

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 81/MP/2019**

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

**Date of Order: 19<sup>th</sup> March, 2021**

**In the matter of:**

Petition under Section 79(1)(c) and (f) and other applicable provisions of the Electricity Act, 2003, *inter-alia*, seeking a declaration that the factor/event, namely, direction of Power Grid Corporation of India Limited to re-route the LILO of one circuit of 765 kV D/C Aurangabad-Padghe transmission line at Shikarpur GIS, is a force majeure event under the TSA dated 24.6.2015 and further seeking extension of time period for achieving the SCoD of the Project under Article 4.4.2 of the TSA and other consequential reliefs.

**And**

**In the matter of**

Chhattisgarh -WR Transmission Limited  
Adani House, Near Mithakhali Six Roads,  
Navrangpura,  
Ahmedabad-380 009

**....Petitioner**

**Vs**

1. Maharashtra State Electricity Distribution Company Limited  
Prakashgad, 5<sup>th</sup> Floor,  
Station Road, Bandra (E),  
Mumbai-400 051

2. Gujarat Urja Vikas Nigam Limited  
Sardar Patel Vidhyut Bhawan, Race Course,  
Vadodara-390 007.

3. Chhattisgarh State Power State Distribution Co. Limited  
4<sup>th</sup> Floor, Vidyut Seva Bhawan,  
Daganiya, Raipur- 492 013, Chhattisgarh

4. M.P. Power Management Company Limited  
Shakti Bhawan, Vidhyut Nagar,

Jabalpur-482 008, Madhya Pradesh.

5. Goa Electricity Department  
Government of Goa, 3<sup>rd</sup> Floor, Vidhyut Bhawan,  
Panji-403 001

6. DNH Power Distribution Corporation Limited  
Dadar and Nagar Haveli, Vidyut Bhawan,  
66 kV Road, Near Secretariat, Amli,  
Silvassa-396 230.

7. Electricity Department, Daman & Diu,  
Plot No.- 35, OID Complex, Near Fire Station, Somnath,  
Daman-396 210

8. Power Grid Corporation of India Limited  
'Saudimini', Plot 2, Sector-29,  
Gurugram-12

...Respondents

**Parties Present:**

Shri Sanjay Sen, Sr. Advocate, C(WR)TL  
Shri Buddy A. Ranganadhan, Advocate, C(WR)TL  
Shri Raunak Jain, Advocate, C(WR)TL  
Shri G. Umopathy, Advocate, MSEDCL  
Ms. Pavitra Balakrishnan, Advocate, MSEDCL  
Shri Pallav Mongia, Advocate, PGCIL  
Shri Vardaan Bajaj, Advocate, PGCIL  
Shri Sameer Ganju, C(WR)TL  
Shri Bhavesh Kundalia, C(WR)TL  
Shri C. S. Gupta, PGCIL  
Shri V. C. Sekhar, PGCIL  
Shri Arjun Malhotra, PGCIL

**ORDER**

The Petitioner, Chhattisgarh-WR Transmission Limited (CWRTL), has filed the present Petition under Sections 79(1)(c) and (f) of the Electricity Act, 2003 (hereinafter referred to as "the Act") seeking declaration that the direction of Power Grid Corporation of India Limited (PGCIL) to re-route the LILO of One Circuit of 765 kV D/C Aurangabad-Padghe transmission line at Shikrapur sub-station, is a force

majeure event under the Transmission Service Agreement (TSA) dated 24.6.2015. The Petitioner has also sought extension of time for achieving the Scheduled Commercial Operation Date (SCoD) of the Project under Article 4.4.2 of the TSA and other consequential reliefs.

**Facts of the Case**

2. The Petitioner was incorporated as a Special Purpose Vehicle (SPV) by the Bid Process Coordinator, namely, PFC Consulting Ltd. (PFCCL) to develop and implement the “Additional System Strengthening for IPPs in Chhattisgarh and Other Generation Projects in Western Region” (hereinafter referred to as “the Project” or “the Transmission System”). The Project consisted of the following elements to be executed through Tariff Based Competitive Bidding under Section 63 of the Act on Build, Own, Operate and Maintain (BOOM) basis:

	<b>Name of Transmission Element</b>	<b>Scheduled COD (in months) from effective date</b>	
<b>1.</b>	<b>400 kV Interconnection at Gwalior 765/400 kV SIS</b>		
i.	Gwalior 765/400 kV – Morena 400 kV D/C Transmission Line	30 months	
ii	Establishment of 2 X 315 MVA, 400/220 kV substation at Morena		
	<table border="1"> <tr> <td><b>400 kV</b> Line bays - 2 Nos. ICT - 2 x 315 MVA, 400/220 kV ICT bays - 2 Nos. Bus reactor - 1X125 MVAR Space for 400 kV Bays - 4 Nos.</td> <td><b>220 kV</b> Line bays - 4 Nos. ICT bays - 2 Nos. Space for 220 kV Bays - 4 Nos.</td> </tr> </table>		<b>400 kV</b> Line bays - 2 Nos. ICT - 2 x 315 MVA, 400/220 kV ICT bays - 2 Nos. Bus reactor - 1X125 MVAR Space for 400 kV Bays - 4 Nos.
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<b>2.</b>	<b>Additional evacuation line from Vindhyachal-IV &amp; V STPP (3x500 MW)</b>		
i.	Vindhyachal-IV & V STPP-Vindhyachal Pool 400 kV D/C (Quad) 2 <sup>nd</sup> line	38 months	
ii.	2 Nos. 400 kV Line bays at Vindhyachal-V STPP switchyard		
<b>3.</b>	<b>Additional System Strengthening Scheme for Chhattisgarh IPPs (Part-A)</b>		
i.	Sasan UMPP- Vindhyachal Pooling station	36 months	

	<b>Name of Transmission Element</b>	<b>Scheduled COD (in months) from effective date</b>
	765 kV S/C line	
ii.	1 no. of 765 kV line bay at Sasan UMPP of M/s SPL, Reliance	
iii.	LILO of one circuit of Aurangabad-Padghe 765 kV D/C line at Pune	40 months
iv.	Raigarh (Kotra) - Champa (Pool) 765 kV 2nd S/C line	36 months
v.	Champa (pool) - Dharamjaigarh 765 kV 2nd S/C line	36 months

3. The Petitioner entered into a TSA dated 24.6.2015 with the Respondents 1 to 7 (hereinafter referred to as "LTTCs"). Pursuant to Tariff Based Competitive Bidding conducted by PFCCL, Adani Power Limited was selected as the successful bidder and Letter of Intent was issued to it. Post award of the Project, Adani Transmission Limited, the investing affiliate of Adani Power Limited, acquired the SPV (the Petitioner) from PFCCL on 23.11.2015 which became fully owned subsidiary of Adani Transmission Ltd. The Commission in its order dated 29.2.2016 in Petition No. 288/TL/2015 granted transmission licence to the Petitioner for inter-State transmission of electricity.

4. Different elements of the Project had different Scheduled COD. The Scheduled COD (SCoD) for the Project was 40 months from the effective date of the TSA. In terms of Article 2.1 of the TSA, the effective date was 23.11.2015 and, therefore, the Project was required to be completed by 23.3.2019.

5. During implementation of the Project, vide its letter dated 24.11.2016, the Petitioner invoked force majeure provision of the TSA on account of demonetization by the Government of India. However, the claim of the Petitioner was contested by Gujarat Urja Vikas Nigam Ltd. (GUVNL) vide its letter dated 27.12.2016 and

Maharashtra State Electricity Distribution Company Ltd. (MSEDCL) vide letter dated 24.1.2017. The Petitioner again invoked force majeure provision of the TSA vide its letter dated 25.7.2018 on account of agitation across the State of Maharashtra for Maratha reservations as well as farmers' agitation for milk procurement prices. In response, M.P. Power Management Company Limited (MPPMCL) and MSEDCL vide letters dated 6.8.2018 and 8.8.2018 respectively denied the claim of the Petitioner. However, the Petitioner has not raised the above claims for adjudication in the present Petition.

6. The Petitioner has submitted that despite facing difficulties in terms of aforesaid force majeure events, it has successfully achieved Commercial Operation Date (CoD) of all elements of the Transmission System much prior to their SCoD except one element, namely, LILO of one circuit of Aurangabad- Padghe 765 kV D/C transmission line at Pune (hereinafter referred to as "LILO of the AP Line" or "the LILO"). During construction of the said LILO in the vicinity of Shikrapur sub-station of PGCIL, the Petitioner submitted its route alignment map around the sub-station in response to it being sought by PGCIL. In response, PGCIL vide its letter dated 1.3.2019 informed the Petitioner that PGCIL is constructing residential colony in the narrow stretch of land between the entrance gate and sub-station premises and that the proposed alignment of LILO of the AP Line is passing over the colony area, which cannot be allowed. Accordingly, PGCIL requested the Petitioner to revise alignment of the LILO from Location No.39/0 towards the PGCIL sub-station gate to cross over with sufficient margin from the proposed colony. Accordingly, as per the

Petitioner, it has been constrained to divert the LILO at the fag end of execution of the Project.

7. The Petitioner has submitted that owing to direction of PGCIL to re-route the LILO, actual CoD of the Project is likely to cross the SCoD of 23.3.2019. The Petitioner has further submitted that PGCIL is the Central Transmission Utility (CTU) constituted under Section 38(1) of the Act and is thus an 'Indian Governmental Instrumentality' which has directed the Petitioner to re-route the line and that PGCIL has stated that only then connectivity to its termination point i.e. Shikrapur sub-station would be granted to the Petitioner. The Petitioner has submitted that it is under obligation to comply with the directions issued by CTU and, consequently, the delay caused in achieving CoD due to the said direction constitutes a force majeure event under Article 11.3 of the TSA dated 24.6.2015. It has also been submitted that no fault can be attributed to the Petitioner for the aforesaid delay as it had followed all the Prudent Utility Practices and had also obtained approval under Section 164 of the Act for the LILO.

8. In light of the above, the Petitioner estimated a delay of at least three months from SCoD of 23.3.2019. The Petitioner has further submitted that completion of balance work may get delayed beyond three months considering that area of LILO of the AP Line falls in thickly populated urban area and that the Petitioner anticipates law and order issues on account of general elections. Vide letter dated 9.3.2019, the Petitioner intimated the Respondents regarding occurrence of force majeure event under Article 11 of the TSA in view of the letter dated 1.3.2019 sent by PGCIL.

However, no reply has been received by the Petitioner to the aforesaid letter.

Accordingly, the Petitioner has filed the present Petition with the following prayers:

- a) *Allow the Petition and declare that the factor(s)/event(s), namely, direction of Power Grid Corporation Limited to re-route the LILO of One Circuit of 765kV D/C Aurangabad-Padghe Transmission Line at Shikarpur GIS and re-submit the proposal for consideration, is a Force Majeure event under the TSA dated 24.06.2015, which is still continuing;*
- b) *Grant extension in the Scheduled Commercial Operation Date under Article 4.4.2 of the TSA to allow 3 months' time from receipt re-route alignment clearance from PGCIL to achieve CoD and waive any penalties or any other consequences thereof under the TSA; However if issues of law & order and work fronts get challenged again, the closing of balancing works may need more time and we would keep authorities informed.*
- c) *Direct the Respondents not to take any coercive steps including encashment of Bank Guarantees against the Petitioner considering the present SCoD of 23.03.2019 as the Project will likely get delayed beyond 23.03.2019 due to Force Majeure event."*

9. The Petition was admitted on 20.3.2019 and notices were issued to the Respondents to file their replies. PGCIL filed IA No 51/2019 seeking its impleadment as a Respondent in the present Petition. The Commission vide order dated 24.6.2019 allowed the IA No 51/2019 and impleaded PGCIL as a Respondent to the present Petition.

10. MPPMCL, vide its reply dated 15.4.2019, has submitted as under:

- (a) The Petitioner's claims of delay in execution of Project due to demonetization of Rs.500/- and Rs.1000/- bank notes by Reserve Bank of India and agitation across the State of Maharashtra for Maratha reservation as well as farmer agitation for Milk Procurement Prices have already been denied by GUVNL, MSEDCL and MPPMCL. Further, the Petitioner has also mentioned list of 97 court cases which became hindrance in early completion of works related to the Project. However, it has not been explained what efforts have been made to resolve the issues at the earliest.

(b) The completion of balance works of the Project before SCoD itself proves that the contention of the Petitioner regarding the adverse effect on the progress of the work due to demonetization, agitation across the State of Maharashtra and filing of court cases was not correct.

(c) SCoD of LILO under question was 23.3.2019 and the correspondence with PGCIL regarding route alignment map was started by the Petitioner on 28.2.2019 i.e. 3 weeks before SCoD. This proves laxity on part of the Petitioner which is ultimately resulting in delay in commissioning of the LILO and the Petitioner is claiming to extend SCoD treating the condition as force majeure. There is a huge gap of 5 months from the date of completion of the last asset and date of writing of letter to PGCIL for route alignment of LILO under discussion. Therefore, the delay in commissioning is fully attributable to the Petitioner.

11. MSEDCL has furnished its replies vide affidavits dated 17.5.2019 and 30.5.2019 and has made submissions in line with the submissions made by MPPMCL and denied the events of demonetization, agitations across State of Maharashtra for Maratha reservations as well as farmers agitations for milk procurement price and diversion of AP line to be force majeure events. Further, MSEDCL has made the following additional submissions:

(a) As per the progress reports of LILO of the AP Line submitted by the Petitioner in accordance with Article 5.3 of TSA, works of only 24 foundations, 32 towers and 42.2 ckm of stringing has been completed in the period of last 9 months (i.e. between July 2018 and Mar 2019). It also shows that work is also pending at various locations other than the location being claimed for force majeure.

(b) To comply with the directive of PGCIL to revise alignment of LILO of the AP line towards Shikrapur sub-station gate to cross over with sufficient margin from the proposed colony of PGCIL, realignment of just a single tower



would have solved the purpose. Instead, the Petitioner has re-aligned all the 7 towers for the reasons best known to the Petitioner only.

(c) The judgment of Appellate Tribunal for Electricity (APTEL) in Appeal No. 123 of 2012 relied upon by the Petitioner is not applicable in the present case as APTEL had allowed delay in obtaining statutory approvals as force majeure, considering that the Appellant therein, M/s Cargo Solar Power Gujarat Pvt Ltd, had applied for the said clearances in timely manner. Further, the Commission in its order dated 21.3.2016 in Petition No. 142/TT/2014 did not condone the delay of 62 days for asset of the Petitioner therein since it had failed to submit any justification for delay in filing of the application for forest clearances.

(d) As required in terms of Article 4.4.2 of TSA, the Petitioner did not make any efforts to approach the LTTCs for extension of time. The dispute is required to be resolved in terms of Article 16 of TSA which provides that the efforts for settlement required are to be undertaken. The Petitioner has approached the Dispute Review Authority i.e. the Commission without adhering to the process laid down in Article 16 of the TSA.

(e) As the Petitioner is responsible for the delay, MSEDCL should be allowed to charge and recover the liquidated damages as per Article 6.4 of the TSA.

12. PGCIL, vide its reply dated 15.7.2019, has made the following submissions:

(a) The delay as alleged by the Petitioner in the present Petition is solely attributable to the Petitioner.

(b) On 30.3.2017, the Petitioner applied for NOC from PGCIL for crossing (but not for vicinity of Shikrapur sub-station) of 765 kV S/C Solapur-Pune transmission line by LILO of the AP Line in between tower Location Nos. 750 and 751. The Petitioner thereafter furnished the requisite data for processing on 17.7.2017. After considering the proposal of the Petitioner, PGCIL granted NOC on 7.10.2017.

(c) With no communication in the interim period of around 1.4 years, the Petitioner once again applied for NOC vide communication dated 15.2.2019 i.e. just about a month before SCoD (23.3.2019) with a revised route for crossing of 765 kV S/C Solapur-Pune transmission line between the tower Location Nos. 751 and 752.

(d) On 28.2.2019, the Petitioner submitted its route plan and terminal details for the revised route which surprisingly was located near the vicinity of Shikrapur sub-station. Bare perusal of the Petitioner's communications dated 15.2.2019 and 28.2.2019 makes it clear that the route alignment suggested therein was completely different from what was previously communicated to PGCIL (i.e. in 2017). Therefore, PGCIL had on no occasion before 1.3.2019 to raise objection of any sort on the revised route alignment.

(e) Vide letter dated 1.3.2019, PGCIL requested the Petitioner to revise the route alignment from Location No. 39/0 towards Shikrapur sub-station gate to cross over with sufficient margin from the proposed colony. It was further stated by PGCIL that only then the proposal of the Petitioner shall be considered for approval.

(f) Thereafter, the Petitioner modified the route near the approach and submitted revised route and termination plan in Shikrapur sub-station. Further, the Petitioner itself has admitted in its communications dated 1.5.2019 and 24.5.2019 that there was change in route alignment and that the same was necessitated due to urbanisation in the intervening period. PGCIL granted approval to the revised proposal of the Petitioner on 27.6.2019.

(g) The onus of avoiding the habitation, residence, etc., while designing and finalising the route plan is solely on the Petitioner. PGCIL cannot be attributed any role in the alleged delay as the responsibility to timely furnish details for approval fell exclusively on the Petitioner. The Petitioner approached PGCIL for approval of its revised route only on 28.2.2019 while SCoD for LILO under the scope of the Petitioner was scheduled on 23.3.2019.

(h) As regards the Petitioner's reliance on approval granted under Section 164 of the Act, the proposed line route is not presented in miniscule and diminutive details for approval in terms of the said Section. Thus, no occasion had arisen for PGCIL to object. Further, the approval granted by MoP under Section 164 of the Act is also bereft of intricate specifics regarding route alignment, etc. and the said approval itself contemplates the Petitioner to comply with the requirement of provisions of the Act and rules framed thereunder.

(i) The role of PGCIL in the instant case is only of a transmission licensee and not as CTU.

13. The Petitioner, vide its rejoinder dated 6.5.2019 to reply filed by MPPMCL and rejoinder dated 15.6.2019 to the reply filed by MSEDCL, has submitted that the Petitioner has put on record challenges faced by the Project, in respect of demonetisation, Maratha and farmers' agitation, etc., to show the seriousness of the Petitioner to overcome most challenges thrown its way in completing the construction of all, but one, elements of the Project within SCoD. However, it has been clarified by the Petitioner that the present Petition has been filed by the Petitioner only for declaration that the event, namely, direction of PGCIL vide its letter dated 1.3.2019 to re-route LILO of the AP Line at Shikrapur sub-station, is a force majeure event under the TSA dated 24.6.2015. It has been further submitted by the Petitioner that there was no corridor available with the Petitioner to enter the Shikrapur sub-station except the route opted by the Petitioner as the area is densely populated with residential colonies and having under-construction premises. Therefore, most of the land is not available for construction of transmission line and the Petitioner had to re-align all the 7 towers (earlier planned) with addition of one tower. The Petitioner has relied on

judgment dated 4.2.2014 of APTEL in Appeal No. 123 of 2012 in '*Gujarat Urja Vikas Nigam Limited vs Gujarat Electricity Regulatory Commission & Ors.*' to contend that the present dispute is covered by the said judgment wherein APTEL held that delay caused in obtaining permission/ approval for land and water which are pre-requisites for a project, would undoubtedly fall under the category of force majeure event. As regards MSEDCL's contention of day to day extension of SCoD in terms of Article 4.4.2 of the TSA, the SCoD could be extended on day-to-day basis for a maximum period of 180 days as per the said Article, if the parties agree. However, MSEDCL declined to treat the event as a force majeure event and the Petitioner was constrained to approach the Commission on 16.3.2019 by filing the present Petition.

14. The Petitioner vide its rejoinder dated 7.8.2019 to the reply filed by PGCIL has submitted as under:

(a) The Petitioner had duly planned its line route much in advance and the same had also been approved by Ministry of Power under Section 164 of the Act. There were no urban colonies in the way of the original line route at that time. Further, no objections were received from any person, including PGCIL, when approval under Section 164 of the Act was granted by the Ministry of Power.

(b) It was only in January 2019 that the Petitioner came to know that PGCIL is constructing a residential colony along the entry passage corridor to the Shikrapur sub-station. The Petitioner also wrote an email dated 18.1.2019 to PGCIL to this effect and held several discussions. In order to save time and complete the LILO at the earliest, the Petitioner initiated the process for approval of new crossing between tower Locations Nos. 751 and 752 vide its letter dated 15.2.2019 addressed to PGCIL.

(c) As per Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010, the voltage level of AP Line being of 765 kV, the Petitioner was under obligation to maintain distance of 8.95 (2 meter +  $(765/33) \times 0.3$  meter) meters from buildings.

(d) As per the Central Electricity Authority (Technical Standards for Construction of Electrical Plants and Electric Lines) Regulations, 2010, the line routing should avoid large habitations, and densely populated areas. Therefore, the Petitioner had no choice but to revise the route of the LILO away from PGCIL's residential colony.

(e) The original map including tower schedule, single line diagram and power line crossing details was submitted to PGCIL while taking approval for crossing of Solapur-Pune transmission line between tower Location Nos. 750 and 751 vide the Petitioner's email dated 10.4.2017. There was no plan of PGCIL for colony area near the sub-station at the time. Had the Petitioner known about the same at that point of time, the Petitioner would have changed the route in 2017 itself and the Project would not have been delayed. As regards PGCIL's contention that the route alignments of the LILO dated 28.2.2019 and 10.4.2017 being different, the original route dated 10.4.2017 was between tower Location Nos. 750 and 751. However, having come to know about the development of PGCIL's colony only around January 2019 through various meetings for execution of work on approved route, the Petitioner applied for revision in route between tower Location Nos. 751 and 752 in order to complete the Project as soon as possible.

(f) The word 'urbanisation' used in the letter dated 24.5.2019 relied upon by PGCIL is nothing but PGCIL's residential colony as the change in route was because of said colony area of PGCIL.

15. The Petitioner vide its additional affidavit dated 1.10.2019 brought on record developments subsequent to admission of the Petition. The Petitioner, *inter-alia*, has submitted as under:

(a) During pendency of the Petition, PGCIL vide its letter dated 27.6.2019 granted permission to the Petitioner for overhead crossing of PGCIL's 765 kV D/C Solapur-Pune transmission line between tower Location Nos. 751 and 752 subject to compliance of erection of Guy wire arrangement for droppers at line side equipment.

(b) Vide its letter dated 1.7.2019, the Petitioner informed the LTTCs that there is delay in grant of approval for power line crossing of 765 kV Solapur-Pune transmission line as per modifications suggested by PGCIL for gantry arrangement at Pune end and stated that the same constitutes continuation of force majeure event as notified by the Petitioner earlier vide its letter dated 9.3.2019.

(c) Pursuant to making the modifications suggested by PGCIL for line crossing of 765 kV Solapur-Pune transmission line, the Petitioner completed all work pertaining to LILO of the AP line on 10.8.2019 and achieved commercial operation date of LILO of the AP Line on 27.8.2019 with a delay of approximately 157 days from the original COD of 23.3.2019.

(d) The aforesaid delay of approximately 157 days is covered as an event of force majeure under Article 11 of the TSA.

16. PGCIL, vide its reply dated 4.11.2019 and MSEDCL vide its reply dated 1.11.2019 to additional affidavit filed by the Petitioner (1.10.2019), have contested the claims of the Petitioner. The Respondents in their replies have mainly submitted as under:

(a) The Petitioner had failed to bring on record that it did not stick to the original route and ended up changing the location of 7 of its towers, leading to the re-alignment of the route. This new route was not subject matter of NOC granted to the Petitioner on 7.10.2017, which was limited to the permission for crossing the pre-existing line of PGCIL i.e. 765 kV D/C Solapur-Pune transmission line between the tower Location Nos. 750 and 751. It had nothing

to do with the route alignment or the tower schedule at other locations of LILO of the AP Line. Therefore, PGCIL had no occasion to go through the tower alignment and raise objections.

(b) Mere re-location of one tower would have served the purpose of avoiding the colony being set up by PGCIL. Accordingly, the delay is due to the Petitioner's own realignment and not due to the instructions of PGCIL.

(c) The Petitioner must be put to strict proof of sending emails dated 10.4.2017 and 18.1.2019. If the Petitioner was aware that PGCIL was constructing a colony pursuant to which the Petitioner was forced to re-align the route vide e-mail dated 28.2.2019, then why was the re-aligned route was still crossing over the colony of PGCIL. It further begs the question as to why letters dated 15.2.2019 and 28.2.2019 bear no reference to the colony if the argument of the Petitioner was that it was forced to change its route alignment on the instructions of PGCIL to avoid crossing over the colony area.

(d) As regards modifications suggested by PGCIL for gantry arrangement at Pune end, the requirements of crossing over the existing line and maintaining adequate clearances and safety standards were required under the applicable regulations of the Central Electricity Authority and were not imposed by PGCIL. In this regard, Article 5.1.1 of the TSA dated 24.6.2015 clearly states that the Petitioner was solely responsible for completion of the project by maintaining adequate clearances and safety standards as required under the applicable regulations. Therefore, if such directions have been issued to the Petitioner, the same cannot be in the nature of unforeseen events so as to be categorized as force majeure. This is so for the reason that such compliances were mostly arising out of the fact that the Petitioner on its own decided to cross the line between the towers Nos. 751 and 752 with removal of earth wire and OPGW of the existing power line. Due to this change, the Petitioner had to change the design of the dead end tower, which consequentially led to compliances as laid down by the Petitioner in the additional affidavit. The change in tower design,

maintaining adequate clearances, guy arrangement, etc. further led to delay in achieving the COD.

17. The Petitioner, vide its rejoinders dated 15.11.2019 to the reply of MSEDCL and reply of PGCIL, has mainly submitted as under:

(a) PGCIL has totally omitted to deal with the email dated 10.4.2017 sent by the Petitioner to PGCIL which contained the original tower schedule, single line diagram, power line crossing details and route of LILO of the AP Line. Thus, as on 10.4.2017, PGCIL was fully aware of the route alignment and tower schedule of LILO of the AP Line. There was no plan of PGCIL for colony area near Shikrapur sub-station at that time.

(b) Immediately on learning about PGCIL's residential township on 8.1.2019, the Petitioner vide email dated 18.1.2019 requested PGCIL to provide detailed layout plan of proposed colony to enable the Petitioner to explore alternate possibilities for route alignment, if any. However, no response was received from PGCIL. The Petitioner also held several discussions between 19.1.2019 and 14.2.2019 with PGCIL officials to resolve the issue. Only as a preventive action and to complete the LILO at the earliest, the Petitioner vide its letters dated 15.2.2019 and 28.2.2019 wrote to PGCIL regarding route alignment and sought the approval of new crossing between tower Location Nos. 751 and 752.

(c) E-mails dated 10.4.2017 and 18.1.2019 were already placed on record by the Petitioner vide its rejoinder dated 6.8.2019 to the reply filed by PGCIL. However, PGCIL never denied or disputed the said emails in the past and it only vide its reply dated 4.11.2019 has chosen to call for strict proof of sending these emails that too without denying the receipt of the same. Hence, the argument of PGCIL to this count is merely an afterthought.

(d) Due to PGCIL's direction to divert LILO of the AP Line as it was passing over PGCIL's colony area, the Petitioner had to take new permission for power line crossing of 765 kV Solapur-Pune transmission line; modifications



were required for gantry arrangement as suggested by PGCIL; and guy wire arrangement for dropper at the line side equipment, new material for guy wire arrangement from PGCIL's approved vendors and approval of the clearance of Y-phase jumpers of 765 kV Padge line was required. Hence, the contention that above requirements cannot be attributed to PGCIL is misconceived.

18. The matter was heard on 12.2.2020 and after hearing the parties, the Commission permitted the Petitioner to place on record by way of an additional affidavit its response to the specific query of the Commission as to what led to re-routing LILO of the AP Line with 7 new tower locations and having crossing of Solapur-Pune transmission line between tower Location Nos. 751 and 752 when the Petitioner could have avoided the PGCIL township by change in one tower in terms of NOC granted on 7.10.2017, as per the Petitioner's original proposal.

19. In response to the query of the Commission, the Petitioner vide its additional affidavit dated 11.3.2020 has submitted as under:

(a) As on December 2018, the Petitioner had successfully achieved CoD of all elements much prior to their SCoD except LILO of the AP Line. As on December 2018, out of total 179 locations for the LILO, 170 foundations had been completed as per original route. The Petitioner had completed foundations till tower Location No. 38/3 by December 2018.

(b) The Petitioner commenced work for the segment of transmission line between Location Nos. AP 39/0 and AP 40/0 as per the old route in January 2019. During the discussion with officials at PGCIL site office, the Petitioner came to know that this segment of the LILO is going to pass through the colony proposed by PGCIL. The Petitioner was not intimated about the proposed colony while the approval under Section 164 of the Act was granted.

(c) The Petitioner thereafter sent an email dated 18.1.2019 to PGCIL seeking detailed layout plan of proposed colony which would enable the Petitioner to explore alternate possibilities for route alignment. However, PGCIL has denied receipt of the said email from the Petitioner.

(d) The Petitioner had already achieved COD of other elements within SCoD and had about three months to complete the remaining work of LILO of the AP Line starting from January 2019 to SCoD of 23.3.2019. The said period was sufficient for the Petitioner to complete the Project within the timeline despite the fact that the implementation of Project was hampered due to intense agitations across the State of Maharashtra for Maratha reservations.

(e) The available period of three months for the Petitioner was very critical considering that laying a transmission line around the Shikrapur sub-station required a lot of effort and time on account of large scale urbanisation around the area.

(f) The sub-station vicinity area already had lot of developmental activities and urbanisation with limited corridor availability for passing the LILO. The Petitioner's original route had very limited scope for diversion and only the original route would have allowed the Petitioner to complete the Project in time in view of the PGCIL's approval dated 7.10.2017 for crossing 765 kV D/C Solapur-Pune transmission line between tower Location Nos. 750 and 751.

(g) However, there was a lot of uncertainty around the route diversion on account of need for rerouting the LILO to avoid PGCIL's proposed colony during January 2019. This led to complete halt of work of LILO in January and early February. It may be observed from the Monthly Progress Reports for the month of December 2018 and January 2019 that only one foundation could be completed in January 2019. At this point of time, the Petitioner was running against time to achieve SCoD on 23.3.2019.

(h) The Petitioner had already lost more than a month and it became very difficult for the Petitioner to complete the LILO within the limited time available

on account of urbanisation of the area on the original route. Therefore, in order to meet the fast approaching SCOD, the Petitioner decided to cross the 765 kV D/C Solapur-Pune transmission line from different point with a shorter route and sought approval from PGCIL vide its letter dated 15.2.2019.

(i) This proposed route was passing through the area in PGCIL's colony where a garden was proposed. The Petitioner anticipated that the approval for the new crossing between tower Location Nos. 751 and 752 of 765 kV D/C Solapur-Pune transmission line shall be granted within a short span thereby allowing the Petitioner to complete the Project within the anticipated timeline.

(j) In response to the letter dated 15.2.2019, PGCIL vide its letter dated 1.3.2019 directed the Petitioner to revise the alignment from Location No.39/0 towards the Shikrapur sub-station gate to cross over 765 kV D/C Solapur-Pune transmission line with sufficient margin from the proposed colony.

(k) Accordingly, the Petitioner diverted the line from AP 39/0 to AP 39B through AP 39A from the old route to avoid proposed colony of PGCIL. The Petitioner did not connect the revised line route from AP 39B to the original route as work on the original route would have taken more time in completion of Project on account of urbanisation. Further on account of urbanisation and presence of non-agriculture land, it was also not feasible for the Petitioner to connect the revised route from AP 39B to the old route for crossing 765 kV Solapur-Pune transmission line of PGCIL at the same point for which approval was received from PGCIL in 2017.

(l) For crossing 765 kV D/C Solapur-Pune transmission line at any location other than the location for which earlier approval was granted would require fresh approval from PGCIL. As it was evident that the Petitioner had to take fresh approval from PGCIL for crossing 765 kV D/C Solapur-Pune transmission line, the Petitioner decided to choose a shorter route for timely completion of the Project with crossing of Solapur-Pune transmission line between Location Nos. 751 and 752. This was the only possible route for

implementation in shortest possible time considering the urbanisation and technical constraints.

(m) The route implemented by the Petitioner is shorter than earlier envisaged route. However, the implemented route has resulted in setting up of one additional tower compared to previous route. The Petitioner has not claimed any compensation for such additional tower installed.

(n) PGCIL during the Joint Site Visit held on 23.5.2019 for the revised crossing approval has acknowledged that the previous approved power line crossing between tower Location Nos. 750 and 751 was not feasible due to construction of new houses.

(o) The Petitioner in the present Petition is not at all asking for any additional costs incurred due to change in route alignment. The Petitioner is merely seeking extension of time due to hardships faced by the Petitioner in changing the route only due to township of PGCIL.

20. MSEDCL and PGCIL vide their affidavits dated 4.5.2020 and 26.5.2020 respectively have reiterated their earlier contentions and also made the following additional submissions:

(a) The Petitioner could have commenced the work at balance locations except for the colony area crossing on original route including the existing power line crossing and gantry tower if it intended to complete the LILO and achieve the SCoD as per original route.

(b) The Petitioner has conceded to the fact that the original route has large scale urbanisation due to which completion of the Project would have taken more time. The urbanisation around Shikrapur sub-station has existed for more than 10 years i.e. even before finalization of the original route. The Petitioner has planned the execution of the work in the urbanised area in a casual and inefficient manner and only at the very end.

(c) In order to buy time, the Petitioner is deliberately putting onus of its own fault on PGCIL in order to evade from its obligation to achieve COD within SCoD. Vide its letter dated 15.2.2019, the Petitioner had deliberately submitted a route which did not have a sufficient margin from proposed colony to gain time to cover up its delay.

(d) It is denied that PGCIL during the joint site visit held on 23.5.2019 for the revised crossing approval had acknowledged that the previous approved power line crossing between tower Location Nos. 750 and 751 was not feasible due to construction of new houses and so the LILO would have to cross over residential area.

(e) The contention of the Petitioner that there will be no prejudice either to LTTCs or PGCIL in case of extension in SCoD is misconceived. MSEDCL has been required to pay PoC charges to the tune of Rs.1.49 crore for this un-commissioned element of the Project. Also, in view of the delay in achieving SCoD, LTTCs are entitled to recover the liquidated damages in line with TSA. In this regard, reliance has been placed on the decision of Hon'ble Supreme Court in the case of ONGC v. Saw Pipes Ltd. [(2003) 5 SCC 705], decision of APTEL dated 30.6.2014 in Appeal Nos. 62 and 47 of 2013 (PTC India Ltd. v. GERC and Anr.) and the Commission's order dated 24.1.2019 in Review Petition No. 4/RP/2018.

21. The Petitioner, vide its rejoinders dated 14.7.2020 to the reply filed by MSEDCL and PGCIL to the Petitioner's affidavit dated 11.3.2020, has, *inter-alia*, made the following submissions:

(a) The urbanisation around Shikrapur sub-station did not exist even in 2017. In this regard, reliance is placed on Google image submitted by the Petitioner. Approval under Section 164 of the Act is sought after undertaking detailed route survey and all the details pertaining to villages along the route, route map on topo sheets and tower schedules are submitted for approval. The

contention of MSEDCL that the original route was planned ignoring existence of urbanization is incorrect.

(b) Though approval under Section 164 of the Act was there, the Petitioner decided to divert route of LILO as per the instruction of PGCIL as these kind of diversions are accommodated during the project implementation not only for PGCIL but for other stakeholders (including farmers) also. However, on account of urbanization and presence of non-agriculture land, it was not feasible for the Petitioner to connect the revised route from the point of diversion to the old route for crossing Solapur-Pune transmission line of PGCIL at the same point for which approval was received from PGCIL in October 2017. This was also ratified by PGCIL during joint site visit held on 23.5.2019.

(c) PGCIL floated tender for construction of their Shikrapur sub-station township only in July 2018 with last date for receipt of bid as 23.8.2018. Hence, at least until August 2018, even PGCIL was not aware whether its proposed colony would come up or not. The bid documents of the tender also do not provide any map of the proposed colony. In the absence of the same, it was not possible for the Petitioner to anticipate that PGCIL's proposed colony would come in the way of the LILO.

(d) The Petitioner proposed a new route which was passing through the area where a garden was proposed since the Petitioner did not have any firm map of PGCIL's proposed colony and further, the Petitioner had to comply with the provisions of Central Electricity Authority (Measures relating to Safety & Electric Supply) Regulation, 2010 as well as Central Electricity Authority (Technical Standards for Construction of Electrical Plants and Electric Lines) Regulations, 2010 to maintain necessary clearance levels from urban areas and buildings. Hence, the LILO was proposed on a new route which was passing through the area where a garden was proposed and avoided the proposed residential buildings.

(e) Aspect of 'Financial Implications' as agitated by MSEDCL is not the subject matter of the present petition. The present Petition has been filed

seeking extension of SCoD only and MSEDCL cannot enhance the scope of the Petition or seek to include a separate cause of action under the ambit of the present Petition.

22. The Petition was finally heard on 11.8.2020 and was reserved for order. After hearing the parties, the Commission allowed the Petitioner and the Respondents to file their written submissions. In terms of the aforesaid liberty, the Petitioner, MSEDCL and PGCIL have filed their respective written submissions.

23. MSEDCL has filed its written submissions dated 20.8.2020 recapitulating its earlier submissions, which have already been captured/ recorded in the foregoing paragraphs and, therefore, are not repeated herewith for the sake of brevity. While reiterating its earlier contentions, PGCIL vide its written submissions dated 27.8.2020 has additionally submitted as under:

(a) The Petitioner's submission during the hearing of the instant matter that PGCIL is not privy to the TSA and as such is not competent to comment/ place reliance on clauses of TSA, is misplaced and is liable to be rejected. The TSA is a statutory contract and PGCIL is in its right to refer to the clauses of TSA even more so when it has been impleaded in the Petition and its letter has been alleged as the force majeure event and delay is attributed it. Moreover, the TSA is annexed in the Petition.

(b) As per the judgment of the Hon'ble Supreme Court in Energy Watchdog Vs CERC dated 11.4.2017 (Civil Appeal Nos.5399-5400 of 2016), force majeure is granted only if there is a complete impossibility in performance of contract and not merely difficulty or inconvenience in performance of contract.

(c) As per the TSA, the Petitioner was required to intimate MSEDCL within 7 days of occurrence of force majeure event. However, there was delay in this

regard as well. Even assuming that the coming up of colony was a force majeure event, the Petitioner ought to have intimated MSEDCL in January itself when they had multiple discussions with the officials of PGCIL and got conversant with the coming up of a colony. The Petitioner deliberately waited till the fag end of the Project in March and strategically sent a notice only on 9.3.2019 so that it may claim extension in SCoD on account of force majeure event.

24. The Petitioner vide its written submissions dated 23.9.2020 has relied on Google Map images at various points of time during the construction of the Project and made the following submission:

(a) Google Map images as on December 2018 demonstrate that the Petitioner had completed tower erection till tower No. 38/2 which is just two towers away from PGCIL proposed township. Google Map images of March 2019 demonstrate that stringing work was complete till tower No. AP 38/0. Accordingly, it was possible for the Petitioner to achieve CoD by SCoD (23.3.2019). Even the Monthly Progress Reports as submitted by the Petitioner under the TSA up till February 2019 clearly mention CoD by SCoD.

(b) Relying upon the comparative depiction of old and revised route of LILO of the AP Line, it has been submitted that the Petitioner was constrained to take back the LILO to revised location AP 39 New since sufficient margin had to be maintained from PGCIL's residential colony as per PGCIL's direction dated 1.3.2019. In view of technical constraint (Maintaining Permissible Angle), the Petitioner was not able to connect AP 39A New to AP 40/0 without routing the LILO through AP 39B New. Hence, the Petitioner was constrained to construct tower Location No. AP 39B New.

(c) It was not possible for the Petitioner to connect the revised line route from AP 39B New to the original route (AP 40/0) on account of urbanisation in between. On account of urbanisation and presence of non-agriculture land, it was also not feasible for the Petitioner to connect the revised route from AP



39B New to the old route from any other location for crossing the 765 kV Solapur-Pune transmission line of PGCIL at the same point for which approval was received from PGCIL in 2017.

(d) Prior to 1.3.2019, there was not a single written communication from PGCIL whatsoever regarding its upcoming residential colony even though PGCIL very well knew that the Petitioner was constructing the LILO which was passing through their upcoming township.

(e) Reliance is also placed on Google Map images at various points of time - December 2016, December 2017, December 2018 and November 2019 to demonstrate that there was no urbanisation, as alleged by PGCIL, for the original route conceived from tower AP 39/0 to AP 44/0, more specifically, between tower Nos. AP 40/0 and AP 41/0. The Petitioner would have crossed the 765 kV Solapur-Pune transmission line between tower Locations 750 and 751 crossing had there been no re-routing required due to PGCIL's proposed township.

(f) Joint site visit Report acknowledges the fact that previously approved crossing in tower Locations 750-751 was not feasible due to construction of new houses and, so, the LILO would have crossed over residential areas. Accordingly, it was not feasible to connect new Tower No. AP 39B envisaged due to re-routing to earlier Tower AP 40/0 due to urbanisation between these two towers and, therefore, the original crossing approved for tower Locations 750-751 was not feasible.

(g) The Petitioner finalised its original line route based on the then prevailing status of land use including urbanisation in the year 2017, when the Petitioner had taken approval to cross over the 765 kV D/C Solapur-Pune transmission line between tower Nos. 750-751. However, when the Petitioner approached the location in 2019, topology and land use pattern had changed substantially. Various residential/ industrial buildings came up and many vacant plots of land were converted to non-agricultural land. The Petitioner has no

control over development/ urbanisation taking place over a span of more than 2 years i.e. from 2017 to 2019.

(h) There is no privity of contract between the Petitioner and PGCIL with respect to the TSA. Hon`ble Supreme Court has, vide its judgment in the case of *M.C. Chacko v State of Travancore [AIR 1970 SC 504]* held that a person not a party to a contract cannot, subject to certain well recognized exceptions, enforce the terms of the contract. The recognized exception mentioned in the quoted judgment is worded widely so as to cover the 'beneficiaries' under the terms of the contract. In the present case, the TSA does not confer any rights or impose any obligations arising under it on any person or agent except the parties to the contract. PGCIL is also not a 'beneficiary' under the TSA. Even the relief sought by the Petitioner does not affect or prejudice PGCIL in any manner whatsoever. Therefore, PGCIL, being a third party to the contract and having no privity, cannot seek to interpret or enforce any of the terms of the TSA.

(i) It is requested to take note of the orders in the Petitions filed by PGCIL, whereby PGCIL's own projects have been at times delayed due to various reasons, including due to ROW and urbanisation, etc., and the same has been considered by the Commission while allowing the IDC for such delay. In this regard, reliance has been placed on the Commission`s orders in Petitions No. 364/TT/2018, 218/TT/2016 and 147/TT/2019. Similar standards should also be applied in the present case while considering the time over-run issue, especially when the Petitioner is not at all claiming any additional costs.

### **Analysis and Decision**

25. We have considered the submissions made by the Petitioner and the Respondents and have perused the documents available on record. The following issues arise for our consideration:

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

**Issue No.2: Whether the direction of PGCIL to re-route the LILO of One Circuit of 765 kV D/C Aurangabad-Padghe transmission line at Shikrapur sub-station is a force majeure event under the TSA dated 24.6.2015?**

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 11 (Force Majeure) of the TSA.

Article 11.5.1 of the TSA provides as under:

*“11.5 Notification of Force Majeure Event*

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

*Provided that such notice shall be a pre-condition to the Affected Party`s entitlement to claim relief under this Agreement. Such notice shall include full particulars of the event of Force Majeure, its effects on the Party claiming relief and the remedial measures proposed.*

*The Affected Party shall give the other Party regular reports on the progress of those remedial measures and such other information as the other Party may reasonably request about the Force Majeure.*

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

27. Thus, under Article 11.5.1 of the TSA, an affected party shall give notice to the other party of any event of force majeure as soon as reasonably practicable, but not later than seven days after the date on which the party knew or should have reasonably known of the commencement of the event of force majeure. It further

provides that such notice shall be a pre-condition to the affected party's entitlement to claim relief under the TSA.

28. PGCIL has contended that though coming up of its colony was not a force majeure event in terms of the TSA, but even assuming it was so, the Petitioner, in terms of Article 11.5.1 of the TSA, was required to intimate MSEDCL about the occurrence of the force majeure event not later than seven days. It has, therefore, submitted that the Petitioner ought to have issued notice in January 2019 when it had multiple discussion with the officials of PGCIL and got to know about coming up of the colony.

29. It is observed that the aforesaid contention had not been raised by PGCIL in any of its three replies but has been raised for first time only in its written submissions. Further, as submitted by the Petitioner, it was the direction of PGCIL dated 1.3.2019 (received on 5.3.2019) which required the Petitioner to re-route LILO of the AP Line at the last leg of the Project completion. Therefore, we do not find any merit in the submission of PGCIL that the Petitioner ought to have issued the force majeure notice in the month of January, 2019.

30. While the Petitioner has cited various events such as demonetisation, Maratha and farmers' agitations to be force majeure events which hindered the construction of the Project, it has clarified that the present Petition has been filed in respect of declaration of only one event, namely, direction of PGCIL vide its letter dated 1.3.2019 to re-route LILO of the AP Line at Shikrapur sub-station, as force majeure event.

31. Therefore, in this petition, we are only considering claim of force majeure event as regards the direction of PGCIL to re-route LILO of the AP Line at Shikrapur sub-station. It is noted that the Petitioner gave notice to the LTTCs on 9.3.2019 about the occurrence of force majeure under Article 11.5 of the TSA in view of the letter of PGCIL dated 1.3.2019, informing LTTCs about receipt of the PGCIL's said letter on 5.3.2019. According to the Petitioner, none of the LTTCs replied to its said notice. Thereafter, the Petitioner has approached the Commission by filing the present Petition. In our view, the Petitioner has complied with the requirement of TSA regarding prior notice to the LTTCs regarding occurrence of force majeure before approaching the Commission.

**Issue No.2: Whether the direction of PGCIL to re-route the LILO of One Circuit of 765 kV D/C Aurangabad-Padghe transmission line at Shikrapur sub-station is a force majeure event under the TSA dated 24.6.2015?**

32. The Petitioner was selected as a Transmission Service Provider through a process of tariff based competitive bidding for constructing the *“Additional System Strengthening for IPPs in Chhattisgarh and other Generation Projects in Western Region”*. The Petitioner entered into a Transmission Service Agreement dated 24.6.2015 with Respondent LTTCs to provide transmission service for the aforesaid scheme. As per Schedule 3 of the TSA, the Transmission Service Provider was required to achieve COD of the Project within 40 months from the effective date of the TSA i.e. 23.11.2015. Accordingly, SCoD for the project was 23.3.2019.

33. The Petitioner has submitted that as on December 2018, out of total 179 locations for LILO of the AP line, 170 foundations had been completed as per the

original route. The Petitioner has contended that but for the direction of PGCIL, it could have completed the balance work of LILO of the AP Line by the SCoD i.e. 23.3.2019. The Petitioner has submitted that the period from December 2018 to SCoD was very critical considering that laying the LILO around the Shikrapur sub-station required a lot of effort and time on account of large-scale urbanisation around the area. As per the Petitioner, during the discussion with officials at PGCIL site office in January 2019, the Petitioner came to know that a segment of LILO of the AP line is going to pass through a colony proposed by PGCIL. The Petitioner has submitted that through its email dated 18.1.2019 to PGCIL, it sought detailed layout plan of proposed colony to enable the Petitioner to explore possibilities of alternate route alignment. The Petitioner has alleged that there was lot of uncertainty around route diversion in the months of January and early February leading to the Petitioner losing critical time required for implementation of the Project considering that the Shikrapur sub-station vicinity area already urbanised and a lot of developmental activities going on and with limited corridor availability for passing the LILO. Thereafter, in order to complete the project on or before SCoD of 23.3.2019, the Petitioner decided to choose a shorter route for timely completion of the Project and accordingly, sought approval of PGCIL for crossing the 765 kV Solapur-Pune transmission line between Location Nos. 751 and 752 vide its letters dated 15.2.2019 and 28.2.2019, respectively. PGCIL vide its letter dated 1.3.2019 requested the Petitioner to revise alignment of the line from Location No.39/0 towards Shikrapur sub-station gate to cross over with sufficient margin from the proposed colony. After exchange of correspondences between the Petitioner and PGCIL, the said approval

for crossing of the 765 kV Solapur-Pune transmission line was granted by PGCIL on 27.6.2019 with certain conditions including erection of guy wire arrangement for droppers at line side equipment. The Petitioner complied with the additional requirements imposed by PGCIL and achieved COD of LILO of the AP Line on 27.8.2019.

34. The Petitioner has contended that the direction for re-routing of the transmission line in the aforesaid circumstances including urbanisation of the area, being beyond the reasonable control of the Petitioner, is an event of force majeure under Article 11 of the TSA. Accordingly, the Petitioner has sought condonation of delay of 157 days from the original SCOD of 23.3.2019.

35. *Per Contra*, PGCIL has submitted that the approval (i.e. NOC) for crossing of 765 kV S/C Solapur-Pune transmission line by LILO of the AP Line in between tower Location Nos. 750 and 751 was granted to the Petitioner on 7.10.2017, but the Petitioner, on its own, again sought approval/ NOC, vide its letter dated 15.2.2019 for crossing of 765 kV S/C Solapur-Pune transmission line between the tower Location Nos. 751 and 752. In response to the approval sought by the Petitioner for crossing 765 kV Solapur-Pune transmission line between Location Nos. 751 and 752, PGCIL requested the Petitioner vide letter dated 1.3.2019 to cross over with sufficient margin from its proposed colony. The Respondents have submitted that in order to comply with the directive of PGCIL to revise alignment of the line towards Shikrapur sub-station gate to cross over with sufficient margin from the proposed colony of PGCIL, realignment of just a single tower would have solved the purpose. Instead,

the Petitioner has re-aligned all the 7 towers for the reasons best known to the Petitioner only. PGCIL has contended that the alleged delay cannot be attributed to PGCIL as the Petitioner in its communications dated 1.4.2019 and 24.5.2019 has admitted that the change in route alignment was necessitated due to urbanisation in the intervening period i.e. between 7.10.2017 and 15.2.2019.

36. We have considered the rival contentions. The Petitioner has sought force majeure relief under Article 11.3 of the TSA dated 24.6.2015. The relevant extract of Article 11 is as under:

**ARTICLE: 11**

**11.3 Force Majeure**

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

*(a) Natural Force Majeure Events:*

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

*(b) Non-Natural Force Majeure Events*

*i. Direct Non-Natural Force Majeure Events*

- Nationalization or compulsory acquisition by any Indian Governmental Instrumentality of any material assets or rights of the TSP; or*
- the unlawful, unreasonable or discriminatory revocation of, or refusal to renew, any Consents, Clearances and Permits required by the TSP to perform their obligations under the RFP Project Documents or any unlawful, unreasonable or discriminatory refusal to grant any other Consents, Clearances and Permits required for the development operation of the Project, provided that a Competent*



*Court of Law declares the revocation or refusal to be unlawful, unreasonable and discriminatory and strikes the same down; or*

*• any other unlawful, unreasonable or discriminatory action on the part of an Indian Governmental Instrumentality which is directed against the Project, provided that a Competent Court of Law declares the action to be unlawful, unreasonable and discriminatory and strikes the same down.*

*ii. Indirect Non ~ Natural Force Majeure Events*

*• act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action: or*

*• radioactive contamination or ionising radiation originating from a source in India or resulting from any other Indirect Non Natural Force Majeure Event mentioned above, excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Site by the Affected Party or those employed or engaged by the Affected Party; or*

*• industry wide strikes and labour disturbances, having a nationwide impact in India.*

37. Thus, force majeure means any event or circumstance or combination of events and circumstances which wholly or partly prevents or unavoidably delays an affected party in the performance of its obligations under the TSA and is/are not within the reasonable control, directly or indirectly, of the affected party and could not have been avoided if the affected party had taken reasonable care or complied with prudent utility practices. An affected Party has been defined in the TSA as “any of the Long Term Transmission Customers or the TSP whose performance has been affected by an event of force majeure”.

38. According to the Petitioner, the direction of PGCIL to re-route LILO of the AP line at Shikrapur sub-station is a force majeure event in terms of aforesaid article, as the said direction has been issued in its capacity of Central Transmission Utility and thus being ‘Indian Governmental Instrumentality’. It is the case of the Petitioner that it

was on account of the construction of the proposed colony planned along the entry passage corridor to the sub-station and it being in the original route of LILO of the AP Line that the Petitioner was required to re-route the LILO, which led to delay in achieving SCoD of the LILO.

39. On the other hand, the Respondents along with PGCIL have contended that the delay is entirely attributable to the acts and omissions of the Petitioner itself and it was the Petitioner who never stuck to its original route and ended up changing the location of 7 of its towers leading to the re-alignment of route. It has also been submitted by the Respondents that in terms of direction dated 1.3.2019, mere re-location of one tower would have served the purpose of avoiding the colony set up by PGCIL and that the onus of diligently designing alignment of transmission line, finalizing route plan, avoiding areas of habitation and residence, etc. along with timely furnishing the details for approval fell exclusively on the Petitioner. PGCIL has also submitted that its letter dated 1.3.2019 to the Petitioner was in its capacity as transmission licensee and not as CTU.

40. It is undisputed that the Petitioner vide its application dated 3.2.2017 had originally applied for NOC from PGCIL for crossing of 765 kV S/C Solapur-Pune transmission line by LILO of the AP Line and that the crossing over permission was sought for between the tower Location Nos. 750 and 751. Based on the request of the Petitioner and upon furnishing the requisite data in relation to said application, NOC/ permission for overhead crossing was granted by PGCIL on 7.10.2017.

41. Subsequently, as the construction of LILO of the AP Line was approaching Shikrapur sub-station (i.e. tower Location No. AP 39) and so was SCoD of the Project (23.3.2019), the Petitioner vide its letter dated 15.2.2019 requested PGCIL for approval of power line crossing of 765 kV Solapur-Pune transmission line for LILO of the AP Line between the tower Location Nos. 751 and 752. The relevant extract of the letter is as under:

“To,

*The Deputy General Manager,  
765/400KV Shikrapur (GIS), Powergrid Substation  
Pune.*

*Kind Attn: Sh. Ajay Kapse.*

*Subject: Approval for Power Line Crossing for LILO 765 KV D/C Aurangabad-Padghe at Pune.*

*Dear Sir,*

*Chhattisgarh Western Region Transmission Ltd is executing System Strengthening for IPPs in Chattishgarh and other generation projects in Western Region. In the process of constructing LILO 765 KV D/C Aurangabad- Padghe at Pune, We are crossing 765 KV D/C Solapur-Pune(CKT I & II) line belonging to PGCIL as per under mentioned details.*

<i>Sr. No</i>	<i>Section Details of New 765 KV Line</i>	<i>Name of New Line (CWRTL)</i>	<i>Existing Line X-ING (PGCIL)</i>
<i>1</i>	<i>40/0-41/0</i>	<i>LILO 765 KV D/C Aurangabad-Padghe TL at Pune</i>	<i>765 KV D/C Solapur-Pune TL X-ing between Tower Loc No: 751 &amp; 752</i>

*We are herewith submitting Power line crossing proposal & request you to examine the crossing feasibility. In the said proposal removal of existing line Earthwire & OPGW is considered and suitable arrangement will be done for the same. Under crossing feasibility is also checked, however it is not feasible in present circumstances. We will also arrange Joint Inspection with PGCIL officials in context of present crossing proposal.*

*Therefore, it is requested to accord your kind approval & issue NOC for laying of LILO 765 KV D/C Aurangabad-Padghe TL at Pune.*

*Earliest action is highly solicited.”*

42. At this point, it would be pertinent to refer to the submissions/contentions of the Petitioner, which according to it led to the issue of the aforesaid letter. The Petitioner has contended that it was during the discussion with PGCIL on 8.1.2019 that the Petitioner came to know that PGCIL has proposed constructing colony along the entry passage corridor to the Shikrapur sub-station and the existing alignment of LILO of the AP Line was crossing the entry passage corridor to Shikrapur sub-station tentative around street light No. 28 keeping the required clearance. According to the Petitioner, on 9.1.2019, it advised its contractor to seek layout of the said colony and to carry out re-routing and survey from AP 39/0 to avoid such colony and thereafter vide its e-mail dated 18.1.2019, the Petitioner requested PGCIL to provide the detailed layout of the colony to enable the Petitioner to explore the alternate possibilities. It has been stated by the Petitioner that since PGCIL failed to provide the said details, the Petitioner as a preventive measure and in order to complete the line at the earliest, revised the route of LILO of the AP Line and initiated the process for approval of new crossing between tower Location Nos. 751 and 752 of the Solapur-Pune transmission line.

43. We have perused the records available. The details of the revised route as submitted by the Petitioner to PGCIL on 28.2.2019, after such details were called by PGCIL, clearly indicate that while the Petitioner re-routed LILO of the AP Line from Location No. AP 40 onwards so as to cross the 765 kV Solapur-Pune transmission line at tower Location Nos. 751 and 752, it was still passing over the Shikrapur sub-station area where the proposed colony of PGCIL were to come up. Hence, if the primary concern of the Petitioner for re-routing LILO of the AP Line was to avoid the

colony of PGCIL, it would have aligned the route in such a manner so as to avoid the colony altogether. However, having come to know about the proposed colony on 8.1.2019, till 28.2.2019, when the Petitioner first submitted its revised route, the LILO was still crossing over the Shikrapur sub-station area where the colony was to come up. The Petitioner has submitted that vide its e-mail dated 18.1.2019, it had requested PGCIL to share the details/layout of the said colony, to which PGCIL did not reply. However, PGCIL has called upon the Petitioner to provide proof of sending the said e-mail and has denied the receipt of the same.

44. We do not find any need to go into this aspect, as the Petitioner itself has admitted that it had several discussions with the officials of PGCIL during 19.1.2019 to 14.2.2019 in this regard, which also has not been denied by PGCIL. It is also a fact that the proposed colony of PGCIL was being constructed along the entry passage corridor to the Shikrapur sub-station and the existing alignment of LILO of the AP Line was crossing the entry passage corridor to Shikrapur sub-station. Therefore, it is surprising that when both the Petitioner and PGCIL had several meetings over a period of one month between 19.1.2019 to 14.2.2019 and both were aware about the proposed colony of PGCIL along the entry passage corridor to the Shikrapur sub-station, they failed to take a timely decision regarding re-routing to avoid the proposed colony.

45. A perusal of the letter of the Petitioner dated 15.2.2019 as extracted above clearly reveals that the Petitioner had neither referred to the earlier approval granted by PGCIL on 7.10.2017 for crossing of Solapur-Pune transmission line between

Location Nos. 750 and 751 nor did it refer to the development that the route is being revised on account of the colony proposed by PGCIL. The revised route of LILO of the AP Line was not furnished along with this application. The revised route was submitted by the Petitioner along with its letter dated 28.2.2019 upon the details of route alignment in the vicinity of Shikrapur sub-station being sought for by PGCIL. The relevant extract of the said letter is as under:

*“....The construction activity of the LILO of 765 kV D/C Aurangabad-Padghe Transmission Line to Shikrapur GIS is under progress and as per the details sought for route alignment in the vicinity of Shikrapur GIS substation. The route alignment in the Vicinity of Shikrapur GIS substation is as per attached Annexure-I.....”*

46. Further, while seeking approval for new crossing from PGCIL vide its letter dated 24.5.2019, the ground taken by the Petitioner was that the LILO is being re-routed on account of construction activities which took place since the approval for original crossing granted on 7.10.2017. The relevant extract of the table enclosed with the said letter is as under:

*“Point wise reply to PGCIL comments*

	<i>PGCIL Comment</i>	<i>CWRTL Reply</i>
1)	<i>FOR DEAD END TOWER SPOTTING:-</i>	
	<i>XXXX</i>	<i>XXXX</i>
	<i>Proposed dead end tower is revised at a distance of 75 Mtrs from Pune GIS SS gantry against previously proposed spotting of dead end tower at 121 Mts.</i>	<i><u>The earlier route was fixed in 2017. Due to urbanisation in the intervening period the line route has to be revised.</u></i>
	<i>XXXX</i>	<i>XXXX</i>
2)	<i>FOR POWER LINE OVERHEAD CROSSING</i>	
	<i>CWRTL has submitted earlier proposal dated 03/02/17 for overhead crossing without removal of Earthwire and same was approved vide our letter dated 07/10/17. (Copy</i>	<i><u>Proposal submitted earlier in 2017 was crossing from span between Loc. 750 to 751. However, due to construction activities taking place during intervening period, the line has to be rerouted and now</u></i>

	<i>enclosed)</i>	<u><i>crossing between tower nos. 751 and 752.</i></u>
	XXX	

XXX”

47. The Petitioner, vide its affidavit dated 7.8.2019 has sought to clarify the term ‘urbanisation’ in the aforesaid letter. The relevant extract of the said affidavit is reproduced below:

*“.....it is pertinent to note that PGCIL raised certain queries vide its Letter dated 01.05.2019 w.r.t approval sought by the Petitioner vide its letter dated 15.02.2019, to which the Petitioner submitted its reply vide Letter dated 24.05.2019 with revised route outside the PGCIL colony specifying that the route is revised due to urbanisation in the intervening period. The word ‘urbanisation’ used in the said letter is nothing but PGCIL’s residential colony as the change in route was because of said colony area of PGCIL.”*

48. The Petitioner has submitted that PGCIL did not raise any objection to the original route of the Petitioner when it was granted approval under Section 164 of the Act by the Ministry of Power. *Per contra*, PGCIL has submitted that the approval granted by the Ministry of Power under Section 164 of the Act is bereft of intricate specifics regarding route alignment, etc. for PGCIL to raise any objection. However, it is observed that the Petitioner did not exercise the option to invoke power from approval granted under Section 164 of the Act by the Ministry of Power. On the other hand, the Petitioner opted to explore alternate possibilities for route alignment based on the layout of the proposed colony to be received from PGCIL.

49. The revised route submitted by the Petitioner along with its letter dated 28.2.2019 proposed to cross the 765 kV Solapur-Pune transmission line between Location Nos. 751 and 752 but continued to be passing over the colony area of PGCIL. However, the revised route which ultimately came to be implemented did

cross 765 kV Solapur-Pune transmission line between tower Location Nos. 751 and 752, but avoided the PGCIL colony altogether was submitted along with letter dated 24.5.2019. Thus, it only goes to show that it was possible to arrive at the re-routing ultimately done based on the proposal dated 24.5.2019 even in February 2019.

50. In the light of the above discussion, it is evident that though one of the causes for the need to re-routing of the AP line at Shikrapur sub-station was the proposed colony of PGCIL, there was sufficient time with the Petitioner to get the approval for the revised route, as the Petitioner was aware of the same as early as 8.1.2019 as admitted by the Petitioner itself. Had the Petitioner sought the approval immediately thereafter, instead of waiting till 15.2.2019, the delay could have been avoided. As a matter of fact, the direction given by PGCIL subsequently vide letter dated 1.3.2019 was in response to the revised route for which approval was sought by the Petitioner. Accordingly, the prayer of the Petitioner to consider that the direction of PGCIL to re-route the AP Line at Shikrapur sub-station is a force majeure event under the TSA dated 24.6.2015 is rejected.

51. Article 11 of the TSA dated 24.6.2015 further provides force majeure exclusions as under:

**11.4 Force Majeure Exclusions**

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

*(a) Unavailability, late delivery, or changes in cost of the machinery, equipment, materials, spare parts etc. for the Project;*

*(b) Delay in the performance of any Contractors or their agents;*



(c) *Non-performance resulting from normal wear and tear typically experienced in transmission materials and equipment;*

(d) *Strikes or labour disturbance at the facilities of the Affected Party;*

(e) *Insufficiency of finances or funds or the Agreement becoming onerous to perform; and*

(f) *Non-performance caused by, or connected with, the Affected Party's:*

*i. negligent or intentional acts, errors or omissions;*

*ii. failure to comply with an Indian Law; or*

*iii. breach of, or default under this Agreement or any Project Documents”*

52. The Petitioner vide its rejoinder dated 14.7.2020 to the reply filed by PGCIL to the Petitioner's affidavit dated 11.3.2020 has admitted that diversions have been accommodated during the Project implementation not only for PGCIL but for other stakeholders as well. The relevant extract is as under:

*“10.....Though Section 164 approval was obtained, CWRTL decided to divert its line as per the instruction of PGCIL away from its colony. These kinds of diversions are accommodated during the project implementation not only for PGCIL but for other stakeholders (including farmers) also. However, on account of urbanization and presence of non-agriculture land, it was not feasible for CWRTL to connect the revised route from the point of diversion sought by PGCIL to the old route for crossing Solapur-Pune line of PGCIL at the same point for which approval was received from PGCIL in Oct 2017.”*

53. As per the Petitioner's own admission in the letter dated 24.5.2019, the route of LILO of the AP Line was revised on account of urbanization in the intervening period from 7.10.2017, when the approval for crossing was granted by PGCIL for the original route and 15.2.2019. The Petitioner vide its written submission dated 23.9.2020 has submitted that it had no control over development/ urbanisation taking place over a span of more than 2 years i.e. from 2017 to 2019.

54. In this context, it would be relevant to note that the Petitioner has acknowledged and agreed that it shall not be relieved from any of its obligations under the TSA or be entitled to any extension of time on account of unsuitability of the site or transmission line route(s) for whatever reasons as per the provision of Article 5 of the TSA. The relevant extract of the TSA is reproduced as under:

**“Article: 5**

**5. Construction of the Project**

**5.1 TSP’s Construction Responsibilities:**

**5.1.1.** *The TSP, at its own cost and expense, shall be responsible for designing, constructing, erecting, completing and commissioning each Element of the Project by the Scheduled COD in accordance with the Central Electricity Authority (Technical Standards for Connectivity to the Grid) Regulations, 2007, Central Electricity Authority(Technical Standards for Construction of Electrical Plants and Electric Lines) Regulations, 2010 Central Electricity (Grid Standards) Regulations, 2010, Central Electricity Authority (Safety requirements for construction, operation and maintenance of electrical plants and electric lines) Regulations, 2011 and Central Electricity Authority (Measure relating to Safety and Electricity Supply) Regulations, 2010, Prudent Utility Practices and other applicable Laws.*

**5.1.2** *The TSP acknowledges and agrees that it shall not be relieved from any of its obligations under this Agreement or be entitled to any extension of time by reason of the unsuitability of the Site or Transmission Line route(s) for whatever reasons. The TSP further acknowledges and agrees that it shall not be entitled to any financial compensation in this regard.”*

**5.1.3** *The TSP shall be responsible for obtaining all Consents, Clearances, and Permits relating but not limited to road/rail/river/canal/power line/crossings, Power and Telecom Coordination Committee (PTCC), defence, civil aviation, right of way/way-leaves and environmental & forest clearances from relevant authorities required for developing, financing, constructing, maintaining/renewing all such Consents, Clearances and Permits in order to carry out its obligations under this Agreement in general and Article 5.1.1 in particular and shall furnish to the Lead Long Term Transmission Customer promptly with copy/ies of each Consents, Clearances and Permits, which it obtains. The Long Term Transmission Customers shall assist and support the TSP in obtaining the Consents, Clearances and Permits required for the Project and in obtaining any applicable concessions for the Project, by providing letters of recommendation to the concerned Indian Governmental Instrumentality, as may be reasonably required from time to time.*

5.1.4 *The TSP shall be responsible for:*

- (a) *Acquisition of land for location specific substations, switching stations or HVDC terminal or inverter stations;*
- (b) *Final selection of site including its geo technical investigation;*
- (c) *Survey and geo- technical investigation of line route in order to determine the final route of the Transmission Lines;*
- (d) *Seeking access to the site and other places where the project is being executed, at its own costs, including payment of any crop compensation or any other compensation as may be required.”*

55. Therefore, the Petitioner cannot claim ignorance of its own responsibilities under the TSA and claim relief for unsuitability of site as a reason for delay in achieving COD. While the urbanization along the route may be beyond the control of the Petitioner, efficient management of laying of the LILO with suitable diversions, if required, was the responsibility of the Petitioner. Admittedly, the Petitioner has been taking such diversions for other stakeholders, including farmers, for implementation of the Project. Any delay on account of negligence and errors or omissions on the part of the Petitioner is covered under force majeure exclusions in Article 11.4 of the TSA. Further, as per Article 5.1.3 of the TSA, the Petitioner is responsible to take necessary consents and approvals from the authorities. Consequently, the delay on account of modifications undertaken by the Petitioner as per the direction given by PGCIL vide its letter dated 27.6.2019 cannot be covered as an event of force majeure, when the delay was on account of the Petitioner.

56. The Petitioner has also contended that the Commission has condoned delay in implementation of projects of PGCIL due to various reasons, including due to ROW problem, urbanisation and allowed IDC for such delay in various Petitions. In

this context, the prayer made by the Petitioner in the instant Petition which is relevant, is as under:

*“(a) Allow the Petition and declare that the factor(s)/event(s), namely, direction of Power Grid Corporation Limited to re-route the LIL0 of One Circuit of 765 kV D/C Aurangabad-Padghe Transmission Line at Shikarpur GIS and re-submit the proposal for consideration, is a Force Majeure event under the TSA dated 24.6.2015, which is still continuing.”*

57. We have examined and rejected the above prayer of the petitioner. The Petitioner, therefore, cannot now seek relief outside the scope of its prayer.

58. The Petitioner has prayed for extension of SCoD. Since we have rejected the prayer of the Petitioner and held that the delay was on account of the Petitioner, the prayer of the Petitioner for extension of SCoD is not sustained.

59. The Petition No. 81/MP/2019 is disposed of in terms of the above.

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

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

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