

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 182/MP/2020**

**Coram:**

**Shri I.S. Jha, Member**

**Shri Arun Goyal, Member**

**Shri P. K. Singh, Member**

**Date of Order: 28<sup>th</sup> August, 2022**

**In the matter of**

Petition under Sections 79(1)(c), 79(1)(d), 79(1)(f) and 79(1)(f) of the Electricity Act, 2003 read with Articles 11 and 12 of the Transmission Service Agreement dated 20.11.2015, seeking monetary compensation on account of occurrence of force majeure and change in law events.

**And**

**In the matter of**

**Odisha Generation Phase II Transmission Limited,**

F-1, The Mira Corporate Suites,  
1 & 2, Ishwar Nagar, Okhla Crossing,  
Mathura Road, New Delhi – 110 065

..... **Petitioner**

**Vs**

**1) West Bengal State Electricity Distribution Company Limited,**

Bidyut Bhawan, A-Block,  
3<sup>rd</sup> Floor, Bidhannagar, Kolkata- 700 091.

**2) North Bihar Power Distribution Company Limited,**

2<sup>nd</sup> Floor, Vidyut Bhawan,  
Bailey Road, Patna – 800 001.

**3) South Bihar Power Distribution Company Limited,**

2<sup>nd</sup> Floor, Vidyut Bhawan,  
Bailey Road, Patna – 800 001.

**4) Damodar Valley Corporation,**

DVC Head Quarters, DVC Towers,  
VIP Road, Kolkata – 700 054.

**5) Jharkhand Bijli Vitran Nigam Limited,**

Engineer's Building, Dhurwa,

Ranchi – 834 004.

**6) GRIDCO Limited,**  
Grid Corporation of Orissa Limited,  
Janpath, Bhubneshwar – 751 011

**7) Energy and Power Department, Govt. of Sikkim,**  
Power Secretariat, Sonam Gyatso Marg,  
Gangtok, Sikkim – 737 101

**8) Power Grid Corporation of India Limited,**  
HVDC Rihand, “Saudamini” Plot No-2  
Sector-29, Gurgaon – 122 001

**9) Odisha Power Generation Corporation Limited,**  
Zone-A, 7th Floor, Fortune Towers, Chandrasekharpur,  
Bhubaneshwar, Odisha – 751 023

**10) SKS Power Generation (Chhattisgarh) Limited,**  
B-501, Elegant Business Park,  
Andheri Kurla Road, J.B. Nagar,  
Andheri East, Mumbai,  
Maharashtra – 400 059

**11) PFC Consulting Limited,**  
1<sup>st</sup> Floor, Urja Nidhi,  
1, Barakhamba Lane,  
Connaught Place, New Delhi – 110 001

....Respondents

**The following were present:**

Shri Hemant Singh, Advocate, OGPTL  
Shri Lakshyajit Singh Bagdwal, Advocate, OGPTL  
Ms. Lavanya Panwar, Advocate, OGPTL  
Ms. Rohini Prasad, Advocate, BSPHCL  
Ms. Anisha Chopra, OGPTL  
Shri Balaji Sivan, OGPTL

**ORDER**

The present Petition has been filed by the Petitioner, Odisha Generation Phase II Transmission Limited (‘OGPTL’) under Sections 79(1)(c), 79(1)(d), 79(1)(f) and 79(1)(k) of the Electricity Act, 2003 (hereinafter referred to as ‘the Act’) read with Article 11

(Force Majeure) and Article 12 (Change in Law) of the Transmission Service Agreement dated 20.11.2015 (in short 'TSA') seeking reliefs on account of occurrence of Force Majeure and Change in Law events. The Petitioner has made the following prayers:

*“(a) admit and allow the present Petition;*

*(b) direct that the Petitioner is not liable in any manner, whatsoever, for delay in commissioning of the 400 kV D/C OPGC-Jharsuguda Transmission Line (OJ-Line) on 30.08.2017, instead of 31.07.2017 as per Article 11.7(a) of the TSA;*

*(c) declare that the following events are in the nature of force majeure, as per Articles 4.4.2 and 11 of the TSA, affecting the Scheduled Commercial Operation Date (SCOD) of OPGC-Jharsuguda 400 kV D/C Transmission line (OJ-Line):*

- i) delay of three (3) months in acquisition of PFCCL/ SPV;*
- ii) delay of fourteen (14) days due to stay order dated 25.07.2017 granted by High Court of Orissa;*
- iii) delay of twenty (20) days on account of unseasonal heavy rainfall and floods in the State of Odisha; and*
- iv) delay of seven (7) months 20 days in obtaining forest clearance.*

*(d) declare that the following events/ notifications are Change in Law events within the meaning of Article 12 of TSA dated 20.11.2015, with respect to the JR Line:*

- i) the imposition of Land and Corridor Compensation in the State of Chhattisgarh on 01.06.2016;*
- ii) standardization of requirement of Power Line Crossing by CEA vide the meeting held on 16.09.2016;*
- iii) shifting of Tower at Location No. 108/2 of 765 kV D/C Jharsuguda-Raipur Transmission Line (JR-Line) as a result of the decision arrived based on the meeting conducted by CEA on 02.05.2018;*
- iv) diversion of Route for construction of 765 kV D/C Jharsuguda-Raipur Line (JR-Line) pursuant to the directions issued by SDM, Simga vide order dated 19.07.2017.*

*(e) direct that the Petitioner is entitled to the following additional expenditure incurred, with respect to the JR Line, on account of Change in Law events:*

- i) additional expenditure of Rs. 17,03,21,102.28/-, incurred by the Petitioner due to the imposition of Land and Corridor Compensation in the States of Chhattisgarh on 01.06.2016;*

- ii) additional expenditure of Rs. 8,45,87,097/-, incurred by the Petitioner due to standardization of requirement of Power Line Crossing by CEA vide the meeting held on 16.09.2016;
- iii) additional expenditure of Rs. 11,84,558.72/-, incurred by the Petitioner, due to shifting of Tower at Location No. 108/2 of 765 kV D/C Jharsuguda-Raipur Transmission Line (JR-Line) as a result of the decision arrived based on the meeting conducted by CEA on 02.05.2018;
- iv) additional expenditure of Rs. 2,35,99,091.67/-, incurred by the Petitioner, due to the diversion of Route for construction of 765 kV D/C Jharsuguda-Raipur Line (JR-Line) pursuant to the directions issued by SDM, Simga vide order dated 19.07.2017.
- (f) declare and direct that the Petitioner is entitled for carrying cost/ interest cost towards the additional expenditure incurred pursuant to the change in law events, or change in scope of work, as the case may be, as detailed in the present petition;
- (g) direct that the Petitioner is entitled to monetary compensation in terms of Article 12.4 of the TSA, either through supplementary bill or through monthly tariff invoices, or both, as may be directed by this Commission;
- (h) in the alternative to prayers (d)(iii) and (e)(iii), declare that the shifting of Tower at Location No. 108/2 of 765 kV D/C Jharsuguda-Raipur Transmission Line (JR-Line), is a change in scope of work with respect to the TSA, and consequently the Petitioner is entitled to a compensation of Rs. 11,84,558.72/-;
- (i) in the alternative to prayers (d)(iv) and (e)(iv), declare that the diversion of Route for construction of 765 kV D/C Jharsuguda-Raipur Line (JR-Line) pursuant to the directions issued by SDM, Simga vide order dated 19.07.2017, is a change in scope of work, and consequently the Petitioner is entitled to a compensation of Rs. 2,35,99,091.67/-; and
- (j) pass any other order as this Commission may deem fit in the facts and circumstances of the present case.”

## **Background**

2. The Petitioner is a fully owned subsidiary of Sterlite Transmission Projects Private Limited ('STPPL'), which was selected as a successful bidder through the tariff based competitive bidding under Section 63 of the Act to establish the "Common Transmission System for Phase-II Generation Projects in the State of Odisha and immediate evacuation system for the power project of Odisha Power Generation Corporation having capacity of 1320 MW" (in short, 'the Project') on Build, Own,

Operate and Maintain (BOOM) basis. The Petitioner is required to provide transmission service to the LTTCs (arrayed as Respondent Nos. 1 to 7) of the Project which requires establishing the transmission system comprising of the following transmission elements:

<b>Sr. No.</b>	<b>Project Element</b>	<b>Scheduled Commercial Operation Date (SCOD)</b>	<b>Actual Commercial Operation Date (COD)</b>
1	OPGC-Jharsuguda (Sundergarh) 400 kV D/C Line ( <b>'OJ Line'</b> )	31.7.2017	30.8.2017
2	Jharsuguda (Sundergarh)-Raipur Pool 765 kV D/C Line ( <b>'JR Line'</b> )	8.8.2019	6.4.2019

3. The Petitioner was incorporated as a Special Purpose Vehicle ('SPV') by Bid Process Coordinator (in short, 'BPC'), namely, PFC Consulting Limited (in short 'PFCCL') for the purpose of developing and implementing the Project under the Tariff Based Competitive Bidding route. In the bid process conducted by PFCCL, STPPL participated and emerged as the successful bidder. Letter of Intent (LoI) was issued by PFCCL to STPPL on 6.1.2016. In accordance with the bidding documents, STPPL acquired 100% of the shareholding in the Petitioner Company by executing a Share Purchase Agreement with PFCCL on 8.4.2016. Under the TSA, West Bengal State Electricity Distribution Company Limited ('WBSEDCL') has been appointed as the lead LTTC to represent all the LTTCs for discharging the rights and obligations specified therein. The Commission in its order dated 30.6.2016 in Petition No. 67/TL/2016 granted transmission licence to the Petitioner for inter-State transmission of electricity and vide order dated 31.5.2016 in Petition No. 66/ADP/2016 adopted the transmission tariff of the Petitioner.

4. As per the TSA, the OJ Line was to be completed and commissioned by

31.7.2017. However, there has been delay of approximately one month in achieving the commercial operation date of the said line on account of various Force Majeure events and the Petitioner is entitled for condonation of delay in achieving the COD of the OJ Line. JR Line has been commissioned earlier than its SCOD, the Petitioner has been required to incur additional recurring/non-recurring expenditure in completion of the said line on account of various Change in Law events for which the Petitioner is entitled for compensation under Article 12 of the TSA.

### **Submissions of the Petitioner**

5. The Petitioner has mainly submitted as under:

#### **Force Majeure events- OJ Line**

(a) The delay caused in achieving COD of OJ Line was on account of occurrence of Force Majeure events viz. (i) delay in acquisition of SPV, (ii) delay due to stay order granted by Hon`ble High Court of Odisha, (iii) Unseasonal heavy rainfall and flood in the State of Odisha, and (iv) delay in obtaining forest clearance.

(b) As per Clause 2.4 of the Request for Proposal (RfP), STPPL was to acquire 100 % shareholding of the Petitioner company from PFCCL within 10 days of issuance of Letter of Intent dated 6.1.2016. However, the 100% equity of the Petitioner company was offered to STPPL only on 8.4.2016 and STPPL executed the Share Purchase Agreement with PFCCL on 8.4.2016 thereby acquiring 100% equity of the Petitioner company. PFCCL vide letter dated 11.4.2016 had extended the date for completion of all activities relating to acquisition till 18.4.2016, which has also been recorded by the Commission in order dated 31.5.2016 in Petition No. 66/ADP/2016.

(c) On account of the above delay in acquisition of the Petitioner company, initiation of the execution works of the Project was delayed by three months. The above delay squarely falls within the definition of the force majeure provided

under Article 11.3 of the TSA and as such the Petitioner is entitled to an extension of SCOD of OJ Line. Once the timelines were extended by PFCCL, consequently, the timelines for achieving COD of the Project should also have been extended, which was not done.

(d) By way of Writ Petition being W.P (C) No. 14866 of 2017, one Mr. Narayan Prasad Dash and few others, had challenged the installation of electric transmission towers of 400 kV of Triple Snow Bird Conductor over their ancestral properties by the Petitioner wherein Hon'ble High Court of Odisha vide order dated 25.7.2017 directed status quo on the Project regarding installation of transmission towers of 400 kV Triple Snow Bird Conductors which resulted in holding up of work regarding erection of OJ Line. It was only on 9.8.2017, the Hon'ble High Court of Odisha vacated the stay granted on 25.7.2017. The stay granted by the Hon'ble High Court of Odisha for the aforesaid period qualifies as a Force Majeure event under the TSA.

(e) The commissioning of OJ Line was delayed due to the unprecedented, unseasonal and heavy rainfall in the State of Odisha resulting in flooding in the area in July, 2017. As per Article 11.3(a) of the TSA, an act of God, including flood and adverse weather conditions is a natural Force Majeure event. Thus, the unpredictable and unexpected flood like situation which stopped the Petitioner from commissioning of OJ Line as per the timelines provided in the TSA also constitutes a Force Majeure event.

(f) Since the Petitioner required 112.86 Ha. of forest land in Sundergarh Forest Division for laying down OJ Line, in terms of the Ministry of Environment and Forest's Guidelines dated 11.7.2014, it was required identify to around 226 Ha. of suitable degraded forest land for raising compensatory afforestation. In this context, the Divisional Forest Officer (DFO) Sundergarh Forest Division on 8.12.2016 wrote to DFO Boudh Forest Division with a request to identify required degraded forest land for raising compensatory afforestation by the Petitioner as no suitable degraded forest land was available in Sundergarh Forest Division area. In response, DFO Boudh Forest Division wrote a letter on 28.1.2017 in which only 40 Ha. of degraded forest land could be identified for compensatory

afforestation. The remaining 190 Ha. of land was identified much later and the same was intimated to the Petitioner vide letter dated 19.7.2017. The above delay in identification of land for compensatory afforestation is a Force Majeure event under the TSA.

(g) As per Article 11.5.1 of the TSA, the Petitioner has notified the LTTCs of the aforementioned Force Majeure events vide notice dated 11.7.2018.

### **Change in Law Events – JR Line**

Diversion of route for construction of JR Line

(h) JR Line is passing through villages Kesda and Dongariya of Tehsil Simga, district Baloda Bazar where 4 Nos. of tower locations i.e. 35/0, 35/1, 35/0 and 35/3 are falling under the jurisdiction of SDM, Simga and in the said region, the Petitioner faced severe hindrances from the land owners and the employees of Videocon Industries Limited, which were not allowing the Petitioner to execute the construction activities in the above locations.

(i) Since the location Nos. 35/2 and 35/3 fell within the land owned by Videocon Industries Ltd. ('VIL'), the Petitioner vide letters dated 2.9.2016 and dated 21.12.2016 requested it to provide the details regarding proposal and sanction date, etc. for necessary approval in giving clearance for construction of JR Line. However, no response was received from VIL in this regard. The Petitioner finally issued notice dated 14.2.2017 for immediate commencement of construction of JR Line and also expressed its readiness to pay compensation for RoW as per the guidelines issued by Government of Chhattisgarh. The Petitioner vide letters dated 22.2.2017, dated 8.5.2017 and dated 19.5.2017 brought to the knowledge of District Magistrate, Baloda Bazar, Chhattisgarh that it had visited the corporate office of VIL on 17.2.2017 and 18.2.2017 for obtaining necessary clearances for executing civil works, but VIL denied such ownership of land at location Nos. 35/2 and 35/3.

(j) The Petitioner vide letter dated 3.4.2017 intimated SDM Simga about hindrances caused by the land owners of locations Nos. 35/0 and 35/1 and that



they were not agreeable to the land compensation computed as per the statutory rates which the Petitioner was ready to pay and further requested SDM, Simga to interfere and take necessary actions for allowing the Petitioner to commence the construction of JR Line. The Petitioner attempted to commence the work on 3.7.2017 with the help of administrative support provided by SDM, Simga, but the same was forcefully stopped by the landowners.

(k) On 5.7.20217, one of the land owners filed a complaint before SDM, Simga for stay of construction of RS Line wherein a notice was issued by SDM on 7.7.2017 to the Petitioner to appear for hearing on 19.7.2017. Meanwhile, the Petitioner also explored various options to divert the route of JR Line and suggested Option I and Option II and further initiated various discussions and meetings with VIL and land owners for feasible diversion of route for construction of JR Line. During the proceedings before SDM on 19.7.2017, the Petitioner was directed to divert the route of JR Line and finalise the tower spotting for changed route as per Option I suggested by the Petitioner. Thereafter, the tower spotting was done by the Petitioner after conducting joint survey with land owners and a report was submitted to SDM on 29.1.2018 with a request for permission to commence the work. The said direction to deviate/ change the route is a Change in Law in terms of Article 12.1.1 of the TSA since the above direction is a change/imposition of a requirement for obtaining consent/permit for construction of JR Line.

(l) The Petitioner vide letters dated 2.9.2017, dated 30.10.2017 and dated 1.12.2017 intimated the District Magistrate, Baloda Bazar about the various hindrances caused by VIL and the land owners in not allowing the Petitioner to commence the construction works and further requested to provide administrative support in execution of the construction works. The Petitioner vide letter dated 22.12.2017 also communicated to DM, Baloda Bazar that Option I as suggested by the Petitioner earlier was not feasible as the land owners caused hindrance in implementing the same and in this context, finding no other alternative, the Petitioner suggested the feasibility of Option II to divert the route for spotting the towers and requested the office of District Collector to issue

appropriate orders/direction for diversion of route so as to commence the construction works of JR Line on immediate basis. Consequently, the SDM, Simga vide its order dated 1.2.2018 allowed the Petitioner to commence the transmission work on the above deviated route.

(m) Diversion of route qua JR Line was based upon the condition imposed by SDM, Simga for obtaining consent and/or clearance which was not required earlier and that the said approval was necessary for the Petitioner to divert the route and commence work for construction of JR Line. Hence, the said order of SDM, Simga constitutes a Change in Law event under TSA.

(n) Alternatively, the aforementioned diversion of route of JR Line, also qualifies as change in scope of work as compared to scope contemplated at the time of bidding on account of orders passed by SDM, Simga and the agitations of the land owners.

Shifting of tower at location No. 108/2 of JR Line

(o) The Petitioner faced obstruction from Sri Krishan Structure (SKS) in commissioning of three towers being location Nos. 108/2, 108/3 and 108/4 with respect to laying down of JR Line. The aforesaid three towers passed through the vacant land in between the pucca boundary wall of the SKS and highly populated village, namely Binjkot, Tehsil Krishna, district Raigarh. The Petitioner vide letters dated 22.3.2016 and dated 20.1.2017 requested SKS to convey its Plant area details. In response SKS vide email dated 21.1.2017 informed the Petitioner that most of the lands in villages Binjkot and Darramunda are already under acquisition for their Phase II generation project of 600 MW and requested the Petitioner to submit the detailed route map for JR Line, which was submitted by the Petitioner. However, no response was received from SKS in this regard.

(p) Subsequently, on 9.4.2017, the Petitioner informed SKS about commencement of foundation work at location Nos. 108/2 and 108/3 in Binjkot area. However, on 23.4.2017, while the Petitioner was commissioning the tower location Nos. 108/2, 108/3 and 108/4 outside the boundary wall of SKS, the Petitioner was obstructed unlawfully, arbitrarily and without any sanction of law

by the SKS employees.

(q) The above matter was pursued with District Magistrate, Raigarh wherein both the Petitioner and SKS were directed to resolve the matter amicably. However, since the matter could not be resolved amicably, SKS approached Hon'ble High Court of Chhattisgarh through Writ Petition No. 700 of 2018 wherein the Hon'ble High Court vide order dated 15.3.2018 directed CEA to resolve the same. Thereafter, on 2.5.2018, CEA conducted a joint meeting with the Petitioner and SKS to discuss the disputes pertaining to shifting of tower at location No. 108/2. In the said meeting, the Petitioner was agreed to explore the possibility of shifting of the said tower qua the JR Line from the land proposed for the power plant of SKS. Accordingly, the Petitioner shifted the tower from location No. 108/2 which resulted in additional expenditure and the said shifting of tower qua JR Line which was based upon the CEA's approval/ consent accorded in the meeting dated 2.5.2018, constitutes a Change in Law under the TSA.

(r) Alternatively, the above shifting of tower is also in the nature of change in scope of the work as a result of obstruction of work by SKS and the subsequent Change in Law events pertaining to orders and directions of the Hon'ble High Court and the CEA.

*Promulgation of new set of compensation guidelines in State of Chhattisgarh*

(s) As on cut-off date, the Guidelines with respect to determination of compensation for Right of Way for the purpose of laying of transmission line, issued by Government of Chhattisgarh vide Notification No. F 7-7/Seven-1/2014 dated 20.2.2015 provide the land compensation @ 50% of the market value of land, which was being used for erection of tower and @ 20% of the benchmark value for transmission corridor of the land. However, subsequently, the Government of Chhattisgarh vide Notification dated 1.6.2016 increased the compensation for acquisition of RoW in land required for tower base @ 85% of current benchmark value of land and for transmission corridor @ 15% of the current benchmark value, as per the guidelines prescribed under the Chhattisgarh Stamp Rules, 1942, leading to increase in the rate of compensation

payable by the Petitioner qua JR Line. The aforesaid notification dated 1.6.2016 of the Government of Chhattisgarh qualifies as Change in Law under the TSA.

*Standardization of requirement of Power line crossing by CEA*

(t) JR Line was proposed to cross the existing power lines of Chhattisgarh State Power Transmission Company Limited numbering around 21 lines and the power lines of PGCIL, numbering around 4 lines in Chhattisgarh at different voltage levels. In this regard, Regulation 89 of the Central Electricity Authority (Technical Standards for Construction of Electrical Plants and Electrical Lines) Regulations, 2010 ('the CEA Regulations, 2010') provides for applicable standards for designing and construction of transmission lines qua the transmission line connected to voltage level of 66 kV and above. As per the said Regulations, the transmission licensee was required to follow certain standards, for designing and carrying out construction of transmission lines, and the said standards ought to be the standards adopted by Bureau of Indian Standards (BIS) or Indian Electricity Grid Code (IEGC) or any other equivalent standards.

(u) The Code of Practice for design, installation and maintenance of overhead power lines (Indian Standards) was adopted by Bureau of Indian Standards on 23.3.1989 ('BIS Code') which, *inter-alia*, provided the standard requirement for crossing of existing EHB line. Accordingly, in terms of the CEA Regulations, 2010 and BIS Code, the Petitioner submitted its proposals dated 21.3.2016, dated 11.5.2016 and dated 6.6.2016 to CSPTCL and PGCIL respectively, for approval of crossing its existing EHV lines. However, PGCIL and CSPTCL vide their letters dated 20.5.2016 and dated 17.6.2016 respectively intimated the requirements for power line crossings, wherein, *inter alia*, it was stated that both side dead end towers or suspension towers with required extensions in combination with dead end towers, have to be used in overhead crossing, which was a departure from the CEA Regulations, 2010 and BIS Code.

(v) On 16.9.2016, CEA, convened a meeting to discuss and standardize the requirement for power line crossing and from the perusal of the minutes of the aforesaid meeting, it is evident that the deviations in the tower design suggested

by PGCIL and CSPTCL were approved by CEA, without referring to the aforementioned letters of PGCIL and CSPTCL. In terms of the above, CEA, a statutory body under Section 70 of the Act, approved the deviations from the conditions qua tower design existing on the date of submission of bid.

(w) The mandate that the power line crossing can be done only with D-D type of towers for crossing the lines of 400 kV and above and that for transmission lines of 220 kV and 132 kV, the line crossing could be done with angular tower as per the requirement of angular deviation came only in the CEA meeting held on 16.9.2016 and as on cut-off date, there was no such requirements. The CEA's standardization for requirements of power line crossing with D-D type of tower constitutes a Change in Law event as per the TSA.

(x) The Petitioner has issued the notices for the aforesaid Change in Law events on 21.7.2017 and 5.10.2018.

(y) The total financial impact on the Petitioner, as a result of the aforesaid Change in Law events, is as under:

Sl. No	Reason for cost Increase	Cost Increase (Rs.)
1.	Additional expenditure towards land compensation in Chhattisgarh and Odisha post the Cut-off date or bid deadline, qua JR Line.	17,03,21,102.28
2.	Additional expenditure towards Power Line Crossing, qua JR Line.	8,45,87,097
3.	Additional expenditure towards diversion of route, qua JR Line.	2,35,99,091.67
4.	Additional expenditure towards shifting of tower, qua JR Line.	11,84,558.72
	<b>TOTAL</b>	<b>27,96,91,849.67</b>

(z) The Petitioner is entitled for carrying cost on additional expenditure incurred on account of Force Majeure and Change in Law events. The said carrying cost is required for the purpose of off-setting the impact of deferred recovery of legitimate expenses incurred by the Petitioner. The Appellate Tribunal for Electricity ('APTEL') and Hon'ble Supreme Court, in their judgments, have already upheld the concept of carrying cost whenever there is any deferred recovery of costs.

### **Hearing on 23.6.2020**

6. The matter was admitted on 23.6.2020 and the notice was issued in the matter. The Respondents were also directed to file their reply by 16.7.2020. However, none of the Respondents filed their reply. The Petitioner was also directed to submit the copy of approval of Central Electricity Authority for early commissioning of JR Line. In compliance to the above, the Petitioner vide affidavit dated.23.7.2020 has placed on record (i) minutes of meeting dated 16.11.2016 conducted by CEA to discuss and ensure smooth operationalization of policy dated 15.7.2015 for early commissioning of transmission Projects through TBCB route, (ii) minutes of meeting taken by Chief Engineer, CEA on 27.12.2016 with the Petitioner and PGCIL in order to decide the revised SCOD for common transmission system for Phase-II generation projects in Odisha and immediate evacuation system for OPGC project, (iii) minutes of meeting taken by Chief Engineer, CEA on 12.9.2018 to review the progress of transmission projects awarded through TBCB route wherein CTUIL/PGCIL was advised to match the bays schedule as per the commissioning of the JR Line, (iv) minutes of validation committee meeting dated 3.10.2018 which evinces early commissioning of JR Line, (v) trial certificate issued by POSOCO dated 27.5.2019 in terms of Regulation 5 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014.

7. Subsequently, the matter was heard on 24.1.2022. However, in the meantime, the Ministry of Power, Government of India having notified the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 ('Change in Law Rules'), the Commission vide Record of Proceedings for hearing dated 24.1.2022 directed the

Petitioner to settle the Change in Law claims among themselves (Petitioner and LTTCs) and to approach the Commission only in terms of Rule 3(8) of the Change in Law Rules. Consequently, the Petitioner was granted a liberty to file amended Petition restricting its prayers to the extent of Force Majeure events only.

8. However, being aggrieved by the aforesaid order of the Commission, the Petitioner had approached the APTEL in Appeal No. 75 of 2022, which was taken up along with OP No.1 of 2022 and Ors. filed by the other transmission licensees also with regard to applicability of Change in Law Rules. The said appeal was allowed by the APTEL vide common judgment dated 5.4.2022 and directed the Commission to consider the case on the merits of the case and adjudicate in accordance with law on dispute in exercise of the jurisdiction under Section 79 of the Act.

9. The matter was heard on 17.5.2022 through video conferencing. After hearing the learned counsel for the Petitioner, the Commission directed the Petitioner to implead BPC, PFCCL as party to the Petition and file revised memo of parties. Further, considering the request of the learned counsel for the Respondent Nos. 2 & 3 during the hearing, the Commission once afforded an opportunity to all the Respondents including PFCCL to file their reply, if any. Pursuant to the above, only the Respondent Nos. 2 and 3 have filed a common reply.

#### **Reply of Respondent No.2 & 3 – Bihar Discoms**

10. The Respondent Nos. 2 & 3, vide their affidavit dated 8.6.2022, have filed a common reply and have submitted as under:

- (a) As per clause 2.14.2.3 and clause 2.14.2.4 of the RfP, the bidders in their own interest were required to carry out the required surveys and field

investigations for submission of their bid. They were also required to visit the route of the transmission line associated with the project and the surrounding areas and obtain/ verify all information which they deemed fit and necessary for preparation of bid. Further, failure to investigate the route of the transmission line associated with the Project and to examine, inspect the site fully was stated to be no ground for a bidder to alter its bid after the bid dead line and it was also stated to not relieve the bidder from any responsibility for appropriately eliminating the difficulty or costs of successfully completing the project (Clause 2.14.2.5 of RfP).

(b) As per clause 2.14.2.1 of the RfP, the bidders were required to make an independent inquiry and satisfy themselves with respect to all required information, inputs, conditions, circumstances and factors that may have any effect on his bid. Once the bidder submitted the bid, they were deemed to have inspected and examined the site conditions and other aspects / factors stated in the said clause, and fixed its price taking into account all such relevant condition and also the risks, contingencies and other circumstances which may influence or affect the transmission of power. The bidders acknowledged that on being selected as the successful bidder and acquisition of 100% of the equity shares of OGPTL, the TSP/Petitioner herein shall not be relieved from any of its obligations under the RfP project document nor TSP shall be entitled for any extension in Scheduled COD mentioned in the RfP or financial compensation for any reason whatsoever.

(c) As per Article 5.1.1 of TSA, TSP at its own cost and expense is mandatorily responsible for designing, constructing, erecting, completing, and commissioning each element of the Project by the SCOD in accordance with the various regulations specified in the said article, prudent utility practices and other applicable laws.

(d) As per Article 5.1.2 of the TSA, the TSP acknowledged and agreed that it shall not be relieved from any of its obligations under this agreement or be entitled to any extension of time by reason of unsuitability of the site or transmission line routes for whatever reasons. It further acknowledged and agreed that it would not be entitled to any financial compensation in this regard.



As per Article 5.1.4 of the TSA, acquisition of land for location specific substations, switching stations or HVDC terminals or inverter stations, final selection of site including its geo-technical investigation, survey and geo-technical investigation of line route in order to determine the final route of the transmission lines, and seeking access to the site and other places where the project is being executed at its own cost including payment of compensation as may be required was the responsibility of the TSP.

(e) Article 4.1 of the TSA provides for TSP's obligations in development of the Project. As per the above Article, subject to the terms and conditions of the agreement, the TSP at its own cost and expense is required to observe, comply with, perform, undertake and be responsible for procuring and maintaining in full force and effect all consents, clearances, permits required in accordance with law for development of the project, and for financing, constructing, owning and commissioning each of the element of the Project in accordance with the code and regulations specified therein as amended from time to time, prudent utility practices and law not later than the Scheduled COD, and to comply with all its obligations undertaken in the agreement.

(f) Insofar as Change in Law is concerned, the definition of Change in Law given in Article 12.1.1 is exhaustive and not inclusive. Article 12.3.1 requires the TSP which is affected by a Change in Law in accordance with Article 12.1 and wishes to claim relief for such Change in Law under Article 12 to mandatorily give notice to the lead LTTC of such Change in Law as soon as reasonably practicable after becoming aware of the same. The notice served in pursuance of Article 12.3.1 of the TSA is required to provide, among other things, precise details of the Change in Law and its effect on the TSP (Article 12.3.3 of the TSA). It has been consistently held by APTEL and this Commission that the requirement of notice is not an empty formality (Re: Judgment dated 7.11.2017 in Appeal No. 212 of 2016 titled Maruti Clean Coal and Power Ltd. v. PGCIL).

(g) Further, for any claims made under Article 12.2.1 and Article 12.2.2 of the TSA (i.e. relief for Change in Law during construction period and during operation period respectively), the TSP is required to provide to the long-term transmission

customers and the Appropriate Commission documentary proof of the increase/decrease in cost of the project/ revenue for establishing the impact of such Change in Law (Article 12.2.3). Article 12.2 deals with relief for Change in Law and nothing beyond what is contemplate by this article would be admissible, if at all.

(h) In view of the provisions of the RfP and TSA, particularly, those as stated above, the claims of the Petitioner with respect to the alleged Change in Law events and the consequent relief of reimbursement of the additional expenditure incurred for constructing JR line are liable to be rejected.

### **JR Line – Change in Law events**

#### *Diversion of Route for construction of JR Line*

(i) In terms of Article 5 of the TSA read with the various clause of RfP as noted above, diversion of route for construction of 765 kV JR Line does not fall under any of the occurrences enumerated as Change in Law events in Article 12.1.1 of the TSA and accordingly, the Petitioner is not entitled to any financial compensation/relief under this head.

(j) Without prejudice to the above, as per the Petitioner, there were other options available with respect to the transmission route at these locations and eventually Option II as selected in this regard was stated to be the one having least harm on the lands of the affected. No reasons have been given by the Petitioner as to why the said factors were not taken into account by it earlier while finalizing the transmission line route, more so, since the RfP also required it to enquire and satisfy itself about the factors affecting the bid and the price had to be fixed taking various circumstances into account as stated in the RfP. Even proviso (c) of Section 10 of the Telegraph Act, 1885 enjoined upon the telegraph authority/ Petitioner to do as little damage as possible in exercise of power conferred under the said Section.

(k) The alleged direction of the SDM vide purported order dated 19.7.2017 to deviate/ change the route does not fall within “Change in Law” in terms of Article 12.1.1 of the TSA. The same also cannot be said to be a change/ imposition of a

requirement for obtaining consent/ permit/ clearance not required earlier for constructing the transmission line. The Petitioner is solely responsible for the change in route that got occasioned, especially, in light of the aforesaid provisions of the TSA and RfP. Hence, this cannot be said to qualify as change in scope of work.

(l) The proceeding before the SDM on 19.7.2017 on which date the Petitioner has been stated to have been directed to divert the route of JR Line has not been brought on record/filed by the Petitioner.

(m) Moreover, it was after more than a year of the purported order dated 19.7.2017 of the SDM (Simga), upon which the Petitioner seeks to rely, that it gave the purported notice dated 5.10.2018, – this cannot be said to be notice “as soon as reasonably practicable” after becoming aware of Change in Law as contemplated by Article 12.3 of the TSA. The said notice is not in accordance with the terms of the TSA and on this count also the claim of the Petitioner is liable to be rejected.

*Shifting of Tower at Location No. 108/2 of JR Line*

(n) The shifting of tower at location No. 108/2 does not constitute a Change in Law event covered under Article 12.1.1 of the TSA and, further such shifting of tower was solely attributable to the faults/ shortcomings of the Petitioner.

(o) The alleged additional expenditure/cost on account of shifting of tower at location No. 108/2 was precipitated and occasioned due to the faults and failures of the Petitioner. As per the Petitioner, prior to the order published in the Gazette on 6<sup>th</sup> March, 2017, in response to its letter dated 20.1.2017, SKS vide its e-mail dated 21.1.2017 had already informed that most of the land in villages Binjkot and Dharramuda were under acquisition for their Phase-II generation project, and it had requested the Petitioner for a detailed route map of the proposed line through the said two villages to be sent to it. It is unclear, from the documents brought on record by the Petitioner, if the said requested detailed route map was shared. The finalization of the transmission route, its survey and geotechnical investigation, etc. were in the domain of the Petitioner, and it was incumbent

upon it to avoid such an eventuality. The same was not an unforeseeable event and the Petitioner did finally agree to explore the possibility of shifting of tower at location No.108/2.

(p) The Petitioner was stated to have known about the possibility of such a change in location being required since at least January, 2017, finally culminating in the meeting of the CEA on 2.5.2018, yet it sent the purported notice regarding Change in Law on this count only on 5.10.2018 and the same cannot be said to comply with the provision of Article 12.3 of the TSA and other terms regarding issuance of notice as contemplated by the TSA.

(q) As per the minutes of the meeting held in CEA dated 2.5.2018 between the Petitioner and SKS, the Petitioner confirmed that it would bear the additional cost of the above arrangement. Nowhere it has been stated by the Petitioner that the LTTCs/Respondents were intimated or taken into confidence in this regard, and it was much later that the letter dated 5.10.2018 was stated to have been given.

*Promulgation of new set of compensation guidelines for the State of Chhattisgarh*

(r) As per Article 5.1.4 of the TSA, seeking access to site and other places where the Project was being executed at its own cost including payment of any compensation as may be required was the primary responsibility of the TSP/ Petitioner. Change in Law article of the TSA cannot be interpreted such as to impose a liability upon the LTTCs /Respondents that was not at all contemplated to be borne by them. The provisions of the TSA are required to be interpreted harmoniously (Article 1.2.5) and they cannot be read such as to denude the responsibility of the TSP. Vide notification dated 1.6.2016, the transmission corridor compensation was fixed at 15% of current benchmark value which was lower than what was in fixed the notification dated 20.2.2015.

(s) As per the Petitioner, the Government of Chhattisgarh by the purported notification dated 1.6.2016 had increased the compensation payable, however, contrary to the requirement of giving notice "as soon as reasonably practicable" as contemplated by Article 12.3 of the TSA, the Petitioner notified the LTTCs

about such developments one year later vide its purported letter dated 21.7.2017 thereby disentiitling itself from claiming such relief.

*Standardization of requirement of power line crossing by CEA*

(t) As per Article 5.1.1 of the TSA, the TSP at its own cost and expense is responsible for designing, constructing, erecting, completing and commissioning each element of the project by the Scheduled COD in accordance with the Regulations stated in the said article, prudent utility practices and other applicable law. "Prudent utility practice" has been defined in the TSA to mean practices, methods, standards generally accepted internationally from "time to time" by electric transmission utilities for ensuring safe, efficient and economic design, construction, commissioning, operation, repair and maintenance of the project and which practices, methods and standards shall be adjusted as necessary to take account of operation, repair and maintenance guidelines given by the manufacturers to be incorporated in the project, the requirement of law, and the physical condition at site.

(u) As per sub-regulation (1)(d)(i)(B) of Regulation 89 of the CEA Regulations 2010, the type of tower and design, etc. are to be selected by the owner as per prudent utility practices. Sub-clause 1 (d) (ii) dealing with design of tower specifies only the "minimum" requirement for the design of tower, and the owner may adopt any additional loading or design criteria for ensuring reliability of the line if so desired and/or deemed necessary. Therefore, the installation of 'D-D' type tower does not qualify as Change in Law event in as much as it was always the requirement of the aforesaid CEA Regulations, 2010 that the tower design and type, etc. be selected as per prudent utility practices, and it was only the minimum requirement with respect to design of tower that was specified, and additional design criteria could be adopted. There was no prescribed configuration for crossing of transmission lines which was changed.

(v) In the minutes of meeting convened on 16.9.2016 by the Chief Electrical Inspector (CEA), in clause (d), recording points of agreement, it was stated that the proposal as indicated at (a), (b) and (c) would be discussed by all the TSPs

within their organization and they would also see if the differential cost could be absorbed by the TSPs. The decision of CEA in the aforesaid meeting cannot be classified as enactment of Law and it was only by way of a consensus for resolution of disputes, and the same is not covered by Article 12.1.1 of the TSA.

(w) Importantly, the LTTCS / Respondents were not a part of this meeting and have not been mentioned as the recipient of the said minutes; and it was two years later that vide the purported letter dated 5.10.2018, the Petitioner sought to inform the Respondents regarding alleged Change in Law event, in utter non-compliance of the requirement of notice as contemplated by Article 12.3.1 of the TSA.

### **OJ Line – Force Majeure Events**

(x) The Petitioner is not liable for relief on account of alleged Force Majeure event claimed in the Petition. As per Article 11.5.1 of the TSA, the affected party is mandatorily required to give notice to the other party of any force majeure event as soon as reasonably practicable but not later than 7 days after the date on which such party knew or should have reasonably known of the commencement of the Force Majeure event. Such notice is a pre-condition to the affected party's entitlement to claim relief under the agreement and the notice was required to include full particulars of the event of Force Majeure, its effects on the party claiming relief and the remedial measures proposed. The affected party was required to give the other party regular reports on the progress of remedial measures and other information as the other party may reasonably request. The affected party is also required to give notice to the other party of cessation of the Force Majeure event and cessation of the effect of such event (Article 11.5.2).

(y) In the present case, no notice in the stipulated time period and as contemplated by the TSA has been given by the Petitioner thereby disentitling it to any relief on account of Force Majeure event.

(z) The alleged delay in acquisition of SPV was stated to have occurred in

April, 2016, stay order was stated to have had impact between 25.7.2017 to 9.8.2017, the unseasonal heavy rainfall was stated to have occurred in July, 2017, and the time taken in identification of land for compensatory afforestation was stated to have occurred in 2016. However, notice regarding force majeure event was given much belatedly on 11.7.2018. The same was, thus, only by way of an afterthought.

(aa) With respect to claim regarding unseasonal heavy rainfall, as per Force Majeure clause (Article 11.3) Natural Force Majeure events included exceptionally adverse weather conditions in excess of the statistical measures for the last 100 years. Thus, heavy rainfall not falling under this clause cannot be said to be a Force Majeure event. A warning of Indian Meteorological Department as relied upon by the Petitioner shows that heavy rainfall was stated to be likely in one or two places of certain districts during next 48 hours. However, there is nothing on record to substantiate the alleged claim of unsubstantiated and unexpected flood and flood like situation as averred by the Petitioner.

(bb) With respect to obtaining forest clearance, since, the MOEF guidelines dated 11.7.2014 were issued prior to the signing of the TSA, the Petitioner ought to have taken timely steps in this regard and cannot take shelter of any alleged delay on this account. Moreover, perusal of the purported letters dated 8.12.2016 and dated 28.1.2017 shows that insofar as OJ Line is concerned, the extent of degraded required forest land was 36.460 Ha. and 40 Ha. was already made available vide letter dated 28.1.2017. The purported letter dated 19.7.2017 does not concern with OJ Line.

(cc) As to the stay order granted by Hon`ble High Court of Odisha, perusal of the order dated 25.7.2017 shows that there was an order of status quo with respect to the suit land till the next date and further perusal of the order dated 9.8.2017 shows that towers had already been fixed and trees had already been cut. Hence, evidently, there was no order of status quo on the Project regarding installation of electric transmission tower and no substantial delay was faced by the Petitioner on this account.

(dd) Keeping in view the definition of Force Majeure under Article 11.3 of the TSA, none of the circumstances cited in the Petition would amount to Force Majeure events.

11. The matter was heard on 23.6.2022 through video conferencing. During the course of hearing, learned counsel for the Petitioner and the Respondent Nos. 2 & 3 made detailed submissions in the matter. The parties as requested were also permitted to file their respective written submissions within four weeks. The Petitioner was directed to furnish the following details on affidavit:

(a) CEA clearance certificate for energization of both transmission lines in terms of the Central Electricity Authority (Measures relating to Safety and Electricity Supply) Regulations, 2010;

(b) RLDC certificate for trial operation of the OJ Line;

(c) Documents declaring COD/Deemed COD of both transmission lines;

(d) In terms of Clause 1.1.1 of the TSA, COD shall not be a date prior to SCOD unless mutually agreed to by all parties. The Petitioner has declared COD of JR line on 6.4.2019 whereas SCOD was 8.8.2019. Submit the agreement of all parties declaring COD before SCOD; and

(e) Copy of the order of the land acquisition Officer, if any, fixing the amount of compensation in terms of Clause 6 of the Government of Chhattisgarh Order dated 20.2.2015 / 1.6.2016 for each involved district in respect of JR Line.

12. In terms of the above directions, the Respondent Nos. 2 and 3 filed their written submissions dated 8.7.2022 mainly reiterating the submissions made in their reply, which for the sake of brevity, are not repeated herein.

13. In response to the additional details sought from the Petitioner under queries (a)



to (e) as noted in Paragraph 11 above, the Petitioner vide affidavit dated 26.7.2022 has submitted as under:

(a) CEA accorded the approval for energisation of electrical apparatus-OJ Line vide letter dated 23.8.2017 whereas the approval for energisation of electrical installation of 304.945 ckt. km of JR Line under Regulation 43 of the Central Electricity Authority (Measures Relating to Safety and Electric Supply) Regulations, 2010 vide letter dated 14.12.2018. Copies of both the above letters have been furnished.

(b) ERLDC granted the certificate of completion of trial operation of OJ Line vide notification dated 4.1.2018. The completion of successful trial operation was carried out on 20.12.2017. Copy of ERLDC certificated dated 4.1.2018 has been furnished.

(c) The Petitioner vide letter dated 23.8.2017 to ERPC declared the deemed commercial operation of OJ Line w.e.f 30.8.2017 in terms of Article 6 of the TSA. Further, the Petitioner vide letter dated 8.4.2019 to ERPC declared the deemed commercial operation of JR Line w.e.f 6.4.2019 in terms of Article 6 of the TSA.

(d) A meeting was convened by CEA on 26.10.2016 for consideration of request of early commissioning of assets covered under the Petitioner's Project and during the meeting, it was deliberated that the request for early commissioning of JR Line could not meet the criteria of providing a 24 months advance request for such early commissioning in light of the fact that the Policy of early commissioning was passed in July, 2015, which made it impossible for the Petitioner to provide 24 months advance notice. Accordingly, PSPM Division, CEA directed the Petitioner to conduct meeting with implementing agencies of the interconnecting (upstream/downstream) elements and associated generator for evaluating the request of early commissioning. Pursuant to the above directions, another meeting was convened by Chief Engineer (PSPM) in CEA on 27.12.2016, where representatives from the Petitioner and PGCIL were present to decide the revised SCOD for common transmission system for Phase-II generation Project in Odisha and immediate evacuation system for OPGC

Project. During the meeting, Chief Engineer (PSPM), CEA directed the representative of the Petitioner and PGCIL to convene a joint meeting for mutually agreed revised SCOD for JR Line in the first quarter of the year, 2018 as the authorities of the both the projects would have sufficient time period of one and half years to complete the 765 kV terminal bays and balance work of transmission line. Subsequently, on 12.9.2018, a meeting was again convened by the Chief Engineer (PSPM), CEA to review the progress of transmission projects awarded through TBCB route, which were expected to be completed during 2018-19 and during the meeting, the Petitioner informed the CEA that JR Line was in advance stage of completion and would be ready by October, 2018 and therefore, SCOD may be preponed. In response, the representatives of PGCIL stated that the construction of the bays would be completed by October, 2018. Therefore, a consensus was reached for early commissioning which was also supported by OPGC and PGCIL had agreed to provide inter-connection facilities matching with the revised timelines proposed by the Petitioner for early commissioning. Accordingly, Chief Engineer (PSPM), CEA directed PGCIL to match schedules of bays as per the commissioning of JR Line.

(e) The Government of Chhattisgarh vide notification dated 1.6.2016 increased compensation for acquisition of RoW in lands required for tower base @ 85% of the current benchmark value of land (RoW compensation) and for transmission corridor, the land compensation was fixed @ 15% of the current benchmark value, as per the guidelines prescribed under the Chhattisgarh Stamp Rules, 1942. Following the above notification, 22 orders were issued by SDMs of Sakthi, Champa, Pamgarh, Janjghar, Gharghoda and Kharsia Districts of Chhattisgarh in terms of Clause 6 of the order of Government of Chhattisgarh dated 20.2.2015/1.6.2016. Details of the SDM orders and payment made by the Petitioner in compliance thereof are as under:

Narration	In favour of	Amount	Bill No	Bill Date	SDM Order Date	Paid Through
ROW Compensation payment by order - SDM Sakthi	SDM Sakthi	50,64,956	LTCD/OGPTL/S RSTL/REIM/22	20-03-2017	15.03.2017	L&T
ROW Compensation payment by order - SDM Sakthi	SDM Sakthi	39,25,000	LTCD/OGPTL/S RSTL/REIM/12	31-01-2017	27.01.2017	L&T

Narration	In favour of	Amount	Bill No	Bill Date	SDM Order Date	Paid Through
ROW Compensation payment by order - SDM Sakthi	SDM Sakthi	50,00,000	LTCD/OGPTL/S RSTL/REIM/62	24-06-2017	17.05.2017	L&T
ROW Compensation payment by order - SDM Sakthi	SDM Sakthi	50,00,000	LTCD/OGPTL/S RSTL/REIM/62	24-06-2017	17.05.2017	L&T
ROW Compensation payment by order - SDM Champa	SDM Champa	64,70,000	LTCD/OGPTL/S RSTL/REIM/63	23-06-2017	30.05.2017	L&T
ROW COMPENSATION PAYMENT BY ORDER - SDM SAKTI	SDM Sakthi	50,00,000	SRSTL/REIM/102	25-09-2017	21.08.2017	L&T
ROW COMPENSATION PAYMENT BY ORDER - SDM SAKTI	SDM Sakthi	55,89,676	SRSTL/REIM/102	25-09-2017	21.08.2017	L&T
ROW Compensation payment by order - SDM PAMGARH	SDM Pamgarh	25,00,000	LTCD/OGPTL/S RSTL/REIM/15	21.02.2017	20.01.2017	L&T
ROW Compensation payment by order - SDM janjgir	SDM Janjgir	9,00,000	LTCD/OGPTL/S RSTL/REIM/16	21-02-2017	02.02.2017	L&T
ROW Compensation payment by order - SDM PAMGARH	SDM Pamgarh	31,28,575	LTCD/OGPTL/S RSTL/REIM/24	14-04-2017	14.04.2017	L&T
ROW Compensation payment by order - SDM PAMGARH	SDM Pamgarh	54,72,708	LTCD/OGPTL/S RSTL/REIM/70	24-07-2017	21.06.2017	L&T
ROW Compensation payment by order - SDM janjgir	SDM Janjgir	88,53,753	LTCD/OGPTL/S RSTL/REIM/101	26-09-2017	06.09.2017	L&T
ROW Compensation payment by order - SDM janjgir	SDM Janjgir	77,57,952	SRSTL/REIM/112	16-10-2017	16.10.2017	L&T
345/prastu-2/2019	SDM Kharsia	3,00,00,000	NA	15-03-2019	15.03.2019	Sterlite
Vachak/1/19K	SDM Gharghoda	2,76,67,015	NA	01-03-2019	01.03.2019	Sterlite
828/Bhu-arjan/2019	SDM Sakthi	85,65,945	NA	06-03-2019	06.03.2019	Sterlite
ROW Compensation payment by order – SDM Pamgarh	SDM Pamgarh	15,80,000	NA	04-03-2019	04.03.2019	Sterlite
758/Va/AVA/Bhu-Arjan/2018	SDM Pamgarh	50,00,000	NA	26-11-2018	26.11.2018	Sterlite
2441/AVA/Bhu-Arjan/2018	SDM Janjgir	90,00,000	NA	09-08-2018	09.08.2018	Sterlite
ROW Compensation payment by order – SDM Pamgarh	SDM Pamgarh	60,00,000	SRSTL/REIM/197	20-04-2018	20.04.2018	L&T
Vachak/1/1576	SDM Gharghoda	1,00,00,000	NA	26-11-2018	26.11.2018	Sterlite
17534/Prastu-2/2018	SDM Kharsia	53,94,209	NA	04-10-2018	04.10.2018	Sterlite
Vachak/1/2018	SDM Gharghoda	50,00,000	NA	24-07-2018	24.07.2018	Sterlite
<b>Total</b>		<b>17,28,69,789</b>				

(f) The total compensation paid by the Petitioner to the landowners based on

the above stated revised guidelines is approximately 20 crore. Out of the said amount, Rs. 17.28 crore of compensation has been paid by the Petitioner in terms of the aforesaid orders of SDMs and the balance remaining amount of compensation has been paid to the landowners as per the prevailing 2016 guidelines without any intervention of the administrative/ revenue authorities.

14. The Petitioner has filed written submissions on 30.7.2022 mainly reiterating the submissions made in the Petition and has made the following additional submissions:

(a) The contention of the Respondents that no notice was issued by the Petitioner qua the Force Majeure event - delay in acquisition of SPV - is not correct for the reason that the above extension of timelines issued by BPC was specifically recorded in the tariff adoption order dated 31.5.2016 in Petition No. 65/ADP/2016. Therefore, sufficient intimation was given to the Respondents and as such they cannot argue that no notice of intimation was ever received by them. In any event, a Force Majeure notice was given by the Petitioner on 11.7.2018. The reliance has also been placed on the order dated 7.5.2022 in Petition No. 13/MP/2021 (Powergrid Southern Interconnector Transmission System Ltd. v. Southern Power Distribution Co. of Andhra Pradesh Ltd. and Ors.) to contend that in the said order, the Commission has treated the licensee having informed LTTCs about the increase in acquisition price by BPC through tariff adoption petition as compliance with the requirement of TSA regarding prior notice regarding occurrence of the Change in Law before approaching the Commission.

(b) The contention of the Respondents that the order of the Hon'ble High Court of Odisha dated 25.7.2017 pertained to the towers already fixed and not qua installation is completely vague and without any factual or legal basis. From the bare reading of the above order it is evident that there was a status quo order which means that the things had to stop where they stand and as such, the Petitioner could not at all take any steps towards implementation of the Project, which is clearly a Right of Way issue. The Commission in its order dated

31.5.2016 in Petition No. 230/TT/2015 (PGCIL v. Gati Infrastructure Chuzachen Ltd. and Ors.) and order dated 30.6.2016 in Petition No. 477/TT/2014 (PGCIL v. Rajasthan Rajya Vidyut Prasaran Nigam Ltd. and Ors.) has condoned the delay on account of RoW issues qua stay orders of the Courts.

(c) The averment of the Respondents that unseasonal heavy rainfall and floods in the State of Odisha does not constitute a Force Majeure event since the rainfall in Odisha does not fall under the exceptionally adverse weather conditions in excess of the statistical measures for last 100 years is devoid of merit and is based upon a restricted reading of Article 11.3(a) of TSA. The said article starts with the words “act of God”, which means that any event which is on account of a natural calamity would be treated as a Force Majeure event. In the present case, the adverse rainfall which happened in Odisha as evidenced from the Flood Alert issued by Meteorological Department clearly falls within the meaning of “act of God” under the “Natural Force Majeure Event”. The Commission in its order dated 24.8.2016 in Petition No. 32/MP/2014 (East North Interconnection Co. Ltd. v. JVVNL and Ors.) and order dated 29.3.2016 in Petition No. 267/TT/2015 (PGCIL v. AEGCL and Ors.) has held the unseasonal heavy rainfall and floods as Force Majeure events.

(d) Similarly, the contentions of the Respondents that the letter dated 8.12.2016 of DFO, Sundergarh and 28.1.2017 of DFO, Boudh respectively show that insofar as OJ Line is concerned the extent of degraded forest required was 36.46 Ha. and 40 Ha. was made available and the letter dated 19.7.2017 of DFO, Boudh does not concerned with OJ Line for which Force Majeure claim has been made are fundamentally flawed. The forest land was required by the Petitioner for the Project as a whole and accordingly, the land for afforestation was also for the entire Project and such requirement cannot be segregated based upon any one of the lines. In the letter dated 8.12.2016 issued by the DFO, Sundergarh, with regard to allocation of land for afforestation, both the lines were mentioned and it is DFO, Boudh which failed to mention the other line in its letter dated 19.7.2017 which cannot be held against the Petitioner. The Commission in its order dated 29.3.2019 in Petition No. 238/MP/2017 (Darbhanga-Motihari

Transmission Co. Ltd. v. BSPTCL and Ors.) and order dated 24.8.2016 in Petition No. 32/MP/2014 (East North Interconnection Co. Ltd. v. JVVNL and Ors.) has considered the delay in obtaining the forest clearance as Force Majeure event.

(e) The submissions made by the Respondents in respect of Change in Law claims by relying upon the Clauses 2.14.2.3, 2.14.2.4, 2.14.2.5 of the RfP and Articles 5, 5.1.2, 5.1.4 and Article 4 of the TSA are completely frivolous. Article 12 of the TSA is a contractual provision which specifically allows additional expenditure to TSP in case there is a Change in Law after the cut-off date. Further, to consider any event as Change in Law, the test which is to be conducted is whether such event is due to force of law, whether it has occurred after the cut-off date and whether there is any increase in cost or revenue due to such event. If these conditions are satisfied then compensation under Change in Law has to be provided to the Petitioner. Bare reading of Article 12.1.1 of the TSA reveals that the Petitioner is entitled to claim relief qua occurrence of Change in Law events in relation to the fulfillment of obligations under the TSA and in the present case, the Petitioner could not have fulfilled such obligation without incurring the burden of additional expenditure towards diversion of route for laying transmission line and shifting of tower location.

(f) If the argument of the Respondents is accepted, then there is no need for having Change in Law and Force Majeure provisions under the TSA. Once a TSA is executed and the same contains the Change in Law and Force Majeure provisions, then such provisions have to be applied in the event the tests/requirements contained under the said provisions are in existence or fulfilled. The Respondents cannot be allowed to rely on the provisions of the RfP which may dilute and contravene the provisions of the TSA. Once an agreement is executed (TSA), then the provisions of the said documents prevails over any of the previous document, including RfP. It is only in the event that the TSA could be silent on an issue, then the reference can be made to the bidding Guidelines and/or the RfP. This principle is also contained in the judgment of Hon'ble Supreme Court in the case of Energy Watchdog v. CERC, [(2017) 14 SCC 80].

Since the TSA contains elaborate provisions relating to Change in Law and Force Majeure, the same will have primacy and need to be given effect to, once the conditions mentioned therein are in existence.

(g) The contention of the Respondents that no notice was issued by the Petitioner in terms of Article 12.3.1 of the TSA is completely erroneous. The Petitioner had in fact issued a notice dated 5.10.2018 on account of Change in Law claims as prayed for in the present Petition. Further, as per Article 12.3.1 of the TSA, there is no timeline which is specified before which the notice for Change in Law is to be served and as such the sufficient intimation was provided to the Respondent Nos. 2 & 3 including other beneficiaries in a reasonably practicable time.

(h) The diversion of route qua JR Line was based upon the condition imposed during the meetings held with SDM, Simga for obtaining consent and/or clearance which was not required earlier and that the said approval was necessary for the Petitioner to divert the route and commence the work for construction of JR Line. Hence, the said order of SDM, Simga reflected in the orders dated 19.7.2017 and 1.2.2018 constitute Change in Law event under Article 12.1.1 of the TSA.

(i) The scope of work defined in the bid survey report is prepared after a walking survey which is conducted by BPC and the Petitioner also conducted a pre-bid survey. It was only after the necessary approvals were granted that the new conditions were imposed. Nevertheless, the above-stated conditions were imposed on the Petitioner at a later stage and were therefore not contemplated by the Petitioner. It would be unfair and unreasonable upon the Petitioner to account for all eventualities and possibilities under the bid estimates when clearly a walking survey was conducted by BPC as well as the Petitioner. As such, the above events were unforeseeable conditions which were imposed upon the Petitioner for implementing the transmission line. In this regard, reliance has been placed on the order of the Commission dated 8.5.2013 in Petition No. 162/MP/2011 (ENCIL v. PSPTCL and Ors.).



(j) The sequence of events mentioned by the Petitioner in the Petition clearly indicates that the Petitioner was forced to change the scope of work which eventually was on account of intervention of CEA in term of the directions issued by Hon'ble High of Chhattisgarh, thereby falling within the definition of Change in Law under Article 12 of the TSA. As to the contention of the Respondents that as per the Minutes of Meeting dated 2.5.2018 between the Petitioner and SKS at CEA, the Petitioner was stated to have agreed to raising the height of tower, to explore the possibility of shifting of tower and to confirm of its own accord that it would bear the additional cost, it is to be noted that the Petitioner did not have any option but to agree to the terms set-out by CEA vide its minutes of meeting dated 2.5.2018 as they were in the form of directions and further the timeline for completion of the Project were approaching. Therefore, the said event is squarely covered under the definition of Change in Law under Article 12 of the TSA. The shifting of tower is also in nature of change in scope of work as a result of obstruction of work by SKS and the subsequent Change in Law events of orders and directions of the Hon'ble High Court of Chhattisgarh and CEA.

(k) The Commission vide order dated 16.6.2021 in Petition No. 453/MP/2021 (Sipat Transmission Ltd. v. MSEDCL and Ors.) has categorically held that the issuance of the Notification No.F 7-7/Seven-1/2014 dated 1.6.2016 by the Government of Chhattisgarh is a Change in Law event. Accordingly, the Petitioner is entitled to seek compensation for the above Change in Law event qua issuance of Notification dated 1.6.2016 of the Government of Chhattisgarh.

(l) At the time of bidding, the Petitioner was put to the condition that as per Clause 6.5.1(h) of the Code of Practice for Design, Installation and Maintenance of Overhead Power Lines (Indian Standards) and BIS, in circumstances where the line is to cross over another line with the same or lower voltage, then in such a case, suspension/ tension tower with suitable extensions were mandated to be used. However, the requirement of power line crossing with D-D type of tower as imposed by PGCIL and CSPTCL and subsequently approved by CEA in the meeting held on 16.9.2019 was a new condition/ requirement from the CEA Regulations, 2010 and BIS Code. Such requirements for power line crossing



were not there at the time of cut-off date and it was imposed upon only in the meeting of the CEA held on 16.9.2019. CEA's standardization for the requirements of power line crossing with D-D type of tower constitutes Change in Law under the TSA.

(m) The Commission vide order dated 29.3.2019 in Petition No. 195/MP/2017 (NRSSXXXI (B) Transmission Ltd. v. UPCL and Ors.) has disallowed the claim of the transmission licensee therein qua change of towers. However, the said decision of the Commission is not applicable to the facts of the present case as stated above. It is settled law that change in facts of particular case can lead to a different interpretation/decision. In this regard, reliance has been placed on the judgment of Hon'ble Supreme Court in the case of Union of India v. Chajju Ram (Dead) by Lrs. and Ors., [AIR 2003 SC 2339].

### **Analysis and Decision**

15. We have considered the submissions of the Petitioner and the Respondent Nos. 2 & 3 and perused the documents available on record. The following issues arise for our consideration:

**Issue No. 1: Whether the Petitioner has complied with the provisions of the TSA before approaching the Commission for claiming relief under Force Majeure and Change in Law?**

**Issue No. 2: What shall be the COD of the elements in the Petitioner's Project?**

**Issue No. 3: Whether the claims of the Petitioner are covered under Changein Law in terms of the TSA?**

**Issue No. 4: What reliefs, if any, should be granted to the Petitioner in the light of the answers to the above issues?**

The above issues have been dealt with in succeeding paragraphs.

**Issue No. 1: Whether the Petitioner has complied with the provisions of the TSA before approaching the Commission for claiming relief under Force Majeure and Change in Law?**

16. The Petitioner has sought reliefs under Article 11 (Force Majeure) of the TSA. In this regard, the Article 11.5.1 of the TSA provides as under:

*“11.5 Notification of Force Majeure Event*

*11.5.1 The Affected Party shall give notice to the other Party of any event of Force Majeure as soon as reasonably practicable, but not later than seven (7) days after the date on which such Party knew or should reasonably have known of the commencement of the event of Force Majeure. If an event of Force Majeure results in a breakdown of communications rendering it unreasonable to give notice within the applicable time limit specified herein, then the Party claiming Force Majeure shall give such notice as soon as reasonably practicable after reinstatement of communications, but not later than one (1) day after such reinstatement. Provided that such notice shall be a pre-condition to the Affected Party’s entitlement to claim relief under this Agreement. Such notice shall include full particulars of the event of Force Majeure, its effects on the Party claiming relief and the remedial measures proposed. The Affected Party shall give the other Party regular reports on the progress of those remedial measures and such other information as the other Party may reasonably request about the Force Majeure.*

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

17. Under Article 11.5.1 of the TSA, an affected party shall give notice to the other party of any event of Force Majeure as soon as reasonably practicable, but not later than seven days after the date on which the party knew or should have reasonably known of the commencement of the event of Force Majeure. It further provides that such notice shall be a pre-condition to the affected party’s entitlement to claim relief under the TSA and the notice shall include particulars of event of Force Majeure, its effects on the affected party and the remedial measures proposed. Further, as per Article 11.5.2 of the TSA, the affected party is also required to give notice of (i) cessation of Force Majeure event and (ii) cessation of the effects of such event Force Majeure on the performance of its rights and obligations under the TSA as soon as practicable after becoming aware of each such cessations.

18. The Petitioner has also sought reliefs under Article 12 (Change in Law) of the

TSA. Article 12.3.1 of the TSA provides as under:

***“12.3 Notification of Change in Law Event***

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

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

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

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

20. The Petitioner has placed on record the notice issued to the LTTCs dated 11.7.2018 about the occurrence of all Force Majeure events claimed in the instant Petition viz. for (i) delay in acquisition of SPV, (ii) delay due to stay order granted by Hon'ble High Court of Odisha, (iii) delays caused due to unseasonal heavy rainfall and flood in the State of Odisha, and (iv) delay in obtaining forest clearance. Based on the basis of the aforesaid, the Petitioner has pleaded compliance to Article 11.5.1 of the TSA.

21. The Respondent Nos. 2 & 3 have submitted that in the present case, the Petitioner has not given the notice in the stipulated time period and as contemplated by

the TSA thereby disentitling the Petitioner to any relief on account of Force Majeure events. It has been further submitted that delay in acquisition of SPV was stated to have occurred in April, 2016, stay order was stated to have had impact between 25.7.2017 to 9.8.2017, unseasonal heavy rainfall was stated to have occurred in July, 2017 and the time taken in identification of land for compensatory afforestation was stated to have occurred in 2016. However, notice regarding Force Majeure event was given much belatedly on 11.7.2018 (after one year) only by way of an afterthought.

22. We have considered the submissions made by the parties. Article 11.5.1 of the TSA, in the plain and clear terms, makes the notice of Force Majeure event a pre-condition to the affected party's entitlement to claim any relief under the TSA. Moreover, the affected party is required to give such notice to other party as soon as reasonably practicable, but not later than seven days after the date on which such affected party knew or should reasonably have known of the commencement of the Force Majeure event. Hence, the said article itself prescribes the outer limit for giving the notice of Force Majeure, that is, not later than seven days after the date on which the affected party knew or should have reasonably have known the commencement of event of Force Majeure. The notice given by the Petitioner for Force Majeure events, when tested against the above requirements, fails to comply with the requirements of Article 11.5.1 of the TSA.

23. As rightly pointed out by the Respondents, the notice given by the Petitioner was way past the outer limit prescribed for giving the notice for Force Majeure under Article 11.5.1 of the TSA. For instance, the concerned period for delay in acquisition of SPV ran from 16.1.2016 to 8.4.2016 whereas for delay attributed to stay order granted by

Hon'ble High Court of Odisha was from 25.7.2017 to 9.8.2017. Similarly, the unseasonal heavy rainfall and flood in Odisha was in the month of July, 2017 and the delay in obtaining forest clearance due to delay in identification and intimation of balance (190 Ha.) of degraded forest land, as per the Petitioner's own submission, ran from 28.1.2017 to 19.7.2017. As per Article 11.5.1 of the TSA, the Petitioner was required to issue the Force Majeure notice as soon as reasonably practicable but not later than seven (7) days after the date on which the affected party knew or should reasonably have known of the commencement of Force Majeure event. In the present case, the Force Majeure notice of the Petitioner dated 11.7.2018 had been issued only after an inordinate delay of approximately one (1) year from the cessation of the majority of its Force Majeure claims let alone the commencement date of Force Majeure. However, what is more striking is that notice issued is even after the SCOD of the OJ Line on 31.7.2017 and the COD of OJ Line on 30.8.2017. This clearly gives an indication that the issuance of notice of Force Majeure events by the Petitioner on 11.7.2018 (approximately 11 months after the COD of the element) is merely an afterthought for covering-up the delay in achieving the SCOD of the element/OJ Line under the Force Majeure. Such conduct and attempt of the Petitioner cannot be permitted and deserve to be rejected outrightly. The Petitioner, particularly in reference to its Force Majeure claim of delay in acquisition of SPV, has submitted that the extension of timelines for acquiring of SPV by the BPC was specifically recorded in the tariff adoption order dated 31.5.2016 passed by the Commission in Petition No. 65/ADP/2016 and thus, sufficient intimation was given to the LTTCs and as such they cannot now argue that no notice of intimation was given to them. The Petitioner in this regard has relied upon the Commission's order dated 7.5.2022 in Petition No.

13/MP/2021, wherein the Commission has considered the Change in Law claim viz. increase in acquisition price of SPV as made by the licensee in the tariff adoption petition, which was duly served to LTTCs including BPC and thus, having made them aware about the said Change in Law claim, as compliance with the requirement of TSA regarding prior notice to LTTCs about the occurrence of Change in Law event. However, the Petitioner's reliance on the aforesaid order of the Commission in respect of its Force Majeure claim is misplaced. Firstly, the event concerned in Petition No. 13/MP/2021 was Change in Law event and not the Force Majeure event governed by the provisions of Article 11 of the TSA as stated above. Secondly, the licensee therein, even in the adoption petition, had specifically brought out the Change in Law event viz. increase in the acquisition price of SPV by BPC, whereas in the present case, nothing has been brought on record indicating that the Petitioner had even pleaded that the delay in acquisition of SPV is likely to have impact on the SCOD or amounted to a Force Majeure event either in the adoption petition or subsequent thereto. Perusal of the documents reveals that the aforesaid issue of delay in acquisition of SPV and the same being a Force Majeure event was raised by the Petitioner only vide letter dated 11.7.2018, which as noted above, is even after the lapse of considerable period from the date of achievement of commercial operation of OJ Line. Hence, the order dated 7.5.2022 of the Commission in Petition No. 13/MP/2021 cannot come to any aid to the Petitioner in the present case. It is a settled position that when a contract between the parties provide for a particular notice period, it cannot be overlooked or diluted. It has also been observed by APTEL in the judgment dated 7.11.2017 in Appeal No. 212 of 2016 (Maruti Clean Coal and Power Ltd. v. PGCIL and Ors.) that when the TSA makes issuance of notice within the specified time line as a pre-condition for claiming relief, the

said provisions cannot be reduced to a dead letter. Accordingly, in the facts and circumstances of the present case, we hold that the notice of Force Majeure events issued by the Petitioner dated 11.7.2018 cannot be stated to be in compliance of Article 11.5.1 of the TSA and as a result, claims of the Petitioner for Force Majeure events deserve to be rejected at the threshold. Having rejected the Force Majeure claims of the Petitioner at the threshold due to non-compliance of the requirements under Article 11.5.1 of TSA, we do not find any need to examine the said claims of the Petitioner on the merits.

24. Insofar as the Change in Law is concerned, the Petitioner has placed on record the Change in Law notices issued to LTTCs dated 21.7.2017 and dated 5.10.2018. In former, the Petitioner had intimated the lead LTTC about the promulgation of new set of compensation guidelines in the State of Chhattisgarh by notification dated 1.6.2016. Whereas in latter, the Petitioner had intimated about the balance Change in Law claims viz. standardization of requirement of power line crossing by CEA, diversion of route for construction of JR Line in terms of the order of SDM, Simga and shifting of tower at location No. 108/2 of JR Line.

25. The Respondent Nos. 2 & 3 have contended that Article 12.3.1 requires the TSP which is affected by Change in Law in accordance with Article 12.1 and wishes to claim relief for such Change in Law under Article 12 to mandatorily give notice to lead LTTC of such Change in Law as soon as reasonably practicable after becoming aware of the same. However, in the instant case, the Petitioner has given the notice of the Change in Law events only after more than a year of the Change in Law event (and 2 years in case of purported Change in Law event of standardization of requirement of power line

crossing by CEA), which cannot be said to be notices “as soon as reasonably practicable” after becoming aware of Change in Law as contemplated by Article 12.3 of the TSA. Therefore, the Change in Law claims of the Petitioner are liable to be rejected on this ground alone.

26. *Per contra*, the Petitioner has submitted that it had in fact issued the notice dated 5.10.2018 on account of Change in Law claims as prayed for in the present Petition. The Petitioner has submitted that as per Article 12.3.1 of the TSA, there is no timeline which is specified before which the notice for Change in Law is to be served and as such sufficient intimation was provided to the Respondents/LTTCs in a reasonable practicable time.

27. We have considered the submissions made by the parties. As already noted above, as per Article 12.3.1 of the TSA, if the TSP is affected by Change in Law and wishes to claim relief for such Change in Law under the Article 12, it is required to give notice to lead LTTC of such Change in Law as soon as reasonably practicable after becoming aware of the same. Further, Article 12.3.3 of the TSA provides that the notice issued under Article 12.3.1 shall provide, *among others*, the details of Change in Law and its effect on the TSP. Noticeably, the TSA does not define what constitutes “as soon as reasonably practicable”. Moreover, unlike the provisions for notice of Force Majeure event under Article 11.5.1 of the TSA, Article 12.3.1 does not prescribe any outer limit of seven days as prescribed in Article 11.5.1. Further, as such notice, also requires inclusion of the details as to its effect on TSP as per Article 12.3.3, it is expected that the TSP would require a reasonable time to ascertain such effect including the financial impact on the licensee during the construction stage due to such



Change in Law. Besides, under the scheme of TSA, relief for Change in Law events during the construction period to TSP flows only after the licensee becomes entitled to receive the transmission charges upon the commissioning of the Project and such relief is spread over the entire useful life of the Project. Keeping in view of the above, this Commission has been taking a lenient view insofar as the period of notice for Change in Law event under the Article 12.3.1 of TSA is concerned, examining/testing the delays in issuance of such notice on case to case basis and the same treatment ought to be meted out to preset the case of the Petitioner. In view of the above, while observing that there are certain unexplained delays on the part of the Petitioner in issuing the Change in Law notices, we are inclined to consider the Change in Law notices issued by the Petitioner in compliance to the Article 12.3.1 of TSA and consequently, we proceed to examine the Change in Law claims of the Petitioner on merits.

28. This issue is answered accordingly.

**Issue No. 2: What shall be the COD of the elements in the Petitioner’s Project?**

29. The Petitioner has submitted SCOD and COD of various elements of its Project as follows:

S. No.	Element	SCOD	Actual COD declared by Petitioner
1	OPGC-Jharsuguda 400 kV D/C Transmission line	31.7.2017	30.8.2017
2	Jharsuguda-Raipur 765 kV D/C Transmission line	8.8.2019	6.4.2019

30. The Petitioner has relied upon the following minutes of meeting with regard to declaration of COD prior to SCOD for Jharsuguda-Raipur 765 kV D/C transmission line:

- (i) Meeting convened by the CEA on 26.10.2016 for consideration of request of early commissioning of assets covered under OGPTL Transmission Project.

- (ii) Meeting convened by Chief Engineer (PSPM) in CEA on 27.12.2016 to decide the revised Scheduled Commercial Operation Date for common transmission system for Phase-II generation Project in Odisha and for immediate evacuation system for OPGC Project.
- (iii) Meeting convened by the Chief Engineer (PSPM), CEA on 12.9.2018 to review the progress of transmission projects awarded through TBCB route.

31. We have perused the COD claimed by the Petitioner. We observe that OPGC-Jharsuguda 400 kV D/C Transmission Line ("OJ Line") was commissioned on 30.8.2017, i.e., 1 month after the Scheduled Commercial Operation Date (SCOD) of 31.7.2017 and Jharsuguda-Raipur 765 kV D/C Transmission line ("JR line") of the Project have been declared COD on 6.4.2019 prior to its SCOD i.e. 8.8.2019 as per TSA. We have perused the provisions of TSA dated 20.11.2015. Relevant provisions dealing with the commercial operation of the elements/Project provide as follows:

*"Commercial Operation Date" or "COD" shall mean the date as per Article 6.2; Provided that the COD shall not be a date prior to the Scheduled COD mentioned in the TSA, unless mutually agreed to by all Parties;"*

The expression "Parties" have been specified in the TSA as under:

*"Where*

*(Each of the "Long Term Transmission Customer" or "Long Term Transmission Customers" and "TSP" are individually referred to as "Party and collectively as the "Parties") .....*

*Schedule: 1  
List of Long-Term Transmission Customers*

*Note: As referred to in the recital of this Agreement and in the definition of "Long Term Transmission Customers" in this Agreement*

Sl.No.	Name of the Long Term Transmission Customer
1.	North Bihar Power Distribution Company Limited
2.	South Bihar Power Distribution Company Limited
3.	Jharkhand Bijli Vitran Nigam
4.	Damodar Valley Corporation
5.	GRIDCO LIMITED
6.	Energy and Power Department, Govt. of Sikkim
7.	West Bengal State Electricity Distribution Company Limited

“Scheduled COD” in relation to an Element(s) shall mean the date(s) as mentioned in Schedule 3 as against such Element(s) and in relation to the Project, shall mean the date as mentioned in Schedule 3 as against such Project, subject to the provisions of Article 4.4 of this Agreement, or such date as may be mutually agreed among the Parties;

Article: 6

## 6 CONNECTION AND COMMISSIONING OF THE PROJECT

### 6.1 Connection with the Inter-Connection Facilities:

6.1.1 The TSP shall give the RLDC(s) CTU/STU, as the case may be, the Long Term Transmission Customers and any other agencies as required at least sixty (60) days advance written notice of the date on which it intends to connect an Element of the Project, which date shall be not earlier than its Scheduled COD or Schedule COD extended as per Article 4.4.1 of this Agreement, unless the Lead Long Term Transmission Customer otherwise agrees.

### 6.2 Commercial Operation:

6.2.1 An Element of the Project shall be declared to have achieved COD seventy two (72) hours following the connection of the Element with the Interconnection Facilities or seven (7) days after the date on which it is declared by the TSP to be ready for charging but is not able to be charged for reasons not attributable to the TSP or seven (7) days after the date of deferment, if any, pursuant to Article 6.1.2.

Provided that an Element shall be declared to have achieved COD only after all the Element(s), if any, which are pre-required to have achieved COD as defined in Schedule 3 of this Agreement, have been declared to have achieved their respective COD.

6.2.2 Once any Element of the Project has been declared to have achieved deemed COD as per Article 6.2.1 above, such Element of the Project shall be deemed to have Availability equal to the Target Availability till the actual charging of the Element and to this extent, shall be eligible for payment of the Monthly Transmission Charges applicable for such Element.”

“ Schedule: 3  
Scheduled COD

(Note: As referred to in the definition of “Element”, “Scheduled COD”, and in Articles 3.1.3 (c), 4.1 (b) and 4.3 (a) of this Agreement)

All Elements of the Project are required to be commissioned progressively as per the schedule given in the following table;

Sr. No.	Name of the Transmission Element	Scheduled COD in from Effective Date	Percentage of Quoted Transmission Charges recoverable on Scheduled COD of the Element of the Project	Sequence of commissioning of Elements(s)
1.	Jharsuguda(Sundargarh) – Raipur Pool 765kV D/c line (Hexa Zebra Conductor)	40 months	94%	NIL
2.	OPGC – Jharsuguda (Sundargarh) 400kV D/c (Triple Snowbird Conductor)	July-2017	6%	NIL

32. As per the above provisions, COD of any element shall not be a date prior to SCOD of the said element as mentioned in TSA, unless mutually agreed to by all the parties to TSA. The expression “Parties” specified in the TSA includes TSP as well as all the LTTCs whose list is appended at Schedule 1 of TSA quoted above. There are seven LTTCs in the instant case.

33. Further, Regulation 6.3A of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) (Fourth Amendment) Regulations, 2016 provides as follows:

“6.3A. \*\*\*\*\*

4. Date of commercial operation in relation to an inter-State Transmission System or an element thereof shall mean the date declared by the transmission licensee from 0000 hour of which an element of the transmission system is in regular service after successful trial operation for transmitting electricity and communication signal from the sending end to the receiving end:

Provided that: (i) In case of inter-State Transmission System executed through Tariff Based Competitive Bidding, the transmission licensee shall declare COD of the ISTS in accordance with the provisions of the Transmission Service Agreement. ....

*(v) An element shall be declared to have achieved COD only after all the elements which are pre-required to achieve COD as per the Transmission Services Agreement are commissioned. In case any element is required to be commissioned prior to the commissioning of pre-required element, the same can be done if CEA confirms that such commissioning is in the interest of the power system.”*

34. The Statement of Reasons issued for the Central Electricity Regulatory Commission (Indian Electricity Grid Code) (Fourth Amendment) Regulations, 2016 provided as follows:

*"Under the Policy of Government of India, Ministry of Power dated 15.7.2015, both the licensees executing ISTS under TBCB as well as PGCIL executing ISTS under compressed time schedule are entitled to tariff if they commission the assets prior to the Scheduled COD. Through the above order, the Commission has examined the scheme of incentives for early commissioning in the context of the various provisions of the TSA and has issued directions as to how the said scheme can be implemented within the framework of the TSA. In a meshed transmission network, no single transmission asset can be planned and executed in isolation. The transmission asset being executed has to serve its purpose i.e. to transmit electricity. It cannot serve its basic purpose unless it is connected at both ends to transmit electricity. While planning the transmission systems, CEA and CTU have decided the SCOD on the basis of the projected commissioning or availability of the upstream or downstream assets. The policy incentivises the transmission licensee to commission the transmission assets early in order to earn the transmission charges.*

*In order to avail the incentives, if the transmission licensee decides to advance the commissioning unilaterally without consulting the Long Term Transmission Customers, the planning agencies and the developers of upstream or downstream assets, it will lead to a situation where the asset after commissioning will remain stranded and will not serve the intended purpose and by virtue of the policy, the licensee will demand the transmission charges to be paid. To facilitate implementation of the policy of incentives by the Central Government, the Commission has directed that the licensee intending to advance the date of commissioning from SCOD shall realistically assess the date of early commissioning of its asset, liaise with the developer of the upstream and downstream assets and mutually advance the date of commissioning for the benefits of both. The Commission has further directed that licensee can declare commercial operation of the asset even if the pre-required asset is not ready, if CEA certifies that the asset can be put to useful service after commissioning. Accordingly, appropriate provisions have been made in the regulations.”*

35. Perusal of above reveals that although TSA provides that explicit agreement of all LTTCs is required to declare COD of an element prior to SCOD. However, as per the Grid Code amended on 6.4.2016, COD can be declared prior to SCOD keeping in view

pre-required elements and upstream, downstream system so that transmission system is put to useful service after commissioning and CEA certifying the requirement of such COD prior to SCOD.

36. The Petitioner has placed on record the minutes of meeting held on 26.10.2016 issued vide dated 16.11.2016 held at CEA with regard to smooth operationalization of the policy for early commissioning of transmission projects wherein consideration of request of early commissioning of assets covered under OGPTL Transmission Project i.e. JR line, which are quoted as follows:

*“The issues were deliberated in detail and the following was agreed:*

*1. All the transmission schemes (five nos.) for which request has been made by M/ Sterlite Grid for early commissioning do not qualify for consideration as the request has not been well in advance (i.e. 24 months in advance of the intended early SCOD). But, as these schemes were under implementation before the constitution of the committee PSPM Division, CA may hold the meetings with the TSP and the implementing agencies of the interconnecting (upstream/ downstream) elements so that a mutually agreed early commissioning date (before SCOD) could be arrived at through mutual consultation.*

*2. Regarding the early commissioning dates, the representatives of POWERGRID, NTPC and HVPNL expressed their views as given below:*

*a) Powergrid stated that they could derive a mutually agreeable date for implementation of associated bays at Powergrid S/s and accordingly advance the commissioning schedule.*

*b) Regarding Khargone TPP Switchyard - Khandwa pool 400 kV D/C (Quad) line, NTPC stated that they are no anticipating any preponing of the generation commissioning schedule, therefore they would require this line only with the SCoD of July, 19 as indicated in the TSA.*

*c) Regarding the downstream network of Sohna Road, Kadarapur and Prithala, HVPNL stated that they would revert back on the issue.*

*d) Regarding the downstream network of TSTRANSCO, M/s Sterlite stated that they would take up the matter with TSTRANSCO.*

*The summary of the transmission schemes of M/s Sterlite Grid is attached at Annexure –B*

*3. Transmission Licensee needs to submit their request for revised early Scheduled Commercial Operation Date (SCoD)) alter submission of their execution plan to PSPM Division, CEA and well in advance (i.e. 24 months in advance of the intended early SCOD to Convener and Member Secretary of the committee and communicate the same to the*

*implementing agencies of the interconnecting (upstream/ downstream) elements.*

*4. PSPM Division, CEA may convene a meeting with TSP and the implementing agencies of the interconnecting (upstream downstream) elements so as to decide the mutually agreed date of commissioning for the elements.*

*5. The committee may take a decision on early commissioning, based on usefulness of the early commissioning for transmission system.*

*6. Mutual indemnification agreements would be signed between the Transmission Licensee/ STU/POWERGRID/existing Transmission Licensee/ Generation developer, as the case may be, whose transmission elements/assets are involved. Accordingly, the committee would finalise the Revised SCOD (RSCOD) and the TSA would stand modified mutatis mutandis.*

*7. PSPM Division, CEA to review the progress of the transmission elements involved in the early commissioning and assess their commissioning in matching RSCOD. The deviations may be brought to the notice of the committee.*

*8. In case of non- availability of interconnecting elements as per the agreed RSCOD, Committee may explore the alternative arrangement for utilization of Transmission element. The effected parties may seek recourse as per the Indemnification Agreements.*

*9. Regarding the applicability of tariff for 35 years, clarifications may be sought from MoP regarding transmission schemes having more than one element with different commissioning schedules.”*

37. Further, meeting regarding commissioning of common transmission system for Phase-II generation Project in Odisha was convened by Chief Engineer (PSPM) in CEA on 27.12.2016. Minutes of meeting issued vide dated 11.1.2017 to decide the revised Scheduled Commercial Operation Date for common transmission system for Phase-II generation Project in Odisha and immediate evacuation system for OPGC Projects are extracted as follows:

*“4. The representative of M/s OGPTL informed that as per TSA, OPGC TPS – Jharsuguda 400 kV D/C line and Jharsuguda-Raipur 765 KV D/C line are scheduled to complete in July 2017 and Aug, 2019 respectively and they are planning to prepone the commissioning of Jharsuguda-Raipur 765 KV D/C line by Oct, 2017. It was observed that both the lines are passing through forest land. The representative of M/s OGPTL informed that OPGC TPS – Jharsuguda 400 kV D/C line involves forest area of 30 Hectares (15 KM in patches) in Odisha and Jharsuguda-Raipur 765 KV D/C line involves forest area of 95 Hectare in Chattisgarh and Odisha. M/s OGPTL representative stated that proposal for both lines have already been submitted and approval is expected by*



March, 2017. He requested POWERGRID to complete the terminal bays at Jharsuguda and Raipur Sub-Station by July 2017 and Oct, 2017 for termination of OPGC TPS – Jharsuguda 400 kV D/C line and Jharsuguda-Raipur 765 KV D/C line respectively.

5. POWERGRID representative informed that award for construction of 400 kV GIS bays for termination of OPTC TPS – Jharsuguda 400 kV D/C line at Jharsuguda substation has been placed to JV of M/s Xian & Techno in Jun2016 and civil work has already been started and it would be ready by July, 2017.

6. Regarding terminal bays for Jharsuguda – Raipur 765 kV D/C line, POWERGRID representative stated that it is in pre-award stage. NIT had been issued and bid opening is scheduled in January 2017 and the award would be placed in March, 2017. She further stated that commissioning schedule of 765 kV bays has been taken as Aug,2019 as indicated in TSA. It was also informed by POWERGRID representative that a meeting was held in POWERGRID in Sept,16 with SGL representatives wherein it was decided to complete the terminal bays for Jharsuguda – Raipur 765 kV D/C line by October, 2018 with best effort.

7. Chief Engineer (PSP&A-1), CEA informed that Jharsuguda-Raipur 765 kV D/C line was discussed in the meeting of the committee for early commissioning of transmission projects held on 26.10.2016 wherein M/s Sterlite was requested for early commissioning of the line by 24 months. In that meeting M/s Sterlite was advised to discuss with POWERGRID for mutually agreeable date.

8. Chief Engineer (PSPM), CEA stated that achieving completion of Jharsuguda - Raipur 765 D/C line by Oct, 2017 is tough as only casting of 300 foundations, 150 towers erection out of 763 locs and stringing of 16 km out of 305 km had been completed so far, which is about 30-40% and other issues such as forest clearances etc are also yet to be obtained. He advised POWERGRID and OGPTL representative to have a joint meeting to arrive at mutually agreed revised schedule COD for Jharsuguda - Raipur 765 D/C line in first quarter of year 2018 as both project authorities would have sufficient time period of one and half year to complete the 765 kV terminal bays and balance work of transmission line and submit report to CEA for further necessary action.”

38. Further to that, meeting was convened by the Chief Engineer (PSPM), CEA on 12.9.2018 to review the progress of transmission projects awarded through TBCB route wherein the following was discussed:

*“After discussions following deliberations are made:*

.....

2. PGCIL shall make best effort to complete terminal bays at Jharsuguda, Raipur, Aligarh, Nemrana and Indore s/s matching with the completion schedule of associated line.

3. CEA to form a technical committee comprising officers of CEA, HPVNL, GPTL and any other agency, if required, to finalise the route of downstream line of HPVNL (inside



*and outside substation), emerging from Kadarapur (Gurgaon), Sohna Road (Gurgaon) and Prithla(Palwal) substations of M/s GPTL.*

*Meeting ended with thanks to the chair.”*

39. We observe that there has been no discussion regarding requirement or usefulness of early commissioning of instant JR Line in any meeting taken by CEA on 26.10.2016, 27.12.2016 and 12.9.2018. Since the Petitioner had proposed for early commissioning of its transmission lines, PGCIL was advised to bring bays in its scope earlier than schedule date. It is noticed that there is nothing mentioned on requirement of the JR Line prior to SCOD.

40. We observe that the Commission, vide Record of Proceedings for the hearing dated 23.6.2022 directed the Petitioner to submit the following information:

*“(a) CEA clearance certificate for energization of both transmission lines in terms of the Central Electricity Authority (Measures relating to Safety and Electricity Supply) Regulations, 2010;*

*(b) RLDC certificate for trial operation of the OJ Line;*

*(c) Documents declaring COD/Deemed COD of both transmission lines;*

*(d) In terms of Clause 1.1.1 of the TSA, COD shall not be a date prior to SCOD unless mutually agreed to by all parties. The Petitioner has declared COD of JR line on 6.4.2019 whereas SCOD was 8.8.2019. Submit the agreement of all parties declaring COD before SCOD; and*

41. In response to the above, the Petitioner vide its affidavit dated 26.7.2022 has relied upon the discussion held in meetings taken by CEA on 26.10.2016, 27.12.2016 and 12.9.2018 and has placed on record the minutes of meetings of the meeting. However, the Petitioner has not placed on record the agreement of all parties declaring COD before SCOD, which was specifically asked from the Petitioner.

42. It is further noticed from RLDC trial run certificate dated 27.5.2019 that first

circuit and second circuit of JR Line were energized on 4.4.2019 at 21:11 hrs and on 5.4.2019 at 23.32 hrs respectively. Both the circuits have been declared under Commercial Operation w.e.f 6.4.2019 as per the letter of the Petitioner to ERPC dated 8.4.2019. We observe that since there was no technical requirement of JRL Line to commissioned earlier than SCOD and nothing is on record regarding safety and security of grid w.r.t JR Line as required while declaring COD prior to SCOD nor there is any agreement of LTTCs to declare COD prior to SCOD, this line cannot be considered COD prior to SCOD. Accordingly, the COD of JR Line shall be approved as its SCOD.

43. Insofar as the OJ Line is concerned, SCOD of OJ Line was 31.7.2017, whereas the Petitioner has claimed COD as 30.8.2017 after delay of one month. It is relevant to note that in Petition filed by Odisha Power Generation Corporation Limited, the Commission vide order dated 26.12.2019 in Petition No. 128/MP/2019 has, *inter alia*, considered the declaration of deemed CoD of OJ Line by the Petitioner as 30.8.2017.

The relevant extract of the said order is quoted as below:

*“84. Respondent No. 2 (Odisha Generation Phase-II Transmission Limited/ OGPTL) vide its letter dated 22.8.2017 intimated Respondent No. 1 with regard to completion of the OPGC-Jharsuguda (Sundargarh) 400 kV D/C line. Further, Chief Electrical Inspector under Central Electricity Authority after carrying out the inspection vide its letter dated 23.8.2017 accorded approval under Regulation 43 of the CEA (Measures relating to Safety and Electric Supply) Regulations, 2010 for energisation of 400 kV OPGC-Jharsuguda Transmission Line. Respondent No. 2 vide its letter dated 23.8.2017 addressed to Eastern Region Power Committee declared the deemed COD of OPGC-Jharsuguda (Sundargarh) 400 kV D/C line w.e.f. 30.8.2017 in terms of Article 6.2.1 of the TSA with copies to CEA, CTU, ERLDC, CERC and the LTTCs of the transmission line. Since the transmission line could not be charged on account of the non-availability of 400 kV GIS bays by PGCIL and 2X400 kV line bays by OPGCL, OGPTL has declared the deemed CoD of the transmission line in terms of Article 6.2.1 of the TSA. Accordingly, OPTCL became entitled for the payment of transmission charges with effect from that date in terms of the TSA.*

.....  
99. We observe that there is delay in upstream /downstream system as on date of deemed DOCO of OPGC –Jharsuguda line. OGPTL vide letter dated 23.08.2017

declared deemed COD of 400kV OPGC-Jharsuguda D/C line w.e.f. 30.8.2017 in accordance with Article 6.2.1 of the TSA. Further, COD of 02 Nos. of 400 kV Line bays for termination of OPGC (IB TPS) - Jharsuguda 400 kV D/C line at Jharsuguda (Sundargarh) of PGCIL has been approved vide order dated 14.02.2019 in Petition No. 59/TT/2018 as 23.11.2017. OPGCL has submitted that its bay were ready for energisation on 18.09.2017 with approval of CEA and finally the 400kV OPGC-Jharsuguda D/C line was charged on 20.12.2017. Accordingly we observe that as on 30.8.2017 both associated Powergrid bays and generation switchyard bays were not ready. The Petitioner has claimed that as on 18.9.2017, generation Switchyard bays associated with OPGC Jharsuguda line were ready. We have perused CEA Certificate dated 18.9.2017. However, it is not clear as to whether bays at generation switchyard associated with the subject line and associated downstream system to put the line in use was ready or not. We also observe that although Powergrid bays got ready as on 23.11.2017, the trial operation for line was completed only on 20.12.2017, which implies that generation was not ready as on 18.9.2017 as claimed by it. We are of view that the delay in the actual charging/commissioning of the 400kV OPGC Jharsuguda D/C line, despite OGPTL having declared deemed COD on 30.08.2017, is attributable to the delay in commissioning of the 02 nos 400kV line bays each at Jharsuguda Sub-station and OPGCL generation.

100. Since both the Petitioner and PGCIL were responsible for delay inputting the 400 kV OPGC –Jharsuguda transmission line into service, the Petitioner and PGCIL shall be liable to pay the transmission charges in the ratio of 50:50 from date of deemed COD of 400 kV OPGC –Jharsuguda transmission line i.e. from 22.11.2017 when the bays of PGCIL achieved COD. From 23.11.2017 onwards, the Petitioner shall pay the transmission charges to Respondent No.2 for the 400 kV OPGC –Jharsuguda transmission line.

.....

#### Summary of decisions

122. Summary of our decisions in this order are capitulated as under:

(a) From 30.8.2017 till 22.11.2017, both the Petitioner and Respondent No.1 shall share the transmission charges of 400 kV OPGC--Jharsuguda transmission line in the ratio of 50:50.

(b) From 23.11.2017 onwards, the Petitioner shall be liable to pay the transmission charges for 400 kV OPGC--Jharsuguda transmission line.

.....”

44. Aggrieved by the above decision of the Commission, Odisha Power Generation Corporation Limited had filed Appeal No. 16 of 2020 and IA Nos. 27 & 183 of 2020 in APTEL. Vide order dated 21.10.2020, the APTEL while disposing of the said appeal, *inter-alia*, also rejected the contention of the appellant, OPGCL therein that the declared COD of 30.8.2017 by the Petitioner herein is wrong. Relevant portion of the APTEL

judgment is extracted as under:

*“8.1 We have considered the submissions of all the parties. One of the contentions of the Appellant during the hearing was that it is disputing the commissioning date of the transmission line of the Respondent No. 3 even though it is not subject matter of this Appeal. The Appellant has alleged that the work related to the aforesaid transmission line was not completed by the Respondent No. 3, and that the commissioning of the line claimed on 30.08.2017 is wrong. According to the Appellant, the Respondent No. 3/ OGPTL did not construct the required optical ground wire (OPGW). From the perusal of Schedule 2 of the TSA, the said contention of the Appellant seems completely erroneous, for the reason that qua OPGW, the responsibility of the Respondent No. 3 was to construct OPGW from the “gantry” of Jharsuguda (Sundergarh) sub-station, to the “gantry” of 400 kV OPGC sub-station, and the said OPGW was to be terminated at a joint box at both the ends by the Respondent No. 3. The said obligation was fulfilled by the Respondent No. 3. It is because of the same that the Respondent No. 3/OGPTL, on 23.08.2017, obtained the Central Electricity Authority’s (CEA) Energization Certificate for commissioning of the OPGC-Jharsuguda Line.*

*8.2 There is no pending challenge to the aforesaid CEA certificate by any of the entities. In fact, Respondent No. 2/PGCIL filed a petition, being Petition No. 350/MP/2018, before the Central Commission seeking setting aside of the commissioning date of the Respondent No. 3/ OGPTL. However, Respondent No. 2 withdrew the aforesaid petition, which was allowed by the Central Commission vide an order dated 21.12.2018. Therefore, the Appellant’s contention disputing the commissioning of the Respondent No. 3 is hereby rejected.*

.....  
10. Summary of findings.

*Based on our analysis and findings on the various issues raised in the Appeal, we summarise our findings as under :*

*10.1 We hold that there was no mismatch in the declared COD of the transmission line as alleged by the Appellant. Accordingly, the transmission charges for the period 30.08.2017 to 22.11.2017 shall be borne by the Appellant and PGCIL in the ratio of 50:50.*

*10.2 As the Appellant was drawing start up power and injecting infirm power through the said line, the transmission charges from 23.11.2017 to 26.12.2018 shall be borne by the Appellant. It is decided that the transmission charges for the reference transmission line for the period from 23.11.2017 to 26.12.2018 shall be borne by the Appellant and thereafter the transmission charges shall be recovered under the POC mechanism.*

*10.3 In line with the TSA, the transmission charges from 26.12.2018 onwards shall be payable to the transmission licensee (OGPTL) from the POC pool in accordance with sharing regulations notified by the Central Commission. “*

Accordingly, in view of the above finding of the Commission and APTEL, the CoD of OJ Line is considered as 30.8.2017 as declared by the Petitioner.

45. In the light of above discussions, we conclude that COD of the elements of the

Project shall be as under:

S. No.	Element	SCOD	Actual COD declared by Petitioner	COD as approved vide this Order
1.	OPGC-Jharsuguda 400 kV D/C Transmission line	31.7.2017	30.8.2017	30.8.2017
2.	Jharsuguda-Raipur 765 kV D/C Transmission line	8.8.2019	6.4.2019	8.8.2019

46. Consequently, CTUIL is directed to raise adjustment bills to the Petitioner to recover the amounts disbursed to the Petitioner, considering COD as approved vide this Order, within a month of issue of this Order. The transmission charges shall be allowed only from the date of approved COD as per this Order.

47. This issue is answered accordingly.

**Issue No. 3: Whether the claims of the Petitioner are covered under Change in Law in terms of the TSA?**

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

**“12.1 Change in Law**

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

- The enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law;*
- A change in the interpretation or application of any Law by Indian Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of Law;*
- The imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier:*
- A change in the terms and conditions prescribed for obtaining any Consents,*

*Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents Clearances and Permits;*

- *Any change in the licensing regulations of the Appropriate Commission, under which the Transmission License for the Project was granted if made applicable by such Appropriate Commission to the TSP:*
- *any change in the Acquisition Price; or*
- *any change in tax or introduction of any tax made applicable for providing Transmission Service by the TSP as per the terms of this Agreement.”*

49. Perusal of the above provisions of Article 12 in the TSA reveals that for an event to be declared as 'Change in Law', its occurrence has to be after seven days prior to the bid deadline and should result into any additional recurring/ non-recurring expenditure by TSP or any income to TSP.

50. The cut-off date for Change in Law events i.e. the date which is seven days prior to the bid deadline was 1.12.2015. In the light of the above provisions of Change in Law, the claims of the Petitioner with regard to Change in Law events, which have occurred after cut-off date during the construction and operating period, have been examined as under:

(a) *Promulgation of new set of compensation guidelines in the State of Chhattisgarh:*

51. The Petitioner has submitted that as on cut-off date i.e. 1.12.2015, the determination of compensation of Right of Way for the purpose of laying of transmission line was in terms of the notification of Government of Chhattisgarh vide No. F 7-7/Seven-1/2014 dated 20.2.2015, which provided that land compensation to the land owners @ 50% of the market value of land which was being used for erection of tower and the compensation qua the transmission corridor of land @ 20% of the benchmark value of land. However, subsequently, Government of Chhattisgarh vide its notification

dated 1.6.2016 increased the compensation for acquisition of ROW in lands required for tower base @ 85% of the current benchmark value of the land (RoW compensation) and for transmission corridor, the land compensation was fixed @ 15% of the current benchmark value as per the guidelines prescribed under the Chhattisgarh Rules, 1942. The Petitioner has submitted that aforesaid notification dated 1.6.2016 issued by the Government of Chhattisgarh after the cut-off date which has led to increase in the rate of compensation/ compensation payable by the Petitioner constitutes Change in Law in terms of Article 12.1.1 of the TSA. The Petitioner has indicated the additional expenditure due to the aforesaid Change in Law qua construction and development of JR Line at Rs.17,03,21,102.28/-

52. The Respondent Nos. 2 & 3 have submitted that as per Article 5.1.4 of the TSA, seeking access to the site and other places where the Project was being executed at its own cost including payment of any compensation as may be required was the primary responsibility of the TSP/ the Petitioner. The Respondents have further submitted that Change in Law articles of the TSA cannot be interpreted to such a manner to impose a liability upon the LTTCs/Respondents that was not at all contemplated to be borne by them. The Respondents have submitted that the provisions of the TSA are required to be interpreted harmoniously and cannot be read such as to denude the responsibility of the TSP.

53. We have considered the submissions made by the parties. At the outset, we observe that the notification dated 1.6.2016 issued by the Government of Chhattisgarh modifying the rate of compensation for land covered under the transmission tower footing and line corridor as prescribed earlier by notification dated 20.2.2015 after the



cut-off date has already been held as Change in Law event by the Commission under Article 12 of the TSA vide order dated 16.6.2021 in Petition No. 453/MP/2019 in the matter of Sipat Transmission Limited v. MSEDCL and Ors. The relevant extract of the said order is as under:

***“(d) Increase in compensation towards damages in relation to Right of Way for Transmission Lines***

66. *The Petitioner has submitted that as on the cut-off date i.e. 23.6.2015, the prevailing rate of compensation (50% of the market value of land) towards RoW damages in the State of Chhattisgarh was in accordance with the Notification dated 20.2.2015 issued by Revenue and Disaster Management Department, Government of Chhattisgarh. However, vide Notification No. F-7-7/1/2014 dated 1.6.2016, the Revenue and Disaster Management Department, Government of Chhattisgarh increased the amount of compensation to 85% of the market value of land on 1.6.2016, modifying its earlier notification for the purpose of aligning the compensation rates with that of the Guidelines issued on 15.10.2015 by Ministry of Power, Government of India. The notification by the Government of Chhattisgarh, which has resulted in additional expenditure to the Petitioner, fulfills all the preconditions and qualifies as a Change in Law event under Article 12.1.1 of the TSA.*

.....  
68. *We have considered the submissions made by the Petitioner and MPPMCL. As on cut-off date, Order No F 7-7/SAT-1/2014 dated 20.2.2015 of Department of Revenue and Disaster Management, Government of Chhattisgarh was in force which specified, inter-alia, that compensation to be provided by transmission service provider to the land owners was @ 50% of the prevalent market value of the land utilized for installing the towers for establishment of 132 kV transmission lines or lines having higher power. Ministry of Power, Government of India vide its letter dated 15.10.2015 issued Guidelines for payment of compensation towards damages in regard to Right of Way for transmission lines. In the said Guidelines, Ministry of Power inter alia also requested all the States/UTs to take suitable decision regarding adoption of the Guidelines for determining the compensation for land considering that the acquisition of land is a “State” subject under the Indian Constitution. On the basis of the said Guidelines, Department of Revenue and Disaster Management, Government of Chhattisgarh issued amended order No K/F-7-7/Sat-1/2014 on 1.6.2016 thereby increasing, inter-alia, the compensation to be provided by the TSP to the land owners to 85% of the prevalent market value of the land utilized for installing the towers for establishment of 132 kV transmission lines or lines having higher power.*

69. *According to the Petitioner, the order issued by Government of Chhattisgarh for making the compensation for RoW by the TSPs qualifies as Change in Law under the TSA. It would be apt to quote the translated version of the above order dated 1.6.2016 issued by the Government of Chhattisgarh submitted by the Petitioner:*

“ .....

*Chhattisgarh Government  
Revenue and Disaster Management Department  
Mantralaya  
Mahanadi Bhavan, New Raipur*



K/F-7-7/Sat-1/2014:- Vide departmental order of even number dated 20/02/2015, provision for paying compensation and the rate at which the compensation shall be paid has been determined for the land acquired or affected by the establishment of electricity transmission lines of 132 kv or more in the State.

2. Vide Government of India, Ministry of Power's letter no. 3/7/2015-Trans., dated 15.10.2015 guidelines have been issued for assessment of compensation payable for "Right of Way" acquired over the land required to establish transmission line. Under these guidelines, the compensation has been decided by the Ministry of Power, Government of India for lines of 66kv or greater capacity in place of 132 kv, which is more than the rate fixed in the State.

3. Hence, to keep the State Government's rate of compensation in accordance with those of the Government of India, it hereby omits paragraph-4 of departmental order dated 20.02.2015 and substitutes it with new paragraph-4 as given hereafter in its place:-

4. The abovementioned situation has been seriously contemplated upon. Accordingly, keeping the public interest in mind, for establishment of 132 kV transmission line or lines having higher power, the following decisions have been taken:

1. In addition to the compensation paid for the damage caused due to entry upon the land, the landowner will be given compensation equivalent to 85 percent of the prevalent market value of the area of land utilised for installing the tower.

2. The compensation will given up to 15 percent of the market value of the land covered by the external ends of the wire connecting towers. For this, the width of both external wires will be determined as given hereunder:

SR.NO.	TRANSMISSION CAPACITY	WIDTH OF BOTH EXTERNAL WIRES. (in metres)
1	66 KV	18m
2	110 KV	22m
3	132 KV	27m
4	220 KV	35m
5	400 KV	46m
6	500 KV	52m
7	765 KV	64m
8	800 KV	67m
9	1200 KV	89m

3. The amount to be given as above will only be compensatory. The land will remain registered in the ownership of the earlier landowner.

4. Notwithstanding anything to the contrary provided in any other rule, compensation for any agricultural land will be payable based on its prevalent market value and compensation for any non-agricultural land will be payable based on its prevalent market value.

5. This compensation will be payable only for the electricity transmission line. Electricity distribution lines are not included in this.

*In the name and as per the order of the Governor of Chhattisgarh  
(K.R. Pisda)  
Secretary,  
Chhattisgarh Government  
Revenue and Disaster Management Department  
Raipur, Date: 01/06/2016*

*P. No. F 7-7/7-1/2014*

*Copy-*

- 1. Special Assistant, Hon'ble Minister Chhattisgarh Government, Revenue and Disaster Management Department, Mantralaya, Mahanadi Bhavan, New Raipur.*
- 2. Sent to Principal Secretary, Chhattisgarh Government, Energy, Mantralaya, Mahanadi Bhavan, New Raipur for information in the context of his Letter No. 352/F21/11/2015/13/2 dated 09.02.2016.*
- 3. Commissioner, Raipur/Durg/Bilaspur/Sarguja and Bastar Division, .*
- 4. Commissioner/Coordinator, Land Records, Chhattisgarh, Raipur.*
- 5. All Collectors, Chhattisgarh for information and necessary action.*

*Secretary,  
Chhattisgarh Government  
Revenue and Disaster Management Department"*

*70. Perusal of the above order issued by the Government of Chhattisgarh reveals that it is a direction of the State Government which is binding on the State authorities for determination of compensation for RoW of transmission lines.*

*71. Government of Chhattisgarh, being the State Government, is an Indian Governmental Instrumentality in terms of the TSA. Therefore, the order dated 1.6.2016 issued by Department of Revenue and Disaster Management, Government of Chhattisgarh, being after the cut-off date, qualifies as a Change in Law event in terms of Article 12.1.1 of the TSA.*

*72. Accordingly, the Petitioner is entitled to increase in transmission charges on account of additional expenditure incurred towards payment of land compensation in terms of the above order of the Government of Chhattisgarh.*

*73. However, at the same time, it is pertinent to note that as on cut-off date, compensation payable for land covered under the transmission lines corridor (i.e. land covered by the external ends of the wire connecting towers) in terms of Government of Chhattisgarh's order dated 20.2.2015 was up to 20% of the market value of such land. Subsequently, vide order dated 1.6.2016, the compensation payable for the land covered under the transmission line corridor has been specified as up to 15% of the market value of such land. It is noticed that the Petitioner has not clarified as to whether this reduction in the rate of compensation payable for the land covered under the transmission line corridor has resulted into any savings to the Petitioner. Accordingly, we direct that while claiming the additional expenditure incurred towards payment of land compensation for the installation of towers, the Petitioner will also factor into the savings, if any, resulted on account of reduction in the rate of compensation payable for the land covered under the transmission line corridor. In case this reduction has not resulted into any savings to the Petitioner, the Petitioner will furnish an undertaking to the effect to the LTTCs/ beneficiaries.*

The aforesaid decision of the Commission squarely applies to the present case as the Petitioner is similarly placed to Sipat Transmission Limited in the above case as far as the cut-off date for reckoning Change in Law under the TSA is concerned.

54. As on the cut-off date in the instant case i.e. 1.12.2015, Order No. F 7-7/SAT-1/2014 dated 20.2.2015 of Department of Revenue and Disaster Management, Government of Chhattisgarh was in force which, *inter-alia*, specified compensation payable by the transmission service provider to the land owners (i) @ 50% of the prevalent market value of the land utilized for installing the towers for establishment of 132 kV transmission lines or lines having higher power, and (ii) @ 20% of market value of land covered under the transmission line corridor. However, subsequently, based on the Guidelines for payment of compensation towards damages in regard to Right of Way for transmission lines issued by Ministry of Power, Government of India vide letter dated 15.10.2015, which, *inter-alia*, requested all the States/UTs to take suitable decision regarding adoption of the Guidelines for determining the compensation for land considering that the acquisition of land is a "State" subject under the Indian Constitution, Department of Revenue and Disaster Management, Government of Chhattisgarh amended earlier order No K/F-7-7/Sat-1/2014 dated 20.2.2015 by way of order dated 1.6.2016. In the amended order, the compensation for land utilized for installing the towers of transmission lines/tower base has been fixed @ 85% of prevalent market value of land whereas for the land covered under the transmission line corridor, the compensation has been fixed @ 15% of prevalent market value.

55. Further, as already held in the order dated 16.6.2021, the "Government of

Chhattisgarh” qualifies as “Indian Governmental Instrumentality” under the TSA and consequently, the Order dated 1.6.2016 issued by the Department of Revenue and Disaster Management, Government of Chhattisgarh, being after the cut-off date, qualifies as Change in Law event in terms of Article 12.1.1 of the TSA. Therefore, the Petitioner is entitled to relief of Change in Law for additional expenditure incurred towards payment of land compensation in terms of the order dated 1.6.2016 issued by the Government of Chhattisgarh. The Respondents have, however, argued that since under Article 5.1.4 of the TSA, it is the primary responsibility of the Petitioner to pay the compensation for seeking access to the site where the Project was to be executed, Change in Law article cannot be interpreted to impose a liability upon the LTTCs that was not at all contemplated to be borne by them. However, in our view, the said contention is completely misconceived.

56. Undeniably, Article 5.1.4 of the TSA fastens the responsibility to pay the compensation for seeking access to the site and other places where the Project is to be executed at its own cost, requiring the Petitioner to factor into such compensation in the quoted tariff. However, such responsibility cannot be said to include the factoring into the compensation modified by the State Government after the cut-off date, which would otherwise qualify as Change in Law event. Article 12 of the TSA entitles the TSP to claim the reliefs for Change in Law (i.e. increase in transmission tariff) provided the occurrence of Change in Law is after the cut-off date and results into additional recurring/non-recurring expenditure by TSP. Moreover, we have already held that the order dated 1.6.2016 issued by the Government of Chhattisgarh qualifies as Change in Law under Article 12.1.1 of the TSA. Hence, the contention of the Respondents

deserves to be rejected. In fact, if the purported interpretation as sought to put forth by the Respondents is accepted, it would render the Article 12 (Change in Law) nugatory, which cannot be allowed.

57. Accordingly, the Petitioner shall be entitled to Change in Law compensation for the incremental expenditure incurred towards the land compensation in terms of the Government of Chhattisgarh's order dated 1.6.2016 for construction and implementation of the JR Line. While claiming such compensation, the Petitioner shall, however, also furnish the calculation/computation of such incremental expenditure (compensation paid as per order dated 1.6.2016 -compensation worked out as per order dated 20.2.2015) certified by the auditor to the LTTCs.

58. This issue is answered accordingly.

(b) Standardization of requirement of Power Line Crossing by CEA

59. The Petitioner has submitted that since the JR Line was proposed to cross the existing power lines of PGCIL and CSPTCL, the Petitioner, in accordance with the Central Electricity Authority (Technical Standards for construction of Electric Plants and Electric Lines) Regulations, 2010 and the BIS Code, submitted its proposals dated 21.3.2016, 11.5.2016 and 6.6.2016 to CSPTCL and PGCIL respectively seeking their approval for crossing the existing EHV lines. However, PGCIL and CSPTCL vide their letters dated 20.5.2016 and 17.6.2016 intimated the requirements of power line crossing wherein it was stated that both side dead end towers or suspension towers, with required extensions in combination with dead end towers have to be used, which was in departure from the requirements under the CEA Regulations, 2010 and BIS Code. The

Chief Electrical Inspector, CEA also held a meeting on 16.9.2019 to discuss and standardize the requirement of power line crossing and a plain reading of the minutes of the said meeting clearly reveals that the deviations in the tower design suggested by PGCIL and CSPTCL were approved by CEA. As a result of the aforesaid approval of CEA, the difference in the requirement of tower type for the purpose of power line crossing as on the cut-off date and after the cut-off date is as under:

<b>Transmission Line</b>	<b>Tower Type (before cut-off date)</b>	<b>Tower Type (after cut-off date)</b>
400 kV and above	Suspension/Tension	D-D type
220 kV and 132 kV	Tension (DB/DC/DD)	Angular Tower
< 66 kV	Any type (Suspension/Tension)	Any Tower

60. The Petitioner has submitted that the CEA's standardization for the requirement of power line crossing with D-D type of tower in the meeting held on 16.9.2016 constitutes a Change in Law event as per Article 12.1.1 of the TSA. The CEA is an Indian Governmental Instrumentality and the above approval of the CEA is a subsequent requirement, which was required to be implemented for obtaining the consent of laying down power line crossings. In the minutes of the meeting held on 16.9.2016, the CEA stated that the approval of power line crossing requirement for the respective voltage level transmission lines is a Change in Law event and the realization of differential cost shall be recovered in accordance with the methodology adopted by CEA. The Petitioner has submitted that pursuant to the aforesaid standardization of requirement of power line crossing by CEA, the Petitioner has been required to incur an additional expenditure of Rs. 8,45,87,097/- in installation of 18 D-D type of towers.

61. The Respondent Nos. 2 and 3 have submitted that as per sub-clause (1)(d)(i)(B) of the Regulation 89 of the CEA Regulations, 2010, the type of tower and design, etc.

are required to be selected by the owner as per the prudent utility practices. As per the sub-clause 1(d)(ii) dealing with the design of tower specifies only the “minimum” requirement for design of tower and the owner may adopt any additional loading or design criteria for ensuring reliability of the line if so desired and /or deemed necessary. Thus, the installation of D-D type tower does not qualify as Change in Law inasmuch as it was always the requirement of CEA Regulations, 2010 that the tower design and type, etc. be selected as per prudent utility practices and it was only the minimum requirement with respect to design of tower that was specified and additional design criteria could be adopted. There was no prescribed configuration for crossing of transmission lines which was changed. The Respondents have submitted that in the minutes of the meeting convened on 16.9.2016 by the Chief Electrical Inspector, CEA, at clause (d), recording the points of agreement, it has been stated that the proposal as indicated at (a), (b) and (c) would be discussed by all the TSPs within their organization and they would also see if the differential cost could be absorbed by the TSPs. The decision of CEA in the said meeting cannot be classified as enactment of law and it was only by way of a consensus for resolution of disputes and the same is not covered by Article 12.1.1 of the TSA.

62. We have considered the submissions made by the parties. We observe that the issue as to whether the requirement of D-D type of tower for crossing of power line of 400 kV and above in terms of the meeting of CEA dated 16.9.2016 constitutes a Change in Law or not has also been considered by the Commission in its order dated 16.6.2021 in Petition No. 453/MP/2019 in the matter of Sipat Transmission Limited v. MSEDCL and Ors. The relevant extract of the said order dated 16.6.2021 reads as



under:

***“(e) Change in configuration of type of towers to ‘D’-‘D’ at both sides of the power line crossing***

*74. As per the Petitioner, Chhattisgarh State Power Transmission Company Limited (CSPTCL) and PGCIL had rejected all power crossing proposals with DHC and DHB type towers and insisted on using “DHD” type towers though there is no such requirement in either the Electricity Rules or any standards. The Petitioner brought the issue to the notice of the Central Electricity Authority (CEA). CEA held two meetings to discuss the issue of power line crossing. During the second meeting, CEA decided that Power line crossing for 400 kV and above should be done only with “D”-“D” type towers. Consequently, the Petitioner had to incur an additional expenditure of Rs 3.40 crore towards installation of towers with “D”-“D” configuration. It has been contended by the Petitioner that this amounts to a change in “requirement” for obtaining a “consent/clearance” and the same amounts to “Change in Law” as per Article 12 of the TSA.*

*76. We have considered the submissions made by the parties. On being denied approval for power line crossing without implementation of “D”-“D” configuration by CSPTCL and PGCIL, the Petitioner approached CEA for resolution of the dispute. CEA held two meetings on the issue on 27.7.2016 and 16.9.2016. The Petitioner has placed minutes of both the meetings on record.*

*77. Perusal of the minutes of the meeting held on 27.7.2016 reveals that Chief Engineer (EI), CEA had informed that as per the Electricity Rules, there is no mandate that power line crossings have to be done with “D” towers on both the sides. However, there has to be sufficient margin in the crossing towers depending on the angle of crossing. The Petitioner had informed CEA that PGCIL is insisting on D-D configuration when PGCIL itself has proposed “D” type tower on one side where as “B” type on other side in its proposal to cross Mundra-Mahindragarh HVDC transmission line of Adani Transmission Ltd. in case of Bhuj-Banaskantha transmission line of PGCIL. It was further informed that even in its TBCB projects, namely, Vemagiri and Nagapattnam, PGCIL has allowed “D” type tower on one side and any angle tower on the other side depending upon the crossing angle. During the meeting, PGCIL categorically admitted that “their management have now taken a view that any power line crossing has to be done with “D” type tower on both sides to avoid any kind of disruption of power due to mis-happening during stringing over their line and subsequently to minimize the probability of snapping of their line due to tower collapse of the other utility”.*

*78. The second meeting on the said issue was held in CEA on 16.9.2016. During the meeting Chief Engineer, PSETD, CEA reiterated that as per IS there is no stipulation regarding the use of D type tower for power line crossing. Further, Chief Engineer (PSPM) stated that there is a need to emphasize more on safety while dealing with the*



power line crossing involving transmission lines of 400 kV and above. As per the minutes, Chief Engineer, PSETD emphasized as under:

*“CE, PSETD insisted that the 400 KV as well as 765 KV lines carries huge quantum of power and in the event of their failure due to collapse of tower would lead to huge financial loss due to failure of power transmission and long outage. The same if quantified in terms of monetary loss, would be very high compared to the differential cost of “D-D” type of tower and angular tower or tower with other combination. Further, grid security due to failure HVAC system is also another dimension to it. Considering this Railways are strictly following the practice of line crossing with only “D-D” towers. As such he advised the TSPs to seriously think over the issue again.”*

79. *The Petitioner and other Transmission Service Providers present during the meeting pointed out that for competitively bid projects, tariff has been fixed through bidding and the proposal of installation of “D-D” tower would put higher financial burden on the TSP. As stated in the minutes of meeting, as the issue was discussed in detail, Chief Engineer, inter-alia, proposed that it would be pragmatic if power line crossing is done only with “D-D” type of tower for crossing lines of 400 kV and above. After detailed deliberation, the proposal was in general agreed by all the participants. However, the TSPs insisted for mechanism for recovery of differential cost due to the change in type of tower as the same was not covered in the TSA. In this regard, Director, CEI stated that there could be problem of recovery of differential cost due to Change in Law prior to the notification, as the notification may take some time so it may not be easy for the Transmission Service Providers to recover the differential cost through the CERC. Based on the discussion, the following was agreed during the meeting (extract from the minutes).*

*“(a) Power line crossing for 400 KV and above should be done only with D-D type of towers.*

*.....*

*(d) The proposal as indicated at (a), (b) and (c) above would be discussed by all the TSPs within their organization and would also see of the differential cost could be absorbed by the TSPs.*

*(e) CEA would discuss the methodology regarding realization of differential cost with CERC till the same is notified.”*

80. *“Law” or “Laws” has been defined in the TSA as “all laws including electricity laws in force in India and any statute, ordinance, rule, regulation, notification, order or code, or any interpretation of any of them by an Indian Governmental Instrumentality having force of law and shall include all rules, regulations, decisions and orders of the Appropriate Commission”. After going through the minutes of the meetings, we are of considered opinion that decision of CEA in the meetings cannot be classified as enactment of “Law” under Article 12.1.1. It is evident that the outcome of the meeting was only a consensus amongst the various stakeholders for resolution of the dispute. The apprehension regarding “Change in Law” claim was also shared by CEA during the meeting and, for the*

same reason, CEA had requested licensees to discuss the issue with their organizations to see if the differential cost can be absorbed by the TSPs. Therefore, the aforesaid decision of CEA upholding the requirement of only “D”-“D” type of tower for power line crossing of 400 kV cannot be considered as Change in Law under Article 12 of the TSA .

81. Further, the Petitioner has contended that PGCIL and CSPTCL insisted the Petitioner to use “D-D” type in order to allow crossing of their transmission lines. It has been contended that it amounts to a change in “requirement” for obtaining a “consent/clearance” under Article 12.1.1 and the said action amounts to a Change in Law event as both PGCIL and CSPTCL are government instrumentality as per Article 1.1 of the TSA. We do not find merit in the argument of the Petitioner in view of the fact that the power line crossing approvals are granted by the transmission licensees to each other in the capacity of transmission licensees only. Neither PGCIL nor CSPTCL have acted as Indian Government Instrumentality in any sense in the instant matter. Also, admittedly, there was no prescribed configuration for crossing of transmission lines which was changed. Change in Law is admissible when any statute, ordinance, rule, regulation, notification, order or code, or any interpretation of any of them by an Indian Governmental Instrumentality having force of law undergoes change, which is not the case in the instant matter.

82. As per Article 5.1.1 of the TSA, the Petitioner is responsible for designing, constructing, erecting, completing and commissioning each element of the Project by the scheduled COD, at its own cost and expense. Further, in accordance with Article 5.1.3 of the TSA, the Petitioner is responsible to obtain all consents, clearances and permits including approval for crossings in order to carry out its obligations under the TSA in general and Article 5.1.1 in particular. It is the responsibility of the Petitioner under the TSA to obtain consents/ clearances by fulfilling the desired criteria. Accordingly, we opine that imposition of the requirement of installation of “D” type towers on both the side of power line crossing for obtaining clearance from PGCIL and CSPTCL is not admissible under Change in Law.

83. In light of the above, the Petitioner is not entitled to increase in transmission charges on account of additional expenditure incurred towards installation of “D” type tower on both the side of the power line crossing.....”

The aforesaid decision of the Commission squarely applies to present case. Accordingly, the requirement of power line crossing with D-D type of tower cannot be considered as Change in Law and consequently, the Petitioner cannot be permitted any compensation on account of additional expenditure incurred towards installation of D-D type of towers for the power line crossings.

63. This issue is answered accordingly.

(c) Diversion of route for construction of JR Line

64. The Petitioner has submitted that in respect of 4 Nos. of tower location of JR Line, namely, 35/0, 35/1, 35/2 and 35/3, which fell under the jurisdiction of Sub-Divisional Magistrate (SDM), Simga, the Petitioner faced sever hindrances from the land owners and the employees of the Videocon Industries Limited and despite the several meetings and correspondence, they did not agree for construction of the transmission line as the same was passing though their lands. The Petitioner had brought to notice to the concerned District Magistrate, Baloda Bazar, Chhattisgarh vide letters dated 22.2.2017, 8.5.2017 and 19.5.2017 and SDM, Simga vide letters dated 3.4.2017 about the above hindrances being faced by the Petitioner while seeking administrative support for construction of JR Line. The Petitioner, thereafter, attempted to commence the work on 3.7.2017 with the help of administrative support provided by SDM, Simga. However, the same was forcefully stopped by the landowners. One of the landowners also filed a complaint before SDM, Simga on 5.7.2017 requesting for stay of construction of JR Line, wherein the notice was issued by SDM to the Petitioner to appear for hearing on 19.7.2017. Meanwhile, the Petitioner also explored the various options to divert the route of JR Line and suggested the Option I and Option II and further initiated the discussions and meetings with Videocon Industries Ltd. and the landowners for feasible diversion of route for construction of JR Line.

65. The Petitioner has submitted that during the proceedings before the SDM on 19.7.2017, the Petitioner was directed to divert the route of 765 kV JR Line and finalize

the tower spotting for the changed route as per the Option I suggested by the Petitioner. The said direction to deviate/ change the route is a Change in Law in terms of Article 12.1.1 of the TSA since the above direction is a change/ imposition of a requirement for obtaining consent/ permit for constructing the JR Line. However, despite the above, the Petitioner continued to face the hindrances caused by the Videocon Industries Ltd. and the land owners, which was brought to the notice of the DM, Baloda Bazar, Chhattisgarh by the Petitioner vide its letters dated 2.9.2017, dated 30.11.2017 and dated 1.12.2017. The Petitioner vide its letter dated 22.12.2017 also communicated to DM , Baloda Bazar, Chhattisgarh that Option I as suggested by the Petitioner earlier was not feasible as the land owners continued to cause hindrances and in absence of any other alternative, the Petitioner suggested the feasibility of Option II to divert the route for spotting the towers and requested the office of District Collector to issue appropriate directions/ orders for diversion of route, which was allowed by the SDM, Simga vide its order dated 1.2.2018. The Petitioner has submitted that it could not have fulfilled the obligations under the TSA without agreeing with the requirement of diversion, thereby incurring the burden of additional expenditure towards such diversion of route for laying of JR Line. The Petitioner has further asserted that the said diversion of route qua JR Line was based upon the condition imposed by SDM, Simga for obtaining consent and /or clearance which was not required earlier and the said approval was necessary for the Petitioner to divert the route and commence the work for construction of JR Line and accordingly, the said order of SDM, Simga dated 19.7.2017, constitutes a Change in Law under Article 12.1.1 of the TSA.

66. Alternatively, the Petitioner has also contended that the diversion of route of JR

Line also qualifies as a change in scope of work as compared to the scope contemplated at the time of bidding, on account of orders passed by SDM, Simga and the agitation of landowners. The Petitioner has indicated that the change in route has resulted in an increase of 181 meters in the line length of JR Line and it had to incur the additional expenditure of Rs. 2,35,99,091.67/- in constructing the JR Line.

67. The Respondent Nos.2 & 3 have submitted that in terms of Article 5 of the TSA, the survey and geotechnical investigation of the line route in order to determine the final route of transmission line, final selection of site including its geotechnical investigation and seeking access to the site and other places where the Project was being executed at its own cost including payment of compensation was the responsibility of the Petitioner/ TSP and it is also stated that unsuitability of site or transmission line route for whatsoever reasons will not relieve the TSP from any of its obligations under the TSA and will also not entitle it to any financial compensation. Moreover, as per the provisions of the RfP also, it was incumbent upon the Petitioner to carry out its own survey and field investigation, visit the route of transmission lines and obtain and verify all the information. Hence, diversion of route for construction of JR Line does not fall under any of the occurrences enumerated under Change in Law events in Article 12.1.1 of the TSA. Further, as per the Petitioner itself, there were other options available with respect to transmission route at these locations and eventually option II as selected in this regard was stated to be one having least harm on the lands of the affected. No reasons have been given by the Petitioner as to why the said factors were not considered by it earlier while finalizing the transmission line route. The Respondents have also stated that direction of SDM vide order dated 19.7.2017 to divert/ change the

route does not fall within Change in Law and it was the Petitioner who is solely responsible for the change in route. The Respondents have submitted that the proceedings before SDM on 19.7.2017 on which date the Petitioner has been stated to have been directed to divert the route JR Line has not been brought on record by the Petitioner.

68. *Per contra*, the Petitioner has submitted that Article 12 of the TSA is a contractual provision which specifically allows the additional expenditure to the TSP in case there is a Change in Law after the cut-off date and the same being an exhaustive provision is duly accepted by the Petitioner and the beneficiaries. The Petitioner has submitted that if the argument of the Respondents on the basis of the clauses of RfP and TSA is accepted then there is no need for having Change in Law provisions under the TSA and once the TSA is executed containing the Change in Law provisions, then such provisions have to be applied in the event the requirements thereunder are in existence or fulfilled. The Petitioner has submitted that diversion of route qua JR Line was based upon the conditions imposed during the meeting held with SDM, Simga for obtaining consent /clearance which was not required earlier and thus, constitutes a Change in Law under the TSA. The Petitioner has further submitted that the scope of work as defined by the bid survey report is prepared after a walking survey which is conducted by BPC and the Petitioner also conducted a pre-bid survey. However, it was only after the necessary approvals were granted that the new conditions were imposed and it would be unfair and unreasonable upon the Petitioner to account for all the eventualities and possibilities under the bid estimates and the above events were unforeseeable conditions which were imposed upon the Petitioner for implementing the JR Line.

69. We have considered the submissions made by the parties. As pointed out by the Respondents, as per clause 2.14.2.1 of the RfP, the bidders were required to make independent enquiry and satisfy themselves with respect to all the required information, inputs, conditions and circumstances and factors that may have any effect on the bid and once the bidders have submitted their bids, the bidders shall be deemed to have inspected and examined the site conditions including but not limited to its surroundings, geological condition, adequacy of transport facilities to the site etc. Moreover, the bidders, in their own interest, were also required to carry out the required surveys and field investigations, visit the route of the transmission lines associated with Project and the surrounding areas and obtain and verify all the information which they deem fit and necessary for preparation of their bid and failure to investigate the route of transmission lines associated with Project and to examine, inspect site or subsurface conditions fully shall not be a ground for a bidder to alter its bid nor it shall relieve a bidder from any responsibility for appropriate eliminating the difficulty or costs of successfully completing the Project (clauses 2.14.2.3, 2.14.2.3 and 2.14.2.5).

70. Further, Article 5.1 of the TSA, which deals with the TSP's construction responsibilities, provides as under:

*"5.1 TSP's Construction Responsibilities:*

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

.....

*5.1.4 The TSP shall be responsible for:*

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

Thus, perusal of the above provisions makes it clear that the survey and the selection of the final route of the transmission line was the responsibility of the licensee and consequently, the licensee shall not be relieved from any of its obligations under the TSA or to be entitled to any extension of time by reasons of the unsuitability of the site or the transmission line route for whatsoever reasons. It is also provided that the licensee shall not be entitled to any financial compensation in this regard. Hence, in the present case also, the route of JR Line selected by the Petitioner including subsequent modification/changes thereof has to be considered as having been done so by the Petitioner after conducting its own survey and investigation of the site and route in terms of the above-mentioned provisions, which consequently, neither relieves the licensee from its obligation under the TSA nor entitles it to an extension of time or any financial compensation on account of the reason of unsuitability of site or the transmission line route.

71. The Petitioner, however, has argued that the diversion of JR Line route has been in terms of the directions/order of SDM, Simga – a Change in Law event – issued keeping in view the obstructions and hindrances being faced by the Petitioner from Videocon Industries Limited and certain landowners while construction of the said line at



the location Nos. 35/0, 35/1, 35/2 and 35/3. At the outset, it would be pertinent to note that Right of Way (RoWs) issues and objections by the concerned landowners are not entirely uncommon and unforeseeable events and the transmission licensees or the bidders, are required to take into the account facing of such eventualities in construction of the transmission line/project to the reasonable extent while bidding for the Project. Moreover, the provisions of the Act, in particular, Section 67 and Section 68, do provide the remedial measures available to the licensee or the affected parties in laying of the transmission lines. In the present case, it is noticed that the Petitioner had also been vested with the power of telegraph authority in laying of the transmission lines under Section 164 of the Act by virtue of which it also exercised the power of telegraph authority under the Indian Telegraph Act, 1885. The Telegraph Act also specifies the remedial measures available to the licensee in the event the exercising of such power in respect of any property is resisted or obstructed.

72. However, noticeably, in the present case, the Petitioner himself, after having faced hindrances in constructing of JR Line on the above-noted locations, explored the alternate options to divert the route and went on to suggest the Option I and Option II for construction of line. Conspicuously, the Petitioner has also not placed on record the order/proceedings of SDM, Simga dated 19.7.2017, which it has sought to be declared as Change in Law event requiring the Petitioner to deviate/change the route of JR Line. Nevertheless, even considering the submissions of the Petitioner with regard to the proceedings of SDM, Simga dated 19.7.2017 as made in the Petition, it is noticed that it was the Petitioner's own suggestion that was accepted by the SDM during the proceedings dated 19.7.2017 and consequently, the Petitioner was directed to divert the

route of the line and finalize the tower spotting for the changed route as per Option I suggested by the Petitioner. The Petitioner has vehemently contended that the said direction to deviate/change the route of JR Line constitutes a Change in Law event in terms of Article 12.1.1 of the TSA. However, in our view, such contention is misplaced. As it was the Petitioner itself who conceived and suggested the options to divert the JR Line from the original route and the SDM, Simga, having accepted such suggestion of the Petitioner cannot be considered as Change in Law event.

73. In any event, the Option I as suggested by the Petitioner and accepted by the SDM, Simga in terms of order dated 19.7.2017 did not even materialize as the landowners did not agree to the said proposal of the Petitioner. Thereafter, the Petitioner sought permission to implement the line in accordance with Option II suggested by it and requested the District Collector, Baloda Bazar to provide the Petitioner an order for the diverted proposal, which was passed by SDM, Simga on 1.7.2018. Similar to the Option I, the Option II route was also proposed by the Petitioner itself and the line came to be constructed in terms of the said option as location of towers in the said option were agreeable to the landowners as well. Although the Petitioner has not specifically prayed for declaration of the order/direction of SDM, Simga dated 1.2.2018 as Change in Law events, the same cannot be considered as Change in Law event for the reasons as already discussed above in respect of the purported order/directions dated 19.7.2017. In the present case, there was no mandate of any Indian Governmental Instrumentality requiring the Petitioner to necessarily alter/deviate the route of JR Line. In fact, both the options were conceived and suggested by the Petitioner himself in its own commercial wisdom, which were allowed

to be implemented by the SDM, Simga as and when suggested by the Petitioner. In view of the foregoing observations, we are of the view that neither the direction of SDM, Simga dated 19.7.2017, which has not even been placed on the record by the Petitioner, can be considered as Change in Law event under the TSA nor the Petitioner claim that such diversion qualifies as change in scope of work as compared to scope contemplated at the time of bidding. Resultantly, no compensation can be allowed to the Petitioner on the aforesaid count.

74. The issue is answered accordingly.

(d) Shifting of tower at location No. 108/2 of JR Line

75. The Petitioner has submitted that it has also faced the obstruction from SKS Industries in commissioning of three towers at location Nos. 108/2, 108/3 and 108/4 of JR Line which passed through the vacant land in between the pucca boundary wall of SKS and a highly populated village-Binjkor, District Raigarh. The Petitioner has submitted that vide letters dated 22.3.2016 and dated 20.1.2017, it requested SKS to convey the area details of the generating project. In response, SKS vide e-mail dated 21.1.2017 stated that most of the land in village Binjkot and village Darramuda is already under acquisition for its phase II generating project of 600 MW and requested the Petitioner to submit detailed route map for the proposed JR Line which was duly submitted by the Petitioner. However, no response was received by the Petitioner from SKS in this regard. Thereafter, the Petitioner, on 9.4.2017, informed SKS about the commencement of foundation work at location Nos. 108/2 and 108/3 in Bijkot area. However, on 23.4.2017, when the Petitioner was commissioning the towers at aforesaid

locations, the Petitioner's men and machinery were unlawfully and arbitrarily obstructed by the SKS employees. The above issue was pursued with the District Magistrate, Raigarh, which directed both the parties to resolve the matter amicably. However, since the matter could not be resolved amicably, SKS approached the Hon'ble High Court of Chhattisgarh in Writ Petition (Civil) No. 700 of 2018, wherein the Hon'ble High Court vide order dated 15.3.2018 directed the CEA to resolve the issue. The Petitioner has submitted that thereafter a joint meeting was convened by CEA on 2.5.2018 to resolve the dispute pertaining to shifting of tower at location No. 108/2 and in the said meeting, the Petitioner agreed to explore the possibility of shifting of the aforesaid tower qua JR Line from the land proposed for the power plant of SKS and accordingly, the Petitioner shifted the tower from location No. 108/2, which resulted into an additional expenditure. The Petitioner has submitted that aforesaid shifting of tower qua JR Line which was based upon the CEA approval/consent accorded in the meeting dated 2.5.2018, constitutes Change in Law event under Article 12.1.1 of the TSA and led to an additional expenditure to the tune of Rs. 11,84,558.72/- for which the Petitioner is entitled for compensation under the TSA. Alternatively, the Petitioner has also submitted that the shifting of the above tower is in the nature of change in scope of work as a result of obstruction of works by SKS and the subsequent Change in Law events of orders and directions of the Hon'ble High Court and CEA.

76. The Respondent Nos. 2 & 3 have submitted that shifting of tower at location No. 108/2 does not constitute Change in Law event as such shifting was solely attributable to faults/shortcomings of the Petitioner. It has been submitted that as per the submissions of the Petitioner itself, even prior to the publication of approval under

Section 164 of the Act in gazette on 6.3.2017, SKS vide its e-mail dated 21.1.2017 had already informed the Petitioner that the most of the land in village Binjkot and village Dharramuda were already under acquisition for their phase II generating project and accordingly, requested the Petitioner to submit the detailed route map of the proposed line. The Respondents have submitted that based on the documents brought on record by the Petitioner, it is unclear that the detailed route map was shared. As per the minutes of the meeting held in PSPA-II Division, CEA dated 2.5.2018 between the Petitioner and SKS, the Petitioner on its own confirmed that it would bear the additional cost of the above arrangement and nowhere it has been stated by the Petitioner that the LTTCs/ Respondents were intimated or taken into confidence in this regard.

77. *Per contra*, the Petitioner has submitted that factual matrix narrated in the Petition clearly indicates that the Petitioner was forced to change the scope of work, which eventually was on account of the intervention of CEA, in terms of the directions issued by the Hon'ble High Court of Chhattisgarh. The Petitioner has submitted that it did not had an option but to agree to the terms set-out by CEA vide its Minutes of Meeting dated 2.5.2018 as these were in the form of directions and further the timelines for the completion of the Project was approaching. Therefore, the aforesaid events squarely fall within the definition of Change in Law under Article 12 of the TSA.

78. We have considered the submissions made by the parties. At the outset, we note that many of our observations in respect of the Petitioner's Change in Law claim - Diversion of route for construction of JR Line, equally apply to the instant claim. Under the TSA, it was the responsibility of the Petitioner to conduct the necessary survey and investigation of the site and the route of the transmission line prior to the selecting the

final route of transmission line route and the licensee is not to be relieved from any obligations under the TSA or to be entitled to any extension of time or financial compensation on account of the unsuitability of the Site or the transmission route. However, the Petitioner has argued that the shifting of tower at location No.108/2 was based upon CEA approval/consent accorded in the meeting held on 2.5.2018 in order to resolve the disputes pertaining to shifting of said tower and therefore, it constitutes Change in Law event. However, perusal of agreeable points between the Petitioner and SKS in the said meeting reveals that to resolve the dispute, the Petitioner had on its own agreed to explore the possibility of shifting the tower at location No.108/2 from the land proposed for e-phase II expansion of SKS's generation project subject to feasibility of site conditions and had confirmed to bear the additional cost for the above arrangement. The relevant extract of the signed copy of the agreeable points between the Petitioner and SKS pursuant to the said meeting is as under:

*"The following is agreed in the meeting held in PSPA-II Division, CEA between OGPTL (Odisha Generation Ph-II Transmission Ltd.) & SPGCL (SKS Power Generation Chhattisgarh Ltd.) regarding Jharsuguda – Raipur 765 kV D/c Transmission line.*

- 1. The minimum ground clearance of the above transmission line shall be maintained at 25 Meter for the span of the transmission line passing over the land of M/s SPGCL (proposed for phase-II expansion project with 2x300 MW).*
- 2. Shifting of the tower at location No. 108/2 of Jharsuguda – Raipur 765 kV D/c Transmission line in the land proposed for phase-II expansion project (2x300 MW) of M/s SPGCL would be explored subjected to feasibility of site condition meeting all technical requirement.*
- 3. M/s SPGCL expressed their inability to bear any cost for above modification by M/s OGPTL. M/s OGPTL confirmed that they would bear the additional cost for the above arrangement.*
- 4. M/s SPGCL confirmed that the engineering of the Phase-II expansion (2x300 MW) would be done complying with CEA (Measuring relating to Safety and Electric Supply) Regulations, 2010 (as amended)..."*

A party having agreed to an amicable solution in the meeting conducted by the CEA to resolve the dispute between the parties and consequently, the Petitioner having shifted the tower location at 108/2 of JR Line in terms thereof, cannot be termed as Change in Law event under the TSA. Perusal of the minutes of the said meeting clearly reveals that the CEA, a statutory body under the Act, had nowhere directed/mandated the Petitioner to shift the tower at the location No. 108/2 as contended by the Petitioner. The decision of the Petitioner to explore the shifting of tower and bear the additional cost for such arrangement, although noble if seen from the point of view of resolving the dispute and timely completion of the line, was still its own - taken in its own volition and the Petitioner cannot be permitted to turn around and claim the results of such decision under Change in Law provisions. In our view, the shifting of tower at location No. 108/2 of the JR Line cannot be considered as Change in Law event as contended by the Petitioner nor can it be considered as change in scope of the work. Resultantly, no compensation can be awarded to the Petitioner on this count.

79. This issue is answered accordingly.

80. The Petitioner has also prayed for carrying cost/interest cost incurred towards the additional expenditure incurred pursuant to the Change in Law events or Change in scope of work as claimed in the Petition. The Petitioner has submitted that the concept of carrying cost /interest cost has been settled by the Hon'ble Courts and the same is essential for the purpose of restoring the aggrieved party to the same economical principle as if such Change in Law event had not occurred. It is submitted that the principle of restoration is the underlying principle behind Change in Law provision.



81. The Respondent Nos. 2 and 3 have submitted that the Petitioner is not entitled to any recompense for the claimed actual additional expenditure or carrying cost/ interest cost incurred towards the said expenditure. It is submitted that nothing beyond what is contemplated by the TSA is admissible to the Petitioner, if at all.

82. We have considered the submissions made by the parties. The issue of entitlement of carrying cost has been dealt with by APTEL in its judgment dated 13.4.2018 in Appeal No. 210 of 2017 in the case of Adani Power Limited v. Central Electricity Regulatory Commission and Ors., wherein, among others, it was held that since Gujarat Bid-01 PPA had no provision for restoration to the same economic position, the decision of allowing carrying cost will not be applicable. The relevant extract of the judgment dated 13.4.2018 reads as under:

*“ISSUE NO.3: DENIAL OF CARRYING COST*

*x. Further, the provisions of Article 13.2 i.e. restoring the Appellant to the same economic position as if Change in Law has not occurred is in consonance with the principle of ‘restitution’ i.e. restoration of some specific thing to its rightful status. Hence, in view of the provisions of the PPA, the principle of restitution and judgment of the Hon'ble Supreme Court in case of Indian Council for Enviro-Legal Action vs. Union of India &Ors., we are of the considered opinion that the Appellant is eligible for Carrying Cost arising out of approval of the Change in Law events from the effective date of Change in Law till the approval of the said event by appropriate authority. It is also observed that the Gujarat Bid-01 PPA have no provision for restoration to the same economic position as if Change in Law has not occurred. Accordingly, this decision of allowing Carrying Cost will not be applicable to the Gujarat Bid01 PPA.”*

83. While dealing with the issue of carrying cost, in another matter, APTEL in its judgment dated 14.8.2018 in Appeal No. 111 of 2017 in the matter of M/s. GMR Warora Energy Limited v. Central Electricity Regulatory Commission and Ors. held as under:

*“xiii. Now we have reached to the final issue raised by GWEL related to carrying cost on the allowed Change in Law events. For the sake of brevity we are not discussing the claims of GWEL and counter claims of the Discom/Prayas Energy Group on this issue as the said issue has been decided by this Tribunal vide judgment dated 13.4.2018 in*

Appeal No. 210 of 2017 in case of Adani Power Ltd. v. CERC wherein this Tribunal after detailed analysis has allowed carrying cost on the allowable Change in Law events. We straight way come to the relevant portion of the said judgment which is reproduced below:

“12 d)

.....

“ix. In the present case we observe that from the effective date of Change in Law the Appellant is subjected to incur additional expenses in the form of arranging for working capital to cater the requirement of impact of Change in Law event in addition to the expenses made due to Change in Law. As per the provisions of the PPA the Appellant is required to make application before the Central Commission for approval of the Change in Law and its consequences. There is always time lag between the happening of Change in Law event till its approval by the Central Commission and this time lag may be substantial. As pointed out by the Central Commission that the Appellant is only eligible for surcharge if the payment is not made in time by the Respondents Nos. 2 to 4 after raising of the supplementary bill arising out of approved Change in Law event and in PPA there is no compensation mechanism for payment of interest or carrying cost for the period from when Change in Law becomes operational till the date of its approval by the Central Commission. We also observe that this Tribunal in SLS case after considering time value of the money has held that in case of redetermination of tariff the interest by a way of compensation is payable for the period for which tariff is re-determined till the date of such re-determination of the tariff. In the present case after perusal of the PPAs we find that the impact of Change in Law event is to be passed on to the Respondents Nos. 2 to 4 by way of tariff adjustment payment as per Article 13.4 of the PPA. The relevant extract is reproduced below:

13.4 Tariff Adjustment Payment on account of Change in Law 13.4.1 Subject to Article 13.2 the adjustment in Monthly Tariff Payment shall be effective from: (a) the date of adoption, promulgation, amendment, re-enactment or repeal of the Law or Change in Law; or (b) the date of order/ judgment of the Competent Court or tribunal or Indian Government instrumentality, if the Change in Law is on account of a change in interpretation of Law; (c) the date of impact resulting from the occurrence of Article 13.1.1. From the above it can be seen that the impact of Change in Law is to be done in the form of adjustment to the tariff. To our mind such adjustment in the tariff is nothing less than re-determination of the existing tariff.

x. Further, the provisions of Article 13.2 i.e. restoring the Appellant to the same economic position as if Change in Law has not occurred is in consonance with the principle of 'restitution' i.e. restoration of some specific thing to its rightful status. Hence, in view of the provisions of the PPA, the principle of restitution and judgment of the Hon'ble Supreme Court in case of Indian Council for Enviro Legal Action vs. Union of India & Ors., we are of the considered opinion that the Appellant is eligible for Carrying Cost arising out of approval of the Change in Law events from the effective date of Change in Law till the approval of the said event by appropriate authority. It is also observed that the Gujarat Bid-01 PPA have no provision for restoration to the same economic position as if Change in Law has not occurred. Accordingly, this decision of allowing Carrying Cost will not be applicable to the

*Gujarat Bid-01 PPA.”*

84. The judgment of APTEL dated 13.4.2018 in Appeal No. 210 of 2017 in the case of Adani Power Limited v. Central Electricity Regulatory Commission and Ors. was challenged before the Hon'ble Supreme Court wherein the Hon'ble Supreme Court vide its judgment dated 25.2.2019 in Civil Appeal No.5865 of 2018 with Civil Appeal No. 6190 of 2018 (Uttar Haryana Bijili Vitran Nigam Limited & Anr. Vs. Adani Power Ltd. & Ors.) has held as under:

*“10. A reading of Article 13 as a whole, therefore, leads to the position that subject to restitutionary principles contained in Article 13.2, the adjustment in monthly tariff payment, in the facts of the present case, has to be from the date of the withdrawal of exemption which was done by administrative orders dated 06.04.2015 and 16.02.2016. The present case, therefore, falls within Article 13.4.1(i). This being the case, it is clear that the adjustment in monthly tariff payment has to be effected from the date on which the exemptions given were withdrawn. This being the case, monthly invoices to be raised by the seller after such change in tariff are to appropriately reflect the changed tariff. On the facts of the present case, it is clear that the respondents were entitled to adjustment in their monthly tariff payment from the date on which the exemption notifications became effective. This being the case, the restitutionary principle contained in Article 13.2 would kick in for the simple reason that it is only after the order dated 04.05.2017 that the CERC held that the respondents were entitled to claim added costs on account of change in law w.e.f. 01.04.2015. This being the case, it would be fallacious to say that the respondents would be claiming this restitutionary amount on some general principle of equity outside the PPA. Since it is clear that this amount of carrying cost is only relatable to Article 13 of the PPA, we find no reason to interfere with the judgment of the Appellate Tribunal.”*

\*\*\*\*\*

*16.....There can be no doubt from this judgment that the restitutionary principle contained in Clause 13.2 must always be kept in mind even when compensation for increase/decrease in cost is determined by the CERC.”*

85. We observe that the TSA in the instant matter does not have restitution provisions and the Petitioner has also not placed on record any such provisions in the TSA. Therefore, in view of above judgments of APTEL and Hon'ble Supreme Court, since the TSA in the instant Petition does not have a provision dealing with restitution

principles of restoration to same economic position, the claim of the Petitioner for carrying cost is not admissible.

86. This issue is answered accordingly.

**Issue No. 4: What reliefs, if any, should be granted to the Petitioner in the light of the answers to the above issues?**

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

*“12.2 Relief for Change in Law*

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

*- For every cumulative increase/decrease of Eight Crore Seventy Nine lakhs Thirty Six Thousand Only (Rs. 8,79,36,000/=) in the cost of the Project up to the Scheduled COD of the Project, the increase/decrease in Non-Escalable Transmission Charges shall be an amount equal to 0.32 percent (0.32%) of the Non-Escalable Transmission Charges.*

.....

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

*12.2.4 The decision of the Appropriate Commission, with regards to the determination of the compensation mentioned above in Articles 12.2.1 and 12.2.2, and the date from which such compensation shall become effective, shall be final and binding on both the Parties subject to the rights of appeal provided under applicable Law.”*

88. All reliefs on account of Change in Law have been claimed by the Petitioner for the construction period. Accordingly, as per Article 12.2.1 of the TSA, for every cumulative increase/decrease of Rupees Eight Crore Seventy Nine Lakhs Thirty Six Thousand (Rs. 8,79,36,000/-) in the cost of the Project up to the Scheduled COD of the Project, the increase/decrease in Non-Escalable Transmission Charges shall be an amount equal to zero point three two percent (0.32%) of the Non-Escalable

Transmission Charges. Thus, in terms of the findings of the Commission in the foregoing paragraphs, the Petitioner shall re-compute the increase in the cost of Project, to be supported by CA certificate, and reconcile with the Petitioner and accordingly, shall be entitled to corresponding increase in Non-Escalable Transmission Charges as provided under Article 12.2.1 of the TSA.

89. After CoD of the JR Line, the Petitioner has been recovering transmission charges for the said line under the provisions of the Central Electricity Regulatory Commission (Sharing of inter-State transmission Charges and Losses) Regulations, 2010. With effect from 1.11.2020, the Central Electricity Regulatory Commission (Sharing of inter-State transmission Charges and Losses) Regulations, 2020 has come into force. Therefore, the impact of Change in Law payable to the Petitioner shall be recovered in accordance with the provisions of Regulation 15(2)(b) (second bill to the DICs) of the Central Electricity Regulatory Commission (Sharing of inter-State transmission Charges and Losses) Regulations, 2020.

90. This issue is answered accordingly.

91. Based on the above analysis and decisions, the summary of our decision under the Change in Law during the construction period of the Project is as under:

<b>S.No</b>	<b>Change in Law events in respect of JR Line</b>	<b>Decision</b>
1	Promulgation of new set of compensation Guidelines in the State of Chhattisgarh	Allowed
2	Standardization of requirement of Power Line Crossing by CEA	Not Allowed
3	Diversion of Route for construction	Not Allowed
4	Shifting of Tower at Location No. 108/2	Not Allowed

92. In view of the aforesaid observations and findings, the Petition No. 182/MP/2020 stands disposed of.

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

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

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