

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 261/TT/2015

Coram:

**Shri I.S. Jha, Member
Shri Arun Goyal, Member
Shri P.K. Singh, Member**

Date of order: 02.09.2022

In the Matter of:

Approval under Regulation 86 of Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 and Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 for determination of transmission tariff from the date of commercial operation(COD) to 31.3.2019 in respect of Asset-1:765 kV Line Bay and 240 MVAR Switchable Line Reactor at Jabalpur Pooling Sub-station for 765 kV S/C Jabalpur-Bina Circuit-III (IPTC); Asset-2: 765 kV Line Bay and 240 MVAR Line Reactor (Non-switchable) at Bina Sub-station for 765 kV S/C Jabalpur-Bina Circuit-III (IPTC); Asset-3: 765 kV Line Bay and 240 MVAR Line Reactor at Jabalpur PS and 765 kV Line Bay and 330 MVAR Switchable Line Reactor at Dharamjaygarh Sub-station for Circuit-3 of 765 kV D/C (Circuit-3 & 4) Dharamjaygarh-Jabalpur PS Transmission Line (IPTC); Asset-4: 765 kV Line Bay and 240 MVAR Line Reactor at Jabalpur PS and 765 kV Line Bay and 330 MVAR Switchable Line Reactor at Dharamjaygarh Sub-station for Circuit-4 of 765 kV D/C (Circuit-3 & 4) Dharamjaygarh-Jabalpur PS Transmission line (IPTC) under "Line Bays and Reactor Provisions at Powergrid Sub-stations associated with Common System Strengthening for Western Region and Northern Region" for tariff block 2014-19 in Western Region.

And in the Matter of:

Power Grid Corporation of India Limited,
"Saudamini", Plot No-2,
Sector-29, Gurgaon-122001,
(Haryana).

.....Petitioner

Versus

1. Madhya Pradesh Power Management Company Limited,
Shakti Bhawan, Rampur,
Jabalpur-482008 (MP).
2. Sterlite Technologies Limited,
C2, Mira Corporate Suits, 2nd Floor,
Okhla Crossing, Mathura Road, Ishwarnagar,
New Delhi-110066.



3. Madhya Pradesh Audyogik Kendra,
3/54, Press Complex, Agra-Bombay Road,
Indore-452008 (MP).
4. Maharashtra State Electricity Distribution Company Limited,
Hongkong Bank Building, 3rd Floor, M.G. Road,
Fort, Mumbai-400001 (Maharashtra).
5. Gujarat Urja Vikas Nigam Limited,
Sardar Patel Vidyut Bhawan, Race Course Road,
Vadodara -390007 (Gujarat).
6. Electricity Department, Government of Goa,
Vidyut Bhawan, Panaji, Near Mandvi Hotel,
Goa -403001.
7. Electricity Department,
Administration of Daman & Diu,
Daman-396 210.
8. Electricity Department,
Administration of Dadra Nagar Haveli U.T.,
Silvassa -396230.
9. Chhattisgarh State Electricity Board,
P.O.SunderNagar, Dangania,
Raipur-492013 (Chhatisgaarh).
10. MB Power (Madhya Pradesh) Limited,
239, Okhla Industrial Estate Phase III,
New Delhi-110020.
11. Corporate Power Limited,
FE-83, Sector-III Salt Lake City,
Kolkata-700106 (West Bengal).
12. Essar Power (Jharkhand) Limited,
Lower Ground Floor, Hotel Conclave Boutique,
A-20, Kailash Colony, New Delhi —110048.
13. West Bengal State Electricity Distribution Company Limited,
Bidyut Bhawan, BidhanNagar, Block DJ, Sector-II,
Salt Lake City, Kolkata-700091 (West Bengal).
14. Adhunik Power and Natural Resources Limited,
9B, 9th Floor, Hansalaya Building, Barakhamba Road,
Connaught Place, New Delhi- 110001.



15. Jabalpur Transmission Company Limited,
C-2, Mira Corporate Suites, Ishwar Nagar,
New Delhi – 110025.

...Respondent(s)

For Petitioner : Ms. SuparnaSrivastava, Advocate, PGCIL
Shri Tushar Mathur, Advocate, PGCIL
Ms. Soumya Singh, Advocate, PGCIL
Shri S. S. Raju, PGCIL
Shri D. K. Biswal, PGCIL
Shri A. K. Verma, PGCIL
Shri Ved Prakash Rastogi, PGCIL

For Respondents : Shri Hemant Sahai, Advocate, MBPMPL
Ms. Molshree Bhatnagar, Advocate, MBPMPL
Shri Deep Rao Palepu, Advocate, JTCL
Shri Arjun Aggrawal, Advocate, JTCL
Shri Saahil Kaul, Advocate, JTCL
Shri Abhishek Gupta, MBPMPL
Shri AnindyaKhare, MPPMCL
Ms. Harleen Kaur, JTCL
Ms. Anisha Chopra, JTCL

ORDER

The present petition has been filed by Power Grid Corporation of India Limited for determination of transmission tariff from the date of commercial operation (COD) to 31.3.2019 under the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (hereinafter referred to as “the 2014 Tariff Regulations”) in respect of the following assets under “Line Bays and Reactor Provisions at Powergrid Sub-station associated with Common System Strengthening for Western Region and Northern Region” (hereinafter referred to as the “transmission system”) in Western Region:

Asset-1: 765 kV line bay and 240 MVAR switchable line reactor at Jabalpur Pooling Sub-station for 765 kV S/C Jabalpur-Bina Circuit-3 (IPTC);

Asset-2: 765 kV line bay and 240 MVAR line reactor (non-switchable) at Bina Sub-station for 765 kV S/C Jabalpur-Bina Circuit-3 (IPTC);



Asset-3: 765 kV line bay and 240 MVAR line reactor at Jabalpur PS and 765 kV line bay and 330 MVAR switchable line reactor at Dharamjaygarh Sub-station for Circuit-3 of 765 kV D/C (Circuit-3 and Circuit-4) Dharamjaygarh-Jabalpur PS Transmission line (IPTC), and

Asset-4: 765 kV line bay and 240 MVAR line reactor at Jabalpur PS and 765 kV line bay and 330 MVAR switchable line reactor at Dharamjaygarh Sub-station for Circuit-4 of 765 kV D/C (Circuit-3 and Circuit-4) Dharamjaygarh-Jabalpur PS Transmission Line (IPTC).

Background

2. The Petitioner was entrusted with implementation of line bays and reactor provisions at Powergrid Sub-stations associated with Common System Strengthening for Western and Northern Regions for termination of Bina-Jabalpur 765 kV S/C (Circuit-3) and Dharamjaygarh-Jabalpur 765 kV D/C (Circuit-3 and Circuit-4) to be implemented by Jabalpur Transmission Company Limited (hereinafter referred to as "JTCL"), under Tariff Based Competitive Bidding (TBCB) route.

3. JTCL filed Petition No. 73/MP/2014 before the Commission seeking various reliefs including the relief of extension in the scheduled date of commercial operation (SCOD) of the project.

4. JTCL declared the COD of the Bina-Jabalpur 765 kV S/C (Circuit-3) Line on 1.7.2015 i.e. after time over-run of 15 months. The time over-run of 15 months was condoned by the Commission *vide* order dated 16.10.2015 in Petition No. 73/MP/2014. The associated bays and line reactors at Bina-Jabalpur 765 kV S/C (Circuit-3) line ends (at Jabalpur Pooling Sub-station and Bina Sub-station) i.e. Asset-1 and Asset-2 under the scope of PGCIL were put into commercial operation on 5.10.2014 and 13.11.2014 respectively. Taking into consideration the mismatch between the bays and reactors of the Petitioner/PGCIL and the transmission line of JTCL, the Commission *vide* order dated 27.5.2016 in Petition No. 261/TT/2015 held that transmission charges of Asset-1



and Asset-2 shall be borne by LTTCs of JTCL. The relevant portion of the order dated 27.5.2016 is extracted as follows:

“53. The transmission charges for the instant assets shall be borne by Long Term Transmission Customers (LTTC) of the Transmission Service Agreement (TSA) executed by Jabalpur Transmission Company Ltd. (JTCL) under Tariff Based Competitive Bidding line, till the commissioning of the transmission lines. Once the associated system is commissioned, the billing, collection and disbursement of the transmission charges approved shall be governed by the provisions of Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010, as amended from time to time as provided in Regulation 43 of the 2014 Tariff Regulations.”

5. In terms of the Commission’s order dated 27.5.2016, the Petitioner/PGCIL raised invoices on LTTCs including MB Power (Madhya Pradesh) Limited (MBPMPL) in 2018. MBPMPL filed Petition No. 232/MP/2018 under Section 79(1)(f) read with Section 79(1)(k) of the Electricity Act, 2003 for quashing the bills dated 2.5.2018, 23.7.2018 and 6.8.2018 raised by the Petitioner on the basis of the Commission’s order dated 27.5.2016 in Petition No. 261/TT/2015 stating that it is not liable to bear the transmission charges for the period of mismatch between transmission assets of the Petitioner and JTCL and for adjudication of the dispute arising out the said bills. MBPMPL in Petition No. 232/MP/2018 made the following prayers:

“(a) To allow the present petition in terms of the submissions and grounds made hereinabove at para 6 to 18 and A to L respectively;

(b) To quash the letters/invoices dated 2.5.2018, 23.07.2018 and 06.08.2018 issued by Power Grid Corporation of India Limited;

(c) To pass such other relief(s)/order(s) that this Hon’ble Commission may deem fit.”

6. Further, MBPMPL filed Petition No. 35/RP/2018 in Petition No. 261/TT/2015 for setting aside the impugned order dated 27.5.2016, directing MBPMPL to bear the transmission charges of Asset-1 and Asset-2 for the period of mismatch between the COD of the bays and reactors of PGCIL and the transmission line of JTCL as it was not a party to the proceedings in Petition No. 261/TT/2015 under Regulation 103 of the



Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999.

MBPMPL in the said Review Petition made the following prayers:

“(a) Allow the present Review Petition in terms of the grounds and submissions made hereinabove at Para Nos. A to H above;

(b) Modify and/or correct the irregularities in the order dated 27.5.2016 in Petition No.261/TT/2015 to the extent pleaded by the Review Petitioner herein at Para Nos. A to H above;

(c) Pass such order Order/(s) as deem fit in the interest of justice and equity by this Hon’ble Commission”

7. The grounds for review in Petition No. 35/RP/2018 and the issues raised by MBPMPL in Petition No. 232/MP/2018 emanate out of the order dated 27.5.2016 in Petition No. 261/TT/2015. As the prayers made in the said petitions are inter-linked and related, hence they were taken up together and combined common order dated 28.1.2020 was issued in Review Petition No. 35/RP/2018 in Petition No. 261/TT/2015 and Petition No. 232/MP/2018. The Commission vide order dated 28.1.2020 disposed of Petition No. 232/MP/2018 and Petition No. 35/RP/2018 observing that Petition No. 261/TT/2015 shall be reopened to the limited extent of sharing of transmission charges and directed the Petitioner to implead all the LTTCs of JTCL. The relevant portions of the order dated 28.1.2020 are as follows:

“18. We are of the view that all LTTCs including MBPL are necessary parties to the proceedings in Petition No. 261/TT/2015 as civil liability in the form of payment of transmission charges for the period of mismatch was created against them. However, the LTTCs including MBPMPL were not impleaded as parties in Petition No.261/TT/2015 by PGCIL. Making MBPMPL liable for payment of the transmission charges for the period of mismatch in COD of transmission assets of PGCIL and JTCL without an opportunity to MBPMPL to place its views/objections on record is an apparent error. Further, PGCIL did not implead the other LTTCs of the transmissions assets in Petition No.261/TT/2015. It is further observed that MBPMPL has not impleaded JTCL, which as per MBPMPL is liable to bear the transmission charges, as a party to the present proceedings in Petition Nos.232/MP/2018 and 35/RP/2018. Without going into the merits of the issues raised by MBPMPL in the instant petitions, we are of the view that the issue of sharing of the transmission charges needs to be decided after hearing all the necessary parties. Accordingly, we allow the review to the limited extent of reconsideration of the sharing of transmission charges of the instant transmission assets and set down the main petition for hearing on the aspect of sharing of transmission charges. PGCIL is directed to file an amended “Memo of Parties” in Petition No.261/TT/2015 making all the LTTCs including MBPMPL as respondents and any other beneficiary(ies) for whom the instant



transmission assets were envisaged and serve a copy of the petition on them within 15 days of issue of this order. Further, PGCIL is directed to clarify whether the transmission charges for the instant assets for the period of mismatch was recovered through PoC mechanism and also the reasons for delay of two years in raising the bills on MBPMPL after the issue of order dated 27.5.2016. The respondents are directed to submit their replies on the limited issue of sharing of transmission charges within three weeks of receipt of the amended Petition No.261/TT/2015 and PGCIL to file the rejoinder, if any, within two weeks thereafter.”

“21. Petition No. 35/RP/2018 and Petition No. 232/MP/2018 are accordingly disposed of. Petition No.261/TT/2015 shall be listed for hearing in March 2020 and exact date shall be notified in due course.”

8. In compliance of the above directions of the Commission, the Petitioner filed revised ‘Memo of Parties’ vide affidavit dated 12.2.2020 wherein LTTCs and beneficiaries of Western Region were impleaded as Respondents and copy of the petition was also served upon them along with proof of dispatch in the instant petition.

9. The hearing in this matter was held on 16.6.2020, 31.8.2021 and 1.8.2022 through video conference and order was reserved on 1.8.2022.

10. In the hearing on 16.6.2020, learned counsels for the Petitioner, MBPMPL and Essar Power (Jharkhand) Limited (EPJL) made the following submissions:

(a) In response to the Commission’s query with regard to recovery of transmission charges through PoC mechanism and reasons for delay of two years in raising the bills on MBPMPL, learned counsel for the Petitioner clarified that the Commission in its provisional order dated 17.12.2015 in Petition No. 261/TT/2015 directed the Petitioner to recover the transmission charges for the assets through PoC mechanism. Accordingly, billing was done by the Petitioner under PoC mechanism. However, after passing the final order dated 27.5.2016, bilateral billing was done on LTTCs’ for the period of mismatch in the execution of transmission assets. Delay of two years in raising the bilateral bills on MBPMPL was mainly due to the fact that



the instant case was a departure from the consistent approach of the Commission as instead of imposing the transmission charges on the defaulting party for the period of mismatch, for the first time, the liability for the period of mismatch was fixed on the LTTCs. Hence, there was issue of reversal of earlier billing done under PoC mechanism and then bilateral bills on MBPMPL/LTTC were raised which consumed considerable time and as a result of which there was a delay of two years. As per order dated 28.1.2020, the Petitioner impleaded all the LTTCs including MBPMPL in the instant petition and filed amended memo of parties after effecting service upon them.

(b) Leaned counsels for MBPMPL and EPJL submitted that the facts of the present case are squarely covered by the judgment dated 3.3.2016 of the Hon'ble Supreme Court in the matter of Power Grid Corporation of India Limited Vs. Punjab State Power Corporation Limited &Ors (Barh-Balia case) wherein it has been categorically held that unless there is actual supply of electricity, the beneficiaries cannot be made liable to bear any transmission cost and as such MBPMPL and EPJL are not liable to pay the transmission charges for the period of mismatch. Learned counsel further submitted that LTA of MBPMPL was operationalized after the COD of the transmission line of JTCL and as such MBPMPL is not liable to pay the transmission charges for the period of mismatch.

(c) Learned counsel for EPJL sought time to place on record reply on behalf of EPJL.

11. Learned counsel for the Petitioner in the hearing dated 31.8.2021 made additional submission that the Commission may take a holistic view to formulate fresh



mechanism in respect of sharing of transmission charges in the instant matter in terms of the APTEL's recent judgement dated 14.9.2020 in Appeal No. 17 of 2019.

12. Learned counsels for MBPMPL and EPJL, during the hearing of the matter on 31.8.2021, submitted that as per stipulations in the TSA dated 14.10.2010, MBPMPL and EPJL were required to share the transmission charges only from the date when power from its generating station is evacuated through the transmission assets. As power was not evacuated during the period of mismatch in the COD of Asset-1 and Asset-2 of PGCIL and JTCL's transmission line, it is not liable to bear the transmission charges. The consistent approach of the Commission to impose the transmission charges on the defaulting party for the period of mismatch has been upheld by the APTEL and the said approach of the Commission has attained finality.

13. In compliance of the directions of the Commission for the hearing dated 31.8.2021, EPJL and JTCL filed their replies in the matter *vide* affidavits dated 6.9.2021 and 24.9.2021, respectively. MBPMPL has submitted its reply in the matter *vide* affidavit dated 11.6.2020 and has also filed its written submissions dated 29.7.2022. The submissions made by the parties are as follows.

14. The gist of the submissions made by MBPMPL, Respondent No.10, *vide* affidavit dated 11.6.2020 and written submissions dated 29.7.2022 is as follows:

- (a) As on 29.10.2014, transmission assets of the Petitioner have been put to use. Consequently, the recovery of transmission charges for these assets is required to be undertaken through PoC mechanism under the then prevalent 2010 Sharing Regulations.



(b) The contractual relationship of MBPMPL with Respondent No.15, JTCL is governed under the Transmission Service Agreement (TSA) executed between them on 1.12.2010 whereunder, the liability of MBPMPL to pay transmission charges does not commence until the transmission system is made operational.

(c) Any issue relating to mismatch between the execution of respective transmission assets of the Petitioner and JTCL and any financial liabilities/implications arising out of such a mismatch are essentially required to be settled between the Petitioner and JTCL only and cannot be imposed upon MBPMPL in any way; and

(d) The Commission in its various orders has already taken a consistent view that in case of mismatch between two transmission assets, the LTTCs cannot be made liable since they are not the defaulting entities.

(e) The dispute of mismatch is between the two transmission licensees i.e. PGCIL and JTCL. PGCIL could not put its transmission asset to use on account of the admitted delay by JTCL. MBPMPL executed its Project (Unit-600MW) on 20.5.2015 i.e. prior to the execution of Jabalpur Bina line by JTCL on 1.7.2015. Therefore, it cannot be said that the PGCIL's transmission assets were unable to be 'put in use' on account of MBPMPL.

(f) The Commission through its orders has already taken a consistent view that in case of mismatch between two transmission assets, the LTTCs cannot be made liable since they are not the "defaulting entity".

(g) APTEL vide judgment dated 14.9.2020 in Appeal No.17 of 2019, in the matter of (NRSS XXXI (B) Transmission Ltd Vs. Central Electricity Regulatory



Commission has held that LTTCs/beneficiaries are liable to pay transmission charges only when the transmission system is being used or put to use.

(h) Since the conveyance of electricity, as per scope of project was not available to its beneficiaries, the question of sharing of transmission charges of the assets of Petitioner in the absence of transmission lines on the part of JTCL is not justified. The beneficiaries of the system are not liable to share transmission charges till the entire asset is executed and is available for successful utilization.

(i) The permission granted by CEA was for part of the project and ought not be considered as COD of the respective asset for commercial and tariff purposes. The tariff would be applicable from actual availability of entire asset covered in the complete scope of the project as set out in the TSA and not from the date of creation or charging or execution of the part of asset.

15. Based on the above submissions, MBPMPL has prayed the following:

(a) The bilateral non-PoC demand dated 2.5.2018 raised upon it by the Petitioner towards payment of transmission charges for the subject assets be quashed;

(b) The consequent Regulation of Power Supply (RPS) Notice dated 6.8.2018 issued by the Petitioner be quashed; and

(c) The bank guarantee of ₹2.87 crore furnished by it in favour of the Petitioner be returned together with the cost incurred for keeping the same alive.

(d) Para 53 of the order dated 27.5.2016 in Petition No. 261/TT/2015 for bearing the transmission charges by LTTCs for the period of mismatch need to



be reviewed to the effect that such charges till execution of the entire asset is borne by JTCL.

16. In response, the Petitioner vide affidavit dated 13.7.2020 has made the following submissions:

(a) As per the TSA, billing and payment of transmission charges is from the date on which the transmission assets under the TSA achieve COD, the liability of the LTTCs to pay transmission charges ensues.

(b) MBPMPL has relied on the judgment of Hon'ble Supreme Court (Barh-Balia case) which deal with the issue involved in the context of the 2009 Tariff Regulations which is applicable for 2009-14 tariff block. The finding of Hon'ble Supreme Court is that the beneficiaries cannot be made liable to pay transmission charges before transmission assets become operational.

(c) Provisions of TSA and the judgment of Hon'ble Supreme Court in Barh-Balia case, the beneficiaries/LTTCs of JTCL, Respondent No.15, may claim commencement of their liability to pay transmission charges from the date of commercial operation of the transmission assets. However, in view of categorical finding of the Hon'ble Supreme Court that delay in implementation of the upstream/downstream may result in suffering for the transmission licensee, the Petitioner is liable to be paid the transmission charges for the period of delay which has been caused in implementation of the TBCB line by JTCL. Accordingly, JTCL is liable to pay the transmission charges for the reasons mentioned above.

(d) The Commission in its various orders has already taken a consistent view that in the event of a mismatch in execution of inter-linked transmission systems, the



transmission licensee whose assets are not yet ready and because of which the already executed assets of the other transmission licensee have not been put in regular service, the defaulting party/ long term transmission customers are liable to pay the transmission charges till execution of the inter-linked downstream/upstream transmission system. This position has also been upheld by the Appellate Tribunal in its judgment dated 27.3.2018 passed in Appeal No. 390 of 2017 titled as Punjab State Power Corporation Ltd. Vs. Patran Transmission Co. Ltd.

(e) In view of above regulatory/legal position, the Commission may pass appropriate orders for sharing of transmission charges for servicing the transmission assets of the Petitioner.

Submissions of EPJL, Respondent No 12

17. EPJL, Respondent No.12, *vide* affidavit dated 6.9.2021 has made the following submissions:

(a) The Statement of Objection to the present petition is being filed through EPJL's Liquidator who is registered with the Insolvency and Bankruptcy Board of India. The present Statement of Objection is being filed for the limited purpose of opposing grant of reliefs against EPJL on the grounds of its ongoing liquidation.

(b) EPJL was incorporated to set up a 1200 MW pit headed coal fired Independent Power Plant. As on date, the power plant of EPJL has not been executed. Consequently, generation and/or transmission of electricity from the power plant has not commenced.

(c) National Company Law Tribunal (NCLT) *vide* order dated 3.1.2020 (the "Liquidation Order"), passed an order for liquidation of EPJL and Liquidator was



appointed. Pursuant to the Liquidation Order, the Petitioner/PGCIL also submitted its claim before the Liquidator on 23.1.2020 and entire claim of the Petitioner was admitted in full after adjusting the amount already available with the Petitioner through invocation of bank guarantees furnished by EPJL to the Petitioner and the was intimated to the Petitioner vide e-mail dated 11.3.2020.

(d) Various meetings of Stakeholder's Consultation Committee, constituted by the NCLT, have been held wherein the Petitioner is also one of the stakeholders. The liquidation process would continue till the realization of all the assets of EPJL.

(e) As per Section 33(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "Code"), no suit or any other legal proceedings can be initiated against EPJL pursuant to the Liquidation Order. The relevant portion of Section 33(5) of the Code is as follows:

"33. Initiation of Liquidation.-

33(5) Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor:

Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority."

(f) As per the Liquidation Order, a fresh moratorium under Section 33(5) of the Code commenced in respect of EPJL, Respondent No. 12, from the date of Liquidation Order.

(g) Section 238 of the Code provides for an overriding effect in case of any inconsistency with any other law in force. Therefore, any other law which is inconsistent with the moratorium enforced under Section 33(5) of the Code by way of which no suit or legal proceedings can be initiated against EPJL, which is undergoing liquidation, ought not to prevail in the present circumstances. In view of



this, the present petition as against EPJL is unlawful and is in violation of the provisions of the Code. Section 238 of the Code is extracted as follows:

“238. Provisions of this Code to override other laws. - The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”

(h) The Petitioner is one of the stakeholders of EPJL and also a Member of the Stakeholder’s Consultation Committee. The stakeholders are entitled to receive proceeds against their claims admitted from the liquidation estate of EPJL as per the waterfall mechanism laid down in Section 53 of the Code. In the circumstances, initiation of such proceedings against EPJL is detrimental to the interests of all the stakeholders, including the Petitioner.

(i) In the circumstances, EPJL may be deleted as a Respondent to the present petition since the present petition in respect of EPJL is not only unlawful but is also violative of Section 33(5) of the Code and is disadvantageous to the stakeholders of EPJL such as the Petitioner.

Submissions of Madhya Pradesh Power Management Company Limited (MPPMCL), Respondent No.1

18. MPPMCL, *vide* affidavit dated 5.8.2020 has made the following submissions:

(a) The Commission *vide* order dated 27.5.2016 in the present petition, while dealing with the issue of sharing of transmission charges, has saddled the liability of sharing of the charges upon the beneficiaries of the transmission system, including MPPMCL. The reasons for delay caused in CODs of respective assets of PGCIL are not attributable to PGCIL and it is undisputedly attributable to JTCL which has delayed declaring the COD of 765 kV S/C Jabalpur-Bina Ckt-III resulting in mismatch between associated bays and reactors. Therefore, the



beneficiaries of the transmission system ought not to be saddled with the burden of IDC and IEDC of assets of PGCIL.

(b) The responsibility of bearing charges lies with the defaulting party, i.e., JTCL. The beneficiaries of the transmission system are not at all liable to suffer the charges for no fault on their part.

(c) The scheme and spirit of transmission tariff regulations is evacuation centric and not asset centric. Since, the conveyance of electricity, as per the scope of Project, was not available to its beneficiaries, the question of sharing of transmission charges of assets of PGCIL in the absence of the transmission line on the part of JTCL is not justified. Since, the conveyance of electricity was not available, for want of transmission line, merely creation of bays and reactors do not lead to any purpose till there is a matching between the two.

(d) The beneficiaries of the system are not liable to pay/share transmission/ POC charges till the entire asset is executed and is available for successful utilization. The TSA between the parties only provides that the transmission charges shall be payable upon execution of the transmission assets and not otherwise.

(e) The permission granted on the part of CEA for execution of a part of the project ought not to be considered as COD of the respective asset for commercial and tariff purposes. The tariff would be applicable from actual availability of entire asset covered in the scope of the project as set out in the TSA and not from the date of creation or charging or execution of the part of the asset.

(f) The order dated 27.5.2016 directing the LTTCs to bear the transmission charges of assets of PGCIL for the period till the inter-connecting transmission



line is not put in use by JTCL is not justified. The same needs to be reviewed to the effect that such charges till execution of the entire asset has to be borne by JTCL.

Submissions of JTCL, Respondent No.15

19. JTCL, Respondent No.15, *vide* affidavit dated 24.9.2021 and its written submissions dated 10.7.2022 made the following submissions:

(a) JTCL is a transmission licensee whose transmission elements inter-connect with the Petitioner's transmission elements which are the subject matter of the instant petition. The Commission *vide* order dated 27.5.2016 in Petition No. 261/TT/2015 held that the Petitioner was unable to put its Asset-1 and Asset-2 into regular service due to delay in completion of matching TBCB transmission line being executed by JTCL. The associated TBCB line, namely, Jabalpur-Bina 765 kV S/C Transmission Line, was put to commercial use w.e.f. 1.7.2015 with time over-run of about 15 months. However, the Commission *vide* order dated 16.10.2015 in Petition No. 73/MP/2014 has condoned the entire delay on the grounds of *force majeure* and COD was extended from 31.3.2014 to 1.7.2015 without any liability. The said order dated 16.10.2015 has not been challenged by any party and has attained finality. Thus, no delay is attributable to JTCL.

(b) The Petitioner has submitted that due to delay in execution of associated TBCB lines of JTCL, there was delay in execution of Petitioner's assets. In this regard, it is Petitioner's submission that when the executed assets of a transmission licensee are not put into regular service due to non-execution of associated transmission assets of an interconnecting transmission licensee, the defaulting party (i.e., the transmission licensee whose assets are not executed) is liable to pay the



transmission charges for the period of mismatch. The aforesaid submission of the Petitioner is misconceived and denied. The Petitioner appears to have ignored the fact that the aforesaid principle cannot apply if the inter-connecting transmission licensee has been finally adjudged to have suffered *force majeure* events and granted an extension of COD on that score. Therefore, JTCL cannot be penalised to incur any additional cost by way of transmission charges or Interest During Construction (IDC) and Incidental Expenditure During Construction (IEDC) to be paid to PGCIL. If Commission accepts the Petitioner's submission qua JTCL and holds JTCL liable for any payments to the Petitioner, this would contradict the order dated 16.10.2015 in Petition No. 73/MP/2014 and render the relief granted thereunder a nullity.

(c) APTEL in its judgment dated 14.9.2020 in Appeal No. 17 of 2019 in the matter of NRSS XXXI (B) Transmission Ltd. v. Central Electricity Regulatory Commission & Ors. (hereinafter referred to as "NRSS Judgment") observed that no liability can be imposed on a delaying entity if the appropriate Commission has condoned the delay in execution of the transmission assets and extended COD on account of legitimate *force majeure* events. The *ratio decidendi* of NRSS Judgment applies to transmission licensees implementing projects under the TBCB regime under Section 63 of the Electricity Act, 2003 such as JTCL.

(d) The principle laid down in the NRSS Judgment has been further affirmed by the APTEL in its judgment dated 3.12.2021 in Appeal Nos. 129 of 2020 and 276 of 2021, *NRSS XXXI (B) Transmission Limited Vs. CERC & Ors.* In the said judgment, APTEL has unequivocally re-affirmed the principle that a party which obtains an SCOD extension on account of *force majeure* events cannot be fastened with any



liability on account of mismatch with other licensees' transmission assets. This principle has also been followed by the Commission in its order dated 13.5.2022 in Petition No. 238/MP/2017. In the said order, the Commission has accepted findings in Appeal No. 129/2020 and has directed PGCIL (being the other licensee in that case as well) to pursue the remedies available law for recovery of tariff during the mismatch period.

(e) Applying the NRSS Judgment and APTEL's judgment dated 3.12.2021 in Appeal Nos. 129 of 2020 and 276 of 2021, to the facts of the present case, no liability can be fastened on JTCL in the instant proceedings. It is a settled law that after *force majeure* relief has been granted for the delayed periods, the question of payment of any transmission charges or IDC and IEDC by a defaulting party for the mismatch in execution of transmission assets does not arise.

(f) The Petitioner operates under the cost- plus regime in accordance with Section 62 of the Electricity Act, 2003 being governed by the Commission's tariff regulations. Under the cost-plus regime, it is open for licensees to claim compensation for financial losses incurred on account of uncontrollable parameters such as *force majeure* events in tariff true-up proceedings. In the present case, the Commission has already condoned the delay in implementation of the JTCL transmission assets on account of *force majeure*, it is possible that such events qualify as *force majeure* qua the Petitioner as well. The Petitioner has the option of recovering the IDC and IEDC from the beneficiaries of its transmission system under the 2014 Tariff Regulations read with 2010 Sharing Regulations, as amended from time to time. However, under Section 63 of the Electricity Act, 2003, a licensee (TBCB) does not



have such an option. Thus, the impact of the mis-match in COD ought to be treated as a *force majeure* event under the 2014 Tariff Regulations.

(g) Any cost over-run incurred by Petitioner on account of delay caused by *force majeure* events suffered by JTCL ought to be socialized among the Petitioner's LTTCs to ensure no entity is unreasonably burdened due to impact of uncontrollable events. This would also be in line with the mechanism applied in assets covered under the regulated tariff mechanism.

(h) The Petitioner may erroneously attempt to rely on the Commission's order dated 26.4.2022 in Petition No. 60/TT/2017, which was passed by the Commission in remand proceedings pursuant to the NRSS Judgment. The order dated 26.4.2022 is not applicable to the facts and circumstances of the present matter and cannot be applied to the facts of the present case. To contend that the Petitioner ought to press a *force majeure* claim in its tariff filings for *force majeure* events affecting associated transmission licensees was not before this Commission and, therefore, was not examined in Petition No. 60/TT/2017.

(i) The operative direction in the NRSS Judgment was for this Commission to re-consider issues in view of the NRSS Judgment. This may be contrasted with the direction in the judgment in Appeal No. 129/2020 wherein APTEL unequivocally ruled that liability of mismatch could not have been levied after the delay in achieving COD was condoned on account of *force majeure* events. In the instant case, the Commission vide order dated 6.10.2015 in Petition No. 73/MP/2014 has already condoned the entire delay for JTCL on account of *force majeure* events. Therefore, the directions of this Commission in order dated 26.4.2020 in Petition No. 60/TT/2017 cannot be applied in the present case. Instead, the Commission's



subsequent order dated 13.5.2022 in Petition No. 238/MP/2017 is squarely applicable to the facts of the present case on the issue of liability due to mismatch wherein the Commission has accepted the findings in Appeal No. 129/2020 judgment. Since JTCL's delay has already been condoned, no liability whatsoever can be fastened upon it for any delay or mismatch with the Petitioner.

(j) The present *force majeure* events affecting JTCL should be treated at par with any other *force majeure* event affecting the Petitioner. The occurrence of a *force majeure* event is a finding of fact. Thus, any *force majeure* event affecting JTCL will equally be a *force majeure* event for the Petitioner as well. Therefore, any delay in putting the Petitioner's asset to use on account of *force majeure* events affecting JTCL should be treated as a *force majeure* event affecting the Petitioner. Any failure by the Petitioner in claiming such events as *force majeure* cannot prejudice JTCL's rights under law.

(k) There is no relationship between the Petitioner (PGCIL) and JTCL either statutory or contractual such that JTCL ought to be bilaterally liable to the Petitioner for any reason whatsoever. JTCL never consented or signed to be liable for any risks *qua* the Petitioner or have any privity with the Petitioner. The Petitioner's plea for a direction to JTCL to pay transmission charges is *de hors* the then applicable 2010 Sharing Regulations.

(l) It is settled law that where a statute provides for a thing to be done in a particular manner, then it ought to be done in such manner alone. The applicable Sharing Regulations do not provide for sharing of liability for any purported mismatch in execution of assets. Therefore, in the absence of any contractual or binding legal relationship between parties, any imposition of liability on JTCL for any purported



mismatch between the assets of the Petitioner and JTCL would be contrary to settled law and ought not to be permitted by this Commission.

(m) The asset executed by the Petitioner form part of the inter-connection facilities required for terminating the transmission line of JTCL. Under Article 4.2 of the TSA, the LTTC's are responsible for arranging and making available the inter-connection facilities (elements executed by the Petitioner) in the matching timeframe of execution of the transmission line of JTCL, to enable the transmission service provider to connect the Project. In the present case, the LTTC's upon discovering that the inter-connection facilities are getting executed earlier than the transmission line of JTCL, made no efforts to coordinate with the Petitioner for avoiding the present mismatch.

(n) At the relevant time, the Petitioner was also discharging functions of Central Transmission Utility ("CTU") as provided under Section 38 of the Electricity Act 2003, which *inter alia* required the Petitioner to ensure the development of an efficient, coordinated and economical system of inter-State transmission projects between different licensees. Given its statutory role, CTU/ PGCIL ought to have considered the JTCL's uncontrollable situation and aligned the execution of its inter-connecting elements to match with the JTCL's elements. In such an event, there would have been no mismatch and and the Petitioner's assets would not have been stranded.

(o) Notwithstanding the aforesaid, JTCL cannot be penalised or made bilaterally liable in any manner to pay the Petitioner. To the extent the Petitioner's assets were charged and were used for the benefit of the meshed transmission grid, it amounts to regular service of PGCIL's assets. From the date on which PGCIL's assets were



put to use, the beneficiaries ought to be made liable to bear transmission charges.

20. This order is issued considering the submissions made in the main petition vide affidavits dated 27.10.2015, 31.5.2016 and 12.2.2020, reply filed by MBPMPL vide affidavits dated 11.6.2020 and written submission dated 29.7.2022 and Petitioner's rejoinder affidavit dated 13.7.2020 to the reply of MBPMPL, reply of MPPMCL filed vide affidavit dated 5.8.2020, reply of EPJL filed vide affidavit dated 6.9.2021 and reply of JTCL filed vide affidavit dated 24.9.2021 and written submissions filed dated 29.7.2022,

21. Having heard the representatives and learned counsels for the parties and after careful perusal of the material on record, we proceed to dispose of the petition.

Analysis and Decision:

22. We have considered the submissions of the Petitioner, MPPMCL, MBPMPL, EPJL and JTCL and have perused the material on record.

23. Short issue involved in the present petition is as to who will bear the transmission charges in respect of Asset-1 and Asset-2 of the Petitioner which were declared under commercial operation on 5.10.2014 and 13.11.2014 respectively under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations due to non-readiness associated transmission line i.e. 765 kV S/C Jabalpur-Bina Transmission Line and 765 kV D/C Dharamjaygarh-Jabalpur Transmission Line. The Commission vide order dated 27.5.2016 in Petition No. 261/TT/2015 observed that transmission charges for the transmission assets shall be borne by LTTC of the TSA executed by JTCL under TBCB line, till the execution of the transmission line. Once the associated system is executed, the billing, collection and disbursement of the transmission charges approved shall be



governed by the provisions of the 2010 Sharing Regulations as amended from time to time as provided in Regulation 43 of the 2014 Tariff Regulations.

24. Aggrieved with the order of the Commission dated 27.5.2016 in Petition No. 261/TT/2015, MBPMPL filed Review Petition No. 35/RP/2018. MBPMPL also preferred Petition No. 232/MP/2018 under Section 79 of the Electricity Act, 2003 with prayers to quash the bills 2.5.2018, 23.7.2018 and 6.8.2018 raised by the Petitioner on the basis of the Commission's order dated 27.5.2016 in Petition No.261/TT/2015 and for adjudication of the dispute arising out the said bills. The prayers being inter-linked in Petition No. 35/RP/2018 and Petition No. 232/MP/2015, the Commission vide common order dated 28.1.2020 in the said petitions decided to hear afresh the issue of payment of transmission charges for the period of mis-match in the execution of transmission assets of the Petitioner and associated transmission line of JTCL.

25. Petition No. 73/MP/2014 filed by JTCL was disposed by the Commission vide order dated 16.10.2015 observing that JTCL faced *force majeure* as a result of which commercial operation date of the associated TBCB line i.e. Jabalpur-Bina 765 kV S/C Transmission Line (linked with Asset-1 and Asset-2 of the Petitioner) was extended from 31.3.2014 to 1.7.2015. The main contention of JTCL is that the Commission vide order dated 16.10.2015 in Petition No. 73/MP/2014 has observed that no delay is attributable to JTCL as it was *force majeure* which prevented JTCL from executing its associated TBCB line. JTCL has submitted that it is not liable to pay the transmission charges of Asset-1 and Asset-2 of the Petitioner for the period of mis-match from the date of COD of the Petitioner till the associated transmission line of JTCL was declared under commercial operation on 1.7.2015. According to JTCL in such a situation, the contention of the Petitioner that defaulting party i.e. JTCL is liable to pay the



transmission charges for the period of mis-match is incorrect as subscribing to this contention of the Petitioner would mean contradicting the Commission's own order dated 16.10.2015 in Petition No. 73/MP/2014 which granted relief of extension in COD to JTCL. JTCL has placed reliance on the judgment of APTEL dated 14.9.2020 in Appeal No. 17 of 2019 in the matter of NRSS XXXI (B) Transmission Ltd. v. Central Electricity Regulatory Commission & Ors. (NRSS Judgment) to contend that no liability can be imposed on a delaying entity if the appropriate Commission has condoned the delay in execution of the transmission assets and extended COD on account of legitimate force majeure events. The *ratio decidendi* of the said NRSS Judgment applies to the transmission licensees implementing projects under the TBCB regime under Section 63 of the Electricity Act, 2003 such as JTCL, therefore, JTCL is not liable to pay the transmission charges for the period of mis-match in execution of the transmission assets in this case.

26. MPPMCL has contended that mismatch between the transmission assets of Petitioner and JTCL and reasons for delay caused in COD of the Petitioner are attributable to JTCL. MPPMCL has further contended that the permission granted by CEA for execution of a part of the project ought not to be considered as COD of the respective asset for commercial and tariff purposes. It is contended that tariff would be applicable from actual availability of entire assets covered in the scope of the project as set out in the TSA and not from the date of creation or charging or execution of the part of the asset. MPPMCL has also contended that the responsibility of bearing such charges ought to shift on the defaulting party, i.e. JTCL in the present case and the beneficiaries of the transmission system are not at all liable to suffer said charges for no fault on their part.



27. MBPMPL has contended that the contractual relationship of MBPMPL with JTCL is governed under the TSA executed between them whereunder the liability of MBPMPL to pay transmission charges does not commence until the transmission system is made operational. Therefore, any financial liabilities/implications arising out of such a mismatch between the respective transmission assets of the Petitioner and JTCL are essentially required to be settled between the Petitioner and JTCL only and cannot be imposed upon the LTTCs including MBPMPL.

28. The Petitioner has contended that reliance placed by MBPMPL on the judgment of Hon'ble Supreme Court in the matter of Power Grid Corporation of India Limited Vs. Punjab State Power Corporation Limited & Ors reported in 2016 4 SCC 797 relates to the issue involved in the context of the 2009 Tariff Regulations which was for the 2009-14 tariff period wherein Hon'ble Supreme Court observed that the beneficiaries cannot be made liable to pay transmission charges before transmission assets become operational. The Petitioner has also contended that in view of the said judgment of Hon'ble Supreme Court, delay in implementation of transmission assets by another entity is to result in suffering for the transmission licensee. The Petitioner has contended that in view of the said judgment of Hon'ble Supreme Court, the Petitioner is liable to be paid the transmission charges for the period of delay which has been caused in the present case by JTCL.

29. The Commission vide its various orders has already taken a consistent view that in the event of a mismatch in execution of the inter-linked transmission systems, the transmission licensee whose assets are not yet ready and because of which the already executed assets of the other transmission licensee have not been put in regular service, the defaulting party/ long term transmission customers are liable to pay the transmission



charges till execution of the inter-linked downstream/upstream transmission system. This position has also been upheld by APTEL in judgment dated 27.3.2018 in Appeal No. 390/2017 in the matter of Punjab State Power Corporation Ltd. Vs. Patran Transmission Co. Ltd. and in judgement dated 18.1.2019 in Appeal No. 332 of 2016 in the matter of RAPP Transmission Company Limited Vs. Power Grid Corporation of India Limited & Others.

30. The subject project is a combination of transmission line under the scope of JTCL and the Petitioner. Asset-1 and Asset-2 of the Petitioner, consisting of line bays and reactors, were executed prior to the associated transmission line of JTCL. Accordingly, as per the request of the Petitioner, COD of Asset-1 and Asset-2 was approved under proviso (ii) to Regulation 4(3) of the 2014 Tariff Regulations. As per the extant regulations, once the COD is approved, the transmission licensee is entitled to transmission charges of the respective asset(s).

31. Now the question arises as to who shall bear the transmission charges once the Commission has approved the COD of the transmission assets under proviso (ii) to Regulation 4(3) of the 2014 of the tariff Regulations. JTCL has contended that as per the NRSS Judgment (Appeal No. 17 of 2019 dated 14.9.2020) no liability can be imposed on a delaying entity if the appropriate Commission has condoned delay in execution of transmission assets, and extended the COD on account of legitimate force majeure events.

32. The APTEL vide its judgement dated 14.9.2020 in Appeal No. 17 of 2019 partially set aside the Commission's order dated 30.11.2017 in Petition No. 60/TT/2017 and directed the Commission to take a fresh view in the matter on the issue of liability for



the period of mismatch between the date when the transmission assets of PGCIL were ready for use and COD of the associated transmission lines of NTL after considering the observations of the APTEL. As per the directions of APTEL in judgement dated 14.9.2020, the Commission heard Petition No. 60/TT/2017 on remand. The findings of the Commission vide order dated 26.4.2022 in Petition No. 60/TT/2017 on remand are as follows:

| SI.No | Observation | Decision of the Commission |
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| | <p>Observation (a) :</p> <p>The APTEL has observed that the principle that the LTTCs/ beneficiaries are liable to pay the transmission charges only when the transmission system is being used or put to use is based on the judicial decisions of the APTEL and Hon'ble Supreme Court.</p> | <p>17. In the light of judgements of APTEL and Hon'ble Supreme Court as quoted above, the legal principle that emerges is that a transmission line can be operational only when the sub-station and bays at both ends of the transmission line are operational. In other words, a transmission line cannot be said to be operational if sub-station and bays at one (or both) ends are not operational and in that case, the beneficiaries cannot be made liable to pay transmission charges of such transmission line. Hon'ble Supreme Court has also clarified that its decision is without prejudice to the right of PGCIL, if any, available to it under law against NTPC. Therefore, as per the principle decided in the judgement of Hon'ble Supreme Court, where the transmission licensee has completed implementation of its transmission system within its scope of work but it cannot be put to use on account of delay on the part of the other transmission licensee or generating company (defaulting party), in that case the transmission licensee shall have the right against the defaulting party as available under law. The APTEL in its judgement dated 14.9.2020 in Appeal No. 17 of 2019 in the instant case has endorsed the above principle.</p> |
| | <p>Observation (b):</p> <p>The APTEL has made observation with regard to the principle laid down by the Commission to deal with mismatch in the date of commercial operation involving TBCB licensees.</p> | <p>27. APTEL in its judgement dated 27.3.2018 in Appeal No.390 of 2017 (the Patran Case) and judgement dated 18.1.2019 in Appeal No. 332 of 2016 (the RAPP Case) has upheld the principles enunciated by the Commission. In these appeals, the APTEL also proceeded to establish the contractual linkage between the transmission licensees executing the upstream and downstream transmission system by referring to the provisions of TSA in case of Patran Transmission Company Limited and the minutes of the meeting of the Standing Committee in case of RAPP Transmission Company Limited.</p> |
| | <p>Observation (c):</p> <p>The APTEL has observed that the Commission should have covered major issues relating to mismatch of COD of transmission</p> | <p>33. Since the Sharing Regulations, 2020 deals with the mismatch in respect of the generating station or transmission system executed through both Regulated Tariff Mechanism as well as TBCB route, Regulation 6 of the 2019 Tariff Regulations has been repealed. Thus, mismatch in COD of transmission system of a</p> |



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| | <p>systems executed by different licensees through regulations.</p> | <p>transmission licensee and a transmission system of another licensee or a generating station is now covered under provisions of the Sharing Regulations, 2020. Also, Regulation 13(12)(c) of the Sharing Regulations, 2020 has provided for case-to-case decision of the Commission for complex cases. It is pertinent to mention that the Sharing Regulations, 2020 has been specified under Section 178 of the Act after due stakeholders' consultations.</p> |
| | <p>Observation (d): The APTEL has observed that since the Commission vide its order dated 29.3.2019 in Petition No.195/MP/2017 has treated the delay in obtaining forest clearance by NTL as an event of force majeure and postponed SCOD to actual COD of the associated transmission lines, imposition of liability of IDC and IEDC of the transmission assets for the period of delay on NTL contradicts the relief granted for force majeure.</p> | <p>39. As a consequence of the delay in obtaining forest clearance being declared as an event of force majeure, SCOD of the associated transmission lines of NTL were extended to the actual COD and NTL was spared from paying the liquidated damages. Petition No. 195/MP/2017 was filed by NTL for reliefs under TSA that included extension of SCOD on account of force majeure events. The Commission, based upon submissions of the parties therein, extended SCOD of the associated transmission lines in terms of provisions of Article 11 of TSA. It cannot be a case of NTL that once SCOD of the associated transmission lines is extended, it is exonerated from all other liabilities whatsoever arising under applicable regulations or orders of the Commission or orders of the Hon'ble Supreme Court. In other words, extension of SCOD of the associated transmission lines of NTL by the Commission, being only in respect of TSA, protects NTL from liabilities under TSA and, in no way, protects it from payment such as IDC and IEDC of the transmission assets of the Petitioner/ PGCIL arising due to matching of the COD. It is pertinent to note that irrespective of extension of SCOD of the associated transmission lines by the Commission, NTL is required to continue to discharge other liabilities viz. related to financial institutions, implications of taxation such as GST and various obligations including contractual obligations. There is no provision in TSA to relieve NTL from any other obligation on account of force majeure including the liability for IDC and IEDC of the bays of PGCIL on account of delay in COD of the transmission lines of NTL. TSA is an Agreement signed between NTL and LTTCS and operates within the contours of what has been agreed to in that Agreement. Rights and obligations of any other entity, such as PGCIL, unconnected with the TSA cannot be affected by operations of the said Agreement. Therefore, extension of SCOD of the transmission lines of NTL because of condonation of delay as per provisions of TSA cannot affect the rights of PGCIL.</p> |
| | <p>Observation (e): The APTEL has observed that this type of major issues ought to be covered under the Regulations by the Commission to plug the</p> | <p>40. The APTEL has observed that in a reverse case i.e. when the associated transmission lines of NTL were ready but the transmission assets of PGCIL were not ready, PGCIL would have been made to pay the transmission charges more than the project cost which would not have been justified. In this connection, it is pertinent to mention that in the RAPP Case and the</p> |



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| | <p>gaps which would avoid litigations (paragraph 8.22 of the APTEL Order dated 14.9.2020 in Appeal No. 17 of 2019)</p> | <p>Patran Case, transmission lines executed by the respective transmission licensees under TBCB achieved deemed COD in terms of Article 6.2.1 of the TSA but could not be connected as the bays being executed by NPCIL and PSTCL respectively were not ready. The Commission imposed the liability of transmission charges on NPCIL and PSPCL for the duration of delay in commercial operation of the bays. APTEL in its judgement dated 27.3.2018 in Appeal No.390 of 2017 (the Patran case) and judgement dated 18.1.2019 in Appeal No. 332 of 2016 (the RAPP Case) has upheld the decision of the Commission. Thus, it is not the project cost but failure to execute the project resulting in assets not being put to use which determines the liability for payment of charges to the other party.</p> |
| | <p>Observation (f): Though the APTEL has recognised NTL as the defaulting party on whose account the Petitioner could not commission the transmission assets, the APTEL has observed that the Commission in its order dated 29.3.2019 in Petition No.195/MP/2017 granted relief to the Petitioner by allowing delay in grant of forest clearance as an event of force majeure under Article 11 of the Transmission Service Agreement and allowed extension of SCOD till the actual COD of the associated transmission lines. The APTEL has further observed that the decision of the Commission to impose liability of IDC and IEDC of the transmission assets for the period of delay is contradictory to the relief granted to NTL under the provisions of force majeure by way of extension of SCOD (paragraph 8.19 of the APTEL Order dated 14.9.2020 in Appeal No. 17 of 2019).</p> | <p>45. The provisions in the Sharing Regulations, 2020 as quoted above provide regulatory certainty in case of mismatch on account of delay in COD of the connected transmission systems and generating station.</p> |



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| | <p>Observation (g): The APTEL has observed that the Commission did not decide the issue of mismatch on basis of the Sharing Regulations but did so by exercising regulatory powers under Section 79(1) of the Act and, therefore, recovery of IDC and IEDC from NTL, in the absence of contract between NTL and the Petitioner, is in the nature of damages and, therefore, cannot be qualified as sharing of transmission charges.</p> | <p>54. The Commission has been empowered under Section 79(1)(d) read with Section 62(1)(b) of the Act to determine the tariff for inter-State transmission of electricity under Regulated Tariff Mechanism route and under Section 79(1)(d) read with Section 63 of the Act to adopt the tariff under TBCB route. Thus, there is a statutory relationship between the transmission licensees and the beneficiaries/LTTCs in so far as determination of tariff and its sharing is concerned. Therefore, keeping in view the statutory relationship and conclusions drawn at Paragraph 53 of this Order, the Commission is well within its power to apportion the liability for delay in achieving the COD. This is particularly so, because the inter-State transmission systems are developed through coordinated transmission planning and implemented through Regulated Tariff Mechanism route or TBCB route. Tariff is determined or adopted by the Commission and the progress of the interconnected transmission systems are coordinated and monitored through Joint Coordination Meeting of CTU or Standing Committee Meetings of CEA. In any case, treatment of mismatch in CODs of the generating station and connected transmission system and COD of two connected transmission systems have been encapsulated in Clause (8) and Clause (12) of the Sharing Regulations, 2020. Therefore, the cases relating to mismatch of CODs shall be decided in accordance with the said principles.</p> |
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33. The Commission vide order dated 26.4.2022 in Petition No. 60/TT/2017 further made the following observations:

“67. Hence, the principle has been followed consistently that even if under Force majeure, delay is condoned or SCOD is extended by the Commission, the liability of upstream/downstream system remains on such delayed transmission licensee.”

34. In the light of above discussions and the above decision of the Commission on remand in Petition No. 60/TT/2017, we are of the view that the transmission charges from the deemed COD till COD of the transmission line in the present case shall be borne by JTCL and the liability of payment of transmission charges is as follows:

| Name of the asset under the scope of Petitioner/PGCIL | COD of the asset under the scope of Petitioner approved under Regulation 4(3) of the 2014 | Name of the asset under the scope of JTCL | COD of JTCL transmission assets | Liability for payment of transmission charges |
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| | Tariff Regulations. | | | |
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| Asset-1: 765 kV line bay and 240 MVAR Switchable Line Reactor at Jabalpur Pooling Sub-station for 765 kV S/C Jabalpur-Bina Circuit-III (IPTC) | 5.10.2014 | 765 kV S/C Jabalpur-Bina S/C transmission line | 1.7.2015 | JTCL is liable to pay transmission charges from 5.10.2014 to 30.6.2015 and thereafter, the transmission charges shall be included in PoC Pool. |
| Asset-2: 765 kV line bay and 240 MVAR line reactor(non-switchable) at BinaSub-station for 765 kV S/C Jabalpur-Bina Circuit-III (IPTC) | 13.11.2014 | 765 kV S/C Jabalpur-Bina S/C transmission line | 1.7.2015 | JTCL is liable to pay transmission charges from 13.11.2014 to 30.6.2015 and thereafter, the transmission charges shall be included in PoC Pool. |

35. As a corollary to this order, we hereby direct that the invoices raised on the LTTCs (including MBPMPL) as per para 53 of the order dated 27.5.2016 in Petition No. 261/TT/2015 are deemed to be withdrawn. The consequent Regulation of Power Supply (RPS) Notice dated 6.8.2018 issued by the Petitioner is also deemed to be withdrawn and the bank guarantee of ₹2.87 crore furnished by MBPMPL in favour of the Petitioner, in this matter, may be returned.

36. Further, in view of the above discussion and findings nothing subsists against EPJL and therefore we are of the view that it is not necessary for us to deal with the EPJL's contention that there is a moratorium under Section 33(5) of the Insolvency and Bankruptcy Code and prayer for deleting it from the array of the Respondents.

37. It is clarified that except for the above, other conditions of the order dated 27.5.2016 in Petition No. 261/TT/2015 shall remain in force.



38. This order disposes of Petition No. 261/TT/2015 in terms of the above discussions and findings.

sd/-
(P.K. Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I.S. Jha)
Member

