

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 120/MP/2022

Coram:

Shri I.S. Jha, Member

Shri Arun Goyal, Member

Shri P.K. Singh, Member

Date of Order: 31st May, 2022

In the matter of

Petition under Section 79 of the Electricity Act, 2003 read with Article 11 and 22 of the Agreement for Procurement of Power dated 25.10.2021 seeking directions to Southern Regional Load Despatch Centre seeking revision of schedule in accordance with notified declared Availability by Jindal India Thermal Power Limited.

And

In the matter of

Jindal India Thermal Power Limited

Habitat India, C-3, Qutab Institutional Area,
Katwaria Sarai, New Delhi- 110016

.....Petitioner

Vs

1. Southern Regional Load Despatch Centre

29, Racecourse Cross Road, Bangalore – 560009.

2. Kerala State Load Despatch Centre

LD Centre H.M.T. Colony P.O.
Kalamassery-683503

3. PTC India Limited

2nd Floor, NBCC Tower, 15,
Bhikaji Cama Place,
New Delhi – 110066

....Respondents

Parties present:

Shri Amit Kapur, Advocate, JITPL

Shri Akshat Jain, Advocate, JITPL

Shri Pratyush Singh, Advocate, JITPL

Shri Rabhav Malhotra, Advocate, JIPTL

Shri Sitesh Mukherjee, Advocate, SRLDC

Ms. Abiha Zaidi, Advocate, SRLDC



Shri Prabhas Bajaj, Advocate, KSEBL
Shri Ajay Sabharwal, Advocate, KSLDC
Shrin Ravi Kishore, Advocate, PTC
Shri Pulak Srivastava, JITPL
Shri Gajendra Sinh Vasava, SRLDC

ORDER

The Petitioner, Jindal India Thermal Power Limited, has filed the present Petition under Section 79 of the Electricity Act, 2003 (the Act) read with Article 11 and 22 of the Agreement for Procurement of Power dated 25.10.2021 seeking direction to the Southern Regional Load Despatch Centre, the Respondent No.1 herein, for revision of schedule in accordance with the notified declared availability by the Petitioner. The Petitioner is aggrieved on account of refusal by SRLDC to downward revise the approved Short-Term Open Access ('STOA') schedule in accordance with notified declared availability by the Petitioner, thereby forcing the Petitioner to declare availability and supply 270 MW power to the Respondent No.4, Kerala State Electricity Board Limited ('KSEBL').

Brief Facts

2. The brief facts of the case as culled out from the pleadings of the parties are as under: -

(a) Ministry of Power, Government of India on 30.1.2019 introduced Pilot Scheme-II to facilitate procurement of aggregated power of 2500 MW for three years from stressed generating companies having coal-based power plants which are already commissioned but are without Power Purchase Agreement. On 1.2.2019, Ministry of Power issued guidelines under Section 63 of the Electricity Act, 2003 (the Act) for procurement of aggregated power of 2500 MW for three years (Medium Term) through



competitive bidding on DEEP e-bidding portal under Pilot Scheme-II. PFC conducted the e-reverse auction on DEEP e-bidding portal pursuant to which the Petitioner was declared as one of L1/successful bidders. PFC issued Letters of Award to JIPL for supply of 270 MW power from its project at the tariff of Rs.3.26/kWh at JIPL's inter-connection point.

- (b) The Petitioner has entered into an Agreement for Procurement of Power ('APP') dated 25.10.2021 under Pilot Scheme-II with the Aggregator PTC India Limited for generation and supply of 270 MW power to KSEBL from the 1200 MW coal-based power project of the Petitioner located in Odisha for a period of 3 years from the appointed date on finance, own and operate (FOO) basis. On 25.10.2021, JIPL and PTC executed a Supplementary Agreement to the APP and agreed to limit the duration of supply of 270 MW to KSEBL for a period of six months (i.e. 1st January to 30th June) every year for the contract period starting from 1.1.2022. On 27.1.2021, PTC entered into Power Supply Agreement (PSA) with KSEBL for supply of 270 MW power from the Petitioner's project on back-to-back basis. On 27.10.2021, PTC entered into a Supplementary Power Supply Agreement (Supplementary PSA) with KSEBL on back to basis by agreeing to limit the duration of supply 270 MW to KSEBL for a period of six months (i.e. 1st January to 30th June) every year for the contract period starting from 1.1.2022. Both PSA and Supplementary PSA form part of APP and Supplementary Agreement to APP.
- (c) The Commission has adopted the tariff under section 63 of the Act vide order dated 22.12.2021.

- (d) The Aggregator PTC has taken Short-term open access approval from SRLDC on behalf of KSEBL from 1.4.2022 to 30.4.2022 and 1.5.2022 to 31.5.2022 on advance basis as per the Detailed Procedure for Open Access in inter-State Transmission System.
- (e) On 1.4.2022, the Petitioner issued force majeure notice to PTC under Article 16.5 of the APP with respect to change in the mechanism/modalities for allocation of non-linkage coal through e-auction to thermal power plant by way of Coal India Limited circular dated 1.3.2022 issued pursuant to Cabinet Committee of Economic Affairs decision dated 26.2.2022. The Petitioner requested PTC/KSEBL to provide confirmation/acceptance on its force majeure claim to procure coal from Coal India under the new mechanism and for a revised letter of credit for additional amount to cover its receivables under APP considering the substantial rise in the price of coal due to Coal India's Circular dated 1.3.2022. The Petitioner also informed that until the remedy for the force majeure event, the Petitioner would be forced to suspend the supply of contracted capacity of 270 MW to KSEB. The said letter was forwarded by PTC to KSEBL vide its letter dated 2.4.2022.
- (f) The Petitioner in its e-mail dated 1.4.2022 requested PTC to make an application for downward revision of schedule as required by it from 270 MW to 0 MW for the period from 4.4.2022 to 30.4.2022 and 1.5.2022 to 31.5.2022. On 1.4.2022, PTC on behalf of the Petitioner made an application to Southern Regional Load Despatch Centre (SRLDC) seeking downward revision of schedule from 270 MW to 0 MW for the period from

4.4.2022 till 30.4.2022. SRLDC vide its email dated 2.4.2022 to PTC and KSEBL sought the consent from KSEBL for processing the request for downward revision of schedule from 270 MW to 0 MW as requested by the Petitioner.

(g) KSEBL vide its letter dated 2.4.2022 intimated PTC that the contract is not dependent on and does not specify any specific source of fuel and the Petitioner is bound to dedicate capacity of 270 MW @Rs. 3.26/kWh for supply of power to KSEBL. Further, KSEBL rejected the notice of force majeure and insisted that the Petitioner is required to continue with the supply of the contracted capacity.

(h) KSEBL vide its letters dated 3.4.2022 and 6.4.2022 denied consent for downward revision of the approved STOA transactions citing the reason of high demand summer season of the State and relying on the provisions of Clause 3 of Supplementary Power Supply Agreement and Supplementary Agreement to APP which required that any subsequent application for change in approved open access quantum shall be only with the consent of KSEBL.

(i) SRLDC vide its letters dated 3.4.2022 and 6.4.2022 rejected the applications of PTC for downward revision of schedule from 270 MW to 0 MW for the period 4.4.2022 till 30.4.2022 and for the period 1.5.2022 till 31.5.2022 respectively.

(j) Aggrieved by the rejection of revision of schedule by SRLDC, the Petitioner has filed the present petition with the following prayers:



“(a) Direct SRLDC to revise the approved Short-Term Open Access Schedule of Petitioner/Jindal India Thermal Power Limited’s Project from 270 MW to 0 MW for the balance period till 30.04.2022 and 01.05.2022 to 31.05.2022 in terms of Regulation 14 of CERC (Open Access in inter-State Transmission) Regulations, 2008;

(b) In the interim, till this Hon’ble Commission finally adjudicates the present Petition, SRLDC be directed to downward revise the approved Short-Term Open Access Schedule of Petitioner/Jindal India Thermal Power Limited’s Project from 270 MW to 0 MW as sought by JITPL forthwith;

(c) Declare that any downward revision or cancellation sought by JITPL/PTC with respect to the approved Short-Term Open Access Schedule arising out of reduction in notified declared Availability of Petitioner/Jindal India Thermal Power Limited’s Project is not contingent upon the consent/approval of the buyer i.e., KSEBL;

(d) Direct Respondent/SRLDC to revise the approved Short-Term Open Access Schedule of Petitioner/Jindal India Thermal Power Limited’s Project as and when such revision is sought by JITPL;

(e) Direct KSEBL to pay compensation to JITPL for the monetary losses suffered by JITPL (with carrying cost) on account of SRLDC’s refusal to downward revise the approved Short-Term Open Access Schedule/DC of JITPL’s Project; and

(f) Pass any such other appropriate orders/directions as this Hon’ble Commission may deem fit and proper in the facts and circumstances of the case.”

Submissions of the Petitioner are mainly on following counts:-

3. SRLDC by its email dated 2.4.2022 and reports dated 3.4.2022 and dated 6.4.2022 has arbitrarily and illegally rejected the Petitioner/PTC’s application requesting for downward revision of the Petitioner’s STOA schedule (with respect of supply of power to Kerala State Electricity Board Limited) from 270 MW to 0 MW for the period from 4.4.2022 to 30.4.2022 and from 1.5.2022 till 31.5.2022 based on the purported e-mail sent by KSEBL and on the pretext that consent from State/buyer i.e. KSEBL is required for processing such request for downward revision. The Petitioner has further submitted that SRLDC’s denial/refusal to revise the Petitioner’s schedule is violative of Regulation 14 of the Central Electricity Regulation (Open Access in inter-State Transmission) Regulations, 2008 as amended from time to time



(‘Open Access Regulations, 2008’) and the Statement of Reasons issued along with the Open Access Regulations, 2008, Central Electricity Regulation (Open Access in inter-State Transmission) (Amendment) Regulations, 2009 (Open Access Amendment Regulations, 2009) and the Procedure for Scheduling Short Term Open Access in inter-State Transmission (Bilateral Transaction) approved by the Commission in 2011 (STOA Procedure, 2011). The Petitioner has further submitted that the regulatory framework provides for the following:

- (a) It is the right and prerogative of the short-term applicant i.e. JITPL/PTC to seek downward revision of the approved short-term open access schedule.
- (b) Nodal Agency i.e. SRLDC is statutorily obligated to downward revise the approved short-term open access schedule upon the request of the short-term customer.
- (c) Downward revision of JITPL’s short-term open access schedule by SRLDC is not contingent upon the consent or concurrence of the buyer of such power i.e., KSEBL.
- (d) SRLDC does not have the discretion to reject such request made by the open access customer for downward revision of the approved schedule.

4. Hon`ble Supreme Court in the case of PTGC India Ltd. Vs CERC has categorically held that Regulations framed under Section 178 of the Electricity Act, 2003 (Act) are in the nature of a subordinate legislation and binding on all entities. Therefore, SRLDC’s refusal is arbitrary, illegal and violative of the applicable regulatory framework.



5. In terms of Article 5.1.4 and 11.4 of the APP dated 25.10.2021 and Statement of Objects and Reasons issued for 5th Amendment to the Grid Code, the declaration of availability of the power plant is the sole prerogative and statutory right of the Petitioner and SRLDC is obliged to consider and record the notified availability. Neither SRLDC nor KSEBL can interfere with the declaration of declared capacity by the Petitioner. It has been further submitted that SRLDC is a statutory body established under the Act and is responsible under Section 28(3)(a) for the optimum scheduling and despatch of electricity in accordance with the contract executed between generating company and distribution licensees. The Petitioner has submitted that SRLDC by not considering the revised declared capacity of the project as notified by the Petitioner has violated the statutory duty under the Act and Grid Code.

6. The Petitioner has submitted that as a result of the arbitrary and illegal action of SRLDC, the Petitioner is constrained to use coal procured under other schemes like linkage coal and Shakti B-vii(a), etc. which is not meant for use under the APP on account of forced supply of 270 MW power to KSEBL and thus, is having an adverse impact of approximately Rs. 1.45 crore per day on the variable cost. The Petitioner has prayed for an ad-interim relief of direction to the Respondent, SRLDC to comply with the provisions of the Open Access Regulations, 2008 and to accordingly downward revise the approved STOA schedule of the Petitioner from 270 MW to 0 MW forthwith apart from the main prayers regarding directions to SRLDC for the period from 4.4.2022 to 30.4.2022 and for the period from 1.5.2022 to 31.5.2022 and consequential compensation from KSEBL.

Hearing dated 21.4.2022

7. The matter was admitted during the hearing on 21.4.2022 and notices were issued to the Respondents to file their replies. During the hearing, learned counsel for the Petitioner submitted that on account of the arbitrary and unreasonable actions of SRLDC, the Petitioner is suffering a loss of approximately Rs.1.5 crore per day and thus, the Commission may consider grant of ad interim relief as prayed for by the Petitioner. Learned counsel for KSEBL opposed the request of the Petitioner for grant of ad interim relief. The Commission observed in the Record of Proceedings that prayer for ad interim relief would be taken up on the next date of hearing after taking into the account the replies and rejoinders filed by the parties.

Reply of SRLDC (Respondent No.1)

8. SRLDC has submitted that during the period from March 2022 till 5.5.2022, a total of 22 requests for downward revision of approved short-term open access transactions were made by STOA applicants to SRLDC. Out of 22 requests, downward revisions of 15 number of applications were approved by SRLDC based on the consent of buyer. Further downward revision of 7 nos. of applications including 2 nos. of applications from M/s PTC India were not processed for downward revision due to non-availability of buyers' consent. With regard to the denial of revision of schedule of the Petitioner, SRLDC has submitted as under:

- (a) While denying the consent for downward revision, KSEBL relied on clause 3 of the Supplementary Power Supply Agreement dated 27.10.2021 between KSEBL and PTC and clause 3 of Supplementary Agreement to APP dated 25.10.2021 between the Petitioner and PTC which provided that "any subsequent application for change in approved open access quantum shall be

only with prior written consent of KSEBL. The statutory right of the Petitioner for revision of schedule has been waived by way of the APP and PSA.

(b) Under Section 28(3)(a) of the Act, RLDC shall be responsible for optimum scheduling and dispatch of electricity within the region, in accordance with the contracts entered into with the licensees or the generating companies operating in the region. Ministry of Power on 22.12.2021 has also issued directions to RLDCs under Section 37 of the Act wherein RLDC has been directed to devise appropriate mechanism to ensure compliance with Section 28(3)(a) of the Act so that scheduling and dispatch in their respective control areas is done in accordance with the contracts entered into between the concerned regional entities. Therefore, SRLDC is duty bound to ensure that scheduling is done in compliance with the contracts.

(c) MoP vide Resolution dated 21.2.2022 notified amendments to the Guidelines for the Short-Term Procurement of Power by distribution licensees through tariff based bidding to address the issue of sale of power by the generators in the market without consent of procurers. The said amendment also in principle support the action of SRLDC while seeking consent from the buyers for allowing the request for downward revision.

(d) SRLDC has faithfully performed the STOA application processing, revision of schedule request by applicants with adequate checks and balances in accordance with the Act, Regulation, Rules and Guidelines. SRLDC has confined its scrutiny to clauses in the contracts/PPA pertaining to scheduling only for the compliance with the Act.

- (e) As regards the contention of the Petitioner regarding claims for force majeure, the Petitioner could have approached the Commission for suitable orders in terms of the agreement between the parties. On the contrary, the present step towards downward revision to 0 MW is being resorted to which would only lead to disruption of power supply to Kerala.
- (f) The applicant TPC has applied for STOA transaction on behalf of the buyer i.e. KSEBL and therefore, PTC is duty bound to take necessary consent of buyer in case of any change request in approved viz-a-viz scheduled quantum of the said STOA transaction.

Reply of Kerala State Load Despatch Centre (Respondent No. 2)

9. KSLDC has submitted that during the present summer period on account of the power shortage across the country, the per unit price of electricity has increased exponentially on the spot exchange. Keeping in view the economic realities, the generators must not be permitted to indulge in profiteering by selling power at the power exchange at the cost of dishonoring their contractual obligation. Any attempt on the part of the Petitioner to wriggle out of its contractual obligations to indulge in profiteering through sale of electricity on the power exchange during the ongoing power crises deserves to be rejected. It has been further submitted that revising the schedule from 270 MW to 0 MW from the Petitioner's power plant would aggravate the situation further and would lead to a power crisis and widespread load shedding and load restrictions in the State. The same would be against the public interest as well as public policy.

Reply of PTC India Limited (Respondent No. 3)

10. The reason for revision in the declared capacity by the Petitioner was on account of the alleged force majeure event i.e. increase in coal prices which is not covered under the relevant provisions of the PPA/PSA. Further, increase in coal prices is not covered under force majeure in terms of judgment of the Hon'ble Supreme Court in Energy Watchdog Vs. CERC and Ors. [(2017) 14 SCC 80]. PTC has further submitted that any downward revision of the schedule requires consent of KSEBL as per Clause 3 of the Supplementary Agreement dated 25.10.2021. The request of the Petitioner for downward revision of the approved STOA is with the sole intention not to supply power under the concluded agreements with PTC/KSEBL mainly on account of the fact that the power rates have drastically gone up and the Petitioner intends illegally to stop the supply of power so that it can unduly enrich itself in the prevalent power markets scenario.

Reply of KSEBL (Respondent No.4)

11. The Respondent No.4, KSEBL has mainly submitted as under:

- (a) As per the PSA under the Pilot Scheme -II entered between KSEBL and PTC on 27.10.2021, PTC is to supply 270 MW RTC power to KSEBL from the Petitioner on medium term basis from January to June for 3 years from 1.1.2022 onwards. As per Clause 3 of the Supplementary Agreement to the PSA, PTC and the Supplementary Agreement to the PPA between PTC and the Petitioner, "the Aggregator/Supplier shall apply for STOA on behalf of KSEBL for the mutually agreed period and utilize the advanced STOA, FCFS STOA, Day Ahead STOA available for applying for short term open access within the stipulated timelines as per the prevailing regulations until the same is granted for the entire contracted quantum.....". As mutually agreed by

PTC/Petitioner and KSEBL, the drawal of power is through short term open access and the STOA application is to be made by the Petitioner or PTC on behalf of KSEBL.

- (b) Power flow to KSEBL started from 1.1.2022 onwards. However, during March 2022, the Petitioner was supplying only 241 MW as against the contracted capacity of 270 MW. The Petitioner was consistently insisting for downward revision of 270 MW from 21.3.2022 to 31.3.2022. KSEBL through PTC intimated the Petitioner that power requirement in the months of March, April and May is maximum in Kerala and therefore downward revision would cause acute power shortage and power crisis in the State. KSEBL also pointed out to the Petitioner that as per Article 10.3 of the PSA, it is the responsibility of the Petitioner to arrange electricity from any alternate source if there is reduction in availability of the power station.
- (c) The Petitioner vide e-mail dated 22.3.2022 intimated KSEBL regarding its planning to take shutdown of Unit-2 of the power plant in or around 15th May 2022 for a period of 45 days. KSEBL requested the Petitioner to postpone the overhaling considering critical requirement of power in the State.
- (d) The Commission vide orders dated 1.4.2022 and dated 6.5.2022 in Petition No. 4/SM/2022 and 5/SM/2022 has capped the price of electricity to be traded at the power exchange in view of the abnormal increase in the price of electricity.
- (e) The Petitioner issued for majeure notice dated 1.4.2022 under Article 16.5 of APP citing circular of Coal India Limited dated 1.3.2022. KSEBL vide its letter dated 2.4.2022 intimated PTC that the contract is not dependent on and does not specify any specific source of fuel and the Petitioner is bound to dedicate

capacity of 270 MW @Rs. 3.26/kWh for supply of power to KSEBL. Further, KSEBL rejected the notice of force majeure and insisted that the Petitioner is required to continue with the supply of the contracted capacity. As the request for acceptance of force majeure notice continued from PTC, KSEBL invited representatives of the Petitioner and PTC for a meeting on 21.4.2022 but no resolution could be found. The claim of the Petitioner of a force majeure event is entirely misconceived and only an attempt to indulge in profiteering through the sale of electricity on the power exchange during the ongoing power crisis in the country.

- (f) Decision of SRLDC sought to be impugned by the Petitioner in the present case is in accordance with the law and does not deserve any interference by the Commission. As per Section 28 (3) (a) of the Act, SRLDC is required to take into consideration the contract entered into with the licensees or the generating companies operating in the region. In the present case, the provisions of the contract including the provision of clause 3 of the Supplementary APP as well as Clause 3 of the Supplementary PSA clearly provide and envisage that any change in the approved open access quantum including request for downward revision of the scheduled capacity for STOA shall be with the prior written consent of KSEBL. In terms of the said binding contractual provisions, there had not been any permissibility for the Petitioner to seek any downward revision of the scheduled STOA quantum without the prior written consent of KSEBL. The decision of the SRLDC is entirely in conformity with the statutory mandate of Section 28(3)(a) of the Act and maintains the sanctity of the contractual arrangement between the parties.

- (g) The reliefs sought by the Petitioner in the present petition are an attempt to



breach the provisions of the APP and PSA which forms an integral part of the APP. Relying on the provisions of Recital A, E, F, Articles 5.2, 10.1, 10.3, 11.1, 11.2 and 11.6 of the APP dated 25.10.2021; Recital F, paras 1, 2, 4 of Supplementary Agreement dated 25.10.2021 to APP; Recital B, Articles 10.1.1, 10.3 and 11.1.1 of PSA dated 27.10.2021 and Recital F and paras 3, 4 and 5 of Supplementary Agreement dated 27.10.2021 to the PSA, KSEBL has submitted that (i) as per the agreements, the Petitioner as the Supplier has arranged fuel supply vide various sources of CIL/MCL for the purpose of the contracted capacity and has agreed to dedicate a generating capacity of 270 MW to the Aggregator/PTC at the delivery point for supply to KSEBL and the contracted capacity shall at all times be operated and utilised in accordance with the agreement; (ii) in the event of the availability of the power station is reduced on account of scheduled maintenance, unscheduled maintenance or force majeure, the Petitioner with prior consent of PTC supply electricity from alternative sources which shall be deemed to be supply under the agreement and payment thereof shall be in accordance with the agreement irrespective of the actual cost of supply from alternative sources; and (iii) the Petitioner/PTC shall apply for STOA on behalf of KSEBL and any subsequent application for change in approved open access quantum shall be only with the prior consent of KSEBL. The Petitioner in violation of the provisions of the agreements has been insisting for downward revision of schedule of power from the generation project from March 2022 onwards on one pretext or the other- initially citing annual maintenance issue and subsequently issuing force majeure notice under Article 16.5 of the APP. The claim of the Petitioner is not legal and admissible.

- (h) The Petitioner's notice for force majeure is based on Article 16.4(a) of the APP under which 'change in law' has been classified as a political event. However, the CIL circular dated 1.3.2022 mandating to offer non-linkage coal through one e-auction window of Coal India Limited/ Singareni Collieries Company Limited only is not covered under change in law. KSEBL has submitted that even under a force majeure condition, the Petitioner is bound to supply contracted power by arranging alternative sources with no additional cost. The conditions in the agreements being so, the request of the Petitioner for downward revision citing a non-existent force majeure event is misconceived, illegal and unsustainable.
- (i) The Petitioner is one among the best sellers in the market and has been selling in the market even during the month when the schedule to KSEBL was reduced. KSEBL has placed on record a chart depicting the net injection schedule from the project of the Petitioner during the months of March and April 2022 for the days when the Petitioner reduced the schedule to KSEBL.
- (j) The agreements that are entered into in the present petition are medium term agreements but due to limited offtake period of 6 months, they are drawn by availing short term open access. The Open Access Regulations cited by the Petitioner would not have any applicability in the facts of the present case.
- (k) The interim relief sought in the petition is in the nature of final relief and should not be granted as it would result in allowing the petition itself.

Appeal before APTEL

12. Aggrieved by the deferment of consideration of ad interim relief in the Record of Proceedings dated 21.4.2022, the Petitioner approached the Appellate Tribunal



for Electricity (APTEL) by filing Appeal No. 177 of 2022 & IA Nos 657 & 705 of 2022. APTEL vide order dated 13.5.2022 directed the Commission to take up the matter for hearing on 19.5.2022 and render its decision after hearing the parties expeditiously.

13. Pursuant to direction of APTEL, the matter was heard on 19.5.2022. Learned counsel for the Petitioner made the submissions mainly on the following grounds:

(a) It is submitted that The APTEL vide its order dated 13.5.2022 has granted liberty to the Petitioner to pursue all requisite remedies including compensation or such other reliefs as admissible under the law in the given facts and circumstances. However, at this stage, the Petitioner is praying for direction to SRLDC to downward revise the approved STOA schedule of the Petitioner's Project forthwith.

(b) it is argued that Clause 3 of the Supplementary Agreement relied upon by the Respondents relates to the revision in the STOA quantum, whereas in the present case, the Petitioner had applied for revision of its schedule and not the quantum of STOA. The quantum of STOA (quantum of transmission corridor booked) remains as it is. Reliance was placed on Regulation 6 of the Open Access Regulations, 2008 to draw the distinction between the STOA quantum and the STOA schedule under Regulation 14.

(c) it is submitted that the provisions of the Open Access Regulations, 2008 override the provisions of the contracts. It is settled position of law that Regulation under Section 178 of the Act overrides the existing contracts. In this regard, reliance was placed on the Judgment of Hon'ble Supreme Court in the case of PTC v. CERC, [(2010) 4 SCC 603].

14. Learned counsel for the Respondent, SRLDC also made the following submissions as under:

(a) The Petitioner is misreading the Statement of Object and Reasons issued along with Open Access Regulations, 2008. It only speaks of omission of nodal agency's powers to allow revision/cancellation in extraordinary circumstances.

(b) SRLDC has acted as per the provisions of Section 28(3)(a) of the Act which mandates that RLDC shall be responsible for optimum scheduling and despatch of electricity within the region in accordance with the contracts entered into with the licensees or the generating companies operating in the region.

(c) As per clause 3 of the Supplementary Agreement, the STOA application was required to be made on behalf of KSEBL. Further, the said clause also provides that for any subsequent application for change in approved open access quantum shall be only with prior consent of KSEBL. Pertinently, such Supplementary Agreement was specifically entered into to supply the power under medium-term contract through the STOA scheduling.

(d) The contention of the Petitioner that the aforesaid clause applies to STOA quantum is specious. The clause is equally applicable for revision of schedule.

(e) Regulation 14 of the Open Access Regulations, 2008 only provides flexibility of revision/ cancellation of STOA schedule and such flexibility given/provided by the provisions of the regulations can be surrendered.

(f) It is a settled position in law that a benefit conferred through a statute can be waived off if it does not affect public policy. In this regard, reliance was placed on the judgments of Hon'ble Supreme Court in the case of P. Dasa Muni Reddy v. P Appa Rao (1974) 2 SCC 725, Krishna Bahadur v. Purna Theatre and Ors., [(2004)



8 SCC 229] and Lachoo Mal v. Radhey Sham, [(1971) 1 SCC 619]. The waiver of the right of the Petitioner towards downward revision without the consent of KSEBL as per the SPPA does not affect the public interest.

(g) Strong reliance on the Regulation 14 of the Open Access Regulation, 2008 by the Petitioner is misplaced in as much as the Petitioner is not even the STOA applicant as envisaged therein.

15. Learned counsel for the Respondent, KSEBL adopted the submissions made by the learned counsel for SRLDC and further submitted as under:

(a) The Petitioner has wrongly argued that it has been denied its right to seek downward revision of the STOA schedule under Regulation 14 of the Open Access Regulations, 2008. In the instant case, the STOA applicant is PTC and not the Petitioner.

(b) PTC vide its reply dated 12.5.2022 has stated that as per the Supplementary Agreement, any revision in STOA can be made only with prior written consent of KSEBL. The Petitioner is not the applicant and that in absence of prior written consent of KSEBL for downward revision, SRLDC has the legal right to refuse such downward revision in the approved schedule.

(c) The action of SRLDC in seeking the consent of KSEBL- which was a condition in the contract- is entirely in accordance with the provisions of the Act in particular Section 28(3)(a) of the Act.

(d) The Petitioner sought downward revision of the STOA schedule by invoking the force majeure on account of Coal India Circular dated 1.3.2022 changing the mechanism/modalities for allocation of non-linkage coal and resulting into the increase in the cost of procurement of e-auction coal. However, aforesaid claim is

misconceived as the agreements between the parties are not dependent on or specify any specific source of fuel and the Petitioner is obligated to supply the power under the agreements by procuring the coal from alternate sources.

(e) Earlier also the Petitioner had sought to wriggle out of its contractual obligations on the pretext of carrying out annual overhauling of Unit 2 during the very same period of peak summer demand.

(f) The Petitioner has been selling the power in the market even during the month when the schedule to KSEBL was reduced.

16. Learned counsel for the Respondent, PTC adopted the submission made by the learned counsel for SRLDC and KSEBL. Learned counsel further submitted that downward revision of the STOA schedule has been sought by the Petitioner on account of alleged force majeure event i.e. change in mechanism/modalities for allocation of coal through e-auction and until such force majeure event is decided by the Commission in a separate petition to be filed by the Petitioner, the present Petition is misplaced. Moreover, change in mechanism/modalities for allocation of coal through e-auction cannot be considered as contingencies which have to be understood in the context of Grid Code.

17. Learned counsel for the Respondent, KSLDC adopted the submissions made by the learned counsel for SRLDC. Learned counsel further submitted that the role of KSLDC, in the instant case, was limited and the Respondent has already filed its reply which may be considered.

18. In rebuttal, learned counsel for the Petitioner mainly submitted as under:

(a) The arrangement for generation and supply of 270 MW power by the Petitioner to PTC under the Agreement of Power Purchase ('APP') dated

25.10.2021 for onward supply of power to KSEBL under the Power Supply Agreement dated 27.10.2021 is on back-to-back basis.

(b) Perusal of the provisions of the agreements clearly reveals that it was the Petitioner who was required to procure the access to the transmission system required for carrying electricity to the delivery point and that the event of non-grant of MTOA shall be mutually decided by the PTC and the Petitioner. PTC, being an aggregator, was also required to provide the support and assistance to the Petitioner in procuring the applicable permits required from any Government Instrumentality for supply of electricity. Reliance was placed on Articles 4.1.3 (f), 5.1.5(a) and 6.1.2(a) of the APP.

(c) The Petitioner is entitled to enforce its rights through the aggregator, PTC.

(d) Reliance placed by the Respondents on the clause 3 of the Supplementary Agreement is completely misplaced as the Petitioner did not seek to change the approved open access quantum but only sought to revise its STOA schedule as per Regulation 14 of the Open Access Regulations, 2008.

(e) It is denied that the Petitioner has waived its rights to seek the downward revisions of the STOA schedule under the aforesaid Regulation as contended by the Respondents.

(f) SRLDC cannot be permitted to act in contravention to the Regulation 14 of the Open Access Regulations, 2008. Reliance was placed on the judgment of Hon'ble Andhra Pradesh High Court dated 15.3.2021 in the matter of Southern Power Distribution Company of Andhra Pradesh Limited and Anr. v. UoI and Ors.

(g) The Petitioner is entitled to sell its untied capacity at the power exchange.

Analysis and Decision

19. The Petitioner is a generating company which has established and operates a 1200 MW (2 x 600 MW) Thermal Power Plant in Odisha. Based on the competitive bidding carried out by PFC Consulting Ltd through reverse bidding on the DEEP portal under Pilot Scheme II in accordance with the Competitive Bidding Guidelines issued by the Ministry of Power, Government of India under Section 63 of the Act, the Petitioner was selected for supply of 270 MW @ Rs.3.26/kWh to the Aggregator PTC for onward supply to KSEBL, the Respondent No.4 herein. The Petitioner and PTC entered into an Agreement for Procurement of Power (APP) dated 25.10.2021 for generation and supply of 270 MW to PTC under medium term for a period of three years. The Petitioner and PTC entered into a Supplementary Agreement dated 25.10.2021 to the APP under which the Petitioner shall supply 270 MW power for six months every year (1st January to 30th June) to PTC/KSEBL and shall not claim any compensation/damages for non-offtake of power by PTC/KSEBL during the remaining six months (1st July to 31st December) every year. PTC and KSEBL also entered into a back-to-back Power Sale Agreement dated 27.10.2021 for supply of power by PTC from the generation project of the Petitioner to KSEBL for a period of three years. PTC and KSEBL have also entered into a Supplementary Agreement dated 27.10.2021 to Power Supply Agreement limiting the supply of power for six months every year (1st January to 30th June) with the stipulation that the Petitioner/PTC shall not claim any compensation/damages for non-offtake of power for the remaining six months every year (1st July to 31st December). Both Supplementary Agreements provide that the Petitioner or PTC shall apply for STOA on behalf of KSEBL for the mutually agreed period and utilize advance STOA, FCFS STOA up to Day Ahead STOA available for short term open access until the same is



granted for the entire contracted quantum for which KSEBL has agreed to provide consent for filing advance STOA application. There is a further stipulation that any subsequent application for change in approved open access quantum shall be only with prior written consent of KSEBL.

20. APP and PSA have been entered into on back to back basis. In fact, the PSA is to be treated as part of the APP as per Recital F of the APP which is extracted as under:

“(F) The Aggregator shall enter into a power supply agreement under pilot scheme-II(PSAP-II) with Kerala State Electricity Board Limited (“the utility”) in accordance with the guidelines for supply of the contracted capacity to the Utility/Utilities. Copy of the PSAPP-II shall be submitted to the Supplier within 7 days of its execution and shall become integral part of this agreement.”
Similarly, Recital (E) of the PSA dated 27.10.2021 provides as under:

“(E) The Aggregator has signed Agreement for Procurement of Power under Pilot Scheme-II (APPP-II) with Jindal India Thermal Power Limited (“Supplier”) for procurement of 270 MW thermal power under the Pilot Scheme @ Rs.3.26/kWh. Copy of the APPP-II shall be submitted to the Utility within 7 days of execution of this Agreement and shall become integral part of this agreement”.

Therefore, both APP and PSA along with their Supplementary Agreements need to be read together while interpreting the rights and contractual liabilities of the parties.

21. PTC on behalf of KSEBL applied for advance scheduling under STOA for 270 MW for supply of power from the generation project of the Petitioner to KSEBL. Power flow started from 1.1.2022 to KSEBL. The Petitioner vide its letter dated 1.4.2022 (forwarded by PTC to KSEBL vide letter dated 2.4.2022) claimed that the change in the mechanism/modalities for allocation of non-linkage coal through e-auction to thermal power plant by way of Coal India Limited circular dated 1.3.2022 issued pursuant to Cabinet Committee of Economic Affairs decision dated 26.2.2022 has resulted in substantial increase in the cost of procurement of e-auction coal and



supply of power as per the PSA and shortfall in availability of sufficient coal required to generate and supply the contracted capacity 270 MW. The Petitioner claimed that the Coal India Circular changing the mechanism/modalities for allocation of non-linkage coal through a single-window e-auction is a force majeure event for the Petitioner in terms of Article 16.5 of the APP and requested PTC/KSEBL to provide confirmation/acceptance on its force majeure claim to procure coal from Coal India under the new mechanism and for a revised letter of credit for additional amount to cover its receivables under APP considering the substantial increase in the price of coal due to Coal India's Circular dated 1.3.2022. The Petitioner also informed that until the remedy for the force majeure event, the Petitioner would be forced to suspend the supply of contracted capacity of 270 MW to KSEB. KSEBL vide its letter dated 2.4.2022 intimated PTC that the contract is not dependent on and does not specify any specific source of fuel and the Petitioner is bound to dedicate capacity of 270 MW @Rs. 3.26/kWh for supply of power to KSEBL. Further, KSEBL rejected the notice of force majeure and insisted that the Petitioner is required to continue with the supply of the contracted capacity.

22. The Petitioner vide its e-mail dated 1.4.2022 requested PTC to make an application for downward revision of schedule from 270 MW to 0 MW for the period from 4.4.2022 to 30.4.2022 and 1.5.2022 to 31.5.2022. On 1.4.2022, PTC on behalf of the Petitioner made an application to Southern Regional Load Despatch Centre (SRLDC) seeking downward revision of schedule from 270 MW to 0 MW for the period from 4.4.2022 till 30.4.2022. SRLDC vide its email dated 2.4.2022 to PTC and KSEBL sought the consent from KSEBL for processing the request for downward revision of schedule from 270 MW to 0 MW as requested by the Petitioner. KSBEL vide its letters dated 3.4.2022 and 6.4.2022 denied consent for downward revision of

the approval STOA transactions citing the reason of high demand summer season of the State and relying on the provisions of Clause 3 of Supplementary Agreement to Power Supply Agreement and Supplementary Agreement to APP which required that any subsequent application for change in approved open access quantum shall be only with the written consent of KSEBL. SRLDC vide its letters dated 3.4.2022 and 6.4.2022 rejected the applications of PTC for downward revision of schedule from 270 MW to 0 MW for the period 4.4.2022 till 30.4.2022 and for the period 1.5.2022 till 31.5.2022 respectively.

23. Aggrieved by the denial of revision of schedule by SRLDC, the Petitioner has submitted that SRLDC by not considering the declared revised capacity of the project as notified by JITPL through PTC has violated its statutory duty under the Electricity Act and Grid Code. The Petitioner has further submitted that SRLDC cannot force the Petitioner to declare 270 MW for supplying power to KSEBL under APP. The Petitioner has made five substantive prayers out of which four pertain to directions to SRLDC for revision of schedule from 270 MW to 0 MW for the period 4.4.2022 to 30.4.2022 and 1.5.2022 to 31.5.2022 including an ad interim direction to SRLDC to allow revision of schedule forthwith and one prayer pertaining to compensation by KSEBL for supply of power by the Petitioner to KSEBL on account of non-revision of schedule which is incidental to the main prayers. Since the Commission has heard all the parties on the prayers for ad interim relief as well as main reliefs, the petition is finally disposed of through the present order.

24. Based on the facts of the case and pleadings of the parties, the following issues arise for our consideration:

(a) **Issue No.1:** Whether the Petitioner has a unfettered right to seek revision of



schedule under short term open access in terms of the Act, Grid Code, Short Term Open Access Regulations and Procedures issued thereunder and the agreements between the parties?

(b) **Issue No.2:** Whether SRLDC has performed its statutory functions under the Act and Regulations while dealing with the request of the Petitioner for revision of schedule?

(c) **Issue No.3:** Relief, if any, to be granted to the Petitioner in the light of the decision on the issues above.

25. The issues have been discussed in the subsequent paragraphs.

Issue No.1: Whether the Petitioner has a unfettered right to seek revision of schedule under short term open access in terms of the Act, Grid Code, Short Term Open Access Regulations and Procedures issued thereunder and the agreements between the parties?

26. The Petitioner has submitted that in terms of Regulation 14 of the Open Access Regulations, 2008 and CERC (Open Access in inter-State Transmission) (Amendment) Regulations, 2009 (Amendment Regulations, 2009), it is the Petitioner's right to notify declared availability under Medium Term Agreement for procurement of power under Pilot Scheme II. Further it is the right of the Petitioner as the Short Term Customer to seek downward revision of its schedule. SRLDC is statutorily obligated to revise the DC upon request from the Short Term Customer which is not contingent upon the consent or concurrence of the buyer i.e. KSEBL. The Petitioner has also submitted that the Statement of Reasons issued along with the Open Access Regulations, 2008 categorically provides that the flexibility of revising or cancelling previously approved short term open access schedule is granted to open access customer/generating company to take care of any contingencies and the power of the nodal agency to allow revision/cancellation of the short term open access schedule only in extraordinary circumstances has been

omitted implying that the nodal agency is now mandated to revise the short term open access schedule upon the request of the short term customer/generating company. The Petitioner has further submitted that in terms of the Procedure for Scheduling Short Term Open Access in inter-State Transmission (Bilateral Transaction) approved by the Commission in 2011 (STOA Procedure, 2011), the short term open access schedule accepted by RLDC shall be revised downward upon an application made by the short term open access customer by giving a notice of 2 days. The Petitioner has submitted that in view of the above regulatory framework, SRLDC does not have the discretion to reject the request made by the Petitioner as open access customer for onward revision of the approved schedule.

27. SRLDC has submitted that it has faithfully discharged its responsibility on the STOA application processing, revision of schedule request by the applicants with adequate checks and balances in accordance with the Act, regulations, rules and guidelines. SRLDC has submitted that under Section 28(3)(a) of the Act, it is responsible for optimum scheduling and despatch of electricity within the region, in accordance with the contracts entered into with the licensees or the generating companies operating within the region. Further, the Ministry of Power, Government of India has issued directions to RLDCs under Section 37 of the Act to devise appropriate mechanism to ensure compliance of the mandates under Section 28(3)(a) of the Act so that scheduling and despatch in their respective control areas is done according to the contracts entered into by the concerned regional entities. SRLDC has further submitted that the Ministry of Power vide Resolution dated 21.2.2022 notified amendment to the Guidelines for Short Term Procurement of Power by the Distribution licensees through tariff based biddings to address the sale

of power by the generators in the market without consent of the procurers and the said amendment in principle support the action of SRLDC to seek consent of the buyers for allowing the request for downward revisions. SRLDC has further submitted that PTC as the applicant for short term open access transactions for supply of power from the Petitioner to KSEBL for 270 MW round the clock power has applied in SRLDC STOA portal with the consent of buyer and seller under advance category of STOA for the month of April and May 2022. SRLDC subsequently processed the application and granted approval as per the STOA Regulations. SRLDC has submitted that the applicant PTC has applied for the STOA transaction on behalf of the buyer and therefore, PTC is duty bound to take necessary consent of buyer in case of any change in approved STOA transaction.

28. KSEBL has submitted that under Section 28(3)(a) of the Act, SRLDC while performing its functions is obliged to take into consideration the contracts entered into with the licensees or generating companies operating in the region. KSEBL has submitted that in the present case, the provisions of the contract, including the provisions of clause (3) of the Supplementary Agreement to APP as well as Clause 3 of the Supplementary Agreement to PSA clearly provide and envisage that any change in the approved open access quantum for the generator which would include any request for downward revision of scheduled capacity for STOA shall be only with the prior consent of KSEBL. Relying on the provisions of Recital A, E, F, Articles 5.2, 10.1, 10.3, 11.1, 11.2 and 11.6 of the APP dated 25.10.2021; Recital F, paras 1, 2, 4 of Supplementary Agreement dated 25.10.2021 to APP; Recital B, Articles 10.1.1, 10.3 and 11.1.1 of PSA dated 27.10.2021 and Recital F and paras 3, 4 and 5 of Supplementary Agreement dated 27.10.2021 to the PSA, KSEBL has submitted that

(i) as per the agreements, the Petitioner as the Supplier has arranged fuel supply vide various sources of CIL/MCL for the purpose of the contracted capacity and has agreed to dedicate a generating capacity of 270 MW to the Aggregator/PTC at the delivery point for supply to KSEBL and the contracted capacity shall at all times be operated and utilised in accordance with the agreement; (ii) in the event the availability of the power station is reduced on account of scheduled maintenance, unscheduled maintenance or force majeure, the Petitioner with prior consent of PTC shall supply electricity from alternative sources which shall be deemed to be supply under the agreement and payment thereof shall be in accordance with the agreement irrespective of the actual cost of supply from alternative sources; and (iii) the Petitioner/PTC shall apply for STOA on behalf of KSEBL and any subsequent application for change in approved open access quantum shall be only with the prior consent of KSEBL. KSEBL has further submitted that the Petitioner in violation of the provisions of the agreements has been insisting for downward revision of schedule of power from the generation project from March 2022 onwards on one pretext or the other- initially citing annual maintenance issue and subsequently issuing force majeure notice under Article 16.5 of the APP. As regards the force majeure, KSEBL has submitted that the Petitioner's notice is based on Article 16.4(a) of the APP under which change in law has been classified as political event and the CIL circular dated 1.3.2022 is not covered under change in law. KSEBL has submitted that even under a force majeure condition, the Petitioner is bound to supply contracted power by arranging alternative sources with no additional cost. KSEBL has further submitted that the decision of SRLDC is entirely in conformity with the statutory mandate of Section 28(3)(a) of the Act and maintains the sanctity of the contractual arrangement of the parties.

29. PTC has submitted that the reason for revision in the declared capacity was the alleged force majeure which is not covered under the relevant provisions of the PPA/PSA. PTC has further submitted that any downward revision of the schedule requires the consent of KSEBL as per clause 3 of the Supplementary Agreement.

30. We have considered the submissions of the Petitioner and Respondents. The functions of the Regional Load Despatch Centre have been stipulated under Section 28 of the Act as under:

“Section 28. (Functions of Regional Load Despatch Centre): (1) The Regional Load Despatch Centre shall be the apex body to ensure integrated operation of the power system in the concerned region.

(2) The Regional Load Despatch Centre shall comply with such principles, guidelines and methodologies in respect of the wheeling and optimum scheduling and despatch of electricity as the Central Commission may specify in the Grid Code.

(3) The Regional Load Despatch Centre shall –

(a) be responsible for optimum scheduling and despatch within the region, in accordance with the contracts entered into with the licensees or the generating companies operating in the region;

(b) monitor grid operation;

(c) keep accounts of the quantity of electricity transmitted through the regional grid;

(d) exercise supervision and control over the inter-State transmission system; and

(e) be responsible for carrying out real time operation for grid control and despatch of electricity within the region through secure and economic operation of the regional grid in accordance with the Grid Standards and Grid Code.”

31. As per the above provisions of the Act, RLDC shall comply with such principles, guidelines and methodologies in respect of the wheeling and optimum scheduling

and despatch of electricity as the Central Commission may specify in the Grid Code.

Regulation 6.5 of the Grid Code provides as under:

“6.5 Scheduling and Despatch Procedure for long term access, Medium-term and short term open access (to be read with the provisions Open Access Regulations, 2008 as amended from time to time. The scheduling procedure for medium term open access shall be similar to the scheduling procedure for long term access transactions and as is given below, except where it is specifically mentioned for collective transactions)”

Thus, the Grid Code contains provisions for scheduling and despatch procedure for long term access and medium-term open access. For short term open access, the provisions of Open Access Regulations, 2008 as amended from time to time and any specific provision with regard to short term open access in the Grid Code are applicable for scheduling and despatch of electricity-

32. Another relevant provision with regard to scheduling and despatch of electricity is Section 28(3)(a) of the Act which provides that RLDC shall “be responsible for optimum scheduling and despatch of electricity within the region in accordance with the contracts entered into with the licensees or the generating companies operating within the region”. For scheduling and despatch of electricity, two types of contract are required- one for sale and purchase of power and the other for reservation of corridor for transmission of power from the point of sale to the point of purchase. RLDCs while carrying out scheduling and despatch of electricity ‘in accordance with the contracts’ under the Act, are required to look into only those provisions which are relevant for scheduling and despatch such as point of injection, point of drawal, duration of the contract, quantum of electricity to be scheduled, and booking of transmission corridor from the point of injection to the point of drawal for the duration and quantum of electricity to be transmitted. RLDCs are not expected to look into

any other aspects of the contract including the commercial aspects. The parties to the contract have the responsibility to ensure that the commercial disagreements and disputes between them are settled in terms of the mechanisms provided in the contract or by approaching the appropriate forum for adjudication under the Act. RLDCs don't have adjudicatory functions under the Act. As such, any instruction to RLDC for scheduling and despatch of electricity cannot be based on any unresolved dispute between the parties. RLDCs are statutory bodies discharging statutory functions under the Act and the parties to the contracts have an obligation to ensure that RLDCs are insulated from any commercial dispute between the parties inter se.

33. The dispute involved in this petition relates to revision of schedule under short term open access with regard to short term open access transactions. Therefore, it is pertinent to examine the relevant provisions of the Open Access Regulations, 2008 as amended from time to time. Regulation 2(n-b) defines "Short Term Customer" as a "person who has availed or intends to avail short term open access". Regulations 6, 9, 10, 11, 12 and 14 of the Open Access Regulations, 2008 as amended from time to time dealing with submission of short term open access applications, procedure for advance scheduling for bilateral transactions, procedure for scheduling of bilateral transactions on first-come-first served basis, procedure for scheduling for day ahead transactions and revision of schedules respectively are extracted as under:

"Submission of Short-term Open Access Application

6. (1) A short term customer or the power exchange (on behalf of buyers and sellers) intending to avail short term open access for use of the transmission lines or associated facilities for such lines on the inter-State transmission system, shall make an application to the nodal agency in accordance with these regulations.

(2) The application for bilateral transaction shall contain the details such as

names and location of supplier and buyer, contracted power(MW) to be scheduled and interface at which it is referred to, point of injection, point of drawal, starting time block and date and such other information that may be required under detailed procedure."

"Procedure for Advance Scheduling for bilateral transactions

9. (1) An application for advance scheduling for a bilateral transaction may be submitted to the nodal agency up to the fourth month, the month in which an application is made being the first month: Provided that separate application shall be made for each month, and for each transaction.

(2) (a) An application for inter-State scheduling during the fourth month shall be made up to the last day of the first month.

(b) All applications received shall be taken up together for consideration.

(c) The nodal agency shall convey its acceptance or otherwise to the applicant latest by the fifth day of the second month.

(3) (a) An application for inter-State scheduling during the third month shall be made up to five (5) days prior to the close of the first month.

(b) All applications received shall be taken up together for consideration.

(c) The nodal agency shall convey its acceptance or otherwise to the applicant latest by the close of the first month:

Provided that while accepting the application, open access granted to any person prior thereto shall not be withdrawn.

(4) (a) An application for inter-State scheduling in the second month shall be made with the nodal agency up to ten (10) days prior to the close of the first month.

(b) All applications shall be taken up together for consideration.

(c) The nodal agency shall convey its acceptance or otherwise to the applicant five days prior to the last day of the first month:

Provided that while accepting the application, open access granted to any person prior thereto shall not be withdrawn.

(5) Wherever the nodal agency rejects an application, it shall convey its reasons to the applicant in writing."

"Procedure for scheduling of bilateral transactions on first-come-first-served basis

11. (1) The applications for grant of short term open access for the second



month, received after the date specified in clause (4) of Regulation 9 and the applications for grant of open access during the first month shall be considered on first-come-first-served basis, and such transactions shall be scheduled subject to availability of the required transmission capacity:

Provided that such applications shall reach the nodal agency at least four (4) days in advance of the date of the bilateral transaction:

*Provided further that separate application shall be made for each transaction.
(2) All these applications shall be processed and decided within three (3) days of their receipt.”*

“Procedure for scheduling for day-ahead transactions

12. All applications for bilateral transactions received within three days prior to the date of scheduling and up to 1500 hrs of the day immediately preceding the date of scheduling shall be clubbed and treated at par, and shall be processed after processing of the applications for collective transactions received till 1500 hrs.

Illustration: An application for scheduling a transaction on 25th day of a month, shall be processed on first-come-first-served basis only if such application is received till 21st day of that month. If the application is received on 22nd day or 23rd day or up to 1500 hrs on 24th day, it shall be treated only after processing of the applications for collective transactions received up to 1500 hrs on 24th day for scheduling on 25th day.”

“Revision of Schedule

14. (1) The open access schedules accepted by the nodal agency in advance or on first-come-first-served basis may be cancelled or revised downwards on an application to that effect made to the nodal agency by the short-term customer:

Provided that such cancellation or downward revision of the short-term open access schedule shall not be effective before expiry of a minimum period of two(2) days:

Provided further that the day on which notice for cancellation or downward revision of schedule is served on the nodal agency and the day from which such cancellation or downward revision is to be implemented, shall be excluded for computing the period of two days.

(1A) Notwithstanding anything contained in clause (1) of this regulation, in case of forced outage of a unit of the generating station, the scheduling of power under Short Term bilateral transactions shall be regulated in accordance with Regulation 6.5 of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 as amended from time to time.

(2) The person seeking cancellation or downward revision of short term open access schedule shall pay the transmission charges for the first two (2) days



of the period for which the cancellation or downward revision of schedule, as the case may be, has been sought, in accordance with the schedule originally approved by the nodal agency, and thereafter in accordance with the revised schedule prepared by the nodal agency during the period of such cancellation or downward revision.

(3) Any person seeking downward revision of short term open access schedule (including revision to zero schedule) shall pay the operating charges specified under Regulation 17 of these regulations corresponding to the number of days for which power has been scheduled and in case of cancellation, operating charges shall be payable in addition for two (2) days or the period of cancellation in days whichever is less.”

Further, STOA Procedure, 2011 provides the following for revision of schedule in case of short term transactions:

“11. REVISION OF SCHEDULE

11.1. The Short-Term Open Access Schedules accepted by the Nodal RLDCs in case of “Advance Scheduling” or “First-Cum-First Served basis” may be cancelled or revised downwards by the Applicant by giving minimum two (2) days notice. The notice period shall be excluding the day on which notice is served and the day from which revised schedules are to be implemented.”

34. On perusal of the above provisions, it is crystal clear that a short term customer can make application for scheduling under short term open access to the nodal agency i.e. RLDC of the region where the point of drawal of electricity is situated. Short term open access for bilateral transactions can be sought as ‘advance scheduling up to four months’ or as ‘scheduling on first come first served basis’ or ‘day ahead transactions’. Downward revision or cancellation of schedule is permissible in case of advance scheduling or first come first served basis with two days’ notice excluding the day on which notice is given and the day on which downward revision or cancellation is to be implemented. Downward revision or cancellation of schedule shall be considered by the nodal agency only on an application made to that effect by the Short Term Customer.

35. In case of forced outage of a unit of a generating station, the scheduling of power under short term bilateral transactions shall be regulated in accordance with Regulation 6.5 of the Grid Code. Regulation 6.5.19 of the Grid Code provides that *“in case of forced outage of a unit of a generating station (having generating capacity of 100 MW or more) and selling power under Short Term bilateral transaction (excluding collective transactions through power exchange), the generator or electricity trader or any other agency selling power from the unit of the generating station shall immediately intimate the outage of the unit along with the requisition for revision of schedule and estimated time of restoration of the unit, to SLDC/RLSC, as the case may be”*. Thus, even in case of forced outage of a unit of the generating station, either the generator or trader or any other agency who is selling power from the generating station is required to intimate the nodal agency for revision of schedule.

36. Unlike the case of medium term open access or long term access, there is no provision for declaration of availability by a generating station while scheduling power under short term access. In case of short term open access schedule, it is the short term customer who is authorised to seek revision of schedule by making application to Nodal Agency. Perusal of Annexure -R-7 filed along with the reply of SRLDC reveals that PTC had made the applications for STOA transactions on behalf of KSEBL, not on behalf of the Petitioner. However, PTC on the request of the Petitioner submitted applications for revision of schedule from 270 MW to 0 MW for the period from 4.4.2022 to 30.4.2022 and from 1.5.2022 to 31.5.2022. The basis for PTC making application for advance scheduling under short term open access can be traced to the agreement between the parties. Even though the APP dated

25.10.2021 and PSA dated 27.10.2021 were entered into between the Petitioner and PTC and between PTC and KSEBL respectively for supply of power under medium term access, the parties have agreed to schedule the power through short term open access through the Supplementary Agreement to APP and Supplementary Agreement to PSA. Supplementary Agreements provide that the Aggregator (PTC) or the Supplier (Petitioner) shall apply for STOA on behalf of KSEBL for the mutually agreed period and utilise advance STOA, FCFS STOA, Day Ahead STOA, until STOA is granted for the entire granted quantum. Relevant provisions of the Supplementary Agreements are extracted as under:

Para 3 of the Supplementary Agreement to APP

3. Aggregator or supplier shall apply for STOA on behalf of KSEBL for the mutually agreed period and utilize advance STOA, FCFS STOA upto day ahead STOA (Application to be filed on or before 11.00 hours of the day of application) (excluding contingency application and transmission corridor e-bidding) available for applying for short term Open Access within stipulated time lines as per the prevailing regulations until the same is granted for the entire contracted quantum. KSEBL will provide consent for firing advance monthly STOA application. Any consequence towards delay in application shall be on the account of the supplier. Any subsequent application for change in approved open access quantum shall be only with prior written consent of KSEBL. Fixed charges is not payable for the quantum of power not scheduled due to the transmission constraints.”

Para 3 of the Supplementary Agreement to the PSA

*“Aggregator or supplier shall apply for STOA on behalf of KSEBL for the mutually agreed period and utilize advance STOA, FCFS STOA upto day ahead STOA (Application to be filed on or before 11.00 hours of the day of application) (excluding contingency application and transmission corridor e-bidding) available for applying for short term Open Access within stipulated time lines as per the prevailing regulations until the same is granted for the entire contracted quantum. KSEBL will provide consent for firing advance monthly STOA application. Any consequence towards delay in application shall be on the account of the Aggregator. **Any subsequent application for change in approved open access quantum shall be only with prior written consent of KSEBL.** Fixed charges is not payable for the quantum of power not scheduled due to the transmission constraints.”*

Based on the above provisions of the Supplementary Agreement, PTC applied for STOA on behalf of KSEBL and was granted STOA by SRLDC for the period



1.4.2022 to 30.4.2022 and 1.5.2022 to 31.5.2022 under advance scheduling. The Petitioner through PTC took up the matter with KSEBL claiming that the Coal India Circular changing the mechanism/modalities for allocation of non-linkage coal through a single-window e-auction is a force majeure event for the Petitioner in terms of Article 16.5 of the APP and requested PTC/KSEBL to provide confirmation/acceptance on its force majeure claim to procure coal from Coal India under the new mechanism and for a revised letter of credit for additional amount to cover its receivables under APP considering the substantial rise in the price of coal due to Coal India's Circular dated 1.3.2022. After rejection of the Petitioner's notice of force majeure by KSEBL, the Petitioner instructed PTC to seek revision of schedule for April and May 2022 on the very ground of force majeure which was taken up by PTC with SRLDC. Since PTC is the applicant having made application on behalf of KSEBL, it could not have sought revision of schedule on behalf of the Petitioner.

In our view, as per Open Access Regulations, 2008 read with Detailed Procedures, the revision of schedule can only be sought by the applicant which is PTC (on behalf of KSEBL) in the instant case. Since the Petitioner is not the applicant, it has no right under the Open Access Regulations, 2008 read with the Supplementary Agreement to seek revision of schedule.

37. The Petitioner has sought to distinguish between the revision of schedule under Regulation 14 of Open Access Regulations, 2008 from Regulation 6 on the ground that the latter pertains to the quantum of transmission corridor booked which remains the same after revision of schedule. Since the provisions of Supplementary

Agreement provide for change in short term quantum, the said provision is not applicable in case of revision of schedule. In our view, such an interpretation does not flow from the provisions of Open Access Regulations, 2008 as amended from time to time. While Section 6 deals with application for short term open access, Regulations 9, 11 and 12 deal with applications for advance scheduling, scheduling on first come first served basis and scheduling for day ahead transactions respectively. However, under short term open access only one application is made for open access and scheduling. In fact, the application for access has the request for scheduling interwoven with it. . If cancellation or downward revision of schedule is sought and given effect to, it leads to reduction in the short term open access charges in terms of Clause (2) of Regulation 14 which is extracted as under:

“(2) The person seeking cancellation or downward revision of short term open access schedule shall pay the transmission charges for the first two (2) days of the period for which the cancellation or downward revision of schedule, as the case may be, has been sought, in accordance with the schedule originally approved by the nodal agency, and thereafter in accordance with the revised schedule prepared by the nodal agency during the period of such cancellation or downward revision.”

It is clear from the above provision that in case of cancellation or downward revision of schedule, revision of open access quantum and revision of corresponding transmission charges after first two days of the period of revision or cancellation. Therefore, change in approved open access quantum in the Supplementary Agreement shall include cancellation or downward revision of advanced scheduling or scheduling on first come first served basis or on day ahead basis. We do not find any merit in the argument of the Petitioner that provisions of Supplementary Agreements do not apply to cancellation or downward revision of schedule and accordingly, the same is rejected.

38. The Petitioner has further submitted that in terms of Article 5.1.4 and 11.4 of the APP dated 25.10.2021 and the Statement of Reasons dated 5th Amendment to Grid Code, declaration of availability of the power plant is the sole prerogative and statutory right of the Petitioner and SRLDC is obliged to consider and record the notified declared availability. The Petitioner has submitted that neither SRLDC nor KSEBL can interfere with the declaration of declared capacity by the Petitioner. Therefore, SRLDC's refusal to revise the Declared Capacity/open access schedule of the Petitioner is arbitrary, illegal and abuse of its dominant position. In our view, these provisions are not relevant for the reason that for advance scheduling under bilateral transactions, or on first come first served basis or on day ahead basis, declaration of availability of a generating station is not required.

39. We observe that the Petitioner is selectively relying on the provisions of the APP. As already observed by us, both APP dated 25.10.2021 and PSA dated 27.10.2021 along with their respective Supplementary Agreements need to be read together while deciding the rights and liabilities of the parties. With regard to the obligation of the Petitioner to supply the contracted capacity to KSEBL through PTC, the following provisions of APP and PSA are relevant which are extracted as under:

Provisions of the APP

10.1 Contracted capacity

Pursuant to the provisions of this agreement, the supplier shall dedicate a generating capacity of 270 MW to the aggregator at the delivery point as the capacity contract hereunder(the "contracted capacity") and the contracted capacity shall at all times be operated and utilised in accordance with the provisions of this agreement.

10.3 Substitute Supply

In the event the availability of the power station is reduced on account of scheduled maintenance, unscheduled maintenance or force majeure, the supplier may, with prior consent of the aggregator, which consent the aggregator may deny in its sole discretion or convey acceptance with such conditions as it may

deem fit , supply electricity from any alternative sources, and such supply shall, for payment of tariff, be deemed to be supply under and in accordance with the provisions of this agreement. For the avoidance of doubt, the parties agree that in the event aggregator rejects any supply of electricity offered here under from an alternative source, the supplier shall be deemed to be in compliance with this agreement for the purpose determination of availability and payment of fixed charge.

In case the transmission and other incidental charges, including but not limited to application fees for open access, RLDC/SLDC charges, etc, applicable from the alternative source of power supply are higher than the applicable transmission charges, the supplier shall be liable to bear such additional charges.

It is hereby clarified that the aggregator shall make payment of the tariff to the supplier for supply of electricity from any alternative sources in accordance with this Article irrespective of the actual cost of supply from search alternative sources.

Provisions of the PSA

10.1 Contacted capacity

10.1.1. Pursuant to the provisions of this agreement, the Aggregator shall dedicate a generating capacity of 270 MW to the Utility at the delivery point as the capacity contract hereunder(the “contracted capacity”) and the contracted capacity shall at all times be operated and utilised in accordance with the provisions of this agreement.

10.3 Substitute Supply

In the event the availability of the power station is reduced on account of scheduled maintenance, unscheduled maintenance or force majeure, the Aggregator may, with prior consent of the Utility, which consent the utility may deny in its sole discretion or convey acceptance with such conditions as it may deem fit , supply electricity from any alternative sources, and such supply shall, for payment of tariff, be deemed to be supply under and in accordance with the provisions of this agreement. For the avoidance of doubt, the parties agree that in the event the Utility rejects any supply of electricity offered here under from an alternative source, the supplier shall be deemed to be in compliance with this agreement for the purpose determination of availability and payment of fixed charge.

In case the transmission and other incidental charges , including but not limited to application fees for open access, RLDC/SLDC charges, etc, applicable from the alternative source of power supply are higher than the applicable transmission charges, the Aggregator shall be liable to bear such additional charges.

It is hereby clarified that the utility shall make payment of the tariff to the Aggregator for supply of electricity from any alternative sources in accordance with this Article irrespective of the actual cost of supply from search alternative sources.”



40. From the above provisions, it emerges that the Petitioner shall dedicate a generation capacity of 270 MW to PTC at the delivery point and PTC in turn will dedicate the generation capacity to KSEBL and the contracted capacity shall at all times be operated and utilised in accordance with the contracts. Further, in the event the availability of power station is reduced on account of scheduled maintenance, unscheduled maintenance or force majeure, the Petitioner with prior approval of PTC and in turn PTC with the prior approval of KSEBL arrange supply of electricity from alternative sources at the same tariff agreed in the APP and PSA. Therefore, even in case of scheduled or unscheduled maintenance or force majeure, the Petitioner carries the obligation to supply electricity from alternative sources at the same rate as agreed tariff. Therefore, the Petitioner cannot seek unilateral revision of short term schedule without the consent of KSEBL.

41. In view of the above discussion, we are of the view that under the Open Access Regulations, 2008 and Procedures for Advance Scheduling (bilateral), an applicant who has been granted short term access is only eligible to seek revision of schedule. In the present case, PTC on behalf of KSEBL had sought and was granted short term open access by SRLDC for the period from 1.4.2022 to 30.4.2022 and from 1.5.2022 to 31.5.2022 under advance scheduling. Therefore, the same process of making application should have been followed for revision of schedule. In terms of Open Access Regulations, 2008 and Procedure for Advance Scheduling (bilateral), the applicant has to apply for revision of the schedule. Therefore, the applications made by PTC at the behest of the Petitioner are not in accordance with the Open Access Regulations, 2008 and the Procedure for Advance Scheduling issued thereunder. Therefore, the Petitioner cannot claim a right for revision of schedules

based on the said applications made by PTC on behalf of KSEBL. The issue is decided accordingly.

Issue No.2: Whether SRLDC has performed its statutory functions under the Act and Regulations while dealing with the request of the Petitioner application for revision of schedule?

42 SRLDC has submitted that under Section 28(3)(a) of the Act, RLDC is responsible for optimum scheduling and dispatch of electricity within the region, in accordance with the contracts entered into with the licensees or the generating companies operating in the region. SRLDC has submitted that it has faithfully discharged its functions involving the STOA application processing, revision of schedule request by applicants with adequate checks and balances in accordance with the Act, Regulation, Rules and Guidelines and has confined its scrutiny to clauses in the contracts/PPA pertaining to scheduling only for the compliance of the Act. SRLDC has also submitted that Ministry of Power on 22.12.2021 has issued directions to RLDCs under Section 37 of the Act wherein RLDC has been directed to devise appropriate mechanism to ensure compliance with Section 28(3)(a) of the Act so that scheduling and dispatch in their respective control areas is done in accordance with the contracts entered into between the concerned regional entities. Therefore, SRLDC is duty bound to ensure that scheduling is done in compliance with the contracts.

43. We observe that the MoP directions issued under Section 37 of the Act are as under:

“ ...

Sub-section-(3) (a) of Section 28 of the Electricity Act, 2003 mandates that the Regional Load Despatch Centre shall be responsible for optimum scheduling and despatch of electricity within the region, in accordance with the contracts entered into with the



licensees or the generating companies operating in the region. Thus, RLDCs have to ensure that the scheduling and despatch is done according to the contractual obligations of the parties. Similar provisions exist under sub-section 2 (a) of section 32 for the State Load Despatch Centres in the State.

2. Section 37 of the Act empowers the appropriate Government to give direction to Load Despatch Centres to take necessary measures for maintaining smooth and stable transmission and supply of electricity to any region or State. Transaction of electricity, strictly according to contractual obligations is of vital importance for smooth transmission and supply of electricity.

3. Under provisions of the Section 37 of the Electricity Act, 2003, RLDCs are directed to:

a) Devise appropriate mechanism to ensure compliance of the mandates under Sub-section (3) (a) of section 28 of the Electricity Act, 2003, so that scheduling and despatch in their respective control areas is done according to the contracts entered into by the concerned regional entities,

b) Take immediate action, on the complaints by any of the parties regarding breach of contractual obligations in scheduling and despatch of the electricity within their respective control areas, according to the stipulations in the Act as well as in the Rules, Regulations, and Guidelines made under the Act.

4. This issues with the approval of Hon'ble Minister of Power, New and Renewable Energy.”

On being asked during the hearing, as to whether any 'mechanism' as directed by the Ministry of Power as above, has been devised by the SRLDC, the learned counsel of SRLDC replied in the negative.

44. SRLDC has further submitted that the Ministry of Power has issued the following amendment to Competitive Bidding Guidelines for short term procurement of power:

“6.4 (vi) PPA proposed to be entered with the Selected Bidder(s) shall include necessary details on:

g. Consequences on Sale of Contracted Power to Third Party without consent of the Procurer

- In case the Seller fails to offer the contracted power as per the Agreement to the Procurer and sells this power without Procurer's consent to any other party, the Procurer shall be entitled to claim damages from the Seller for an amount equal to the higher of :(a) twice the Tariff as per the PPA for the corresponding contracted power; and (b) the entire sale revenue accrued from Third Parties on account of sale of this contracted power. These damages shall be in addition to Liquidated Damages as per Para 6.4 (e) of existing guidelines, for failure to supply the Instructed Capacity.*
- On a complaint to this effect by the Procurer to the concerned load dispatch centre, the Seller shall be debarred from participating in power exchanges and also from scheduling of this power in any short term/ medium term / long term contracts from that generating station for a period of three months from the establishment of default, in the complaint. The period of debarment shall increase to six months for second default and shall be one year for each successive default."*

SRLDC has submitted that the mechanism it has devised for seeking concurrence of buyers is in consonance with the above guidelines.

45. SRLDC has submitted that during the period from March 2022 till 5.5.2022, a total of 22 requests for downward revision of approved short-term open access transactions were made by STOA applicants to SRLDC. Out of 22 requests, downward revisions of 15 number of applications were approved by SRLDC based on the consent of buyer. Further downward revision of 7 nos. of applications including 2 nos. of applications from M/s PTC India were not processed for downward revision due to non-availability of buyers' consent. It has been further submitted that while denying the consent for downward revision, KSEBL relied on clause 3 of the Supplementary Power Supply Agreement dated 27.10.2021 between KSEBL and PTC and clause 3 of Supplementary Agreement to APP dated

25.10.2021 between the Petitioner and PTC which provided that “any subsequent application for change in approved open access quantum shall be only with prior written consent of KSEBL.” The statutory right of the Petitioner for revision of schedule has been waived by way of the APP and PSA. Further, PTC has applied for STOA transaction on behalf of the buyer i.e. KSEBL and therefore, PTC is duty bound to take necessary consent of buyer in case of any change request in approved viz-a-viz scheduled quantum of the said STOA transaction.

46. During the hearing, the learned counsel for KSEBL relied on the following chart and submitted that the Petitioner has been granted downward revision from schedule with the consent of KSEBL:

Reduction in schedule from JIPTL for the months of March'22, April'22 and May'22						
1	In March 2022, JIPTL reduced the schedule of the original quantum of 270 MW to 250 MW from 2.3.2022 to 10.3.2022					
2	In April 2022, the reduction started from 4.4.2022 till 20.4.2022 as given below					
Date	Time blocks	Quantum reduced (MW)	Qty sold in market during specified blocks	Avg rate in Rs./kWh	Quantum sold in market in MW	
2.3.22	1 to 96	270 MW reduced to 250 MW	0.95	5.03	1 to 98 MW varying	
3.3.22	1 to 96	270 MW reduced to 250 MW	0.68	4.24	1 to 98 MW varying	
6.3.22	1 to 96	270 MW reduced to 250 MW	1.3	4.56	36 MW in certain time blocks and 80 MW in certain other time blocks	
7.3.22	1 to 96	270 MW reduced to 250 MW	1.72	5.94	66 MW in certain time blocks and 80 MW in certain other time blocks	
8.3.22	1 to 96	270 MW reduced to 250 MW	4.84	6.23	198 MW in certain time	



					blocks and 207 MW in certain other time blocks
9.3.22	1 to 96	270 MW reduced to 250 MW	4.99	6.68	204 MW in certain time blocks and 213 MW in certain other time blocks
10.3.22	1 to 96	270 MW reduced to 250 MW	5.59	7.11	233 MW in all time blocks
4/4/22	95-96	270 MW to 44 MW	Tripping of Unit #2		
5/4/22	1-96	270 MW to 44 MW	10.85	4.97	452 MW in all time blocks
6/4/22	1-96	270 MW to 132 MW	5.81	7.26	242 MW in all time blocks
7/4/22	1-96	270 MW to 132 MW	5.91	8.48	246 MW in all time blocks
8/4/22	1-96	270 MW to 132 MW	5.90	10.1	246 MW in all time blocks
9/4/22	1-18	270 MW to 132 MW	2	12	183 to 691 MW varying
18/4/22	21-96	270 MW to 120 MW	Tripping of Unit #2		
19/4/22	1-96	270 MW to 120 MW	5.54	10.49	231 MW in all time blocks
20/4/22	1-16	270 MW to 88 MW	11.29	11.47	295 to 700 MW varying
	17-96	Gradually increased to 270 MW			
16/5/22	1-91 91-96	270 MW to 102.86 MW	Tripping of Unit #2		
17/5/22	1-96	270 MW to 102.86 MW	5.71	5.13	238 MW in all time blocks
18/5/22	1-96	270 MW to 132.90 MW	3.29	5.91	137 MW in all time blocks

KSEBL submitted that while the Petitioner sought downward revision from KSEBL, at the same time it was selling the same in power market.

47. It is clear from the submissions of SRLDC that SRLDC has been seeking the consent of buyers in all cases of cancellation or downward revision of schedules under short term open access from 1.3.2022. It leads to a logical conclusion that SRLDC has revised the schedule in the cases mentioned in the chart after obtaining the consent from KSEBL. The Act requires RLDC to carry out scheduling and

despatch of electricity in accordance with the contracts entered into with the generating companies and licensees operating in the region. As we have already observed in Paragraph 32 of this order, RLDC is required to be guided by those provisions of the contract which pertain to scheduling and despatch of electricity and shall not consider or sit on judgement on any commercial aspect of the contract, as it does not have powers to adjudicate upon disputes under the Act. Contractual disputes between parties have to be agitated before the appropriate forum as per the law of the land including the provisions of the Act.- It is equally the responsibility of the Short term customer to ensure that its application for advance scheduling or on first cum first served basis or on day ahead basis complies with all procedural requirements of the contract so that RLDC can discharge its statutory duty in a dispute free manner.

48. Based on the provisions of the Supplementary Agreements, PTC applied for STOA on behalf of KSEBL and was granted STOA by SRLDC for the period 1.4.2022 to 30.4.2022 and 1.5.2022 to 31.5.2022 under advance scheduling. The Petitioner through PTC took up the matter with KSEBL claiming that the Coal India Circular changing the mechanism/modalities for allocation of non-linkage coal through a single-window e-auction is a force majeure event for the Petitioner in terms of Article 16.5 of the APP and requested PTC/KSEBL to provide confirmation/acceptance on its force majeure claim to procure coal from Coal India under the new mechanism and for a revised letter of credit for additional amount to cover its receivables under APP considering the substantial rise in the price of coal due to Coal India's Circular dated 1.3.2022. Since KSEBL refused to accept the said event as force majeure, a dispute has arisen between the parties. The proper course of action would be to resort to dispute resolution mechanism provided under the APP



and PSA. However, by seeking revision of the schedule on the same ground of force majeure which was rejected by KSEBL, the Petitioner is seeking to settle its contractual dispute through SRLDC and thereby making SRLDC a party to the contractual dispute between the Petitioner and PTC/KSEBL. As already stated above, such a course of action is definitely not in consonance with the provisions of the Act.. It is important that the parties should ensure that the contractual disputes are not sought to be resolved through scheduling by RLDCs.

49. PTC in para (IX) of its reply has admitted that “any downward revision of the schedule required the consent of the Respondent No.4 i.e. KSEB as per the Supplementary Agreement dated 25.10.2021.” Contrary to the above submission, PTC sought revision of schedule at the behest of the Petitioner despite being fully aware that downward revision of schedule can be sought only after obtaining the consent of KSEBL in accordance with the Supplementary Agreements and KSEBL has already rejected the Petitioner’s notice for force majeure. We are constrained to observe that the dispute has arisen on account of PTC not discharging its contractual obligations under the APP and PSA and the Supplementary Agreements.

50. We have taken a note of the facts brought out by KSEBL that Petitioner was seeking downward revision of schedule under existing contract while selling the same power under power market at higher rates. We have also taken a note of the concerns of MOP as issued vide letter dated 22.12.2021 as directions under Section 37 of the Act of RLDC to ensure that contractual obligations are not breached. We observe that in case of any contractual breach, the parties can approach appropriate legal forum for adjudication. RLDCs are required to devise appropriate mechanism at

the earliest to comply with the directions of the Ministry of Power, Government of India issued under Section 37 of the Act, however the mechanism for compliance should not impinge on or overreach the rights and obligations of the parties to the contract. The devised mechanism may include submission of an affidavit by the Short Term Customer that its application for cancellation or downward revision of schedule is strictly in accordance with the provisions of the contract and all procedural requirements of the contract precedent to seeking such revision or cancellation has been complied with and that it indemnifies the RLDC from any dispute or court cases or damages that may arise on account of such cancellation or revision of schedule. The Issue No. 2 is answered accordingly.

Issue No.3: Reliefs, if any, to be granted to the Petitioner

51. We have come to a finding in this order that in case of short term open access, the generator is not required to declare availability to the concerned RLDC. Further, under the Open Access Regulations as amended from time to time, it is the short term customer who can seek downward revision of the schedule. As per the Supplementary Agreements to APP and PSA, the Petitioner or PTC can apply for short term access on behalf of KSEBL. As agreed by the parties, PTC has applied for short term access under advance scheduling on behalf of KSEBL and was granted advance schedule for the period 1.4.2022 to 30.4.2022 and 1.5.2022 to 31.5.2022. Cancellation or downward revision can only be sought by the Short term customer, PTC on behalf of KSEBL. Therefore, PTC's application for revision of schedule at the behest of the Petitioner without the approval of KSEBL is not in accordance with the contractual arrangement between the parties. We are of the view that the Petitioner is not entitled any other discretionary relief as well. As per the

above discussion, we do not find any merit in the petition and accordingly, the petition is dismissed.

52. Petition No. 120/MP/2022 is disposed of in terms of the above.

sd/-
(P.K. Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I.S. Jha)
Member

