

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 334/MP/2020

Coram:

Shri P.K. Pujari, Chairperson

Shri I.S Jha, Member

Shri Arun Goyal, Member

Date of Order: 7th February, 2021

In the matter of:

Petition seeking extension of scheduled commercial operation date on account of force majeure events and consequential reliefs.

And

In the matter of

Warora Kurnool Transmission Limited
Essel Infraprojects Limited, 6th Floor,
Plot No. 19, Film City, Sector-16, Gautam Buddha Nagar
Noida, Uttar Pradesh-201301

.....Petitioner

Vs

1. Tamil Nadu Generation and Distribution Corporation Limited
NPKRR Malligai, 144, Anna Salai
Chennai-600 002
2. Southern Distribution Company of Andhra Pradesh Limited
D. No: 19-13-65/ A, Srinivasapuram
Corporate Office, Tiruchhanur Road
Tirupati- 517503, Andhra Pradesh
3. Eastern Distribution Company of Andhra Pradesh Limited
P&T Colony, Seethmmadhara
Vishakhapatnam- 530013
Andhra Pradesh
4. Southern Distribution Company of Telangana Limited
2nd Floor, H.No. 6-1-50, Mint Compound
Hyderabad - 500063 (Telangana)
5. Northern Distribution Company of Telangana Limited
H.No. 2-5-3 1/2, Corporate Office
Vidyut Bhavan, Hanamkonda
Warangal (Telangana) – 506001

6. Bangalore Electricity Supply Company Limited
Krishna Rajendra Circle, Bangalore-560001
7. Gulbarga Electricity Supply Company Limited
Station Road, Kalaburagi,
Karnataka-585102
8. Hubli Electricity Supply Company Limited
Corporate Office, P.B. Road
Navanagar, Hubli-580025
9. Mangalore Electricity Supply Company Limited
Paradigm Plaza, A.B. Shetty Circle
Pandeshwar, Mangalore- 575001
10. Chamundeshwari Electricity Supply Company Limited
No.29, CESC Corporate Office
Hinkal, Vijaynagar 2nd Stage
Mysuru-570017, Karnataka
11. Kerala Electricity Supply Company Limited
Vydyuthi Bhawanam, Pettom
Tiruvananthapuram, Kerala – 695004
12. Electricity Department, Govt. of Puducherry
137, NSC Bose Salai, Puducherry - 605001
13. Electricity Department, Government of Goa
Vidyut Bhawan, Panaji
Near Mandvi Hotel, Goa - 403 001
14. Central Transmission Utility
'Saudamini', Plot 2, Sector-29,
Gurugram-122001

...Respondents

Parties Present:

Shri Amit Kapur, Advocate, WKTL
Ms. Poonam Verma, Advocate, WKTL
Aparajita Upadhyay, Advocate, WKTL
Ms. Sakshi Kapoor, Advocate, WKTL
Shri B. Vinodh Kanna, Advocate, TANGEDCO
Shri Mehul Desai, WKTL
Shri S. N Sunkari, WKTL
Ms. KS Priyadarshini, WKTL
Shri Vinay Pathak, WKTL
Shri Sachin Borade, WKTL
Ms. R. Ramalakshmi, TANGEDCO
Dr. R. Alamelu, TANGEDCO

ORDER

The Petitioner, Warora Kurnool Transmission Limited (hereinafter referred to as 'the Petitioner' or 'WKTL'), has filed the present Petition seeking extension of Scheduled Commercial Operation Date (SCOD) of the transmission system being developed by it, on account of Force Majeure Events. The Petitioner has made the following prayers:

“(a) Allow the present Petition and declare that events mentioned in paragraphs 19 to 89 above, which have obstructed, delayed and adversely affected the completion of the Transmission System, for which Warora-Kurnool Transmission Limited is entitled to the extension of Scheduled Commercial Operation Date as claimed until the adverse impact of the Force Majeure Events has ceased to impede the work and the completion of the Transmission System Project which are still continuing, constitute Force Majeure in terms of the TSA;

(b) Grant extension of Scheduled Date of Completion in terms of Article 4.4.2 of the TSA for a period of 24 months (as on the date of filing of this Petition) or any other further time as this Commission deems fit;

(c) Pending disposal of the present Petition, restrain LTTC's to take any coercive action against WKTL in terms of the Transmission Service Agreement including encashment of Contract Performance Guarantees against the Petitioner;

(d) Hold and declare that Warora-Kurnool Transmission Limited is exempt from any financial liabilities due to delay in achieving SCOD due to Force Majeure Events, including invocation of any Contract Performance Guarantees submitted to the LTTCs under the TSA; and

(e) Grant liberty to WKTL to file a separate petition under Order II Rule 2 CPC to seek compensation on account of time and cost overrun, prolongation costs, opportunity costs, etc. incurred by Warora-Kurnool Transmission Limited in mitigation.”

2. WKTL is a fully owned subsidiary of Essel Infraprojects Limited (in short, 'Essel Infra') which was selected as a successful bidder through the international tariff based competitive bidding process under Section 63 of the Electricity Act, 2003 (hereinafter referred to as 'the Act') to establish the transmission system of the "Additional inter-Regional AC link for import into Southern Region i.e. Warora-Warangal and Chilakaluripeta-Hyderabad-Kurnool 765 kV Link" (hereinafter referred to as "the Transmission System" or "the Project") on Build, Own, Operate and

Maintain (BOOM) basis and to provide transmission service to the Long Term Transmission Customers (LTTCs) of the Project.

3. WKTL was incorporated as a special purpose vehicle by PFC Consulting Limited (PFCCL) as part of Tariff Based Competitive Bidding process for implementing the Project on BOOM basis. Essel Infra participated in the competitive bidding process conducted by PFCCL and upon emerging as the successful bidder, Letter of Intent (LOI) was issued by PFCCL to Essel Infra on 29.2.2016. In accordance with the bidding documents, Essel Infra acquired 100% of the shareholding in WKTL by executing a Share Purchase Agreement with PFCCL on 6.7.2016. WKTL entered into the Transmission Service Agreement (TSA) with LTTCs on 6.1.2016. The Commission in its order dated 29.9.2016 in Petition No. 111/TL/2016 granted transmission licence to WKTL for inter-State transmission of electricity.

4. As per the TSA, the transmission system comprised of seven elements and SCOD for elements 1 to 6 (i.e. 6.11.2019) of the transmission system was 40 months from the effective date whereas, element 7 was to be commissioned matching with Warora Pool-Ranganandgaon 765 kV D/C line by November 2018. However, due to the following force majeure events, the Petitioner could not declare commercial operation of the Project and has accordingly sought extension of the SCOD:

Force Event	Majeure	Transmission Line Affected	Date of start of the Event	Anticipated end date of the Event	Days of delay
RoW Resistance from Bhadrawati MLA		Warora-Warangal	12.2.2018	19.4.2018	66
Farmer Agitation		All lines	5.10.2018	19.11.2018	45
Court proceedings		Warora-Warangal (WP2269)	14.3.2019	31.3.2020	383
		Warora-Warangal (WP6980)	11.10.2018	31.3.2020	537

	Warangal-C'Peta (WP42836)	26.11.2018	31.3.2020	491
	Warangal-Hyderabad (OS121)	23.7.2018	31.3-2020	617
	Warangal-Hyderabad (WP11733)	6.4.2018	31.3.2020	725
Route overlapping with PGCIL	All lines except for Warangal- C'Peta Line	10.7.2017	20.4.2018	284
Unprecedented Heavy rainfall	All lines	23.9-2016	29.9.2016	6
Unprecedented Heavy rainfall	All lines	1.10.2017	23.10.2017	22
Objections raised by TSIC	Warangal-Hyderabad	10.4.2018	4.6.2018	55
	Hyderabad- Kurnool	18.7.2018	31.3.2020	622
Directions by WCL & SCCL to stop construction	Warora-Warangal	28.9.2018	31.3.2020	550
Wildlife Approval	Warora-Warangal	26.2.2018	31.3.2020	764
NHAI crossing	Warora-Warangal	25.7.2018	7.3.2019	225
Demonetization	All lines	9.11.2016	1.1.2017	53

Submissions of the Petitioner

5. The Petitioner has submitted that various force majeure events have impacted execution of the Project and led to delay.

(a) Overlapping of route alignment of Power Grid Corporation of India Limited's route alignment with transmission lines of WKTL impacted timely completion of the project

6. PGCIL vide its email dated 10.7.2017 informed the Petitioner about the overlapping of approximately 100 km of PGCIL 800 kV HVDC Raigarh-Pugalur transmission line with the transmission lines of the Petitioner and requested the Petitioner to attend the meeting to check the overlapping of transmission lines and finalise the route. Accordingly, on 21.7.2017, a meeting was held between officials of PGCIL and the Petitioner to review the routes of PGCIL's HVDC transmission line and the Petitioner's transmission lines. Subsequently, the Petitioner vide its letter dated 24.7.2017 informed that any change in the route at this stage will impact the completion time of the Project as per schedule. The Petitioner further informed that during the route alignment of its transmission lines, no marking of angle points by

PGCIL for its 800 kV HVDC Rajgarh-Pugalur transmission line was found in the route and accordingly, the route alignment of transmission lines by WKTL was finalized. Based on the route alignment finalized, approval was granted by CEA.

7. In the meeting held on 3.8.2017 between officers of PGCIL and WKTL, it was decided to carry out a joint survey on the route alignment of transmission lines. The Petitioner vide its letter dated 4.8.2017, informed the Respondents regarding overlapping of PGCIL transmission line with its transmission line impacting the completion of project as per schedule and the decision taken in the said meeting dated 3.8.2017.

8. The Petitioner vide its letter dated 16.8.2017 informed CEA that the site work has been stopped in the overlapping sections of the transmission lines and discussions are going on with PGCIL to avoid overlapping of transmission lines.

9. The Petitioner vide its letters dated 5.9.2017 and 16.10.2017 informed the Respondents that after making required changes in the route alignment of its transmission lines, the overlapping issue for 3 stretches is required to be resolved with PGCIL. The Petitioner further informed that said issue has impacted the completion of Project as per schedule. As per the previous discussion held on 26.9.2017, WKTL submitted HVDC line crossing methodology to PGCIL on 5.10.2017 and consequently on 20.4.2018, PGCIL issued provisional clearance of the route alignment crossing.

(b) Unprecedented heavy rainfall in the States of Telangana and Andhra Pradesh causing the transmission system work to come at standstill

10. The Petitioner has submitted that due to unprecedented heavy rainfall in the States of Telangana and Andhra Pradesh, execution of the transmission system

including mobilization of material, manpower and machinery was severely affected and the work was completely at standstill from 1.10.2017 to 23.10.2017. The Petitioner vide its letters dated 5.10.2017, 16.10.2017 and 25.10.2017 further informed the Respondents about the aforesaid event of natural force majeure and the complete standstill of the execution work from 1.10.2017 to 23.10.2017.

(c) Delay due to severe Right of Way (RoW) problems faced by WKTL causing the transmission system work to come at standstill

11. The Petitioner has submitted that the execution of the transmission system was delayed due to the following RoW issues :

a) *Stiff resistance from the MLA of Bhadrawati constituency along with his supporters:* On 12.2.2018, tower erection work at Location No. 88/9 of 765 kV D/C Warora-Warangal transmission line was stopped by the MLA of Bhadrawati constituency along with his supporters. A joint meeting was convened by the District Magistrate, Chandrapur on 19.4.2018 with landowners, MLA, SDM, Tahsildar and Land Record Officer of Rajura for resolution of RoW issue. Post issuance of instructions by the District Magistrate, work was resumed w.e.f. 20.4.2018.

b) *Farmers agitation in Maharashtra seeking higher compensation to the landowners:* The execution work in Maharashtra was stopped completely from 5.10.2018 due to farmer agitation demanding higher compensation for the construction of transmission lines at their fields. The protestors warned to lock up the Sub-Divisional Officer on 20.11.2018, if demand of landowners would not be fulfilled by 19.11.2018. The execution work was hampered from 5.10.2018 to 19.11.2018.

c) Various court proceedings initiated by landowners and stay/ interim injunction orders granted thereon led to delays. Brief is as under:

(i) The landowner of location No. 2/6 of 765 kV D/C Warangal-Hyderabad transmission line has filed Writ Petition No.11733/2018 before Hon'ble High Court of Hyderabad seeking *inter-alia* direction against the Petitioner and others not to proceed with laying of power supply lines on his land.

The Hon'ble High Court vide order dated 10.4.2018 granted stay on the work on the said stretch. Subsequently, during the hearing on 3.6.2019, the Hon'ble High Court adjourned the matter and the next date is yet to be scheduled. In such a situation, the work is at standstill at the said location since 10.4.2018.

(ii) Landowner of the stretch of land between location No. 30 to 31 of 765 kV D/C Warangal-Hyderabad transmission line has filed Original Suit No.121/2018 before the District Judge Court at Bhongir, Telangana seeking permanent injunction against the transmission system work being carried out on the said stretch. The work at the said stretch is at standstill since 20.3.2018 i.e. from the date of filing of the said Suit. The matter is yet to be decided.

(iii) Hon'ble High Court of Bombay, Nagpur Bench vide order dated 17.10.2018 in Writ Petition No. 6980/2018 granted ad-interim injunction on the Government Resolution granting compensation to the land owners of the stretch of land between location No. 89/8 in Warora-Warangal transmission line. Thereafter, the Office of Tehsildar, Rajura, District-Chandrapur vide its letter dated 22.10.2018 directed the Petitioner to stop the transmission tower execution work immediately in terms of injunction order dated 17.10.2018. In response, the Petitioner vide its letter dated 22.1.2019 sought withdrawal of its letter dated 17.10.2018 so that work can be resumed and project work is continued in larger public interest.

(iv) Farmers in the section of AP 89-A 98 of 765 kV D/C Warora-Warangal transmission line (Maharashtra section) have filed Writ Petition No. 2269/2019 before the Hon'ble Bombay High Court, Nagpur Bench against the compensation amount finalized by the District Magistrate, Chandrapur. Though, the Hon'ble High Court has not passed any interim order in the said Writ Petition, the transmission system work being carried out on the said stretch is at a standstill.

(v) M/s. Emami Cement Ltd. has filed Writ Petition No. 42836 of 2018 before the Hon'ble High Court of Hyderabad seeking direction to remove the Petitioner's transmission towers from 765 kV D/C Warangal-Chilakaluripeta transmission line with direction to re-route the WKTL's transmission line. At 4 tower locations of the proposed area of Ms. Emami Cement, 4 foundations and 3 erections have already been completed by the Petitioner. However, due to pendency of the said Writ Petition, the Petitioner is unable to continue the work on the said location.

(d) Delay due to the directions issued by Western Coalfields Ltd. and Singareni Collieries Company Ltd. to stop construction of tower of Warora- Warangal line passing through WCL Penganga Open Cast Mine Area and Prof. Jayashankar Open Cast project completely jeopardizing the Transmission System project

12. On 28.9.2018, Western Coalfields Limited (WCL) directed the Petitioner to stop the ongoing tower construction work since the Warora-Warangal 765 kV D/C transmission line is traversing through coal bearing area, namely, Penganga Open Cast (OC) extension where the future coal mining projects are being planned and requested the Petitioner for diversion of route of the said transmission line. The Petitioner vide its letter dated 9.10.2018, informed WCL that pursuant to Gazette notification dated 10.7.2017, proper notice for laying down of transmission line was issued to the landowners and it was intimated to the administration. As per instructions of administration, TLR survey was carried out at the said location by Land and Revenue Department and the ownership of the land was confirmed. The Petitioner further informed that since all other statutory approvals such as PTCC, aviation, railways, power line crossings and forest proposals have been submitted, any deviation at this stage will have adverse effect towards completion of the Project.

13. On 12.10.2018, Singareni Collieries Company Ltd. (SCCL) requested the Petitioner to stop the erection of transmission towers in 765 kV D/C Warora-Warangal transmission line across the proposed Open Cast coal bearing area i.e. Prof. Jayashankar Open Cast Project area as proposed line (765 kV HT) is passing across the upcoming Prof. Jayashankar Open Cast Project which will hamper the grounding of the same. In response, the Petitioner vide its letter dated 25.10.2018 stated that since all statutory requirements were observed while laying down the transmission line, deviation of the route would not be feasible and will jeopardize the Project of national importance.

14. The Petitioner vide its letters dated 6.11.2018, sought support from CEA to avoid shifting of transmission line`s towers and to intervene in the matters with

reference to WCL's and SCCL's letters dated 28.9.2018 and 12.10.2018 respectively directing the Petitioner to stop ongoing construction work and for diverting transmission towers from WCL Penganga OC mine area and Prof. Jayashankar Open Cast Project respectively. The Petitioner informed CEA that prior to initiating execution work, the Petitioner published notification in local newspapers and Gazette of India dated 22.11.2016 seeking objections from local public. However, no objections were received in this regard. A proper notice was issued to landowners along with intimation to district administration before starting execution work in the area. Land and Revenue Department carried out TLR Survey in which it was never revealed that same land has already been acquired for mining purposes. Accordingly, compensation was settled with landowners. The Petitioner further informed that any further diversion will create serious issue as part of statutory approvals pertaining to this line are at advance stage. The Petitioner further informed that the work status of WKTL transmission towers inside the Prof. Jayashankar Open Cast Project and foundations for all four towers have been completed and tower material has already been unloaded at site for tower erection.

15. On 29.11.2018, a meeting was convened by Chief Engineer (PSMPM), CEA to discuss the RoW issue in which representatives of Ministry of Coal (MoC), WCL, SCCL and WKTL participated. In the said meeting, representatives of MoC, WCL and SCCL emphasized for shifting of transmission line to avoid coal bearing area. However, the Petitioner was not in favour of shifting of the transmission line at this advance stage as the Project being a fixed tariff and time-bound one, diversion of route of transmission line would have cost implication which was not envisaged at tendering stage. The Petitioner informed that the Project would be derailed and cannot be completed as per schedule in case of such re-routing. However, the issue

could not be resolved in the meeting and it was decided that the matter would be taken up for further discussion for resolution.

16. On 4.1.2019, the matter was discussed in the meeting held under the chairmanship of Joint Secretary (Transmission), Ministry of Power to review the status of critical transmission line. In the said meeting, the representative of the Petitioner informed that transmission line route survey was carried out by the Revenue Department and compensation was paid to the landowners as per the land owners' details of the Revenue Department. The Petitioner was directed to complete the transmission line as per the planned route and the diversion of line, if required, shall be taken up at later stage when mining activities will start since it may involve huge financial implications.

17. The Petitioner vide letter dated 22.2.2019 informed CEA that in line with the decision taken during the meeting held in Ministry of Power on 4.1.2019, it is going ahead with construction activities along the identified route (as approved under Section 164 of the Act) for timely completion of Project. On 11.4.2019, a meeting was held by the Joint Secretary, Ministry of Coal along with the representatives of WKTL, WCL and SCCL wherein WCL and SCCL were directed to come up with their notifications issued under Section 4 of Coal Bearing Areas (Acquisition and Development) Act, 1957 prior to commencement of their mining operations latest by 16.4.2019. However, WKTL was orally directed to stop the project execution in that area till issuance of further orders from Ministry of Coal and till the first rights are established.

18. The Petitioner vide its letter dated 10.5.2019, informed Joint Secretary, Ministry of Coal to update the status and requested to conclude the issue of

diversion so that the Petitioner can proceed with construction activities as the execution work had been stalled for two months. Subsequently, in the meeting dated 31.5.2019, convened by Chief Engineer, CEA, the Petitioner informed that 765 kV D/C Warora-Warangal transmission line is the pre-requisite transmission element for commissioning of most of the elements of this project but is adversely affected under the objections raised by WCL and SCCL since November 2018. The work progress of 765 kV D/C Warora-Warangal transmission line is completely held up. Under current scenario, it will take minimum 13 months after resolution of the issue which is pending with Ministry of Coal.

19. Further, a meeting was again held by Joint Secretary (Transmission), Ministry of Power on 3.6.2019 to discuss the issues regarding execution of the transmission system. After detailed deliberations, Ministry of Power constituted a committee led by Chief Engineer, CEA with representatives from MoC, WCL, SCCL, WKTL and others to examine the issue along with relevant notifications/ guidelines and to suggest possible solutions for resolution of the matter within 15 days of its constitution.

20. Subsequently, Ministry of Power, Government of India vide Order No. 7/1/2017-Trans. dated 26.6.2019, constituted committee to examine the issue regarding execution of 765 KV D/C Warora-Warangal transmission line being implemented by WKTL. First meeting of the committee under the Chairmanship of Chief Engineer, CEA was held on 19.7.2019. In the said meeting, it was agreed that CMPDI, WCL and WKTL will carry out a joint survey in and around coal bearing areas of WCL in presence of representatives of CEA and lead LTTC within a week from the date of meeting. Accordingly, on 26.7.2019, a joint site visit was carried out with representatives of CEA, WCL and CMPDI at the proposed site of Penganga

deep block to explore the option for diversion of the constructed route of 765 kV transmission line.

21. Subsequently, a meeting with Director (SCCL) was also held along with representative of the Petitioner on 29.7.2019 to discuss route alignment of transmission line through coal bearing area of SCCL. In the said meeting, it was agreed that since both the Projects are of national importance, amicable resolution of the long pending issue is necessary. Further on 19.8.2019, a meeting was convened by Additional Secretary, Ministry of Power with the stakeholders viz. MoC, CEA, LTTC and the Petitioner. In the said meeting, *inter alia*, WCL was asked to confirm the requirement of diversion considering the commercial viability of coal extraction project.

22. In view of the aforesaid meeting, Committee constituted by MoP to examine the issue regarding execution of transmission line submitted its recommendations. Further, on 15.11.2019 a meeting was convened by the Additional Secretary (Transmission), Ministry of Power with participation from representatives of Ministry of Coal, CMPDI, LTTCs, CEA and WKTL. During the meeting:

- a. MoC requested for diversion of route.
- b. LTTCs informed that due to large scale integration of generation from Renewable Energy Sources (RES) in the State of SR by 2021-2022, the WR-SR link's importance has increased manifold and the system should be available by 2021-2022 to evacuate the power.
- c. Specific questionnaire to be clarified by the Committee constituted by MoP under Chairmanship of Chief Engineer, CEA was prepared. It was decided that on receipt of the same, suitable decision would be taken subsequently.

(e) Demonetization causing considerable reduction in number of labours at the site and affecting execution of work at site

23. Government of India (Ministry of Finance, Department of Economic Affairs) issued a notification dated 8.11.2016 whereby *inter-alia* the legal tender character of the high denomination bank notes of Rs.500 and Rs.1000 denominations issued by Reserve Bank of India had been cancelled from 8.11.2016. Accordingly, on 14.11.2016, the Petitioner issued notice to the Respondent Nos. 1 to 13 under force majeure events in terms of Article 11.3 of TSA due to cancellation of legal tender character of high denomination bank notes. On 24.11.2016, 1.12.2016, 12.12.2016, 22.12.2016 and 2.1.2017, the Petitioner sent up-dation of the force majeure event to the Respondents regarding impact on project execution due to reduction in presence of labour at site since cancellation of legal tender character of high denomination bank notes. It was stated that for the site construction work, labour are paid on daily basis and due to restricted daily cash withdrawal limit, on number of occasion, the contractors were forced to restrict/ delay the daily wage payment of the labour, which caused the reduction of presence of labour on site.

(f) Delay due to the objections raised by the Telangana State Industrial Infrastructure Corporation (TSIIC) to the construction of Warangal-Hyderabad transmission line and Hyderabad-Kurnool transmission line on the ground that TSIIC was in the process of acquiring the land over which the said lines were being constructed, for development of industries.

24. While executing the work in 765 kV D/C Warangal-Hyderabad transmission line and 765 kV Hyderabad-Kurnool transmission line, the work was stopped by TSIIC officials on the ground that they are in process of acquiring the land for development of construction of industries. However, no such objections were raised by TSIIC during the notice period. Due to the said stoppage, the work of transmission system was hampered from 10.4.2018 till 4.6.2018. In this regard, a meeting was held on 24.5.2018 between officials of TSIIC, PGCIL, KEC International (work executing agency for tower lines) and the Petitioner. During the meeting, TSIIC

requested PGCIL and KEC Ltd. to stall the ongoing project work until further clarification for alternative route, etc. as the excavation work for erection of towers were in progress at site. PGCIL informed that tower foundation work was halted at site as per request of TSIIC. Thereafter, the work of transmission system was stopped by TSIIC again near PGCIL's sub-station at Maheshwaram for Hyderabad-Kurnool and Warangal-Hyderabad transmission system since TSIIC was acquiring land near the said sub-station. After carrying out survey on the said land, the Petitioner vide its letter dated 18.7.2018 informed TSIIC that the 765 kV D/C Warangal-Hyderabad and Hyderabad-Kurnool transmission lines are required to terminate at PGCIL sub-station at Maheshwaram. The adjoining plot to the said PGCIL substation has been acquired by Hyderabad Pharma City Limited (subsidiary of TSIIC) and as such the transmission line is passing through the said adjoining plot. The Petitioner also submitted sketches of the afore-mentioned transmission line and informed that the Petitioner will be constructing the transmission line while maintaining all statutory clearances and sought TSIIC's approval for the said crossing.

25. Subsequently, the Petitioner vide its email dated 4.8.2018 informed TSIIC that the Petitioner is developing transmission network along with substation for importing power into Southern Region from Western Region. The Petitioner also informed that few locations are passing through the plots acquired by TSIIC and requested for a meeting. In view of aforesaid communications, a meeting was held on 4.9.2018 and Warangal-Hyderabad transmission line was principally cleared by TSIIC subject to certain inputs from the Petitioner. Accordingly, the Petitioner, vide its email dated 12.9.2018, submitted technical particulars and informed that the Petitioner intends to commence the work in Warangal-Hyderabad location by the end of September 2018.

Further, with respect to Hyderabad-Kurnool transmission line, WKTL informed that it will revert within a few days after carrying out site activity as suggested by TSIIC. Further, the Petitioner vide its email dated 25.9.2018 provided certain inputs regarding clearance of buildings. The Petitioner vide its email dated 12.10.2018 informed TSIIC that it has already provided all the inputs required by TSIIC and requested for TSIIC's concurrence. Thereafter, a meeting with officials of TSIIC took place on 6.9.2019 and the conclusion is still awaited.

(g) Delay due to delay in grant of wildlife approval from the Principal Chief Conservator of Forest (PCCF)

26. The Petitioner has submitted that while processing the case of forest clearance in Telangana State pertaining to 765 kV Warora-Warangal transmission line, PCCF vide its letter dated 27.1.2018 informed the Petitioner that the length of alignment passing through notified forests was 2542 m with RoW of 67 m and the extent of forest area involved was estimated to be 17.0314 hectares. PCCF further requested WKTL to submit the wild life proposal since the transmission line was passing through the "proposed tiger corridor of Kawal". However, even at the time of issuance of said request letter, the said corridor was only a "proposed corridor" and the same was neither envisaged in the plan during bidding nor was mentioned in the RfQ.

27. The total affected forest area in Maharashtra and Telangana is 19.793 hectares (2.954 km) and 47.592 hectares (7.103 km) respectively. On 4.8.2017 and 23.8.2017, the Petitioner submitted forest proposals for Maharashtra and Telangana respectively. The wildlife proposal complete in all respects was submitted by the Petitioner on 26.2.2018. The Petitioner vide its letter dated 11.10.2018 informed the Respondents regarding force majeure event under Article 11 of the TSA due to

applicability of Model Code of Conduct on forest diversion proposal by the Election Commission. The forest diversion proposal of transmission line was recommended by REC on 27.9.2018 for grant of Stage-I (in-principle) approval. Regional Office (SEZ) of Ministry of Environment, Forests and Climate Change, Government of India (MoEF&CC) vide email dated 8.10.2018 intimated regarding applicability of Model Code of Conduct on forest diversion proposals and directed to obtain necessary prior approval of the Election Commission for issuing Stage-I (in-principle) approval due to premature dissolution of Telangana State Legislative Assembly. Such additional requirement of seeking prior approval of the Election Commission for Stage-I approval affected the Project progress.

28. The Ministry of Environment, Forests & Climate Change vide its letter dated 28.11.2018 and 13.12.2018 granted Stage-I approval under Section 2 of the Forest (Conservation) Act, 1980 for diversion of 18.86 hectares and 45.1009 hectares of forest land in the States of Andhra Pradesh and Telangana for laying of 765 kV D/C Warangal-Chilakauripeta and Warora Pool-Warangal transmission lines respectively in favour of WKTL.

29. The Stage-I approval of the Maharashtra section was received on 5.2.2019. The State Board of Wild-Life (SBWL) forwarded the forest proposal to Member Secretary, National Board of Wild Life (NBWL) on 20.11.2018. The proposal was further forwarded to National Tiger Conservation Authority of India (NTCA) for recommendation. Ministry of Environment, Forests & Climate Change requested the State Governments to submit the minutes of meeting of the SBWL, which is awaited for further processing and consideration in the next National Board of Wildlife.

(h) Delays due to crossing of proposed wayside amenity and Helipad on the Project line raised by National Highway Authority of India (NHAI)

30. NHAI vide its letter dated 25.7.2019, informed the Petitioner that NHAI has awarded the work of four-laning of NH-363 from Repallewada to Telangana/Maharashtra Border in the State of Telangana under Agreement dated 14.5.2018. A proposal to construct wayside amenity and helipad has been made on the project highway which is crossing the erection of 765 kV transmission line. Accordingly, the Petitioner vide its letter dated 26.7.2018 informed NHAI that the Project route has been approved by CEA based on which Gazette Notification was published by the Petitioner on 27.6.2017 prior to NHAI's gazette notifications dated 24.8.2017 and 4.1.2018. The Petitioner further informed that it has already completed more than 70% foundation work in Telangana State and the work of erection is going on full swing and, therefore, it is not possible to relocate the route at that juncture.

31. Thereafter, the Petitioner vide its letter dated 16.8.2018 informed CEA regarding NHAI's request for relocation of towers of 765 kV D/C Warora-Warangal transmission line due to four-laning of NH-363 in the State of Telangana. It was informed that in absence of information regarding widening of NH-363, the foundations at the locations are done without considering the four-laning of the highway. It was further informed by the Petitioner that diversion of approximately 5-10 km would be required for which additional time and cost implications would be incurred. After regular follow-up and providing the required inputs by WKTL, NHAI issued No Objection Certificate on 7.3.2019 for carrying out project work.

32. The Petition was admitted on 14.1.2020 and the parties were directed to complete the pleadings. Reply to the Petition has been filed by the Respondent,

Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO). The Petitioner has not filed rejoinder thereof.

Reply of TANGEDCO

33. TANGEDCO in its reply affidavit dated 21.8.2020 has submitted as under:

(a) The present Petition is not maintainable as the Petitioner has violated the undertaking given during the bidding process as per Request for Proposal, frustrated the provisions of the TSA and has also violated the provisions of the relevant Regulations.

(b) The Petitioner has not complied with the provisions of the Regulation 10(2) of the Central Electricity Regulatory Commission (Procedure, Terms and conditions of grant of Transmission Licence and other related matters) Regulations, 2009, which obliges a transmission licensee to build the Project in a time bound, efficient, coordinated and economic manner.

(c) The Project consists of seven elements. The commissioning of the elements is inter-dependent but the execution of the elements of the Project is not inter-dependent. However, the Petitioner has not made any prudent effort to complete the various elements of Project within SCOD despite multiple notices sent to the Petitioner to commence the work. The Petitioner has wilfully delayed the execution of the Project.

(d) As per Article 2.14.2 of RfP, the prospective bidders were required to make independent enquiry and satisfy themselves with respect to all the required information, inputs, conditions and circumstances and factors which may have effect on bid. Bidders were also required to visit the route of transmission line associated with the Project and the surrounding areas and obtain/ verify all the relevant information including carrying out their own required surveys and field investigation. In case of failure to do the same, TSP cannot be relieved from its responsibility for appropriately eliminating the difficulty or costs of successfully completing the Project. The Petitioner has completely failed to honour the undertaking given while bidding for the Project.

(e) As per Article 11.5 of the TSA, the Petitioner is bound to give notice for any force majeure condition and to seek extension of time. Extension of time is allowable on 'day for day' basis as per Article 4.4 of the TSA upto a maximum of 180 days only. The Petitioner should notify the commencement and cessation of the force majeure. Since the Petitioner has not sought and obtained any consent from the LTTCs for extension, the Petitioner is not entitled for any relief under the provisions of TSA.

(f) Force majeure conditions notified by the Petitioner such as court cases, unprecedented rains and public agitation are not covered under the provision of Article 11 of the TSA. The Petitioner is liable to foresee such eventualities and act accordingly rather than passing the burden of such eventualities on beneficiaries. If the Petitioner is granted liberty to claim the cost impact on account of time over run and associated cost escalations which are mainly due to the inefficiency of the Petitioner and unwillingness to execute the Project, then the very purpose of competitive bidding will be defeated.

Analysis and Decision

34. We have considered the submissions of the Petitioner and TANGEDCO and perused the documents available on record. According to the Petitioner, its Project has been affected due to the following force majeure events:

- a) Overlapping of route alignment of Power Grid Corporation of India Limited's route alignment with transmission lines of the Petitioner impacted timely completion of the Project;
- b) Unprecedented heavy rainfall in the States of Telangana and Andhra Pradesh causing the transmission system work to come at standstill;
- c) Delay due to the following severe Right of Way (RoW) problems faced by WKTL causing the transmission system work to come at standstill:
 - i. Stiff resistance from the MLA of Bhadrawati constituency along with his supporters;
 - ii. Farmers agitation in Maharashtra seeking higher compensation to the landowners; and
 - iii. Various court proceedings initiated by landowners and stay/interim injunction orders granted therein.

d) Delay due to the directions issued by Western Coalfields Ltd. and Singareni Collieries Company Ltd. to the Petitioner to stop construction of tower of Warora-Warangal transmission line passing through WCL Penganga Open Cast Mine Area and Prof. Jayashankar Open Cast project;

e) Demonetization causing considerable reduction in number of labours at the site and affecting execution of work at site;

f) Delay due to the objections raised by the Telangana State Industrial Infrastructure Corporation to the construction of Warangal-Hyderabad transmission line and Hyderabad- Kurnool transmission line on the ground that TSIIC was in the process of acquiring the land over which the said lines were being constructed for development of industries;

g) Delay due to delay in grant of wildlife approval from the Principal Chief Conservator of Forest; and

h) Delays due to crossing of proposed wayside amenity and helipad on the Project line raised by National Highway Authority of India.

35. During the course of hearing on 25.8.2020, in response to a specific query of the Commission regarding likely COD of the transmission Project, learned counsel for the Petitioner informed the Commission that since many of the force majeure events such as pending court proceedings, objections raised by TSIIC and pendency of wildlife approval are still continuing, the Petitioner is not in position to confirm the likely COD of the Project. Learned counsel further submitted that lenders of the Petitioner are also in process of substituting Essel Infraproject Limited with their nominee, Adani Transmission Limited (successful bidder) due to continuous defaults in debt payment.

36. It is observed that events cited above are still continuing and the Petitioner has approached the Commission for declaration of these events as force majeure events and requested for extension of SCOD of the Project, in advance. The Petitioner itself stated that it is unable to quantify and to confirm the likely COD of the Project as some of above events are still continuing. Therefore, we are of the view

that since the project has not been completed by the Petitioner till date and is still under implementation with uncertainty about the likely COD, it would not be appropriate to take a view on the claimed force majeure issues and extension of SCOD at this stage. Accordingly, the Petitioner is granted liberty to approach the Commission to seek the appropriate relief for force majeure events, after completion of the Project.

37. The Petitioner has prayed for restraining the LTTCs from taking any coercive action against the Petitioner in terms of TSA including the encashment of Contract Performance Guarantee (CPG). Learned counsel for the Petitioner during the course of hearing pointed out that the lead LTTC, TANGEDCO vide its letters dated 18.12.2019 and 21.3.2020 has already indicated its intention to proceed with encashment of CPG. The Respondent, TANGEDCO, on the other hand, has opposed the said plea by submitting that no case has been made out by the Petitioner for grant of any relief including any interim protection. As in the above paragraph, we have directed the Petitioner to approach the Commission only after completion/ implementation of the Project, it is imperative that no precipitative actions be taken against the Petitioner as the subsistence of TSA in the interregnum is vital to the completion/ implementation of the Project. Meanwhile, the Petitioner shall make sincere endeavours to complete the Project.

38. This order disposes of Petition No. 334/MP/2020.

Sd/-
(Arun Goyal)
Member

sd/-
(I. S. Jha)
Member

sd/-
(P. K. Pujari)
Chairperson