

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 389/MP/2018**

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

**Date of Order: 20<sup>th</sup> July, 2022**

**In the matter of**

Petition for recovery of charges from PGCIL under Clause 6.0 (d) of the Bulk Power Transmission Agreement dated 24.02.2010 read with Regulation 32 of the Central Electricity Regulatory Commission (Grant of Connectivity, Long Term Access and Medium-Term Open Access in inter-State Transmission and related matters) Regulations, 2009.

**And**

**In the matter of**

GMR Kamalanga Energy Limited,  
10<sup>th</sup> Floor, D Block, IBC Knowledge Park,  
Bannerghatta Road, Bangalore – 560 0029.

....**Petitioner**

**Vs.**

Power Grid Corporation of India Limited,  
B-9, Qutub Industrial Area,  
Katwaria Sarai, New Delhi – 110 016

...**Respondent**

**The following were present:**

Shri Matrugupta Mishra, Advocate, GKEL  
Ms. Ritika Singhal, Advocate, GKEL  
Ms. Suparna Srivastava, Advocate, CTUIL  
Ms. Soumya Singh, Advocate, CTUIL  
Shri Tushar Mathur, Advocate, CTUIL  
Shri Rajesh Kumar, CTUIL  
Shri Manish Ranjan Keshari, CTUIL  
Shri Anupam Kumar, CTUIL  
Shri Swapnil Verma, CTUIL  
Ms. Kavya, CTUIL  
Shri Siddharth Sharma, CTUIL  
Shri Ranjeet Singh Rajput, CTUIL

**ORDER**

The Petitioner, GMR Kamalanga Energy Limited ('GKEL'), has filed the present Petition for recovery of charges from the Respondent, Power Grid Corporation of India

Limited ('PGCIL') under Clause 6.0(d) of the Bulk Power Transmission Agreement ('BPTA') dated 24.2.2010 read with Regulation 32 of the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009 (in short, 'Connectivity Regulations'). The Petitioner has made the following prayers:

*“(a) Direct PGCIL to pay an amount of Rs. 4,68,02,06,946/- (Rupees Four Hundred and Sixty Eight Crores Two Lakhs Six Thousand Nine Hundred and Forty Six Only) to the Petitioner towards liability of Power Grid Corporation of India under Clause 6.0 (d) of the Bulk Power Transmission Agreement dated 24.02.2010 for delay in Commencement of LTA along with applicable interest calculated till the actual payment is made;*

*(b) pass any order and/or any such orders as this Commission may deem fit and proper under the facts and circumstances of the present case and in the interest of justice.”*

**Submissions of the Petitioner:**

2. In the Petition, the Petitioner has mainly urged as under:

(a) The Petitioner has set-up a coal based thermal power plant of 1050 (3x350 MW) at village Kamalanga in Dhenkanal District Odisha ('the Project') and for the purpose of evacuating power from Phase I of its Project, the Petitioner entered into BPTA dated 24.2.2010 for evacuation of 800 MW power on long-term basis.

(b) The said BPTA, *inter alia*, provides for (i) construction of the power plant and dedicated transmission line by the Petitioner, and (ii) augmentation of the transmission system by PGCIL.

(c) As per Clause 1.0 of the BPTA, PGCIL agreed to provide open access required by the LTA customer/ Petitioner as per applicable regulations and from the date and in the manner provided in Annexure 1, Annexure 2, Annexure 3 and Annexure 4 of the BPTA for a period of 25 years from the scheduled date of open access of LTA customer as specified in Annexure 1. As a consideration for such LTA granted in favour of long-term customer, the Petitioner is under obligation to share and pay the transmission charges to PGCIL in terms of BPTA dated 24.2.2010.

(d) In furtherance of the above mutual obligation on the part of the parties to guarantee access right in lieu of consideration in terms of transmission

charges, etc., Clause 6.0 (a) of the BPTA provides that in case a developer, i.e. the Petitioner fails to construct the generating station/ dedicated transmission system or makes an exit or abandons its project, PGCIL is vested with the right to collect transmission charges and/ or damages as the case may be, in accordance with regulations issued by the Commission from time to time. Further, Clause 6.0 (d) of the BPTA, provides that in the event, there is a delay in commissioning of the concerned transmission system from its schedule as indicated under Annexure 4 of the BPTA, the Respondent will be liable to pay proportionate transmission charges to the concerned Long-Term Access Customers/Petitioner proportionate to its commissioned capacity.

(e) Unit I, Unit II and Unit III of the Project were commissioned on 29.4.2013, 12.11.2013 and 25.3.2014 respectively. After successful commissioning of all 3 units, the Petitioner achieved COD of its 400 kV D/C dedicated transmission line from its power plant to Angul Pooling Station of PGCIL on 21.12.2014. The same is also recorded by this Commission in paragraph 24(b) of its order dated 21.2.2018 in Petition No. 73/MP/2017.

(f) Thus, from the very date of 21.12.2014, as per the BPTA, the generation asset of the Petitioner was ready and it was also ready to evacuate 800 MW of power under LTA by utilizing its dedicated transmission line. However, on the said date, PGCIL failed to commission the concerned transmission system as required under the BPTA, and is consequently, liable to pay proportionate transmission charges under Clause 6 (d) of the BPTA.

(g) However, PGCIL could only operationalize the LTA qua the Petitioner on 14.7.2016, after a lapse of 19 months from the date on which the generation assets and the dedicated transmission line of the Petitioner were ready to evacuate power and operationalize the LTA.

(h) The terms and conditions on the basis of which the LTA is granted and operationalized are governed by the Electricity Act, 2003 (in short 'the Act'), the Connectivity Regulations and the terms of BPTA. Pursuant to the provisions of the Act, this Commission has enacted the Connectivity Regulations, which provides for the manner in which LTA applications are made by the DICs, LTAs are granted by PGCIL and LTA is operationalized. Further, pursuant to the provisions of the Connectivity Regulations, BPTAs are executed between PGCIL

and the LTA customers, which are also approved by this Commission. Therefore, these agreements under the name and style of BPTA have a statutory flavour and the signatory to these agreements are bound by the terms and conditions of the BPTA.

(i) As per Clause 6.0 (a) of the BPTA, PGCIL is liable to collect the transmission charges from the developer in accordance with the provisions of the relevant Regulations, if the developer fails to construct the generating station or the dedicated transmission system or makes an exit or abandons its project. For the purpose of ensuring equity amongst the parties to the BPTA, Clause 6.0 (d) makes provision for proportionate transmission charges payable by PGCIL to the developer, in the event, the developer is ready with the generating asset as well as the dedicated transmission line, while PGCIL failed to commission the concerned transmission asset required for operationalizing LTA of the developer.

(j) The Petitioner vide its letter dated 19.6.2018 sent a computation statement to PGCIL for transmission charges payable to the Petitioner by PGCIL for delay in commencement of LTA, amounting to Rs. 4,68,02,06,946/- being the total charge for period when LTA was not operationalised and the interest @ 1.25% per month from the month the charges are payable up to the month before the said letter was issued by Petitioner. However, upon receipt of the above letter, the Respondent failed to make any payment towards such contractual claim made by the Petitioner.

(k) In view of the above, the Petitioner is entitled to claim proportionate transmission charges as per Clause 6.0(d) of the BPTA. The quantum payable by PGCIL in the event of its default is already provided under the contract, and the tariff of PoC Charges determined by this Commission for the relevant months in which the LTA was not provided were relied upon, and accordingly, the Petitioner has made the calculation which is attached along with the letter dated 19.06.2018.

(l) The aforesaid amount is a contractual payment, being quantified and indicated at the time of executing the contract. Therefore, the parties are bound by such clauses of the agreement. At the time of execution of the BPTA, the parties have well comprehended such eventualities, on the occurrence of which

the proportionate transmission charges were indicated to be payable by the parties respectively, in the manner provided.

3. The matter was admitted on 9.5.2019 and the notice was issued with direction to the Respondent to file its reply and the Petitioner to file its rejoinder, if any, thereafter. Pursuant to the above, the Respondent and the Petitioner have filed their respective reply and rejoinder in the matter, which are taken note of in the subsequent paragraphs.

### **Reply of the Respondent, PGCIL**

4. The Respondent vide its affidavit dated 1.6.2019 has mainly submitted as under:

(a) For evacuation of power from the Project, on 8.12.2007, the Petitioner had made an application for grant of LTA and had, *inter alia*, proposed certain alternatives for inter-connection facility of its Project including through LILO of 400 kV Talcher-Meramundali D/C line which was passing through the proposed land for the Project.

(b) At the time when the Petitioner had applied for grant of LTA as aforesaid, a number of power generation projects, including ultra-mega power projects, were being planned for their implementation in the Eastern Region and for power evacuation therefrom to different Regions. Accordingly, the transmission system required in the Eastern Region was being evolved through discussions in various Meetings of the Central Electricity Authority ('CEA') held during that period with all the stakeholders. With reference to the generation projects in Odisha, implementation of the transmission system in stages depending upon the progress of generation projects was emphasized so as to enable the implementation in an optimal manner. In the Standing Committee Meeting on Power System Planning in the Eastern Region held on 8.11.2008, the system strengthening scheme requirements in the Eastern Region were discussed and agreed, wherein for immediate evacuation of power (under the scope of generation developers in Odisha), three (3) pooling points in Odisha at Dhenkanal, Angul and Jharsuguda were identified to be established.

(c) For power system planning, the Petitioner's Project was identified to be included in Stage-I generation developers in Odisha along with six other generation developers. In the Meeting regarding grant of LTA for generation projects in advance stage in Odisha held on 8.12.2008 and 15.12.2008, it was informed that a comprehensive transmission system for all the future generation projects coming up in Odisha and applied for LTA had been evolved by the Respondent in consultation with the CEA. A portion of this transmission system required for evacuation of power from these generation projects had been identified for stage-wise implementation. The Minutes of the said Meeting specifically recorded that the said identified transmission system was the bare minimum system required for evacuation of power from Stage-I generation projects and "*hence initially there would not be any redundancy in the system*". The Minutes further recorded that "*the LTOA can be granted to the applicants after the implementation of the complete transmission system (54 months from the date of signing of BPTA). Till that time power transfer would be on short/Medium term basis, during which there may be some transmission constraints.*"

(d) Being fully aware of the system constraints during the initial period of open access, the Petitioner had itself suggested an alternative arrangement for power evacuation at the time of applying for the LTA so that the power from its generating station was not stranded. In the aforesaid meeting which was also attended by the Petitioner, it was clearly informed that till the time the complete transmission system was not implemented, power transfer was to take place on short/medium-term basis.

(e) That in Annexure-I to the aforesaid Minutes, the list of transmission system for evacuation of power from priority projects in Odisha was given which, among others, included the two LILOs at Angul pooling station under the scope of the Respondent for facilitating evacuation from generation projects that had been granted connectivity at Angul pooling station of the Respondent. Thus, the power from the Petitioner's Project could be evacuated in the interim through the use of these LILOs, one of which had been suggested by the Petitioner itself.

(f) LTA application of the Petitioner was discussed in the CEA Meeting held on 17.4.2009 for finalization of evacuation system for generation projects in

Odisha along with other Stage-I IPP projects. In the said meeting, with regard to power evacuation from the Petitioner's Project, it was recorded that the Petitioner had indicated that 350 MW of power from its Project had to be transferred to Haryana under case-1 bidding and for this purpose, it was clarified that the connectivity to meet this requirement of power transfer can be made by LILO of Talcher- Meramundali 400 kV line (one circuit) as a dedicated system and upon completion of Angul sub-station, loop in and loop out arrangement may be restored and the same line route may be utilized to terminate the GMR TPS at Angul.

(g) The common transmission system for evacuation of power from Stage-I projects to its beneficiaries was also deliberated upon and it was agreed to include therein the establishment of new 765/400 kV pooling stations at Angul, Jharsuguda and Dharamjaygarh as also two LILOs at Angul pooling station viz. (i) LILO of one ckt. of Talcher-Meramundali 400 kV D/c line; and (ii) LILO of Meramundali-Jeypore 400 kV S/c line.

(h) Pursuant to the aforesaid discussions, the Respondent, vide intimation dated 29.4.2009 (as revised by intimation dated 14.5.2009) granted the LTA of 800 MW (600 MW for Northern Region and 200 MW for Southern Region) to the Petitioner. Clause 2 of the LTA grant stated that the LTA was permitted with requirement of additional system strengthening as per the details enumerated therein. In so far as the date of commencement of LTA was concerned, the LTA grant recorded that the date of commencement of open access would be after fulfilment of all conditions, namely. (i) availability of transmission system indicated at (d-ii) therein which was to be implemented by the Respondent as per its schedule, (ii) In the interim period between the commissioning of the generation project and commissioning of the indicated transmission system, the generation project may be allowed connectivity to ER grid for transfer of power to their beneficiaries through STOA as per the terms and conditions of short-term transmissions, and (iii) signing of BPTA with Respondent by generating project developer for sharing of transmission charges for regional, inter-regional and strengthening scheme.

(i) The LTA intimation thus recorded the arrangement for power evacuation as agreed in the aforesaid meetings and specifically stated that the

operationalization of LTA was subject to system availability and that power in the interim could be transferred on short-term basis. The transmission system required to be made available by the Respondent under the said LTA grant comprised of strengthening scheme in Odisha as also in “ER-WR AC Corridor”. The system strengthening in Odisha required implementation of the following by the Respondent (i) Establishment of 765/400kV Pooling Station at Jharsuguda, (ii) Establishment of 765/400kV Pooling Station at Angul, (iii) Angul Pooling Station – Jharsuguda Pooling Station 765kV 2xS/c, (iv) LILO of Rourkela – Raigarh 400kV D/c at Jharsuguda Pooling station, (v) LILO of Meramundali – Jeypore 400kV S/c line at Angul pooling station, (vi) LILO of one ckt of Talcher – Meramundali 400kV D/C line at Angul pooling station.

(j) After grant of LTA as aforesaid, the Petitioner executed BPTA dated 24.2.2010 with the Respondent for evacuation of 800 MW power from its generation project on long-term basis. In terms of the said BPTA, the Respondent agreed to provide open access for 800 MW to the Petitioner (600 MW in Northern Region and 200 MW in Southern Region) for a period of 25 years from the scheduled date of open access as specified in Annexure-I (i.e. November, 2011, January, 2012 and March 2012) on payment of transmission charges in accordance with the Regulations/Tariff orders of this Commission. These charges were applicable from the scheduled date of commissioning of generation projects irrespective of their actual date of commissioning.

(k) From the perusal of Recital F & Clause 6 of the BPTA, it is clear that the LTA was granted from the date of availability of the identified transmission system. Further, in case of delay in commissioning of associated transmission system (which is relevant for the controversy raised in the present Petition), the Respondent was liable to pay proportionate transmission charges to the Petitioner subject to fulfilment of the conditions, namely, (i) generation was ready and the associated transmission system was not ready; and (ii) the Respondent failed to make alternate arrangement for dispatch of power. In the absence of any of the aforesaid two conditions, the provisions of Clause 6.0(d) could not be attracted.

(l) In the present case, right from the beginning when the Petitioner had applied for grant of LTA, it was aware that with the implementation of various



generation projects in the Eastern Region and particularly in Odisha, there was no redundancy available in the transmission system and that temporary arrangements for power evacuation were required to be made till the time the required system strengthening schemes were implemented by the Respondent.

(m) Accordingly, while making the LTA application, the Petitioner had itself suggested alternate arrangements for power evacuation which were duly incorporated into the transmission system under the scope of the Respondent so as to enable the Petitioner to evacuate power from its generation project during the interim period when the transmission system was not fully commissioned. Apart from the recordings in the Meetings as set out hereinabove, this interim arrangement was also recorded in the Minutes of Meeting dated 15.9.2009 with developers of IPPs in Odisha as also in the Standing Committee Meeting on Power System Planning in Eastern Region held on 20.9.2010. This “temporary interim arrangement” agreed to be under the scope of the Petitioner was the LILO of one ckt. Talcher-Meramundali 400 kV D/c line.

(n) In the 5<sup>th</sup> Joint Coordination Committee Meeting of Eastern Region held on 21.1.2015, the Respondent requested the Petitioner to convey the start date of LTA in writing at a later date and also suggested the Petitioner to ensure that all the formalities were completed by that time. The Respondent vide letter dated 17.7.2015, had requested the Petitioner to open LC of the requisite amount. However, the Petitioner opened LC for only 387 MW on 7.7.2016. Accordingly, the LTA of 387 MW for the Petitioner was operationalized w.e.f. 14.7.2016 vide letter dated 11.7.2016 of the Respondent. Upon such operationalization, the Petitioner began evacuating power under LTOA through the connectivity granted at Angul pooling station.

(o) During the period between the commissioning of unit-I of the Petitioner’s generation project till the commissioning of the GMR-Angul pooling station 400 kV D/c dedicated transmission line alongwith the associated line bays on 21.12.2014, power was getting evacuated by the Petitioner through the aforesaid agreed interim arrangement i.e. LILO of one ckt. of Talcher-Meramundali 400 kV D/c line at the Petitioner’s end and the interim arrangement of LILO of one circuit of Talcher-Meramundali 400 kV line was disconnected on 18.12.2014. Thereafter, from 22.12.2014 onwards the Petitioner began evacuating power

through the dedicated 400 kV GMR – Angul 400 kV D/c line and the existing ISTS LILO of Meramundali-Bolangir/Jeypore 400 kV S/c line at Angul and selling the same on short-term basis. Thus, there was in place an alternate arrangement available for despatch of power from the Petitioner's generating station, which arrangement was in fact utilized by the Petitioner for undertaking power transactions on short-term basis; there was no stranding of any generation capacity as the Petitioner subsequently chose to wrongly allege and the provisions of Clause 6.0(d) were not attracted. This arrangement had been known to the Petitioner at all times and was also agreed under the LTA grant made to it.

(p) It is pertinent to note that even when the transmission system was commissioned in January 2016, the Petitioner did not immediately open LC for operationalization of its LTA till as long as July, 2016. Due to delay on part of the Petitioner in establishment of payment security mechanism, LTA could only be operationalized for 387 MW from 14.7.2016 and 260 MW from 9.7.2017. The Petitioner, therefore, continued to evacuate power on short-term basis for many months even when it had an option to evacuate power under LTA. This was despite the fact that the Petitioner had been requested on multiple occasions by the Respondent to establish its payment security and operationalize its LTA. Therefore, the Petitioner's contention that it was prejudiced in any manner on account of non-operationalization of LTA is belied by its own conduct.

(q) The Petitioner has proceeded to file the present Petition to make wrongful claim of transmission charges upon the Respondent without demonstrating with supporting facts and extent to which power from its generation project had allegedly been stranded. The Petitioner is making illegal demands and is attempting wrongful gains from the Respondent and is thus causing financial injury to it. It is after almost two years from operationalization of the LTA that the Petitioner has raised the aforesaid illegal demands on the Respondent even when it has been evacuating power from its commissioned units by way of interim-alternate arrangements provided for by the Respondent and when there has been no bottling-up of generation from its project. The provisions of Clause 6.0(d) of the BPTA are clearly not attracted in the present case.

5. Vide Record of Proceedings for the said hearing dated 9.5.2019, the Petitioner was directed to place on record the details as to (i) data as to how the power was transacted during the period when the system was not ready, and (ii) copy of LTA application filed by the Petitioner and the LTA granted by PGCIL.

6. In compliance to the aforesaid, the Petitioner filed an affidavit dated 13.7.2019 wherein in respect of details under (i) above, the Petitioner submitted that there is no denial of the fact that the LTA was not operationalized. However, the Petitioner does not have access to the data to show as to how the power was transacted during the period when the system was not ready and the same is maintained by the Load Despatch Centre. The Commission may call upon the RLDC or PGCIL to furnish the requisite documents/information in order to demonstrate the aforesaid. As to the details under (ii) above, the Petitioner placed on record its LTA application for 1050 MW dated 8.12.2007 and the PGCIL's intimation to the Petitioner for grant of LTA dated 5.3.2011.

### **Rejoinder of the Petitioner**

7. The Petitioner vide its affidavit dated 13.7.2019 has mainly submitted as under:

(a) The settled contractual principles mandate that rights and obligations of the parties to an agreement/contract freely/ mutually consented and agreed to, have to be complied with by such parties and the said parties cannot be allowed to renege on such representations and commitments. Clause 6(d) of the BPTA is unequivocal in terms of its stipulation that if CTU delays the commissioning of the concerned transmission network (i.e. beyond the scheduled stipulated under Annexure 4 of the BPTA) being developed for a developer to avail LTOA, the former shall have to pay proportionate transmission charges to the power developer proportionate to commissioned capacity.

(b) The Petitioner's generation asset and the dedicated transmission line were ready w.e.f 21.12.2014 and thus, it was ready to evacuate 800 MW of power

under the LTA. On the other hand, PGCIL failed to commission the concerned transmission network qua the Petitioner's Project by the aforesaid date (as mandated by and required under BPTA) and is clearly required to pay proportionate transmission charges to the Petitioner in terms of Clause 6(d) of the BTPA.

(c) Section 38 of the Act provides for the functions of CTUIL, which are being carried out by PGCIL and as such it is vested with the planning and co-ordination relating to development and operation of the inter-State transmission system. For the purpose of granting of LTA, PGCIL has to undertake planning and coordination relating to the development of ISTS and for the said purpose, the PGCIL, under Section 38(2)(b) of the Act is mandated to coordinate with various entities, including CEA, licensees and generating companies.

(d) While developing any transmission system, PGCIL by way of Section 38 of the Act is mandated to undertake system studies and analyse the ground situation qua initiation of long-term power procurement process by Discoms, power demand scenario and execution of long-term PPAs, during discussions in the various coordination meetings conducted with the stakeholders including generation companies. Further, Regulation of the Connectivity Regulations, envisage augmentation/ development of transmission corridor only for the purpose of LTA and not MTOA/ STOA which is relevant for the reason that when the entire system is being built for LTA, surely, PGCIL is under an obligation that having constructed the system, the same ought to be put to use qua the said LTAs so that the said system is economical and efficient as per the mandate of Section 38 of the Act. For this very reason, PGCIL is mandated under the Act as well as the BPTAs to convene meeting of coordination committee wherein PGCIL is apprised of the development of the Projects by the Stakeholders as well as any update with regard to successful tie ups being made by the generators. PGCIL was required to implement the transmission project in alignment with the actual ground realities for fulfilment of the statutory objective behind the Section 38 of the Act.

(e) The averments made by PGCIL in its reply have to be understood and interpreted in light of above mentioned obligations of PGCIL as CTUIL under the Act. The discussion and coordination that has taken place during such committee

meetings, are for the purpose of understanding the ground realities, the requirement of power flow, the demand and supply scenario and overall system requirement. The Respondent is restrained from wriggling out of its own liability that has been captured under the BPTA after taking into consideration the outcome of all these meetings that has been taken place from time to time.

(f) BPTA, by virtue of its very nature, is a long-term access agreement or LTA agreement. The said agreement entirely revolves around the provision of LTA qua the Petitioner's Project in availing open access on a long-term basis for the purposes of evacuation of 800 MW power from the Project. Moreover, Clause 6.0(d) is unequivocal to the effect that if the CTU i.e. the Respondent fails to commission and/or fully execute the concerned transmission system by such date as stipulated under the BPTA, i.e. 20.12.2014, it shall have to pay compensatory charges provided if the generation assets/dedicated transmission line are ready and no such alternative arrangement has been made in light of the failure to operationalize the LTA by the stipulated date. The fact that PGCIL provided STOA for the stated period of 19 months (delay in commissioning of the requisite transmission network and subsequent operationalization of LTA qua the Petitioner's Project) cannot absolve PGCIL from its liability to pay the compensatory charges payable in terms of the unambiguous stipulations under Clause 6.0(d).

(g) PGCIL by referring to the minutes of the meeting (MoM) held on 8.12.2008 and 15.12.2008 has tried to mislead the Commission with regard to the then existing position. An effort has been made to draw unnecessary presumption with regard to MoM for avoiding liability ensuing out of an agreement executed on 24.2.2010. The MoM is very clear as it listed out under its Annexure I, the list of transmission system to be developed and strengthened by PGCIL as well as the generators, for the purpose of evacuation of power from seven entities as listed in MoM. There is no doubt of the fact that ISTS network was at a nascent stage in the State of Odisha, therefore, the generators as well as the Respondent and other stakeholders have convened the meetings for laying down the way forward. Certain alternative suggestion made by the Petitioner for inter-connection in the backdrop of the fact that there was no network available in December, 2007 cannot be brought to state that knowing what transpired

between the parties in December, 2008, the Petitioner made suggestion of alternative arrangement in December, 2007.

(h) The agreement to transfer of power on STOA/ MOTA basis was in respect of time line within which the implementation of the complete transmission system was to be achieved as reflected under the MoM. However, such clauses of MoM cannot be interpreted in a manner that would absolve the Respondent of its express liability under Clause 6.0(d) of the BPTA. The interpretation and logic extended by the Respondent evidences the clear double standards in terms of penalties stipulated under the BPTA.

(i) The very first condition for commencement of LTA was that the transmission system indicated at d(ii) were to be implemented by PGCIL as per its schedule. Hence, PGCIL was bound to implement the transmission system within the scheduled period of time. While extracting the above, PGCIL has failed to refer to Clause d(ii), which further elaborates that the assets contemplated under Annexure IV to the intimation letter, are to be implemented by PGCIL before the scheduled commissioning of the generating units.

(j) It is denied that the requisite conditions for PGCIL to attract the penalties stipulated under Clause 6.0(d) of the BPTA are not fulfilled. PGCIL has conveniently omitted to refer the detailed timeline provided under Annexure 4 of the BPTA. In the said annexure, the composite transmission scheme was divided into 2 stages and the charges for such network developed under these stages are to be shared by the generators mentioned therein including the Petitioner. The Stage I transmission network was to be achieved by PGCIL within a period of 30 months and 42 months from the date of regulatory approval as referred under Article 1.22 of the Annexure 4 to the BPTA. Similarly, the Stage II transmission network was to be achieved by PGCIL within a period of 30 months and 42 months from the date of regulatory approval as the case may be as laid down under Article 2.22 of Annexure 4. Under the said Article 2.2, the Petitioner was put to obligation to develop a 400 kV D/c line from TPP till Angul Pooling Station and 2 Nos. of 400 kV line bays for connecting 400 kV lines from TPP to Angul Switchyard. It was also reflected under the note appended to Article 2.21 that since the Project of the Petitioner is coming up early, the Talcher Meramundali line would be looped in and looped out at the Petitioners' Project

as dedicated portion. This line route will be later utilised to terminate Petitioner's Project at Angul and loop in loop out Talcher Meramundali 400 kV will be restored. Hence, the LILOs are very well contemplated under the BPTA to evacuate power as an interim mechanism till the time the Angul Pooling station along with associated system are established. For the later part, a time line of 42 months from the date of regulatory approval is prescribed under the BPTA. Therefore, after cessation of 42 months to be reckoned from the date of regulatory approval, Clause 6.0(d) would be triggered from the date of generating assets have achieved COD along with dedicated transmission line.

(k) The regulatory approval has been granted by the Commission for the transmission network under question on 31.5.2010 in Petition No. 233 of 2009. Hence, the prescribed period of 30 months and 42 months are to be reckoned from the above date of 31.5.2010. Various submissions made by PGCIL have to be read in light of the above position of the fact, which was not brought on record by PGCIL.

(l) Unless the above interpretation is adhered to, Clause 6.0(d) would be not only redundant but also the same would amount to an unconscionable bargain in favour of PGCIL thereby prejudicing the rights and interest of the Petitioner. It is settled principle of law that an interpretation of a clause of a contract which rendered a clause ineffective or enforceable shall be avoided since each and every part of the clause of a contract is intended and meant to be implemented and have an effect. On one hand, the Petitioner is liable to pay transmission charges from the date on which the transmission network is commissioned notwithstanding its ability to evacuate a single unit of power, on the contrary, the liability of the Respondent according to the interpretation of PGCIL would be pushed to eternity till PGCIL commission the entire transmission network at its sweet will and convenience. The mutuality of the agreement so far as liability for failure to perform is concerned, nothing is to be implied since the expressed terms and conditions of the BPTA are categorical enough to make both the parties liable in the manner expressly provided under Clause 6.0 of the BPTA.

(m) Alternative arrangement never envisaged and could not reasonably include the provision of STOA in lieu of LTA that was granted to the Petitioner.

The idea and intent behind devising the mechanism of LTA, MTOA and STOA are very different. The Connectivity Regulations envisage LTA as a definitive and truly long-term arrangement and accordingly, transmission networks are developed in order to cater to the requirement of such LTA applicants/customers. LTA to be provided in terms of BPTA cannot be replaced by STOA that has been given by CTUIL.

(n) The Respondent was never in a position to operationalize the LTA qua the Petitioner's Project irrespective of when the Petitioner chose to open the LC against the grant and subsequent use of the LTA. The opening of LC on the aforesaid date was also a business decision on the part of the Petitioner as it had no certainty as to when PGCIL would be able to operationalize the said LTA. Further, opening of LC is purely commercial in nature and the said Clause will not defeat the liability ensuing against PGCIL under Clause 6.0(d). Reference to opening of LC is extraneous to the issues in hand. There is also an admission on the part of the Respondent to the effect that upon performing its own part of obligations under the BPTA, the Petitioner sought for the performance to be carried out by PGCIL vide its letter dated 23.12.2014.

(o) As to the averment that by utilising the interim arrangement, the Petitioner has been supplying power through STOA and there was no stranding of any generating capacity, nowhere under the Clause 6.0(d) there is a requirement of stranded generating capacity as a condition precedent for recovering transmission charges from the Respondent. Therefore, raising of this issue is redundant and amounts to reading into the clause something which is not contemplated expressly or impliedly.

(p) LTA being the basis for which the transmission networks are being created, LTA customers have a priority over MTOA and STOA customers, who operate only on available margins. A LTA holder has right qua the transmission network to the extent of the LTA granted by the licensee. However, STOA holder does not have any right or charge over the network for evacuation of its powers. It is only accommodated when transmission capacity is available after exhausting LTA transactions followed by MTOA transactions.

(q) A long-term PPA cannot under any circumstance be workable, if a LTA customer is being made to avail STOA in lieu of the fact that CTUIL has defaulted



in its obligation under the BPTA to commission and/or fully execute the concerned/requisite transmission network in respect of a particular power developer. It is safe to presume that the parties to a commercial agreement such as BPTA could not have envisaged or intended for a situation wherein a provision of STOA under makeshift or temporary arrangement would be put to parity with LTA and thus, could be deemed the same, in lieu of the latter.

(r) A lesser right can under no circumstances be equated to right clearly understood to be at a higher pedestal that has been vested on a party both under the Regulation as well as a contractual arrangement. In other words, if a party is entitled to and/or vested with a right by way of an agreement, the said party cannot be subjected to an inferior right in lieu of the said vested right. Thus, the phrase “alternative arrangement” under Clause 6.0(d) of the BPTA does not or rather can never envisage STOA to be an alternative or substitute for LTOA. The very purpose of the said agreement, i.e. BPTA is to avail open access under a long-term arrangement. Such an agreement materializes the long-term commitments keeping in view the commercial certainty and viability of a power project such as the Petitioner’s Project.

(s) Even though the alternative arrangement has not been expressly defined under the BPTA, it is clearly implied that the said phrase includes or covers only those arrangements that are at par with the right of LTA. Even the Appellate Tribunal for Electricity (APTEL) acknowledges the fact that a LTA Agreement such as the BPTA dated 24.2.2010 in the present case, formalizes a long term arrangement for which LTA charges are applicable and the same is different from short term transactions with traders and Power Exchange for which STOA charges are applicable. It is naturally implied that the term “alternate arrangement” could not have been intended and agreed for between the parties hereto, to include the provision of STOA. In this regard, reliance has been placed on the judgment of Hon’ble Supreme Court in Satya Jain (Dead) Through L.Rs. and Ors. vs. Anis Ahmed Rushdie (Dead) through L.Rs. and Ors., reported in (2013) 8 SCC 131.

(t) It is trite law that any contract/agreement ought to be read in its entirety in order to give effect to the basic or fundamental intention of the parties to enter into the contract, i.e. a contract must be read as a whole in order to ascertain the true meaning of its several clauses and the words of each clause should be

interpreted so as to bring them into harmony with the other provisions if that interpretation does no violation to the meaning of which they are naturally susceptible (Bank of India & Ors. v. K. Mohandas & Ors., reported in 2009 5SCC 313). Any commercial agreement such as the BPTA ought to be read in a manner so as to give business efficacy to the said agreement in consonance with the basic intention and expectations behind execution of the said agreement, i.e. an interpretation of the provisions of the contract along with reading implied terms into a contract ought to be done with the purpose of giving commercial efficacy to same as anything otherwise would erode the very purpose and fabric of the said agreement. (Nabha Power Limited (NPL) vs. Punjab State Power Corporation Limited (PSPCL) & Ors., 2018 11 SCC 508).

(u) Merely because the Petitioner raised its claim after 2 years from the operationalization of the LTA does not absolve the Respondent of its liabilities under the BPTA as the said agreement is a continuous and subsisting agreement and the aforesaid claim of the Petitioner was also valid in terms of the provisions of the BPTA.

8. Further, in terms of liberty granted by the Commission vide Record of Proceedings for hearing dated 23.7.2021, the Petitioner vide affidavit dated 24.8.2021 placed on record certain additional documents, namely, (i) PGCIL's letter dated 17.7.2015 stating that the transmission system associated with concerned generation project is scheduled to materialise in August, 2015, (ii) order dated 8.3.2018 passed by the Commission in Petition No. 229/RC/2015, (iii) Report indicating status of construction of transmission line (220 kV and above) vis-à-vis programme during 2015-16 as on 30.11.2015, (iv) Minutes of 4<sup>th</sup> Meeting of Standing Committee on Transmission Planning for State Sector held on 6.6.2016 in ERPC, Kolkata, (v) Report indicating status of construction of transmission lines (220 kV and above) vis-à-vis programme during 2015-16 as on 31.1.2016, (vi) Report giving details of sub-station completed during 2016-16 till date, as on 31.3.2016 and (vii) Report giving details of transmission lines completed during 2015-16 as on 31.3.2016.

9. The matter was finally heard on 11.11.2021. During the course of hearing, the learned counsel for the Petitioner and the Respondent made their respective submissions and consequently, the matter was reserved for order. Pursuant to the liberty granted by the Commission, both the side also filed their short submissions in the matter.

10. The Petitioner vide its short note dated 16.11.2021 has mainly submitted as under:

(a) The principle governing pre-estimated liquidated damages under a contract, under Section 74 of the Indian Contract Act, 1872 has been put to test before the Hon'ble Supreme Court of India on various occasions. The reference may be made to the analysis made by the Hon'ble Supreme Court in the matter of *Kailash Nath Associates v. Delhi Development Authority*, [(2015) 4 SCC 136] wherein under para 43(1) of the judgment, it has been reiterated that the party complaining of a breach can receive as reasonable compensation such liquidated amount if it is a genuine pre-estimate of damages fixed by both the parties.

(b) The above principle as laid by the Hon'ble Supreme Court is now required to be applied to the present set of facts and circumstances. In the present case, the compensation envisaged by the BPTA must be given effect to since (i) the BPTA is a statutory contract, (ii) Clause 6.0 of the BPTA sets out a genuine pre-estimate of the compensation payable by the parties in case of delay by either party in meeting the timelines set in the BPTA, (iii) the Commission has approved the BPTA based on the standard bidding documents issued by the Ministry of Power and has therefore already sanctified the pre-estimated damages payable by the parties in the event of default by either party to meet the timelines.

(c) BPTA was a standard bidding document issued by the Ministry of Power and thus, the Petitioner clearly had no bargaining power or room for negotiation while signing the BPTA. Therefore, as per the doctrine of *Contra Proferentem*, the terms of the BPTA, must be interpreted to the benefit of the Petitioner. The

Petitioner or any other DIC has no say in deciding the terms and conditions of the BPTA, rather, the DICs are subjected to follow the dotted line of the contract as provided by the CTUIL pursuant to grant of long-term access rights.

(d) It is a settled principle of law that explicit words of an agreement are always the final words with regard to the intention of the parties. [Para 49 of Nabha Power Limited v. Punjab State Power Corp. Limited and Ors., (2018) 11 SCC 508.]

(e) Execution of contract in furtherance to discharge of its functions under Section 38(2)(c) of the Act by CTUIL cannot be interpreted to not have intended the compensation amount referred to under Clause 6.0 (d) of the BPTA.

(f) As a matter of practice, CTUIL starts imposing transmission charges as provided under the BPTA even though the DIC fails to commission its project. The Petitioner in the present case has also been subjected to pay Rs. 39.83 crores towards transmission charges due to delay in commissioning of dedicated transmission line from its project to Angul Pooling Station. Therefore, unless CTU is also subjected to such liability as provided under Clause 6.0(d), such interpretation would amount to rendering the contract inequitable, thereby, perpetrating differential treatment in departure from the unambiguous and expressed provisions of the contract.

(g) The Commission has also in the past directed PGCIL to compensate generators in case of delay in operationalization of LTA as per Clause 6.0(d) of the BPTA. In this regard, the reliance has been placed on the paragraph 32 of the order dated 10.5.2019 passed in Petition No. 96/MP/2018 (MP Power Ltd. v. PGCIL).

11. The Respondent, PGCIL also filed its written submission dated 19.11.2021 in the matter mainly reiterating the submissions made by it in its reply. The Respondent has, *inter alia*, submitted that during the period between the commissioning of Unit-I of the Petitioner's generation project till the commissioning of the GMR-Angul Pooling Station 400 kV D/c dedicated transmission line along with associated line bays on 21.12.2014, power was being evacuated by the Petitioner through the agreed interim

arrangement i.e. LILO on one Ckt. of Talcher-Meramundali 400 kV D/c line at the Petitioner's end till it was disconnected on 18.12.2014. Thereafter, from 22.12.2014 onwards, the Petitioner began evacuating power through the dedicated 400 kV GMR – Angul 400 kV D/c line and the existing ISTS LILO of Meramundali-Bolangir/Jeypore 400 kV S/c line at Angul and selling the same on short-term basis. There was thus in place an alternate arrangement for despatch of power from the Petitioner's generating station, which arrangement was in fact utilised by the Petitioner for undertaking power transactions on short-term basis. SLDC data placed by the Respondent (Annexure R-9) indicates that there was no stranding of generation capacity and the provisions of Clause 6.0(d) were thus not attracted. This arrangement had been known to the Petitioner at all times and was also agreed under the LTA grant made to it. The charted data (Annexure R-9) is itself a proof that the Petitioner was injecting power even over and above its LTA capacity (upto its installed capacity) from time to time with the elements of HCPTC – V corridor already commissioned at the time. It was only the formal operationalization of LTA which was awaited firstly till the commissioning of the last element of HCPTC- V corridor (January, 2016) and secondly, till the establishment of payment security mechanism by the Petitioner (July, 2016). As such the Petitioner was evacuating its power throughout the period since the commissioning of its dedicated transmission line upto formal LTA operationalization with the existing and commissioned elements of the ISTS. Accordingly, the provisions of Clause 6.0 (d) of the BPTA are clearly not attracted in the present case.

12. The Petition was heard on 11.11.2021, and the Commission, after directing the parties to file written submissions vide ROP dated 11.11.2021, reserved order in the matter. However, as the Petition could not be disposed of, prior to the earlier Chairperson demitting office, the Petition was re-heard on 12.7.2022. During the

course of hearing, the learned counsel for the Petitioner submitted that in support of above prayer, the Petitioner has contended, inter alia, that LILO of Meramundli-Bolangir/Jeypor 400 kV S/C line at Angul cannot be considered as 'alternate arrangement' as envisaged in the BPTA, that provision of Short-Term Open Access cannot be equated with LTA granted to the Petitioner and that vide order dated 10.5.2019 in Petition No. 96/MP/2018, the Commission has in the past directed PGCIL to compensate the generator in case of delay in operationalization of LTA a per Clause 6.0(d) of the BPTA. Learned counsel submitted that the Petitioner has also contended that in view of the BPTA already providing for genuine pre-estimate of compensation payable by the parties in case of default by either party to meet timeline, there is no requirement of proving loss sustained by the Petitioner on account of delay in operationalisation of LTA. However, if the Commission is of the view that there is need of ascertaining the losses incurred to the Petitioner, the Petitioner may be permitted to place on record an additional affidavit to substantiate or prove the actual loss suffered to it.

13. Learned counsel for the Respondent, CTUIL submitted that the aforesaid submissions have already been made by the Petitioner on the previous hearing of the matter i.e. on 11.11.2021 and in the event, the Petitioner intends to place on record any additional submissions, the Petitioner may be directed to file such submissions on an affidavit and the Respondent may also be permitted to file its response thereon.

14. Based on the request of the learned counsels for the parties, the Petitioner was permitted to file an additional affidavit within two days after serving the copy of the same to the Respondent, who was directed to file its response thereon, if any, within two days thereafter. Accordingly, the Commission reserved order in the matter.

However, the Petitioner and the Respondent have not filed written submissions within the given time.

### **Analysis and Decision**

15. We have considered the submissions made by the Petitioner and the Respondent and also perused the documents made available on record. The issue involved in the matter hinges around the scope of Clause 6.0(d) of the BPTA dated 24.2.2010, more precisely in the phrase “*alternate arrangement for dispatch of power*”.

16. Clause 6.0 (d) of the BPTA reads as under:

*“6.0(d) In the event of delay in commissioning of concerned transmission system from its schedule, as indicated at Annexure-4 POWERGRID shall pay proportionate transmission charges to concerned Long Term Access Customer(s) proportionate to its commissioned capacity (which otherwise would have been paid by the concerned Long Term Access Customer(s) to POWERGRID) provided generation is ready and POWERGRID fails to make alternate arrangement for dispatch of power.”*

As per the above provision, in the event of delay in commissioning of concerned transmission system from its scheduled as indicated in Annexure 4 of the BPTA, PGCIL is required to pay proportionate transmission charges to the concerned LTTCs (generating company in the present case) proportionate to its commissioned capacity provided generation is ready and PGCIL fails to make an alternate arrangement for dispatch of power.

17. Thus, in plain and clear language of the aforesaid provision, the liability of PGCIL to pay the proportionate transmission charges to concerned LTTC in proportionate the commissioned capacity would trigger in the event (i) there is delay on the part of PGCIL in commissioning the concerned transmission system by its schedule as indicated in Annexure – 4 (of BPTA), (ii) generation of the LTTC is ready,

and (iii) PGCIL fails to make alternate arrangement for despatch of power. Pertinently, all the above three conditions have to be met simultaneously otherwise, the said provision would not get attracted or triggered.

18. As far as the concerned transmission system for the operationalization of LTA in respect of the Petitioner's Project is concerned, the relevant extract of Annexure – 4 of the BPTA reads as under:

*Annexure-4*

***Transmission Charges for the transmission system of respective Generation Project***

.....

*The composite transmission scheme would be developed in phases keeping in view the commissioning of generation project. Depending upon the status of various generation projects as informed by different generation developers, the details of phasing of development of transmission system has been evolved. Details of staging are described as follows –*

.....

***2.0 Stage – II***

***2.1 Generation Projects***

| <i>Generation</i>          | <i>Capacity</i>          | <i>Commissioning Schedule</i>          |
|----------------------------|--------------------------|--|
| <i>GMR Unit #1</i>         | <i>350 MW</i>            | <i>Nov. 2011</i>                       |
| <i>Ind-Barath #1</i>       | <i>350 MW</i>            | <i>Dec. 2011</i>                       |
| <i>GMR Unit #2</i>         | <i>350 MW</i>            | <i>Jan. 2012</i>                       |
| <i>Ind-Barath #3</i>       | <i>350 MW</i>            | <i>Feb.2012</i>                        |
| <i>GMR Unit #3</i>         | <i>350 MW</i>            | <i>March 2012</i>                      |
| <i>Monnet Unit #1</i>      | <i>525 MW</i>            | <i>June 2012</i>                       |
| <i>Monnet Unit #2</i>      | <i>525 MW</i>            | <i>Sept. 2012</i>                      |
| <i>Lanco Unit #1,2,3,4</i> | <i>4 × 660 = 2640 MW</i> | <i>Progressively onwards of Dec 13</i> |

***2.2 Transmission System***

***2.21 Transmission System to be developed by the generator developer With GMR Generation Project***

- *GMR – Angul 400 kV D/c line*
- *2 nos 400 kV line bays for connecting 400 kV lines from GMR to Angul switchyard (along with commissioning of Angul substation)*

.....

*Note: As the Angul Substation would not be ready the Meramundali-Jaypore 400 kV S/C line would be looped in and looped out at Angul depending upon the project*



commissioning schedule. As GMR project is coming up early, the Talchar – Meramundali line would be Looped in and Looped out at GMR project as dedicated portion. This line route will be later utilised to terminate GMR project at Angul and loop in loop out Talchar – Meramundali 400 kV will be restored.

## 2.22 Transmission System to be developed by POWERGRID

### A. 30 months from the date of regulatory approval.

- LILO of Jaypore – Meramundali 400 kV S/c at Angul
- LILO of one ckt. of Talcher – Meramundali 400 kV D/c at Angul

Note:

1. As the Angul Substation would not be ready by this time, the lines from the generating projects to Angul S/s may be joined temporarily with LILO of Talcher – Meramundali 400 kV one ckt and/or LILO of Meramundali – Jeypore 400 kV S/c line at Angul depending upon the commissioning of the generation projects and its dedicated transmission system.
2. As mentioned above, these LILOs would also help in evacuation of power before commissioning of Angul S/s.
3. These LILOs are provided for better grid connectivity as well as reliability and security of power supply.
4. These LILOs would be withdrawn at appropriate time in order to reduce the short-circuit level.

### B. 42 months from the date of regulatory approval

- Establishment of 765/400 kV Pooling Station at Angul
- Angul Pooling Station – Jharsuguda Pooling Station 765 kV 2xS/c
- Establishment of 765/400 kV substation at Dharamjaygarh
- Jharsuguda Pooling Station – Dharamjaygarh (WR) 765 kV D/c LILO of Ranchi – WR Pooling near Sipat 765 kV S/c line at Dharamjaygarh
- Dharajaygarh – Jabalpur Pool 765 kV D/c line
- Establishment of 2x1500 MVA, 765/400 kV Pooling Station near Jabalpur
- Jabalpur Pool – Jabalpur 400 kV D/c (high capacity)
- Jabalpur Pool – Bina 765 kV D/c line
- Bina – Gwalior 765 kV S/c (3<sup>rd</sup> circuit)
- Jabalpur – Bhopal – Indore – Vadodara 765 kV S/c
- Establishment of 2x1500 MVA, 765/400 kV sub-station at Bhopal
- Bhopal New Substation – Bhopal (M.P.) 400 kV D/c (high capacity)
- Establishment of 2x1500 MVA, 765/400 kV sub-station at Vadodara
- Vadodara – Pirana 400 kV D/c (high capacity)

*Sharing of Transmission Charges: The transmission charges for Stage-I and Stage-II transmission system are to be shared by GMR Kamalanga Energy Ltd., Monnet Power Company Ltd., Lanco Babandh Power Pvt. Ltd., and Ind-Barath Energy (Utkal) Ltd. in proportion to the MW capacity to be injected matching with the commissioning of schedule. ....”*

19. It is not under dispute that generating Unit I, Unit-II and Unit- III of the Petitioner achieved the commercial operation on 29.4.2013, 12.11.2013 and 25.3.2014 respectively. Subsequently, the dedicated transmission line i.e. GMR- Angul Pooling Station 400 kV D/C line along with associated bays, which was under the scope of the Petitioner as per the BPTA, was commissioned on 21.12.2014. Thus, the generating station of the Petitioner along with dedicated transmission line & associated bays was ready w.e.f. 21.12.2014. It is also not under the dispute that number of transmission system within the scope of the Respondent as mentioned in the Annexure – 4, which were required for the operationalization of the LTA to the Petitioner were delayed beyond the timeline specified therein (i.e. 30 months/ 42 months from the date of regulatory approval i.e. 31.5.2010). Even the Respondent has fairly stated that Angul Pooling Station was commissioned only in March, 2015 and the entire transmission system under the Petitioner's LTA was commissioned in January, 2016. Eventually, after opening of the LCs by the Petitioner, the LTA for the quantum of 387 MW was operationalized w.e.f 14.7.2016 and for the further quantum of 260 MW was operationalized w.e.f 9.7.2017.

20. Thus, while two of the three conditions for triggering of the Clause 6.0(d) appear to be met, the dispute lies in narrow compass to the third condition i.e. alternate arrangement to be made by PGCIL for dispatch of power. According to the Respondent, the Clause 6.0(d) of the BPTA is not attracted in the present case in view of the alternate arrangements put in place for dispatch of power from the Petitioner's Project which was in fact utilised by the Petitioner for undertaking power transactions on short-term basis and as a result, there was no stranding of any generation capacity. The Respondent has submitted that right from the beginning in terms of the various meetings held in regard to grant of LTA for generation project in the advance stage in

Odisha in which the Petitioner also participated, it was made known that the identified transmission system for Projects in Odisha was bare minimum and further , that there would not be any redundancy in the system and initially the power evacuation was to take place through short-term/ medium term open access. It has been submitted that while making the LTA application, the Petitioner had itself suggested alternate arrangements for evacuation of power which were duly incorporated into the transmission system under the scope of the Respondent so as to enable the Petitioner to evacuate the power from its generating station during interim period when the transmission system was not fully commissioned. It has been further submitted that LTA intimation to the Petitioner also recorded the arrangement for power evacuation as agreed in the various meetings and specifically stated that the operationalization of LTA was subject to the system availability and that the power in the interim could be transferred on short-term basis. The Respondent has submitted that during the period between the commissioning of Unit-I of the Petitioner's generating station till the commissioning of GMR-Angul Pooling Station 400 kV D/c dedicated transmission line along with associated line bays on 21.12.2014, power was getting evacuated by the Petitioner through agreed interim arrangement i.e. LILO of one ckt. of Talcher – Meramundali 400 kV D/c line at the Petitioner's end, which was disconnected on 18.12.2014 and thereafter, from 22.12.2014 onwards the Petitioner began evacuating power through dedicated 400 kV GMR – Angul 400 kV D/c line and existing ISTS LILO of Meramundali-Bolangir/Jeypore 400 kV S/c line at Angul. Therefore, there was thus in place an alternate arrangement for despatch of power from the Petitioner's generating station which arrangement was in fact utilised by the Petitioner for undertaking power transactions on short-term basis and there was no stranding of any generation capacity and the provisions of Clause 6.0(d) were thus not attracted. It is submitted that the above stated mutually agreed arrangement will form a part of the

BPTA. It is pointed out by the Respondent that despite the concerned transmission system having commissioned in January, 2016, the Petitioner did not immediately open LC for operationalization of its LTA till July, 2016 and continued to evacuate power on short-term basis for a month even when it had an option to evacuate power under the LTA. It was only after two years from LTA operationalization and evacuating power from its commissioned units by way of interim-alternate arrangements provided for by the Respondent, the Petitioner vide letter dated 19.6.2018 raised the demand for payment of transmission charges as per Clause 6.0(d) of the BPTA.

21. *Per contra*, the Petitioner has submitted that the Respondent having failed to commission the concerned transmission system qua the Petitioner's Project for the purpose of evacuation of 800 MW from its Project by the mandated date and as per the BPTA, is clearly required to pay the transmission charges in terms of Clause 6.0(d) of the BPTA. The Petitioner has submitted that reference to the various meetings and the averments made by the Respondent basis such meetings have to be understood and interpreted in light of the obligation of the Respondent as CTUIL under the Section 38 of the Act and on these basis, the Respondent cannot wriggle of its express liabilities under the BPTA. The effort made by the Respondent to draw unnecessary presumption with regard to the various minutes of the meeting for avoiding its liability ensuing out of BPTA deserves to be rejected. It has been submitted that the agreement to transfer of power on STOA/MTOA basis was in respect of timeline within which the implementation of complete transmission system was to be achieved as reflected in the minutes of the meetings and such minutes cannot be interpreted in a manner that would absolve the Respondent of its express liability under Clause 6.0(d) of the BPTA. The provision of STOA that had been provided as a temporary/ make-shift arrangement in lieu of LTA that ought to have been operationalized by the

stipulated date in BPTA. As to the LTA intimation, the very first condition for commencement of LTA was that the transmission system as indicated at Clause d(ii) are to be implemented by the Respondent within the scheduled period. Clause d(ii) elaborates the assets contemplated under Annexure IV of the letter, which were to be implemented by the Respondent before the schedule commissioning of the generating units.

22. The Petitioner has further submitted that the interpretation of Clause 6.0(d) of the BPTA put forth by the Respondent would not only make the said clause redundant but would also amount to unconscionable bargain in favour of the Respondent. On one hand, the Petitioner is liable to pay transmission charges from the date on which the transmission network is commissioned notwithstanding its ability to evacuate single unit of power, on the contrary, the liability of Respondent, according to its interpretation, would be pushed to eternity till it commissions the entire transmission network at its will and convenience. It has been submitted by the Petitioner that the “alternative arrangement” never envisaged and could not reasonably include the provision of STOA in lieu of LTA that was granted to the Petitioner. A lesser right can under no circumstances be equated to right clearly understood to be at a higher pedestal that has been vested on a party both under the Regulation as well as a contractual agreement and therefore, the phrase “alternative arrangement” under Clause 6.0(d) of the BPTA does not or rather can never envisage STOA to be an alternative or substitutive for LTA. A long-term PPA, that is usually entered into in furtherance of a LTA agreement (BPTA) cannot be viable if the term “alternative arrangement” includes STOA within its ambit. It is a trite law that a contract must be read as whole in order to ascertain the true meaning of its several clauses and the words of each clause should be interpreted so as to bring them into harmony with the

other provisions if that interpretation does violence to the meaning of which they are naturally susceptible.

23. We have considered the submissions made by the Petitioner and the Respondent. It is pertinent to note that the phrase employed in the Clause 6.0(d) of the BTPA only speaks of making of an alternate arrangement for despatch of power by PGCIL. The plain and clear meaning of the wordings “alternate arrangement” would be making available an alternate transmission system in view the delay in commissioning of the concerned transmission system as specified/identified in Schedule of the BPTA. The said clause does not specify the manner of evacuation of the power, be it STOA, MTOA or LTA, from and in context of this “alternate arrangement”. Therefore, linking the alternate arrangement made for the despatch of power with the type of the open access, in our view is wrongly construed.

24. In the present case, indisputably, the power from the generating Project of the Petitioner prior to commissioning of GMR-Angul 400 kV D/c line along with associated bays (i.e. 21.12.2014) was being evacuated through the agreed interim arrangement i.e. LILO of one ckt. of Talcher-Meramundali 400 kV D/c line and thereafter, from 22.12.2014 onwards, the power from the Project was being evacuated through dedicated 400 kV GMR-Angul 400 kV D/c line and the LILO of MMeramundali-Bolangir/ Jeypore 400 kV S/c line at Angul, albeit on the basis of the STOA availed by the Petitioner. Evidently, it not the case of the Petitioner that in terms of the aforesaid alternate arrangement put in place for evacuation of power from its Project in lieu of delay in commissioning of the concerned transmission system, it had not been able to evacuate the power corresponding to the quantum of the LTA grant. The entire thrust of the arguments of the Petitioner is that the “alternative arrangement” could never be

reasonably include the provision of the STOA in lieu of LTA that was granted to the Petitioner and if the interpretation as put forth by the Respondent is accepted, then Clause 6.0(d) would be rendered unenforceable as at no point in time, eventuality as specified therein will ever arise. However, the aforesaid arguments, in our view, are misplaced. As already noted above, the alternative arrangement envisaged in Clause 6.0(d) is in context of the making available transmission system for despatch of power and it would not be appropriate to link it with the type of open access availed for despatch of power. Besides, the alternate arrangement is to be put in place for despatch of power in the event of delay in commissioning of the concerned/ identified transmission systems in the BPTA. If the contention of the Petitioner that such alternate arrangement could never include despatch of power through STOA/MTOA in lieu of LTA granted to the Petitioner is to be accepted, then only possible outcome would be that its LTA ought to have operationalized on the basis of such alternate arrangement. However, this again would not be in line with provisions of the BPTA which provide for commissioning of the concerned/ identified transmission system for operationalization of LTA. Moreover, as argued by the Petitioner, if the licensee had to have operationalized the LTA on the basis of alternate arrangement to meet the object of Clause 6.0(d), then the requirement for completion of the concerned/identified transmission system would itself in doubt. In our view, the issue as to whether on the basis of such alternate arrangement put in place for despatch of power, LTA could have or ought to have operationalized depends on facts of each case. While nothing stops the parties to agree upon the operationalization of LTA on the basis of such alternate arrangement if the arrangement is of such kind by the suitable amendments to the BPTA (in regard to identified transmission systems therein), at the same time, the Clause 6.0(d) does not in any way take away the option available to the licensee/ PGCIL to provide such alternate arrangement as an interim

measure till the time the concerned/ identified transmission system in the BPTA is implemented and commissioned.

25. Once it is understood that the alternate arrangement also includes within its scope a temporary arrangement of transmission system for despatch of power till the time the identified transmission system under the BPTA is being implemented, it cannot be quarrelled that it also entails the despatch of power by the generating company through STOA or MTOA as the case may be through such arrangement. The test for efficacy of such alternate arrangement is whether the generating company/LTTC is able to evacuate the power corresponding to its LTA grant or not and not by the manner of despatch of power through such alternate arrangement. In the present case, the Petitioner has neither contended so nor placed any document on record indicating that by way of alternate arrangement put in place, the Petitioner was not able to evacuate the power corresponding to the quantum of its LTA grant and resulting into a stranded generation thereby raising doubt over the efficacy of such alternate arrangement.

26. Contrary to the arguments of the Petitioner, the aforesaid interpretation of Clause 6.0(d) of the BPTA does not in any manner render the said clause redundant. The said clause would be triggered in the event all the three conditions as noted in paragraph 14 are met. In the present case, the said clause would have been triggered had it been the case of the Petitioner that it was not in position to evacuate the power through the alternate arrangement as put in place corresponding to the quantum of its LTA grant. On the contrary, the data placed by the Respondent indicates that by virtue of the alternate arrangement put in place, the Petitioner had been able to despatch the power through STOA for the quantum even more than its LTA grant. Hence, the



contentions of the Petitioner that the alternate arrangement under Clause 6.0(d) of the BPTA does not cover or include STOA arrangement and that Clause 6.0(d) is attracted in the present case deserve to be rejected.

27. The Petitioner, in the context of the interpretation of the said clause of the BPTA, has also submitted that it is a trite law that any contract/agreement ought to be read in its entirety to give effect to the basic or fundamental intention of the parties to enter into the contract and that any commercial agreement such as BPTA ought to be read in the a manner so as to give business efficacy to the said agreement in the consonance with the basic intention and expectations behind the execution of the said agreement. In this regard, the Petitioner has relied upon the decisions of the Hon'ble Supreme Court in the case of *Staya Jain (Dead) through L.Rs. and Ors. V. Anis Ahmed Rushdi (Dead) through L.Rs. and Ors.*, [(2013) 8 SCC 131], *Bank of India & Ors. v. K Mohandas & Ors.*, [(2009) 5 SCC 313] and *Nabha Power Ltd. v. PSPCL and Ors.*, [2018 11 SCC 508]. However, in the foregoing paragraphs, we have already observed that scope of Clause 6.0(d) of the BPTA has been understood by considering the plain, simple and literal meaning of the words contained therein. In our view, there is no ambiguity in the said clause and in fact, on the contrary, if the interpretation as advanced by the Petitioner is to be accepted, it leads to a distorted view of the said clause as already noted above.

28. The Petitioner has relied upon the order of the Commission dated 10.5.2019 in Petition No. 96/MP/2018 in the matter of *MP Power Ltd. v. PGCIL*, in particular paragraph 32 of the order, to contend that the Commission has in the past directed PGCIL to compensate generators in case of delay in operationalization of LTA as per Clause 6.0(d) of the BPTA. We have perused the said order and find that the said

order does not apply to facts of the present case. Bare reading of the order dated 10.5.2019 in Petition No. 96/MP/2018 read with order dated 15.12.2017 in Petition No. 141/TT/2015 (PGCIL v. MPPTCL and Ors.) clearly reveals that in the said cases, there was no alternative arrangement put in place by PGCIL for despatch of power in view of the delay in achieving commissioning of identified transmission system. Besides, in the said cases, there was also specific plea by the generator that PGCIL had failed to provide any alternate arrangement for despatch of power from generation Project as a result the generator was unable to supply power to the beneficiary thereby forcing a shutdown of its project. Hence, the said orders cannot come to any aid to the Petitioner in the present case.

29. In order to properly appreciate our reasoning in this present case, with regard to the issue that has arisen in the present case as addressed in the subsequent regulations i.e. the Central Electricity Regulatory Commission (Sharing of Transmission Charges and Losses) Regulations, 2020 ('Sharing Regulations'). Regulation 13 (8) of the Sharing Regulation will further elucidate the point, it provides as under:

***“13. Treatment of transmission charges and losses in specific cases***

....

*(8) In case a generating station or unit(s) thereof has achieved COD and the Associated Transmission System is delayed, the concerned inter-State transmission licensee(s) shall make alternate arrangement at its own cost for despatch of power of the generating station or unit(s) thereof in consultation with the Central Transmission Utility:*

*Provided that till such alternate arrangement is made, the inter-State transmission licensee(s) shall pay to the generating station, the Yearly Transmission Charge corresponding to the quantum of Long Term Access for the period for which the transmission system has got delayed.”*

As per the above provision, in case a generating station or unit(s) thereof has achieved the COD and associated transmission system is delayed, the concerned licensee is required to make alternate arrangement at its own cost despatch of power

from the generating station/unit(s) in consultation with CTUIL and till such alternate arrangement is made, the licensee is required to pay the generating station, Yearly Transmission Charges corresponding to the quantum of LTA for the period for which the transmission system got delay. Pertinently, the aforesaid provision fastens the cost of making alternate arrangement on the licensee which has delayed the transmission system and also the payment of yearly transmission charges corresponding to LTA quantum till such time the alternate arrangement is made. However, the said provision also recognises that the alternate arrangement may be temporary in nature and as such does not mandate the despatch of power under LTA only through such arrangement. The findings of the Commission in the foregoing paragraphs are also in consonance with the intent of the aforesaid Regulation.

30. Thus, we conclude by saying that an effective alternative arrangement was made by the respondent as per the agreement and the contract was not broken within the meaning of Section 73 and Section 74 of the Indian contract Act to attract any damages or penalty as prayed by the Petitioner.

31. In view of the above discussions and findings, the claim of the Petitioner for Rs. 4.68 crore towards liability of the Respondent under Clause 6.0(d) of the BPTA dated 24.2.2010 for delay in commencement of LTA along with the interest being not sustainable is rejected.

31. Petition No. 389/MP/2018 is disposed of in terms of the above.

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

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

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