the Project. Relying upon the 2014 Tariff Regulations, it has been submitted by the Petitioner that even as per the said Regulations, IDC, which essentially comprises of interest payable on debt part is allowed to be capitalized and the total expenditure incurred in the Project including on account of time overrun is capitalized with IDC as an additional cost to the extent of 70% of the increased Project cost and the balance 30% of the increased Project cost is serviced as equity providing for a return of 15.5% post-tax. Similarly, for competitively bid transmission Projects, increase in Project cost on account of Change in Law events needs to be fully serviced, namely, the cost overrun in regard to increase in Project cost on account of Change in Law and the funding cost during the construction period. For that purpose, the quantum of Project cost related to increase in the Project cost is to be apportioned as debt-equity in the ratio of 70:30 and increased equity deployed related to such increase in Project cost is to be serviced at a higher return consistent with the rate of return applicable to the equity.

65. The Petitioner has further submitted that the entire increase in the Project cost on account of the capital expenditure incurred by the Petitioner by reason of Change in Law as well as the funding and financing cost of such capital expenditure, in full, during the construction period needs to be serviced by increase in transmission charges payable over and above the quoted transmission tariff during the entire period of TSA in order to enable the Petitioner to be compensated fully for the effect of Change in Law event. Therefore, the compensation/relief to the Petitioner should not be restricted only to the capital expenditure incurred but should also include the funding and financing costs as well as overheads. Accordingly, the Petitioner has claimed additionally Rs.0.25 crore as funding cost and Rs.3.86 crore as overhead costs for the aforesaid Change in Law events.

66. MPPMCL has opposed the Petitioner's claims towards 'overheads' and 'funding cost' on the ground that they were not envisaged in the bid documents or in the TSA. MPPMCL has further submitted that reliance placed by the Petitioner on Tariff Regulations, 2014 for these claims is misplaced as the said Regulations are not at all applicable in the present case of adoption of tariff by bidding mode. MSEDCL has submitted that the Petitioner has not furnished a copy of Consultancy Agreement with PGCIL on the basis of which overhead cost @5% is considered and also it is not clear as to how the overheads cost has been incurred by the Petitioner towards payment of such differential tax.

67. *Per contra*, the Petitioner has submitted that in case of increase in Project cost, there is an associated funding cost and overheads cost which is also part of the Project cost. In the instant case, increase in Project cost is identified pertaining to Change in Law events and the associated funding cost and overheads cost are claimed as part of the increased Project cost due to Change in Law. The funding cost

and overhead cost would not have burdened the Petitioner, had the increase in Project cost not occurred on account of Change in Law. TSA recognizes relief for increase in cost of Project on account of Change in Law and such funding and overheads costs are due to Change in Law events and, therefore, ought to be allowed. The Petitioner has further submitted that overheads costs included the consultancy charges along with the applicable taxes paid by the Petitioner to PGCIL as per the Consultancy Agreement. Since the overheads cost is calculated @5% of the Project cost + applicable taxes, any increase in Project cost due to Change in Law event leads to increase in overhead costs as well.

68. We have considered the submissions made by the parties. In terms of Article 12.2 of the TSA, relief for Change in Law during the construction period entails a stipulated increase/decrease in the non-escalable transmission charges for the corresponding increase/decrease in the cost of Project upto SCOD. Any compensation to the Petitioner for a Change in Law event has to be according to provisions of Article 12 of the TSA. Since the Petitioner, while entering into the contract i.e. TSA, was fully aware of the formula provided in Article 12.2 of the TSA for compensation on account of a Change in Law event, it is not entitled to claim any additional cost on account of Change in Law events over and above the compensation as per formula provided in Article 12.2 of the TSA. Further, it is not the contention of the Petitioner that the provision of Article 12 of the TSA is insufficient to compensate for the impact of Change in Law. Moreover, the overhead cost claimed by the Petitioner as consultancy charges to PGCIL is not directly linked to any Change in Law event and in our view, it is governed by the contract executed between the Petitioner and PGCIL. Therefore, any such consultancy charges cannot be allowed to be passed on to the consumers under the Change in Law provisions of the TSA.

69. We also take note of the submissions of the Petitioner that the matter of extension of SCOD owing to various Force Majeure events was taken up with LTTCs in accordance with Article 4.4.2 of the TSA and a joint coordination meeting was held between the Petitioner and the LTTCs on 28.9.2018 to discuss the extension of time for the Project. Based on the request of LTTCs, the Petitioner vide its letter dated 29.3.2019 had undertaken that no tariff burden shall be levied on any of the LTTCs pursuant to the extension of the SCOD owing to the Force Majeure events. Admittedly, the issue regarding time over run and time extension for the Project from SCOD to actual COD has been duly settled with LTTCs and the Petitioner has not sought relief on account of Force Majeure events that resulted into time overrun for the Project. Therefore, the Petitioner has already forgone its claims for the period from SCOD till the revised COD of the Project. We also take note of the fact that none of the Change in Law events deliberated in the present Petition has resulted in delay in Project implementation. Therefore, the Petitioner cannot claim any additional IDC on account of Change in Law from SCOD till actual COD over and above the compensation allowed in terms of Article 12 of the TSA. Moreover, the issue of extension of SCOD to COD has been settled between the Petitioner and LTTCs vide letter dated 29.3.2019.

Issue No. 3: What reliefs, if any, should be granted to the Petitioner in the light of the answers to the above issues?

70. Article 12.2 of the TSA provides for relief for Change in Law as under:

"12.2 Relief for Change in Law

12.2.1 During Construction Period: During the Construction Period, the impact of increase/decrease in the cost of the Project in the Transmission Charges shall be governed by the formula given below:

- For every cumulative increase/decrease of each Rupees Seven Crore Thirty Nine Lakh in the cost of the Project upto the Scheduled COD of the Project, the increase/decrease in Non-Escalable Transmission Charges shall be an amount

equal to zero point three one three percent (0.313%) of the Non-Escalable Transmission Charges.

12.2.3 For any claims made under Article 12.2.1 and 12.2.2 above, the TSP shall provide to the Long Term Transmission Customers and the Appropriate Commission documentary proof of such increase/decrease in cost of the Project/revenue for establishing the impact of such Change in Law.

12.2.4 The decision of the Appropriate Commission, with regards to the determination of the compensation mentioned above in Articles 12.2.1 and 12.2., and the date from which such compensation shall become effective, shall be final and binding on both the Parties subject to the rights of appeal provided under applicable Law.”

71. Accordingly, as per Article 12.2.1 of the TSA, for every cumulative increase/decrease of each rupees seven crore thirty nine lakh in the cost of the Project upto the Scheduled COD of the Project on account of Change in Law during the construction period, the Petitioner shall be entitled to be compensated with increase/decrease in non-escalable transmission charges by an amount equal to zero point three one three percent (0.313%) of the non-escalable transmission charges.

72. In light of the above, the Petitioner shall be compensated for the following on account of the Change in Law events:

- a) Increase in acquisition price by BPC;
- b) Additional expenditure on account of GST Laws; and
- c) Notification of Policy on land compensation dated 31.5.2017 by the Government of Maharashtra.

73. As regards compensation for Change in Law on account of Policy of the Government of Maharashtra dated 31.5.2017, the LTTCs shall be liable to pay the additional cost that the Petitioner became liable to pay on account of that Policy. For this purpose, the Petitioner shall submit to the LTTCs the difference in cost of compensation for laying the transmission line on account of the Policy of 2017 dated 31.5.2017 and that which would have been payable in terms of the GR of 2010 of

Government of Maharashtra dated 1.11.2010. The LTTCs shall verify the claims of the Petitioner within 30 days of submission of details by the Petitioner.

74. Impact of GST in terms of this order shall be payable after the proof of payment is made available by the Petitioner to LTTCs in terms of order dated 17.12.2018 in Petition No. 1/SM/2018.

75. LTTCs arrayed as Respondents in this petition shall make payment of claims of Change in Law approved in this Petition within a period of 90 days of raising the demand by the Petitioner, failing which they shall be liable to pay Late Payment Surcharge at the rates provided in the TSA.

76. The Petition No. 264/MP/2020 is disposed of in terms of the above.

Sd/-
(Arun Goyal)
Member

sd/-
(I.S.Jha)
Member

sd/-
(P.K. Pujari)
Chairperson