

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 533/MP/2020

Coram:

Shri P.K. Pujari, Chairperson

Shri I.S. Jha, Member

Shri Arun Goyal, Member

Shri P.K. Singh, Member

Date of Order: 7th November, 2021

In the matter of:

Petition under Section 79(1)(d) and (f) of the Electricity Act, 2003 read with Regulation 5(3) of the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 seeking compensation/relief for increased construction cost due to certain events of Change in Law as per the applicable provisions of Transmission Service Agreement dated 24.6.2015.

And

In the matter of

Raipur-Rajnandgaon-Warora Transmission Limited,
C-105, Anand Niketan,
New Delhi – 110 019

.....Petitioner

Vs

1. Maharashtra State Electricity Distribution Company Limited,
Prakashgad, 4th Floor, Bandra (East),
Mumbai – 400 051

2. Chhattisgarh State Power Distribution Company Limited,
P.O. Sunder Nagar, Dangania,
Raipur – 492 013, Chhattisgarh

3. Gujarat Urja Vikas Nigam Limited,
Vidyut Bhawan, Race Course,
Vadodara – 390 007

4. Madhya Pradesh Power Management Company Limited,
Block No. 11, Ground Floor, Shakti Bhawan,
Vidyut Nagar, Rampur,
Jabalpur – 482 008, Madhya Pradesh

5. Electricity Department,
Government of Goa, Aquem Alto Margaon,
Goa – 403 601

6. DNH Power Distribution Corporation Limited,
66kV, Amlı Ind. Estate, Silvassa – 396 230,
Dadar Nagar Havelı

7. Electricity Department, Administration of Daman and Diu,
Plot No. 35, OıDC Complex, Near Fire Station, Somnath,
Daman – 396 210

8. Power Grid Corporation of India Limited,
Saudamini, Plot No.2, Sector 29,
Gurgaon-122 001

9. Central Electricity Authority
Sewa Bhawan, R.K.Puram, Sector-1,
New Delhi-110 066

....Respondents

Parties present:

Shri Amit Kapur, Advocate, RRWTL
Ms. Poonam Verma, Advocate, RRWTL
Ms. Aparajita Upadhyay, Advocate, RRWTL
Ms. Sakshi Kapoor, Advocate, RRWTL
Ms. Gayatri Aryan, Advocate, RRWTL
Shri Ravi Sharma, Advocate, MPPMCL
Shri Rahul Sinha, Advocate, MSEDCL
Shri Bhavesh Kundalia, RRWTL
Shri AnindyaKhare, MPPMCL

ORDER

The present Petition has been filed by the Petitioner, Raipur-Rajnandgaon-Warora Transmission Limited (RRWTL) under Section 79(1)(d) and Section 79(1)(f) of the Electricity Act, 2003 (hereinafter referred to as 'the Act') seeking compensatory relief under Article 12 of the Transmission Service Agreement (TSA) dated 24.6.2015 on account of Change in Law events, which according to the Petitioner have adversely affected the cost of the Project. The Petitioner has made the following prayers:

“(a) Allow the present Petition;

(b) Grant relief to the Petitioner, Raipur-Rajnandgaon-Warora Transmission Limited under Article 12.2.1 of the Transmission Service Agreement dated 24.06.2015 for the Change in Law events specified in the present Petition along with carrying cost/interest;

(c) Hold that the compensation for such Change in Law events shall be effective from the date when such Change in Law events were brought into force by the Indian Governmental Instrumentalities;

(d) Grant interim relief to the Petitioner as prayed at paragraph 107 hereinabove pending final adjudication of the Petition by this Commission; and

(e) Grant liberty to the Petitioner to approach this Commission at the appropriate time, for seeking compensation for Change in Law events which are not claimed in the present Petition.”

2. The Petitioner is a fully owned subsidiary of Adani Transmission Limited (ATL) which was selected as a successful bidder through the Tariff Based Competitive Bidding process conducted by PFC Consulting Limited to establish the transmission system, namely, “Additional System Strengthening Scheme for Chhattisgarh IPPs (Part B)” (in short, ‘the Project’) on Build, Own, Operate and Maintain basis. The Petitioner is required to provide transmission service to the Long-Term Transmission Customers (LTTCS) (Respondents 1 to7) of the Project which required establishing the Raipur Pool-Rajnandgaon 765 kV D/C transmission line, Rajnandgaon-New Pooling Station near Warora 765 kV D/C transmission line and new switching station near Rajnandgaon.

3. The Petitioner has entered into TSA with LTTCS on 24.6.2015 and Maharashtra State Electricity Distribution Company Limited (MSEDCL) has been appointed as the lead LTTTC to represent all LTTCS for discharging their rights and obligations as specified in TSA dated 24.6.2015. The Commission in its order dated 16.2.2016 in Petition No. 289/TL/2016 granted transmission licence to the Petitioner for inter-State transmission of electricity. The Petitioner achieved commercial operation of the Project on 31.3.2019.

4. The Petitioner has submitted that since certain Change in Law events during the construction period have resulted in increase in cost of the Project, it has filed the present Petition seeking reliefs for the following Change in Law events in terms of Article 12 of the TSA:

- (a) Levy of Swachha Bharat Cess and Krishi Kalyan Cess;
- (b) Increase in Maharashtra Value Added Tax;
- (c) Increase in Basic Customs duty on primary aluminium products;
- (d) Introduction of Goods and Service Act;
- (g) Increase in compensation to be paid to land owners for Right of Way for transmission lines in the States of Maharashtra and Chhattisgarh; and
- (h) Imposition of requirement of 'D'-'D' type tower for obtaining approval for power line crossing.

5. The Petition was heard on 6.4.2021 and 6.10.2021. During the course of hearing held on 6.10.2021, the learned counsel for the Respondent, MP Power Management Company Limited (MPPMCL) objected to the maintainability of the Petition. After hearing the learned counsel of the Petitioner and the Respondents, the Commission reserved the order on the maintainability of the Petition.

6. Vide its reply dated 27.4.2021, MPPMCL has raised objections on the maintainability of the Petition on the following grounds:

- (a) As per the Limitation Act, 1963 (hereinafter referred to as 'the Limitation Act'), the period of limitation for filing any petition/application before any authorities including but not limited to quasi-judicial authorities, limitation period is defined as three years. Article 137 of Schedule to the Limitation Act, 1963 applies to any Petition or application filed under any Act in Civil Court whether filed under the Code of Civil Procedure or under any special statute. It is also settled principle of law that any application/petition filed under any special statute, to the Civil Court would be governed by the limitation prescribed by Article 137 of the Schedule to the Limitation Act, 1963. In this regard,

reliance has been placed on the judgments in the cases of *Kerala State Electricity Board vs T.P. Kunhaliumma* dated 29.10.1976 [equivalent citations (1976) 4 SCC 634; AIR 1977 SC 282; 1977 1 SCR 996], *Andhra Pradesh Power Coordination Committee and Ors. v. Lanco Kondapalli Power Ltd. and Ors.*, [(2016) 3 SCC 468] and judgement dated 11.10.2018 in Civil Appeal No.23988 of 2017 in the matter of *BK Educational Services Private Limited v. Parag Gupta and Associates*.

(b) As per TSA dated 24.6.2015, each Change in Law event needs to be considered as individual event. Therefore, the limitation period will be applicable on each of the event independently.

(c) The Petitioner has not only failed to approach the Commission within limitation period but also failed to issue Change in Law notice to the beneficiaries within reasonable time frame. As per TSA and prevalent laws, there is no bar on approaching the Commission for individual Change in Law events. In the order dated 28.3.2018 in Petition No. 104/MP/2017, the Commission has decided that even individual Change in Law events can be claimed separately and legal preposition of which has been affirmed by the Appellate Tribunal for Electricity (APTEL) in its order dated 02.12.2019 passed in IA No. 1295 of 2019 in DFR No. 2199 of 2019.

(d) Therefore, the present Petition is liable to be dismissed as “time barred” as limitation period to approach the Commission to claim compensation for Change in Law events has expired.

(e) The Petitioner has not filed any application seeking relief for extension of limitation period under Section 5 of the Limitation Act, 1963. The Petitioner has not pleaded anything about delay or condonation of the same. The Hon'ble Supreme Court in its judgment dated 14.08.2020 in Civil Appeal No. 6347 of 2019 in the case of *Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries Pvt. Ltd. & Anr* had observed that limitation period is extendable only by application of Section 5 of the Limitation Act, 1963. It is a settled principle of Law that the no court can grant the relief beyond the pleadings of the case/ petition. A court cannot make out a case not pleaded nor can it grant a relief

which is not claimed and which does not flow from the facts and the cause of action alleged in the plaint.

(f) The Petitioner was required to send Change in Law notices to the beneficiaries within reasonable time. However, the Petitioner has taken very dull approach to inform the beneficiaries. Reliance has been placed on the judgment of the Hon'ble Supreme Court (Constitution Bench) in the case of *Chand Rani (Smt.) (Dead) By Lrs. v. Kamal Rani (Smt.) (Dead) By Lrs.* [1993 (1) SCC 519] and *K.S. Vidyanadam & Ors. v. Vairavan* [1997 (3) SCC 1] to contend that the meaning of the word "reasonable" in law is with regard to those circumstances of which the person concerned is called upon to act reasonably knows or ought to know as to what was reasonable. It may be unreasonable to give an exact definition of the word "reasonable". The reason varies in its conclusion according to idiosyncrasy of the individual and the time and circumstances in which that person thinks. The dictionary meaning of the "reasonable time" is to be so much time as is necessary, under the circumstances, to do conveniently what the contract or duty requires should be done in a particular case. In other words, it means as soon as circumstances permit. In Law Lexicon, it is defined to mean "a reasonable time, looking at all the circumstances of the case; a reasonable time under ordinary circumstances; as soon as circumstance will permit; so much time as is necessary under the circumstances, conveniently to do what the contract requires should be done; some more protracted space than 'directly'; such length of time as may fairly, and properly, and reasonably be allowed or required, having regard to the nature of the act or duty and to the attending circumstances; all these convey more or less the same idea."

(g) In view of aforesaid legal proposition of law, it can be firmly said that the delay of 1 month, 3 months, 5 months or 8 months or more than a year has no reasonableness. Therefore, declaration of Change in Law event by the Petitioner is bad in law and doesn't fall within the four corners of legal principles dealing with change in law.

(h) The present application is liable to be dismissed with cost.

7. On the issue of maintainability, the Petitioner, vide its rejoinder dated 16.6.2021, has made the following submissions:

(a) The Petitioner has claimed Change in Law relief for additional expenditure incurred by it during the construction period of the Project. For this, the Petitioner has invoked Article 12.2.1 of TSA which provides the formula for computing the relief for cumulative increase in cost of the Project due to Change in Law events occurring till the Scheduled Commercial Operation Date (“SCOD”) of the Project. Therefore, in order to compute the impact of Change in Law events under Article 12.2.1, it is important to first complete the Project.

(b) The Project of the Petitioner achieved COD on 31.03.2019. Therefore, in terms of TSA, the Petition could not have been filed this petition before SCOD as the cumulative actual impact of the Change in Law events would not have been known.

(c) Further, as per Article 12.2.3 of TSA, in order to claim cumulative Change in Law relief during the construction period, the Petitioner is required to submit before the Commission documentary proof of such increase in cost of the Project for establishing the impact of such Change in Law. Therefore, completion of the Project is important. In this regard, the Commission in its earlier orders, including Order dated 08.01.2020 in Petition No. 126/MP/2019 [*Fatehgarh-Bhadla Transmission Limited vs. Adani Renewable Energy Park Rajasthan Limited &Anr*], has held that in order to claim Change in Law, the transmission licensee should approach the Commission after completion of the project.

(d) Accordingly, the present Petition was filed on 02.06.2020, i.e. after completion of the Project (on 31.03.2019) and closing of all the contracts with the vendors. Therefore, the same is not barred by limitation.

(e) Meanwhile, the provision of TSA was duly complied with and the LTTCs were kept notified of the Change in Law events. It was only on 27.02.2020 that the lead LTTC i.e., MSEDCL responded to the Petitioner regarding Change in Law notices and requested the Petitioner to approach this

Commission for approval of the Change in Law claims. Accordingly, the Petitioner filed the present Petition on 02.06.2020 and the same cannot be said to be time barred for this reason also.

(f) Without prejudice to the aforesaid, the claims of the Petitioner under the present Petition falls under the exception to law of limitation i.e., Section 22 of the Limitation Act, 1963 which provides that breach of a continuing nature or continuous course of action as an exception to the rule of limitation. Each Change in Law event has an impact on tariff and burdens the Petitioner with additional expenditure. Each such Change in Law event creates a continuous and recurring source of injury for the Petitioner. Applying the principle of Section 22 of the Limitation Act, 1963, each time a Change in Law event took place, a fresh cause of action arose. In this regard, reliance has been placed on judgement of the APTEL dated 2.11.2020 in the case of *Power Company of Karnataka Limited & Anr. vs. Udipi Power Corporation Ltd & Ors.*[2020 SCC On Line APTEL 94].

(g) The last cause of action arose on 01.07.2017. Accordingly, the limitation period of three years shall be computed from 01.07.2017. Since the present Petition was filed on 02.06.2020, the same is within the limitation period.

(h) Due to the practical impossibility caused owing to the nation-wide lockdown due to Covid-19 pandemic, it would not have been possible for the Petitioner to file the present Petition between the months of March 2020 and May 2020. In this regard, the Hon'ble Supreme Court vide its order dated 23.03.2020 in Suo Motu Writ Petition (Civil) No. 3/2020, took suo motu cognizance of the difficulties being faced by litigants due to the covid-19 pandemic and held that the period of limitation shall be condonable from 15.03.2020 until further orders. In view thereof, since at the time of the filing of the present Petition (i.e. 02.06.2020), the aforesaid order dated 23.03.2020 was still in operation, the period from 15.03.2020 until 02.06.2020 (i.e. 78 days), ought to be excluded for the purposes of computing the limitation period in the present case.

(i) Further, since the Petition is not barred by limitation, there was no requirement of filing any application for condonation of delay. MPPMCL is mistaken regarding the present legal position with respect to the Commission's power to condone any delay (if any) without a formal application for the same. The Hon'ble Supreme Court in a recent judgment in the case of Sesh Nath Singh and Another vs. Baidyabati Sheoraphuli Co-operative Bank Ltd. [reported as 2021 SCC On Line SC 244] has held that there is no bar on a court/tribunal to exercise its discretion to condone delay under Section 5 of the Limitation Act, 1963 in the absence of a formal condonation of delay application under Section 5 of the Limitation Act, 1963. Hence, the Commission has the discretion to condone the delay even in the absence of a formal application for condonation of delay under Section 5 of the Limitation Act.

(j) MPPMCL's contention that Change in Law notice was not issued by the Petitioner within a reasonable time period in terms of the TSA, is wrong and denied. The Petitioner has issued Change in Law notices in accordance with Article 12.3.1 of the TSA which specifically provides that the TSP "*shall give notice to the Lead Long Term Transmission Customer of such Change in Law as soon as reasonably practicable after becoming aware of the same.*" Accordingly, the Petitioner has promptly issued Change in Law notice to the LTTCs after becoming aware of the each of the Change in Law events.

(k) Neither TSA nor any statute stipulates any specific time within which the Change in Law notice have to be issued by the Petitioner, failing which substantive rights of the Petitioner would stand vitiated. The Petitioner has issued notices at the earliest reasonable opportunity.

(l) The Commission is not inhibited by the technicalities of procedural law and is instead guided by sound principles of substantive law to further the ends of justice. It is a settled position of law that procedural law cannot be a handmaid of real justice. In this regard, reliance has been placed on the judgment dated 11.04.2019 of the Hon'ble Supreme Court in the case of *Atma Ram & Ors. VS. State of Rajasthan [(2019) 20 SCC 481]*.

Analysis and Decision

8. We have considered the submissions of the Petitioner and MPPMCL on the maintainability of the Petition and perused the documents placed on record. MPPMCL has mainly raised the following objections on the maintainability of the Petition:

(a) The Petition is barred by limitation and the Petitioner has not filed application for condonation of delay under Section 5 of the Limitation Act; and

(b) The Petitioner has not complied with the provisions of TSA regarding issue of notice before approaching the Commission.

(a) The Petition is barred by limitation and the Petitioner has not filed application for condonation of delay under Section 5 of the Limitation Act

9. MPPMCL has submitted that it is settled principle of law that any application/Petition filed under any special statute, before the Civil Court would be governed by the limitation prescribed by Article 137 of the Schedule to the Limitation Act, 1963. Therefore, as per Limitation Act, 1963, the period of limitation for filing any Petition/Application before any authorities but not limited to quasi-judicial authorities, is defined as three years. MPPMCL has submitted that TSA provides for each event as individual event. Therefore, limitation period will be applicable on each of the Change in law event individually.

10. *Per contra*, the Petitioner has submitted that it has claimed compensation towards Change in Law for additional expenditure incurred by it during construction period in terms of Article 12.2.1 of TSA which provides that in order to compute the impact of Change in Law, the Petitioner first was required to complete the Project. The Project of the Petitioner achieved commercial operation on 31.3.2019 and the same was approved by the Commission in its order dated 9.10.2019 in Petition No.

326/MP/2018. Therefore, in terms of TSA, there was no point in filing the Petition before SCOD as the cumulative actual impact of the Change in Law events would not have been known. As per Article 12.2.3 of TSA, the Petitioner was required to submit documentary proof of such increase in cost for establishing the impact of such Change in Law. Therefore, completion of the Project and closing of contracts is necessary to assess cumulative impact and to produce documents for the same. It has been submitted that the present Petition falls under exception to law of limitation i.e. Section 22 of the Limitation Act, 1963. Since the petitioner was having a continuing cause of action till 1.7.2017, the limitation period of three years is required to be computed from 1.7.2017.

11. MPPMCL has relied on the following provisions of the Limitation Act, 1963:

*“PART X — SUITS FOR WHICH THERE IS NO PRESCRIBED PERIOD
113. Any suit for which no period of limitation is provided elsewhere in this Schedule.
Three years.
When the right to sue accrues.*

.....
*“PART II — OTHER APPLICATION
137. Any other application for which no period of limitation is provided elsewhere in
this Division.
Three years.
When the right to apply accrues.”*

12. Before going into the aspect of period of limitation, it is necessary to establish as to when the cause of action arose for the Petitioner to file Change in Law claims.

In this regard, Article 12 of the TSA provides 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 (Rs. 7,00,00,000/=) in the cost of the Project up to the Scheduled COD of the Project,** the increase/decrease in non-escalable Transmission Charges shall be an amount equal to 0.32 percent (0.32%) of the Non-Escalable Transmission Charges.”*

12.2.3 For any claims made under Articles 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 Article 12.2.1 and 12.2.2, and the date from which such compensation shall become effective, shall be final and binding on both the Parties subject to rights of appeal provided under applicable Law.”

13. We note that as per Article 12.2.1 of the TSA, the compensation for impact of cumulative increase/decrease in the cost of the Project is to be paid to the Petitioner by the Respondent LTTCs in terms of increase/decrease of transmission charges. Article 12.2.1 of the TSA provides that for every cumulative increase/decrease of Rs.7 crore in the cost of the Project up to scheduled COD of the Project, the non-escalable transmission charges shall be increased by 0.32%. We also note that the compensation to be paid to the Petitioner is qualified with the words 'cumulative increase/decrease'. Thus, the clear intent of the provision is to consider the impact of all Change in Law events leading to net increase or decrease of the cost of the Project on cumulative basis up to the scheduled COD of the Project. Only after the net cumulative increase/decrease in cost of the Project up to scheduled COD is crystalized, the transmission charges can be increased/decreased by 0.32% of non-escalable transmission charges for every cumulative increase/decrease of Rs.7 crore in the cost of the Project as per this provision. Even if each Change in Law event during the construction period is to be dealt with individually, the relief to the Petitioner needs to be considered on cumulative basis which can be crystalize only after COD of the Project.

14. Further, as per Article 12.2.3 of TSA, for claiming the Change in Law relief during the Construction Period, the Petitioner is required to provide the documentary proof of increase in cost of the Project for establishing the impact of Change in Law

beyond the threshold as specified in the Article 12.2.1. Moreover, as per Article 12.2.4, the Commission is also required to decide upon the compensation for Change in Law during the Construction Period, which as noted above, is to be in terms of increase/decrease in non-escalable transmission charges to a tune of 0.32% for the cumulative increase/decrease of Rs.7 crore in the Project cost up to the scheduled COD of the Project. Thus, even for the effective determination of Change in Law relief during the Construction Period, TSA provides for consideration of the cumulative increase/decrease in the cost of Project up to the scheduled COD of the Project. Also, though with the occurrence of each Change in Law event, the Petitioner`s right to seek compensation triggers under TSA, Article 12.2.1 of TSA requires that the cumulative increase in the cost of the Project up to scheduled COD has to be considered for claiming Change in Law relief. Therefore, the Petitioner could not have filed a Petition before the Commission with all the details as required in terms of Article 12.2.1 and Article 12.2.3 of TSA until completion of the Project.

15. The Petitioner has contended that the Commission in its earlier orders, including Order dated 08.01.2020 in Petition No. 126/MP/2019 [*Fatehgarh-Bhadla Transmission Limited vs. Adani Renewable Energy Park Rajasthan Limited &Anr*], has held that in order to claim Change in Law the transmission licensee should approach the Commission after completion of the project. The relevant extract of the said order dated 8.1.2020 is as under:

“7. The Petition was heard on 17.7.2019. During the course of hearing, the Commission observed that since the Scheduled COD of the Project is September, 2019, the Petition at that stage was premature.

27. Since the Petitioner has not implemented the Project, no relief can be granted at this stage. However, the Petitioner is directed to implement the project at the earliest so that associated generating stations are not stranded. The Petitioner is granted liberty to approach the Commission for appropriate relief, if any, in terms of the provisions of the TSA after completion of the project.”

16. In the above-quoted order, the Commission had observed that the Petition No. 126/MP/2019 filed by the Petitioner therein was premature since the Project had not achieved COD at the time of filing of the Petition. Thus, the Commission has been insisting that the transmission licensees should approach the Commission for adjudication of the Change in Law events only after achieving COD of the project.

17. In the present case, the scheduled COD of the Project was 23.11.2018. However, vide its order dated 9.10.2019 in Petition No. 326/MP/2018 filed by the Petitioner, the Commission had extended the scheduled COD to 31.03.2019. The Project of the Petitioner has achieved COD on 31.03.2019 and the present Petition was filed on 02.06.2020. Therefore the Petition has been filed within the limitation period of three years from the day the cause of action arose.

18. The date when the last Change in Law event occurred was 01.07.2017. Therefore, even if the Limitation period is counted from this date as contended by MPPCL, the Petitioner having filed this petition on 02.06.2020, is within the three years' limitation period.

19. MPPMCL has relied upon various judgments of the Hon`ble Supreme Court to substantiate its case including the judgment of the Hon`ble Supreme Court in the case of BK Educational Services Private Limited Vs. Parag Gupta and Associates [(2019) 11 SCC 633]. It is noticed that the cited judgment is pertaining to the question of applicability of Article 137 of the Limitation Act, 1963 to application filed under Insolvency and Bankruptcy Code, 2016. However, this question was specifically with respect to the claims filed prior to the insertion of Section 238A vide Insolvency and Bankruptcy Code (Second Amendment), Act, 2018. Therefore, in the cited judgment, the parent statute i.e. the Code after amendment in 2018 provided

for the applicability of the Limitation Act, 1963 to the applications/Petitions filed by the Code. The question before the Hon`ble Supreme Court was whether this amendment shall have a retrospective effect. However, in the present case, neither TSA nor statue i.e. the Electricity Act, 2003 read with Regulations framed thereunder provide that the Limitation Act, 1963 shall be applicable for making a claim for Change in Law before the Commission. Both the statue and TSA are silent on this aspect. Therefore, the facts in the present case are materially different from the cited judgment and it has no applicability to the present case.

20. In light of the above, we do not find merit in the submission of MPPMCL that the Petition is time-barred.

21. MPPMCL has argued that the Petitioner did not file the application under Section 5 of the Limitation Act for condonation of delay. Since we have held that the Petition is not time-barred, there is no need for the Petitioner to file application for condonation of delay under Section 5 of the Limitation Act, 1963. Accordingly, the objection of MPPCL on the count is not sustainable. The question of limitation is a mixed question of law and facts, and we find and hold that the instant petition is not time barred.

(b) The Petitioner has not complied with the provisions of TSA regarding notice before approaching the Commission

22. MPPMCL has contended that, as per the TSA, the Petitioner was required to send Change in Law notices to beneficiaries within reasonable time. However, the delay of 1 month, 3 months, 5 months, 8 months and more than a year is not reasonable and, therefore, declaration of Change in Law event by the Petitioner is

bad in law and doesn't fall within the ambit of legal principles dealing with change in law.

23. *Per Contra*, the Petitioner has submitted that neither TSA nor any statute stipulates any specific time within which the Change in Law notice have to be issued by the Petitioner, failing which its substantive rights would stand vitiated. It is submitted that it has issued notices at the earliest reasonable opportunity.

24. We have considered the submissions made by the Petitioner and MPPMCL. The requirement of notice for Change in Law prescribed in Article 12.3.1 of the TSA is as under:

12.3 Notification of Change in Law:

12.3.1 If the TSP is effected by as 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.

12.3.3 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."

25. As per Article 12.3.1, the Petitioner is required to give Change in Law notice to LTTCs as soon as reasonably practicable. The Petitioner had issued Change in Law notices to the LTTCs on 14.4.2016, 4.7.2016, 14.11.2016, 22.12.2016, 18.1.2017, 11.4.2017, 31.7.2017, 7.11.2017 and 21.2.2017 in terms of Article 12 of the TSA. Further, the Petitioner has submitted the following details with regards to notices for individual Change in Law events:

Sr. No.	Change in Law Event	Coming into force of the Change in Law event	Date of notice by RRWTL in terms of the TSA
1.	(a) Increase in effective rate of service tax due to levy of	15.11.2015	On 14.04.2016 and reminder on 21.02.2020

Sr. No.	Change in Law Event	Coming into force of the Change in Law event	Date of notice by RRWTL in terms of the TSA
	Swachha Bharat Cess @ 0.5%		
(b)	Increase in effective rate of service tax due to levy of Krishi Kalyan Cess @ 0.5%	01.06.2016 <ul style="list-style-type: none"> Announced in the Union Budget in February 2016. Came into effect from 01.06.2016 vide Ministry of Finance notification dated 26.05.2016 	On 14.04.2016 and reminder on 21.02.2020
2.	Increase in Maharashtra Value Added Tax from 5 to 6%	01.04.2016 and 17.09.2016	On 22.12.2016 and reminder on 21.02.2020
3.	Increase in Effective Custom Duty on primary aluminium products (ingots) due to increase in Basic Custom Duty from 5% to 7.5%	01.03.2016	On 14.04.2016 and reminder on 21.02.2020
4.	Increase in effective tax rate on goods and services due to levy of Central Goods and Services Tax and State Goods and Services Tax /Integrated Goods and Services Tax	01.07.2017	On 31.07.2017 and reminder on 21.02.2020
5.	Increase in compensation for RoW due to levy of CGST @ 9% and Maharashtra/ Chhattisgarh/ Gujarat GST @ 9%	01.07.2017	On 31.07.2017 and reminder on 21.02.2020
6	Increase in Right of Way compensation in Maharashtra and Chhattisgarh	31.05.2017 (for Maharashtra) and 01.06.2016 (for Chhattisgarh)	On 07.11.2017(for Maharashtra) and 04.07.2016 (for Chhattisgarh) and reminder on 21.02.2020
7.	Imposition of Requirement of D-D type Tower for obtaining power-line crossing approval	16.09.2016	On 14.11.2016 and reminder on 21.02.2020

26. As regards definition of 'reasonable time', MPPMCL has relied on the following judgment of the Hon'ble Supreme Court of India:

(a) Lrs. v. Kamal Rani (Smt.)(Dead) By Lrs. 1993 (1) SCC 519:“*that in case of sale of immovable property there is no presumption as to time being the essence of the contract. Even if it is not of the essence of contract, the court may infer that it is to be performed in a reasonable time if the conditions are (i) from the express terms of the contract; (ii) from the nature of the property; and (iii) from the surrounding circumstances, for example, the object of making the contract. For the purposes of granting relief, the reasonable time has to be ascertained from all the facts and circumstances of the case.*”

(b) K.S. Vidyanadam&Ors. v. Vairavan [1997 (3) SCC 1]: “*Even where time is not of the essence of the contract, the plaintiffs must perform his part of the contract within a reasonable time and reasonable time should be determined by looking at all the surrounding circumstances including the express terms of the contract and the nature of the property.*”

27. The Hon’ble Supreme Court in the above judgments has held that the reasonable time should be determined looking at all the surrounding circumstances including the express terms of the contract.

28. In the instant matter, we have held in earlier part of this order that the cause of action arose only after the Project achieved commercial operation which is in accordance with the express terms of the contract. Further, the Petitioner has issued Change in Law notices and reminders before the commercial operation date of the Project. It is noted that the delivery of Change in Law notices before the COD at any point of time does not have material impact on the LTTCs as the transmission charges could be claimed only after the Project achieved COD.

29. Further, in terms of the Article 12.3.4 of the TSA, Change in Law notice is required to provide, inter alia, precise details of the event and its effect on TSP (transmission service provider) i.e. the Petitioner. We have perused the effective date of various Change in Law events and the Change in Law notices issued by the Petitioner for such events. While we may agree that for some of the Change in Law

events, the delay between the occurrence of the event and issuance of notice could have been reduced by exercising caution and prudence, we do not find such delays to be inordinate and inexcusable, which would otherwise defeat the Petitioner's Change in Law claims and the consequent relief.

30. In view of the surrounding circumstances in the present case, we are of the opinion that the Petitioner has complied with requirement of TSA in terms of notice to LTTCs for Change in Law event within a reasonable time. We observe that a notice, in legal concept, describes a requirement that a party be made aware of legal process affecting their rights, obligations or duties, and it may be a formal legal notice, actual notice, constructive notice and implied notice. We find that the Petitioner has communicated on various dates on different events and thus, the Petitioner was putting the LTTCs on notice of such events.

31. In the light of the above discussion and findings, we hold that there is no merit in the objections of MPPMCL as regards maintainability of the Petition. We find and hold that the Petitioner has served the notice and the Petition is not hit by the law of limitation. Accordingly the Petition is maintainable.

32. The Respondents are directed to file their reply on merit within 15 days of issue of this order and the Petitioner is directed to file rejoinder, if any, within 7 days thereafter.

33. The Petition shall be listed for hearing in due course for which separate notice shall be issued to the parties.

**Sd/-
(P.K. Singh)
Member**

**sd/-
(Arun Goyal)
Member**

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

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