

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No. 40/MP/2019
along with
IA No.22/2021**

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

Date of Order: 22nd April 2022

In the matter of

Petition under Sections 73 (n), 79(1)(c) and 79 (1)(f) and other applicable provisions of the Electricity Act, 2003 and in terms of Appellate Tribunal's order dated 1.2.2019 read with order dated 7.2.2019 in Appeal No. 200 of 2015 and Appeal No. 201 of 2015.

**And
In the matter of**

Talchar-II Transmission Company Limited (TTCL),
12th Floor, Building No. 10B,
DLF Cyber City,
Gurgaon 122002

.....Petitioner

Vs

- 1) Power Grid Corporation of India Limited,
Corporate Office: Saudamini, Plot No. 2, Sector 29,
Gurgaon 122001
- 2) Reliance Power Transmission Limited,
5th Floor, JMD Galleria,
Sector 48, Sohna Road,
Gurgaon 122018
- 3) Tamil Nadu State Electricity Board,
6th Floor, Western Wing,
144, Anna Salai.
Chennai 600 002
- 4) Eastern Power Distribution Company of Andhra Pradesh Limited,
P&T Colony, Seethammadhara,
Viskhapatanam 530020



- 5) Southern Power Distribution Company of Andhra Pradesh Limited,
Srinivasa Kalyana Mandapam Backside,
Tiruchanoor Road, Kesavayana gunta,
Tirupati 517 501
- 6) Central Power Distribution Company of Andhra Pradesh Limited (APCPDCL),
6-1-50, Corporate Office, Mint Compound,
Hyderabad 500004
- 7) Northern Power Distribution Company of Andhra Pradesh Ltd. (APNPDCL),
Vidyut Bhavan, Nakkalagutta, Hanamakonda,
Warangal 506001
- 8) Power Company of Karnataka Limited,
Room No. 501, 5th Floor,
KPTCL Building, Kaveri Bhavan,
Bangalore 560009
- 9) Bangalore Electricity Supply Co. Limited (BESCOM),
2nd Floor, Corporate Office, K.R. Circle,
Bangalore 560001
- 10) Gulbarga Electricity Supply Co. Limited (GESCOM),
Station Main Road,
Gulbarga 585102
- 11) Hubli Electricity Supply Co. Limited,
Corporate Office Navanagar, P.B. Road,
Hubli 580025
- 12) Mangalore Electricity Supply Co. Limited,
Corporate Office, Paradigm Plaza, A.B. Shetty Circle,
Mangalore 575001
- 13) Chamundeshwari Electricity Supply Co. Limited,
Corporate Office, 927, L.J. Avenue,
New Kantharaj Urs Road, Saraswathipuram
Mysore 570009
- 14) Kerala State Electricity Board,
Vydyuthi Bhavan, Pattom,
Thiruvananthapuram 695004
- 15) Puducherry Electricity Department,
137, Netaji Subhash Chandra Bose Road,
Puducherry 605001
- 16) Grid Corporation of Orissa Limited (GRIDCO),
Janpath,
Bhubaneswar 751022



- 17) Central Electricity Supply Utility of Orissa (CESU),
2nd Floor, IDCO Tower, (Rupali Square), Janpath,
Bhubaneshwar 751022
- 18) Western Electricity Supply Co. Limited (WESCO),
Burla,
Sambalpur 768017
- 19) Southern Electricity Supply Co. Limited (SOUTHCO),
Behrampur,
Ganjam 760004
- 20) North Eastern Supply Co. Limited (NESCO),
Januganj,
Balasore 756019
- 21) Central Electricity Authority,
SEWA Bhawan, Rama Krishna Puram, Sector 1,
New Delhi

.....Respondents

Petition No. 41/MP/2019
along with
IA No. 23/2021

In the matter of

Petition under Sections 73 (n), 79(1)(c) and 79 (1)(f) and other applicable provisions of the Electricity Act, 2003 and in terms of Appellate Tribunal's order dated 1.2.2019 read with order dated 7.2.2019 in Appeal Nos. 200 of 2015 and 201 of 2015.

And

In the matter of

North Karanpura Transmission Company Limited (NKTCL),
12th Floor, 10B, DLF Cyber City,
Gurgaon 122002

....Petitioner

Vs

1. Power Grid Corporation of India Limited,
Corporate Office: Saudamini,
Plot No. 2, Sector 29,
Gurgaon 122 001
2. Reliance Power Transmission Limited,
5th Floor, JMD Galleria,
Sector 48, Sohna Road,
Gurgaon 122 018



3. Maharashtra State Electricity Distribution Company Limited,
Prakashghad, Anant Kanekar Marg, Bandra (East),
Mumbai 400 051
4. Dakshin Gujarat Viz Company Limited,
Manavarachha Road, Kaopdara,
Surat 395 006
5. Madhya Gujarat Viz Company Limited,
Sadar Patel Vidyut Bhavan, Race Course,
Vadodara 390 007
6. Paschim Gujarat Viz Company Limited,
Laxminagar, Namava Main Road,
Rajkot 360014
7. Gujarat Urja Vikas Nigam Limited,
Sadar Patel Vidyut Bhavan, Race Course,
Vadodara 390 007
8. Uttar Gujarat Viz Company Limited,
Vish Nagar Road,
Mehsana 384 001
9. Madhya Pradesh Power Trading Company Limited,
Shakti Bhawan, Vidyut Nagar, Rampur,
Jabalpur 482 008
10. MP Poorva Kshetra Vidyut Vitaran Company Limited,
Block No. 7, Shakti Bhawan,
Jabalpur 482 008
11. MP Pachim Kshetra Vidyut Vitaran Company Limited,
GPH Compound, Polo Ground,
Indore 452 015
12. MP Madhya Kshetra Vidyut Vitaran Company Limited,
Bijli Nagar Colony, Nishtha Parisar
Govindpura, Bhopal 462 023
13. MP Adyukik Kendra Vikas Nivam Limited
Free Press House, 1st Floor,
3/54, Press Complex, A.B. Road,
Indore 452 008
14. Chhattisgarh State Power Transmission Company Limited,
Vidyut Seva Bhawan Parisar, Danganiya,
Raipur 492 013
15. Goa State Electricity Department



- Vidyut Bhawan, Panaji,
Goa 403 001
16. Electricity Department,
UT of Daman and Diu,
Sachivalaya, Moti Daman,
Via Vapi, Daman 396 210
 17. Electricity Department,
Administration of Dadar Nagar Haveli,
Dadra Nagar Haveli UT,
Silvassa 396 230
 18. Heavy Water Projects,
Department of Atomic Energy,
Heavy Water Board, Vikram Sarabhai Bhawan, Anushakti Nagar,
Mumbai 400 054
 19. Jindal Power Limited,
Jindal Centre, 12, Bhikaiji Cama Place,
New Delhi-110066
 20. Torrent Power Limited,
Torrent House, Off Ashram Road,
Ahmedabad-380009
 21. PTC India Limited,
2nd Floor, NBCC Tower,
15, Bhikaiji Cama Place,
New Delhi-110066
 22. Adani Power Limited,
Adani House, Plot No. 83,
Institutional Area, Sector 32,
Gurgaon-122001
 23. Rajasthan Power Procurement Centre,
Shed No. 5/6, Vidyut Bhawan, Janpath, Jyoti Nagar,
Jaipur-302005
 24. Jodhpur Vidyut Vitran Nigam Limited,
New Power House Industrial Area,
Jodhpur-342003
 25. Jaipur Vidyut Vitran Nigam Limited,
Vidyut Bhawan, Janpath, Jyoti Nagar,
Jaipur 302005
 26. Ajmer Vidyut Vitran Nigam Limited,
Old Power House, Hathi Bhata, Jaipur Road,



Ajmer 305001

27. BSES Yamuna Power Limited,
2nd Floor, B Block, Shakti Kiran Building
Near Karkardooma Court,
New Delhi 110092
28. BSES Rajdhani Power Limited,
BSES Bhawan, 2nd Floor, B Block,
Behind Nehru Place Bus Terminal, Nehru Place,
New Delhi 110019
29. Tata Power Delhi Distribution Limited,
CENNET Building, 33 kV Sub Section Building,
Hudson Lines, Kingway Camp,
Delhi 110009
30. New Delhi Municipal Council,
Palika Kendra Building,
Opposite Jantar Mantar, Parliament Street,
New Delhi 110001
31. Uttarakhand Power Corporation Limited,
Urja Bhawan, Kanwali Road,
Dehradun 248001
32. Uttar Pradesh Power Corporation Limited,
Shakti Bhawan, 14, Ashoka Road,
Lucknow 226001
33. Pashimachal Vidyut Vitaran Nigam Limited,
Victoria Park, PIME,
Meerut 250001
34. Poorvanchal Vidyut Vitaran Nigam Limited,
Hydel Colony, Bhikaripur,
Varanasi 221004
35. Dakshinanchal Vidyut Vitaran Nigam Limited,
Urja Bhavan, NH-2, (Agra-Delhi By-pass Road), Sikandra,
Agra 282007
36. Madhyanchal Vidyut Vitaran Nigam Limited,
4A, Gokhale Road,
Lucknow 226001
37. Kanpur Electricity Supply Company Limited (KESCO),
14/71, Civil Lines,
Kanpur 208001



38. Chief Electrical Distribution Engineer,
North Central Railway, Head Quarter Officer, Subedarganj,
Allahabad 211033
39. Uttar Haryana Bijli Vitran Nigam Limited,
Vidyut Sadan, C-16, Sector 6,
Panchkula 134109
40. Dakshin Naryana Bijli Vitran Nigam Limited,
Vidyut Sadan, Vidyut Nagar
Hisar 125005
41. Punjab State Power Corporation Limited,
Old PSEB Headquarter Building,
The Mall Road,
Patiala 147001
42. The Principal Secretary to J&K Government,
Civil Secretariat,
Srinagar 190001
43. Himachal Pradesh State Electricity Board,
Vidyut Bhawan,
Shimla 171004
44. Electricity Department,
5th Floor, UT Chandigarh Secretariat Building, Sector 9,
Chandigarh 160017
45. Central Electricity Authority,
SEWA Bhawan, Rama Krishna Puram, Sector 1,
New Delhi

.....Respondents

Parties present:

- 1) Shri Sajan Poovayya, Sr. Advocate, TTCL and NKTCL
- 2) Shri Buddy A. Ranganadhan, Advocate, TTCL and NKTCL
- 3) Shri Hasan Murtaza, Advocate, TTCL and NKTCL
- 4) Ms. Suparna Srivastava, Advocate, CTUIL
- 5) Shri Tushar Mathur, Advocate, CTUIL
- 6) Ms. Soumya Singh, Advocate, CTUIL
- 7) Shri S. Vallinayagam, Advocate, TANGEDCO
- 8) Shri Anand Ganesan, Advocate, GUVNL
- 9) Shri Samir Malik, Advocate, MSEDCL
- 10) Shri Rahul Sinha, Advocate, MSEDCL
- 11) Dr. R. Kathiravan, TANGEDCO
- 12) Ms. R. Ramalakshmi, TANGEDCO
- 13) Shri R. Srinivasan, TANGEDCO
- 14) Ms. Padmalatha, PCKL
- 15) Shri Anindya Khare, MPPMCL



ORDER

The Petitioners, namely Talcher Transmission Company Limited (TTCL) and North Karanpura Transmission Company Limited (NKTCL) have filed the Petition No. 40/MP/2019 and Petition No. 41/MP/2019 respectively pursuant to the liberty granted by Appellate Tribunal for Electricity (APTEL) vide its order dated 1.2.2019 in Appeal No. 200 of 2015 and Appeal No. 201 of 2015.

Background

2. Rural Electrification Corporation Transmission Projects Company Limited (RECTPCL) was appointed as the Bid Process Coordinator for selection of the Transmission Service Providers in accordance with Tariff Based Competitive Bidding Guidelines for Transmission Service issued by the Central Government under section 63 of the Electricity Act, 2003 (the Act) in respect of the following projects:

- (a) Transmission System-System Strengthening in Northern Region for import of power from North Karanpura and other projects outside the Northern Region and System Strengthening in Western Region for import of power from North Karanpura and other projects outside the Western Region and also for power evacuation from projects within Western Region;
- (b) Transmission Systems-Augmentation of Talcher-II Transmission System.

3. For the above purpose, TTCL and NKTCL were incorporated as Special Purpose Vehicles by Rural Electrification Corporation Transmission Projects Company to initiate the work on the projects and subsequently to act as Transmission Service Provider (TSP) after being acquired by the successful bidders. Based on the tariff based competitive biddings, Reliance Transmission Company Limited (RTCL) emerged as the successful bidder and Letters of Intent were issued



to RTCL on 18.12.2009. TTCL and NKTCL were acquired by RTCL on 27.4.2010 and 20.5.2010 respectively as its fully owned subsidiaries. TTCL and NKTCL also entered into Transmission Service Agreements with the Long Term Transmission Customers (LTTTC) of the projects on 10.9.2009 and after these companies were acquired by RTCL, TSAs were deemed to have been signed by RTCL. Thereafter, TTCL approached the Commission for adoption of transmission charges and grant of transmission licence. The Commission vide order dated 4.11.2010 in Petition No. 145/2010 adopted the tariff and vide order dated 8.11.2010 in Petition No. 146/2010 granted transmission licence to TTCL valid for a period of 25 years to discharge the functions as the Transmission Service Provider. The Commission vide order dated 13.9.2011 in Petition No.170/2011 adopted the tariff and vide order dated 22.12.2010 in Petition No.171/2010 granted transmission licence to NKTCL to discharge the functions as the Transmission Service Provider.

4. Approval under Section 68 of the Act for laying the overhead lines was accorded by Ministry of Power, Government of India to TTCL and NKTCL on 8.12.2008. As per the terms and conditions of the said approval, the works on the transmission projects were required to start within three years from the date of approval. NKTCL and TTCL also applied to Ministry of Power Government of India for authorization under section 164 of the Act on 9.11.2010 and the authorizations under section 164 of the Act were issued by Ministry of Power on 11.8.2011.

5. While the requests of the Petitioners for authorization under section 164 of the Act was under consideration of Government of India, Ministry of Power, NKTCL and TTCL filed Petition No. 169/2010 and Petition No. 170/2010 respectively seeking extension of the date of commercial operation of the projects and escalation of

input/capital cost related to the projects on the following grounds:

- (a) absence of the requisite authorizations under Section 164 of the Act;
- (b) non-designation of the Sponsoring Authority under the Project for the purpose of availing concessional customs duty;
- (c) increase in cost of inputs after submission of the bids;
- (d) impact of change in law on account of enhancement of Excise Duty by the Central Government by notification dated 26.2.2010 issued by Department of Revenue on certain components such as steel, zinc, and aluminum etc.
- (e) risk of lapse of permission granted under Section 68 of the Act;

6. The Commission vide orders dated 9.5.2013 disposed of Petitions No. 169/2010 and Petition No. 170/2010 holding as under:

- (a) Time taken for authorisation under section 164 of the Act is not a force majeure event and therefore, the Petitioners cannot be granted any relief on this account;
- (b) There is no basis for the Petitioners' claim that the project costing and the tariff were predicated on availability of concessional Customs Duty. Ministry of Power clarified that it was not obligated under any provision to undertake any step for appointment of Sponsoring Authority. Therefore, there is no force majeure on this account.
- (c) The Petitioner was selected based on tariff based competitive bidding. There is no provision in the TSA to allow for the increase in the capital cost on account of increase in the cost of the material such as steel, zinc, iron etc. used for construction. Any increase or decrease in the capital cost has to be on the Petitioners' own account.
- (d) Increase in Excise Duty from 8% to 10% notified by the Central

Government on 26.2.2010 was allowed by invoking "Change in Law" clause under the TSA with the caveat that any increase in excise duty during the period when the project is delayed for no genuine and permissible reason would not be admissible.

- (e) The authorisation under section 164 of the Act was issued on 11.8.2011 before the expiry of the approval under section 68 of the Act on 7.12.2011 and the petitioner had sufficient time for commencement of the work.
- (f) Alleged delay in adoption of the transmission charges by this Commission is not a ground for invoking the Force Majeure clause as adoption of the transmission charges by the Commission was not a condition precedent for commencement of construction by the petitioner, either in terms of RFP or the TSA.
- (g) For extension of time for execution of the project, the petitioner was directed to approach the LTTCs in this regard who were also directed to consider the request of the petitioner and convey their approval within one month.

7. Aggrieved by the orders dated 9.5.2013 in Petition No. 169/2010 and Petition No. 170/2010, NKTCL and TTCL preferred Appeal No. 139 of 2013 and Appeal No. 140 of 2013 before APTEL with the following prayers:

- "(a) Quash and set aside the Hon`ble CERC order dated 9.5.2013 under Petition No. 169/MP/2011 and 170/MP/2011;*
- (b) Extend the COD of the projects by giving clear working period of 30, 36, 42 months and compensating for reduction of "Revenue Earning Years";*
- (c) Granting such escalation of Input/Capital Costs as pleaded by the Appellant;*
- (d) Pass such other order(s) and directions as this Hon`ble Tribunal deems fit and appropriate in the facts and circumstances of the present case."*

8. APTEL in the said Appeal No. 139 of 2013 and Appeal No. 140 of 2013 framed the following issue for its consideration:



“Whether the authorisation under Section 164 of the 2003 Act by the appropriate government to a Transmission Licensee conferring powers of the Telegraph Authority under Indian Telegraph Act 1985 for laying a Transmission Line is a necessary requirement and failure of the appropriate government to issue such authorisation would amount to force majeure?”

9. APTEL vide a combined judgment dated 2.12.2013 in Appeal No. 139 of 2013 and Appeal No. 140 of 2013 decided the above issue as under:

“36. To sum up. In the light of above discussion, we are of the view that the power of Telegraph Authority under 164 of the 2003 Act is essential for laying transmission line both from prior consent of land owner as well as from telephonic or telegraph message point of views. Hence, the delay in obtaining the Central Government’s approval in conferring power of the Telegraph Authority is to be construed to be a force majeure.

37. In view of the above, the impugned orders are set aside. Both the Appeals are allowed. However, there is no order as to costs.”

10. Thus, the APTEL held that the delay in grant of the permission under Section 164 of the Act is construed to be a force majeure, but did not issue any specific directions with regard to the Petitioner’s prayers for extension of SCOD and escalation of Input/Capital cost.

11. The judgement dated 2.12.2013 in Appeal No. 139 of 2013 and Appeal No. 140 of 2013 was challenged in the Supreme Court by Gujarat Urja Vikas Nigam Limited (GUVNL) vide Civil Appeal No.2022/2014, by Maharashtra State Electricity Distribution Company Limited (MSEDCL) vide Civil Appeal No.4401/2014 and Tamil Nadu State Electricity Board (TNSEB) vide Civil Appeal No. 7615/2014. However, no stay has been granted by the Hon’ble Supreme Court.

12. During the period when Petition No.169/MP/2011 and 170/MP/2011 were under consideration of the Commission, Power Grid Corporation of India Limited (hereinafter “PGCIL”), in its capacity as Central Transmission Utility (CTU), filed Petition No. 19/MP/2013 and Petition No. 20/MP/2013 with the following prayers:

- (a) *For initiation of the proceedings for revocation of licence under Section 19 of the Electricity Act, 2003 against the TTCL, NKTCL and Reliance Power Transmission Limited;*
- (b) *For orders directing the implementation of the projects covered by the Transmission Service Agreements entered into with TTCL and NKTCL to the Central Transmission Utility in the discharge of its functions under Section 38 of the Electricity Act, 2003 under the regulated tariff mechanisms;*
- (c) *For holding that the inter se rights and obligations of TTCL and NKTCL vis-à-vis their respective beneficiaries including the damages, liquidated damages shall be settled amongst them with no effect or implication to the Power Grid;*

13. NKTCL and TTCL vide their letter dated 24.2.2014 requested the Commission to accord consent to the following amendments to the TSA, which upon the Commission's consent, would be formalized into addenda to the said TSA so that appropriate proceedings may be initiated for fresh adoption of tariff:

- (a) The COD of the projects to be extended by a clear working period of 30, 36 and 42 months of each element of the project from the date of renewal/revival of approval under Section 68 of the Electricity Act, 2003 and issuance of project import certificate as per Project Import Regulations, 1986. Accordingly, the commencement date of Contract Year under Schedule 6 of Transmission Service Agreements shall be shifted to be aligned with extended COD of the project.
- (b) Enhancement of the Transmission Charges of the project as quoted under schedule 6 of the TSAs are required to compensate the increase in cost/expenses on account of force majeure, inter alia, due to the following factors: (i) Increase in Hard cost reflecting the price escalation in material and labour; (ii) Extraordinary increase in compensation for RoW near Gurgaon (PG) substation; and (iii) Increase in interest rate which has double impact in terms of increase in capital cost due to increased IDC as

well as increase in interest outgo.

14. PGCIL submitted before the Commission that non-implementation of the projects by NKTCL and TTCL is causing serious and adverse impact on the operation and maintenance of the integrated national grid. LTTCs such as KSEBL, PSPCL, UPPCL TANGEDCO and MSEDCL submitted that considering the critical importance of the transmission projects, they should be entrusted to CTU for implementation.

15. The Commission, through the Record of Proceedings of the hearing dated 27.5.2014 in Petition No. 19/MP/2013 and Petition No. 20/MP/2013 directed Central Electricity Authority (CEA) to submit a detailed report and status of the projects of NKTCL and TTCL. At the same time, NKTCL and TTCL were also directed to submit the following information:

- (a) Exact status of the implementation of the projects at the ground level.
- (b) Concrete steps taken for execution of the projects.
- (c) Clear and unambiguous roadmap for future implementation of the projects along with clear time lines.
- (d) Revised cost of the projects. (e) To hold a meeting with the LTTCs within a period of three weeks to resolve the issues and file the outcome of the meeting before 26.6.2014.

16. CEA in its report dated 1.7.2014 submitted the required information and status report with regard to evacuation system for North Karanpura as under:

"The Following transmission system had been agreed as part of the evacuation system for North Karanpura:

- (i) North Karanpura-Gaya 400 kV D/C (Quad)*
- (i) North Karanpura-Ranchi 400 kV D/C (Quad)*



- (iii) Sipat/Koarba (poolin)-Seoni 765 kV S/C
- (iv) Lucknow-Bareilly 765 kV S/C v. Bareilly-Meerut 765 kV S/C
- (vi) Agra-Gurgaon (ITP)-Gurgaon (PG) 400 kV D/C (Quad)
- (vii) 2x500 MVA 400/220 kV sub-station at Gurgaon (ITP)

In the 29th meeting of the Standing Committee of Northern Region it was decided that even if the North Karanpura generation project of NTPC was delayed, the elements (iv) to (vii) of North Karanpura transmission system would hold in providing a strong inter-connection between Eastern and Northern Region and therefore, the implementation of these elements is delinked from North Karanpura generation project. As such non-implementation/delay of the transmission lines which was to be utilized for evacuation of surplus power of the Eastern Region and Open Access Application in the Eastern Region, would affect transmission of power from the Eastern Region up to load centers in the Northern Region.”

17. CEA in the said report dated 1.7.2014 submitted the required information and status report with regard to Talcher II Augmentation System as under:

“The following transmission system had been agreed as part of evacuation system for Talcher II Augmentation System:

- (i) Talcher II - Rourkela 400 kV D/C (Quad) line
- (ii) Talcher II - Behrampur 400 kV D/C (Quad) line
- (iii) Behrampur - Gazuwaka 400 kV D/C line
- (iv) Lucknow -Bareilly 765 kV S/C 2x315MVA 400/220 kV substation at Behrampur

Power from Talcher-II STPS (2000 MW) having SR constituents as its beneficiaries is evacuated through Talcher-Kolar bi-pole HVDC line. Talcher-II Augmentation scheme has been planned as a backup transmission system to cater to pole outage of HVDC line. Uncertainly in commissioning of Talcher-II augmentation scheme will affect the reliability of evacuation of power from Talcher-II STPS to SR. (iii) In the event of non-implementation/delay of Behrampur-Gazuwaka line evacuation of power from the East Coast Energy generation project (1320 MW), that is under construction would not be possible.”

18. CEA in its further report dated 17.11.2014 observed as under:

“6. Impact, if any, in the event of discontinuing with the scheme: As stated above, the scheme is essential and may not be discontinued. Any discontinuation of the scheme would involve a re-run of the system planning and approval process and consequent additional delay in the execution /completion. Impact of this would be that situation of unreliable system operation and increased congestion in transmission system would get prolonged for the further period till the required system is put in place. It is recommended that the scheme may not be discontinued.”

19. NKTCL and TTCL submitted that the delay in grant of the permission under Section 164 of the Act, resulting in a force majeure event could not be considered a default on the part of NKTCL and TTCL which had been upheld by the APTEL.



Therefore, the implementation of the project be allowed to be carried out under revised cost and extension of time line. After the judgment of APTEL treating the delay in Section 164 as force majeure, NKTCL and TTCL approached LTTCs for extension of the time for execution of the projects and enhancement of the tariff of the transmission system. However, the LTTCs have rejected the proposal of NKTCL and TTCL. NKTCL and TTCL have approached Ministry of Power (MoP) for extension of the approval under Section 68 of the Act. NKTCL and TTCL further submitted that under Clause 11.7 of the Transmission Service Agreement, NKTCL and TTCL are not to be held responsible for the non-implementation of the transmission systems since the performance of their obligations was prevented and hindered due to force majeure events.

20. NKTCL and TTCL questioned the locus of PGCIL for seeking revocation of licences. The Commission after examining the provisions of Section 19 of the Act and the facts of the case decided vide order dated 2.9.2015 in Petition No. 19/MP/2013 and Petition No. 20/MP/2013 the locus of PGCIL in the following terms:

“32. The Commission has granted the licence to NKTCL and TTCL to implement the transmission projects as mentioned in the respective Transmission Service Agreements within stipulated timeframes. Progress of the execution of the transmission projects for which licences have been granted has to be brought to the notice of the Commission so that the Commission can form an opinion after making a proper enquiry whether the licensees are executing the transmission system as per the terms and conditions of the licence or not. In the Commission’s view, Central Transmission Utility is the best suited agency to discharge this responsibility. Under Section 38 (2) (b) of the Act, PGCILCTU is required to discharge all functions of planning and coordination relating to the interState transmission system with various agencies including the licensees. Further under Section 38 (2) (c), CTU has been vested with the responsibility to ensure development of an efficient, coordinated and economical system of inter-State transmission lines for smooth flow of electricity from the generating station to the load centres. If there is lag in the implementation of inter-State transmission system by any licensee which affects the development of efficient, coordinated and economical system of inter-State Transmission lines, CTU has a statutory responsibility to bring the same to the notice of the Commission which is not only the Licensing Authority but also is vested with the wide powers to regulate inter-State transmission of electricity. In our view, CTU has discharged its responsibility under section 38 of the Act by bringing to the notice of the Commission about the non-execution of the transmission systems by NKTCL and TTCL which is

affecting the efficient, coordinated and economical development of the interState transmission system. The information submitted by the petitioner in the petitions has been considered as the material for making further enquiry as to whether the cases of NKTCL and TTCL fall within the scope of any of the clauses under sub-section (1) of section 19 and whether it is in public interest to revoke their licences. To that extent, the petitions have served the purpose of providing the basis to the Commission for making enquiry about the fitness of these cases for revocation licences under section 19 of the Act.”

21. The Commission after considering the submissions of CTU, LTTCs and the Petitioners, the report of CEA and the judgement of the APTEL in its judgement dated 2.12.2013 in Appeal No. 139 of 2013 and Appeal No. 140 of 2013 issued the following directions with regard to implementation of the projects vide order dated 2.9.2015 in Petition No. 19/MP/2013 and Petition No. 20/MP/2013:

“38. Central Electricity Authority has clearly indicated that the projects awarded to NKTCL and TTCL are critical for transmission of power. With regard to transmission system for which licence has been granted to NKTCL, CEA has stated that non-implementation/delay of the transmission lines which are to be utilized for evacuation of surplus power of the Eastern Region and Open Access Applications in the Eastern Region, would affect transmission of power from the Eastern Region up to load centres in the Northern Region. As regards the transmission systems for which licence has been granted to TTCL, CEA has stated that power from Talcher-II STPS (2000 MW) having SR constituents as its beneficiaries is evacuated through Talcher-Kolar bi-pole HVDC line. Talcher-II Augmentation scheme has been planned as a backup transmission system to cater to pole outage of HVDC line. Uncertainty in commissioning of Talcher-II augmentation scheme will affect the reliability of evacuation of power from Talcher-II STPS to SR. The respondent beneficiaries such as PSPCL, MSEDCL, KSEBL, TANGEDCO and UPPCL have also emphasised the necessity and criticality of these transmission lines. In our view, implementation of these strategically important projects cannot be held hostage to the contractual disputes between NKTCL/TTCL and the LTTCs. Public interest requires that there is finality and clarity with regard to implementation of these projects.

39. The Commission has therefore decided to give a final chance to NKTCL and TTCL to submit their firm commitment and action plan to implement the transmission projects within a period of 15 days from the date of issue of this order taking into consideration the following:

(a) Since transmission licences have been granted, tariff has been adopted and section 164 approvals have been granted, NKTCL and TTCL shall confirm that they would implement the projects within a period of 30 months counting from 1.10.2015.

(b) NKTCL and TTCL shall approach the MoP for issue of section 68 notification within a period of 15 days and if approached, MoP is requested to issue the Order in Petition Nos. 19/MP/2013 and 20/MP/2013 Page 36 of 37 section 68 approval at the earliest keeping in view the timeline for implementation of the projects.

(c) NKTCL and TTCL shall be entitled to relief as per the TSAs on account of force majeure for the delay in grant of powers of Telegraph Authority by the Central Government as decided by the Appellate Tribunal for Electricity. The exact quantification of the relief will be done after execution of the projects and on production of documentary evidence with regard to cost escalation attributable to such force majeure events.

(d) There will be no upfront revision of tariff as it will be against the principle of discovery of tariff through competitive bidding. The affected party is required to be compensated for the force majeure event which can be worked out after the exact impact is known after the execution of the project.

(e) No petition for revision of tariff shall be entertained except in cases of force majeure events or change in law which are permitted under the TSA.

(f) The above affidavit shall be made without any conditions. In case any condition is attached, it will be presumed that NKTCL and TTCL are not interested to implement the projects.

40. In case NKTCL and TTCL find the above conditions not acceptable, the Commission would expect NKTCL and TTCL to make applications or submit consent on affidavit within a period of 15 days from the date of issue of this order for revocation of licences under sub-section (2) of section 19 of the Act. It is pertinent to note that uncertainty in implementation of these projects which are already delayed will be against the interest of consumers and public interest requires that some other project developers implement the projects in accordance with the Transmission Licence Regulations and the Tariff Policy.

41. In the event, no reply is received from NKTCL and TTCL for implementation of the projects or no application/consent under sub-section (2) of section 19 is received within 15 days of the issue of this order or such longer period as the Commission may permit, it will be considered that NKTCL and TTCL are not interested to execute the projects and necessary action will be initiated for revocation of licence after following the procedure in terms of sub-section (3) of section 19 read with Regulation 20 of the Transmission Licence Regulations.”

42. CTU has prayed for revocation of the licences of NKTCL and TTCL and for vesting the responsibility of development of the transmission system with the CTU in view of the criticality of the transmission lines. In view of our decision in paras 39 to 41 of this order, no direction is required to be issued on the prayers of CTU.

43. Petition Nos. 19 of 2013 and 20 of 2013 are disposed of in terms of the above”

22. The order dated 2.9.2015 in Petition No. 19/MP/2013 and Petition No. 20/MP/2013 was challenged before APTEL by NKTCL and TTCL by filing Appeal No.200 of 2015 and Appeal No.201 of 2015 with the following prayers:

“(a) The Hon’ble Tribunal may be pleased to quash and set aside the impugned order dated 2nd September, 2015 passed by Respondent No.1 Commission in Petition No.19/MP/2013 (in Appeal No.200 of 2015) and Petition No.20/MP/2013 (in Appeal No.201 of 2015) and to set off the adverse effect in time and cost overruns due to



unavoidable delays owing to the circumstances explained in paragraphs 7 and 9 of the appeal.

(b) That this Hon'ble Tribunal may be pleased to extend the COD of the project by giving clear working period of 30, 36 and 42 months of each element as provided for initially to be reckoned from the date of grant of authorisation under Section 68 of the Electricity Act, 2003 and issuance of Project Import Certification as per Project Import Regulations, 1986 and compensate for reduction of "Revenue Earning years".

(c) Grant such escalation of Input/Capital costs as pleaded above by the Appellant, and relief for loss of opportunity in view of extension of this project.

(d) Pending hearing and final disposal of this Appeal, the Long Term Transmission Customers may be ordered not to take any coercive action against the Appellant including encashment of contract performance guarantees furnished by the appellants under the TSA.

(e) Grant such further escalation on Input/Capital costs for the time during which the matter was pending before the Hon'ble Central Commission and also for the time that the matter pends before this Hon'ble Tribunal; and

(f) For such other and further relief's as the nature and circumstances of the case may require."

23. NKTCL and TTCL also filed IA No.337/2015 and IA No.338/2015 for stay of the operation of the order dated 2.9.2015 in Petition No. 19/MP/2013 and Petition No. 20/MP/2013. APTEL vide its judgement dated 30.9.2015 rejected the stay application with the following observations:

"9. Having considered the matter in its proper perspective and after carefully examining the extracts of CEA report, we are of the opinion that it would not be possible either to stay the impugned order or to give any directions as urged by Mr Sanjay Sen, learned Senior Counsel for the Appellant. As stated in the CEAs report the transmission projects awarded to the Appellants are critical for transmission of power. Admittedly, there is no progress in construction of transmission lines. Any order passed by us staying the impugned order or giving directions as suggested by Mr Sen will be counter productive as it will further delay the commissioning of the projects. In our prima facie opinion, the Central Commission has adopted a balanced approach. Hence the applications for stay are rejected and disposed of as such."

24. Since NKTCL and TTCL failed to file necessary affidavits in terms of paragraph 39 of the order dated 2.9.2015 in Petition No. 19/MP/2013 and Petition No. 20/MP/2013, the Commission issued notices under Section 19 of the Act for revocation of inter-State transmission licence granted to NKTCL and TTCL vide

orders dated 5.11.2015 in Petition No.13/SM/2015 and 14/SM/2015. NKTCL and TTCL have not filed responses to the said notices.

25. The judgement of APTEL dated 30.9.2015 in IA No.337/2015 and IA No.338/2015 was challenged before the Hon'ble Supreme Court in Civil Appeal No. 9291/2015 and Civil Appeal No. 13370/2015. Hon'ble Supreme Court while issuing notice in the said appeals directed that no coercive action be taken. Hon'ble Supreme Court vide its judgement dated 12.8.2016 disposed of both appeals with the following directions:

"1. We have heard the learned counsels for the parties. Having regard to the subject matter involved we are of the view that the refusal of interim relief by the learned Appellate Tribunal for Electricity, New Delhi (for short "the Appellate Tribunal"), in the facts of the case, was not justified as such refusal would have rendered the appeal pending before it virtually infructuous.

2. Accordingly, we grant interim relief as prayed for by the appellant before us (as well as before the learned Appellate Tribunal) and request the learned Appellate Tribunal to decide the appeal itself as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of this order.

3. The appeals are disposed of in the above terms."

26. Subsequent to the judgement of the Hon'ble Supreme Court as quoted above, APTEL vide its order dated 1.2.2019 disposed of the Appeal No.200 of 2015 and Appeal No.201 of 2015 with the following directions:

"1. In Appeal No. 200 of 2015, the Appellant, North Karanpura Transmission Co. Ltd., is questioning the legality and validity of the Order dated 02.09.2015 passed by the Central Electricity Regulatory Commission (CERC), New Delhi in Petition No. 19/MP/2013 in the case of Power Grid Corporation of India Ltd. v North Karanpura Transmission Company Ltd. & Ors.

2. In Appeal No. 201 of 2015, the Appellant, Talcher-II Transmission Co Ltd. is questioning the legality and validity of the Order dated 02.09.2015 passed by the Central Electricity Regulatory Commission, New Delhi in Petition No. 20/MP/2013 in the case of Power Grid Corporation of India Ltd. v North Karanpura Transmission Company Ltd. & Ors.

3. The learned counsel, Mr. Buddy A. Ranganadhan, appearing for the Appellants, during the course of his submissions, submitted that, the instant two appeals filed by the Appellants may kindly be disposed of reserving liberty to the Appellants to file necessary applications before the first Respondent/CERC for redressing their

grievances within a period of two weeks from today.

4. Further, the counsel for the Appellants submitted that, liberty also may kindly be reserved to the Appellants to assail the correctness of the impugned Orders dated 02.09.2015 passed in Petition Nos. 19/MP/2013 and 20/MP/2013 respectively and, in the event, orders passed by the first Respondent/CERC are against the Appellants, the Appellants may kindly be permitted to file the appeals against the impugned Orders as well as the order passed by the first Respondent/CERC on the applications filed by the Appellants before this Tribunal.

5. We have heard the learned counsel for the Appellant and the learned counsel for the Respondents.

6. Submissions of the counsel appearing for the Appellants, as stated supra, are placed on record.

7. In view of the submissions of the learned counsel for the Appellants, as stated supra, the instant two appeals, being Appeal Nos. 200 of 2015 and 201 of 2015, stand disposed of reserving liberty to the Appellants to file the necessary applications for redressing their grievances before the first Respondent/CERC, New Delhi within a period of two weeks from the date of the receipt of this Order.

8. The liberty is also reserved to the Appellants in the event the prayers sought in the applications to be filed by the Appellants before the first Respondent/CERC are not considered or rejected by the first Respondent/CERC, the Appellants are permitted to file the appeals before this Tribunal questioning the correctness of the order impugned dated 02.09.2015 in Petition Nos. 19/MP/2013 and 20/MP/2013 and also against the order passed on the applications filed by the Appellants before the first Respondent/CERC. With these observations the instant two appeals, being No. 200 of 2015 and 201 of 2015, on the file of the Appellate Tribunal for Electricity, New Delhi stand disposed of.

Order accordingly.”

27. Pursuant to the liberty granted by the APTEL, NKTCL and TTCL have filed the present Petition No. 40/MP/2019 and Petition No. 41/MP/2019.

Prayers and Submissions of the Petitioners

28. The Petitioners have made the following prayers in the Petition No. 40/MP/2019 and Petition No. 41/MP/2019:

“(a) assess as to whether the transmission project as a whole or in part or with modification is required and, if so, what should be the scope of work and seek necessary advice from the Central Electricity Authority to assess the requirement or redundancy of the NK Transmission and Talcher-II augmentation scheme;

(b) If the projects are still required, revise the timelines, costs and tariff to cater to the force majeure as already held by the APTEL to enable the project to be

- executed;*
- (c) *In the alternative, if it is held that the projects are no longer required, and without prejudice to prayer clauses (a) to (b) above, pass necessary orders to relieve the Petitioners herein from the duty or responsibility to execute the said transmission project and direct return of the Contract Performance Guarantees/bank guarantees to the Petitioners without there being any coercive action by any of the beneficiaries;*
- (e) *hold and declare that the Petitioners are entitled to recover the expenditure so far spend on the projects to the tune of Rs.25 crores;*
- (e) *pass any such other and further reliefs as this Commission deems just and proper in the nature and circumstances of the present case.”*

29. The Petitioners have submitted the following grounds in support of the reliefs prayed in the petitions:

- (a) The projects are delayed not for any reasons attributed to the Petitioners.
- (b) Fundamental basis of TSAs stands altered and eroded as projects are not required any more.
- (c) The Transmission Service Agreements stand frustrated.
- (d) Independent assessment mandated as to whether the projects are required or not.

30. Submissions made by the Petitioners under each of the grounds have been discussed in the subsequent paragraphs.

(a) The projects are delayed not for any reasons attributed to the Petitioners

31. The Petitioners have submitted that the transmission projects were adversely affected as the scheduled CODs of various transmission elements/lines which were between 30 months and 42 months from the effective dates i.e.20.5.2010, have been delayed on account of non-availability of the statutory authorisation of the Central Government under Section 164 of the Act conferring powers of the Telegraph Authority for implementation of the transmission projects and also on account of expiry of the approval under Section 68 of Act to place the overhead lines. The Petitioners have submitted that the approval under Section 164 was granted by Ministry of Power only on 11.8.2011 and was received by the Petitioner on 7.9.2011



and after a day later one of the Petitioner's banker withdrew their sanctions. By then, the approval under Section 68 of the Act was about to expire and the Petitioners applied for extension on 3.9.2011. However, no extension was granted and the approval under Section 68 expired on 7.12.2011 and has not been renewed thereafter despite reminders. The Petitioners have submitted that APTEL in its judgment dated 2.12.2013 in Appeal No. 139 of 2013 and Appeal No. 140 of 2013 has held that the delay in obtaining the Central Government's approval under Section 164 of the Act conferring power of Telegraph Authority is to be construed as force majeure. In view of the APTEL's judgment, the schedule for commissioning, commercial operation of the transmission project and escalation of cost were to be reworked. However, the APTEL's judgment was never implemented as the beneficiaries did not accede to the request of the Petitioners for mitigating the impact of escalation of cost owing to existence of force majeure events. The Petitioners have further submitted that under Clause 11.7 of the Transmission Service Agreements, the Petitioners were not to be held responsible for the non-implementation of the projects since the performance of their obligations was prevented and hindered due to force majeure events. As a result, no part of the transmission systems is ready as on the date of filing the present Petition.

(b) Fundamental basis of TSAs stands altered and eroded as projects are not required any more

32. The Petitioners have submitted that in the course of the pleading before the APTEL in Appeal No. 200 and Appeal No. 201 of 2015, several beneficiaries raised the issue that the transmission projects of NKTCL and TTCL were not required any more. TANGEDCO took the stand that Talcher-II augmentation scheme has no relevance in the present and future scenarios and would be a redundant asset

causing unnecessary burden on the beneficiaries. TANGEDCO has submitted that a load flow study was conducted by the system studies group of TANGEDCO by using the All India Data Base given by CEA for the year 2019-20 considering the Commission/ongoing network elements and the study revealed that taking into consideration of the Angul and Harsuguda 765/400 kV substations in Eastern Region and the newly commissioned/under execution and planned 765/400 kV lines in Southern Region, there will not be any constraint in Eastern as well as Southern Region in evacuating power from Talcher-II TPS during single pole outage of Talcher-Kolar HVDC line. Also, there will not be any constraint in transfer of power from Eastern to Southern Region and vice versa. TANGEDCO has categorically stated that necessity for the transmission system within the scope of licence of TTCL has become obsolete and the TSA between TTCL and the LTTCs is liable for termination. TANGEDCO has further stated before APTEL that TTCL is liable to compensate the LTTCs as per Article 6.4.2 of the TSA. The LTTCs have also questioned the requirement/redundancy of the NKTCL augmentation scheme on the ground that surplus power is available from 2019-20 onwards as also the various improvements to the transmission network has already been commissioned or in advance stage of commissioning. Since the LTTCs have indicated technical issues for justifying the requirement/redundancy of NKTCL scheme, this would require technical expertise from the Central Electricity Authority for independent assessment of the facts and verification of the same. The Petitioners have submitted that they are unable to execute and implement the transmission project (i) in the absence of extension of the scheduled COD owing to the existence of force majeure events; (ii) non-acceptance of increase in the price over the quoted tariff owing to the escalation in the various cost elements attended to the transmission project/capital

cost especially when more than 8 years have expired from the effective date of; (iii) non-clarity on whether the transmission project is required at all to be implemented.

(c) The Transmission Service Agreements stand frustrated

33. The stand taken by the LTTCs that the NKTCL augmentation scheme and Talcher-II augmentation scheme are no longer required or have become redundant, has made the performance of the TSAs impossible because a state of things which was the basis of the contract has ceased to exist and in any case circumstances has intervened which render the performance of the TSA, within the time, in the way contemplated, impossible. Firstly, the foundation of the contract was the timeline of completion of scheduled COD for the different transmission elements from 30 months to 42 months has provided in Schedule-II of the Transmission Service Agreements which were subject to extension under Article 11 for being effected by force majeure event on account of delay in grant of authorization under Section 164 of the Act which has been upheld by the APTEL in Appeal No. 139 and Appeal No. 140 of 2013. Secondly, the performance of the Transmission Service Agreements was prevented due to the fact that the statutory permission under Section 68 of the Act had expired and was not renewed by the Central Government as well as the fact that there was an inordinate delay by the Central Government to grant the authorization under Section 164 of the Act. Thirdly, the facts of non-renewal of Section 68 statutory permission as well as inordinate delay of the authorization under Section 164 which prevented the performance of Transmission Service Agreements were never in the contemplation of the parties on the date of signing of the Transmission Service Agreements. Accordingly, the Petitioners and the LTTCs are discharged from further performance of the contracts and consequently, the contract performance guarantee must be returned to the Petitioners in the original form as

submitted by the Petitioners initially.

(d) Independent assessment mandated as to whether the projects are required or not

34. The stand taken by some of the beneficiaries especially TANGEDCO that Talcher-II augmentation scheme is redundant and no more required as well as PGCIL's stand that Talcher-II augmentation scheme and NKTCL augmentation scheme be awarded to PGCIL instead of requiring the Petitioners to execute strikes the very root of the entire project and the purpose for which the Petitioners and the LTTCs had entered into the TSAs. This has rendered the TSAs impracticable and impossible to be performed. The Petitioners have submitted that the Commission may seek necessary advice from CEA whether the transmission projects as a whole or in part or with modification are required and if so what should be the scope of work. The Petitioners have further submitted that in case the Commission decides that transmission project is no more required or that the transmission project can be executed by PGCIL under cost plus tariff determination, the Commission may relieve the Petitioners from the duty or responsibility of executing the said transmission projects and direct for return of the contract performance guarantee. Relying on the provisions of Article 4.4.2 and 13.5 of the TSAs, the Petitioners have submitted that the delay in execution of the transmission projects has caused prejudice and prolonged uncertainty to the Petitioners which resulted in the lenders withdrawing their support and cancelling their sanction of loan amounts. If the Commission were to hold that the projects are still required and the fundamental premises of the projects remain unchanged, the Petitioners are still willing to implement the project subject to the Commission providing fresh timelines and a revised cost to cater to the effect of force majeure as upheld by the APTEL.

IA No. 21/2019 & IA No. 22/2019 and IA No. 22/2021 & IA No. 23/2021

35. The Petitioners had filed IA No.21/2019 in Petition No. 40/MP/2019 and IA No. 22/2019 in Petition No. 41/MP/2019 seeking to restrain the LTTCs from invoking, encashing or otherwise taking any steps as against the Bank Guarantees till the final disposal of the petitions. The Commission through the Record of Proceedings dated 19.2.2019 directed the LTTCs not to take any coercive measures till further order and disposed of both IAs. Subsequently, the Petitioners have filed IA No.22/2021 in Petition No. 40/MP/2019 and IA No. 23/2021 in Petition No.41/MP/2019 seeking directions to exchange the Bank Guarantees with Corporate Guarantees.

Replies by Respondents

36. Replies to the Petition No.40/MP/2019 have been filed by Tamil Nadu Generation and Distribution Company (TANGEDCO). Replies to Petition No. 41/MP/2019 have been filed by M.P. Power Management Company Limited (MPPMCL), Gujarat Urja Vikas Nigam Limited (GUVNL) and Maharashtra State Electricity Distribution Company Limited (MSEDCL).

Submissions of TANGEDCO

37. TANGEDCO has taken a preliminary objection with regard to the maintainability of the petition on the ground that the Commission after passing the order dated 2.9.2015 in Petition No.19/MP/2013 and Petition No.20/MP/2013 cannot entertain any application seeking re-adjudication of the settled issues since the said order dated 2.9.2019 has not been set aside by APTEL but the Appeals have been disposed of with liberty to the Petitioners to approach the Commission. TANGEDCO has further submitted that the Petition is hit by Order 2 Rule 2 of CPC, since the Petitioner TTCL did not seek before the Commission any prayer to protect its bank

guarantee and the Commission did not grant protection against invocation of contract performance guarantee by the Respondents. Even the interim applications filed by the Petitioners before the APTEL seeking stay of encashment of its contract performance guarantee were dismissed. Though, the Hon'ble Supreme Court granted protection to the Petitioners till the disposal of the Appeals before the APTEL, the Appeals were disposed of by APTEL at the request of the Petitioners without setting aside the order dated 2.9.2015 in Petition No.19/MP/2013 and Petition No.20/MP/2013. Since the Commission did not protect the Petitioners' bank guarantee from being encashed in the order dated 2.9.2015 and since the said order has not been set aside by the APTEL, the Petitioners cannot seek the relief of protection of bank guarantee by filing the present petitions.

38. TANGEDCO has further submitted that the Commission in its order dated 2.9.2015 had liberally granted time of 30 months from 1.10.2015 to the Petitioner TTCL for completion of the project having due consideration to the ground reality and wilful and prolonged default on the part of the Petitioner and duly factoring the force majeure declared by APTEL. The Petitioner instead of completing the project as directed, filed appeal before the APTEL and after its interim application for stay was dismissed by the APTEL vide order dated 30.9.2015, filed Civil Appeal before the Hon'ble Supreme Court. The Hon'ble Supreme Court granted interim relief to the Petitioner and requested the APTEL to decide the Appeal within a period of 3 months. However, APTEL after 3 years on the request of the Petitioner disposed of the Appeal granting liberty to the Petitioner to approach the Commission. TANGEDCO has submitted that there was no court order restraining the Petitioner from performing its part of the contract till date and it was the Petitioner which on its own did not proceed with the project despite the Commission giving it a time of 30

months from 1.10.2015 to complete the project. The Petitioner cannot take advantage of its own wrong and absolve itself of the contractual obligation.

39. TANGEDCO has further submitted that during the course of hearing before APTEL, TANGEDCO submitted a study report stating that the sole purpose of augmenting the transmission project of TTCL was to have a backup scheme in case of single pole outage of Talcher-Kolar HVDC line at the instance of NTPC during 2009. Since the instant project was not executed by the Petitioner, other transmission lines which were proposed during 2013 have been commissioned or are in the final stages of being commissioned by PGCIL. The augmented transmission system would be adequate to transfer power during single pole outage of Talcher-Kolar HVDC line. TANGEDCO has submitted that as per the study results, Talcher-II augmentation scheme which was evolved 10 years back has no relevance in the present context or in future scenario due to the non-performance of the contract by the Petitioner in time. TANGEDCO has submitted that if the same is implemented now, it will be a redundant asset causing unnecessary burden on the beneficiaries.

40. TANGEDCO has submitted that the Petitioner has miserably failed to honour the provisions of the TSA. As per Article 3.1.1 of the TSA, the Petitioner TTCL has provided a bank guarantee for an aggregate amount of Rs.38.40 crore to the LTTCs and the pro-rata share of TANGEDCO is Rs.9.57 crore. As per Article 3.3 of the TSA, if the TSP fails to fulfil the conditions as per Article 3.1.3, then the TSP is required to furnish additional contract performance guarantee of Rs.1.92 crore. Due to non-fulfilment of the conditions subsequent under Article 3.1.3, the Petitioner is liable to pay the LD from the date of issue of show cause notice by the Commission.

TANGEDCO has further submitted that as per Article 6.4.1 of the TSA, the Petitioner is liable to pay liquidated damages if it fails to achieve the COD of the project by the SCOD as extended under Article 4.4.1 and Article 4.4.2. The Petitioner TTCL is liable to pay the LTTCs Rs.51.20 crore with a applicable interest from the date of termination notice which shall be reckoned from the date of show cause notice issued by the Commission.

41. TANGEDCO has submitted that the Petitioner TTCL has miserably failed to fulfil its obligation under the contract and has caused a huge financial loss to the beneficiaries by not implementing the project as per the TSA in terms of limiting the power transfer capability between Eastern Region and Southern Region during the said contractual term as a result the utilities in the Southern Region were forced to buy costly power from another sources resulting in an additional financial burden to the distribution utilities. The Petitioner is liable to make a good the loss incurred by the distribution utilities during the said contractual period. TANGEDCO has further submitted that Article 3.3.3 of the TSA clearly stipulates that even if the TSA is terminated by the LTTCs as per provisions of Article 3.2.2, the TSP shall be liable to pay to the LTTCs Rs.51.20 crore as liquidated damages which shall be recovered from the contract performance guarantee and the shortfall shall be payable by the TSP. Further, Article 3.3.3 shall survive the termination of the Agreement. TANGEDCO has further submitted that Section 37, Section 74 and Section 75 of the Indian Contract Act, 1872 mandate the Petitioner to pay the liquidated damages even if the contract is terminated. TANGEDCO has submitted that the Commission may allow TANGEDCO and other LTTCs to encash the contract performance guarantee furnished by the Petitioner and direct the Petitioner to pay the balance amount of Rs.12.80 crore to all the LTTCs in proportion to their allocated project

capacity.

Submissions of MPPMCL

42. MPPMCL, one of the LTTCs in North Karanpura Augmentation scheme and Respondent No. 9 in Petition No. 41/MP/2019 has submitted that the Petitioner NKTCL has hopelessly failed to complete the transmission project in accordance with the TSA entered into with LTTCs and has accordingly breached the transmission service agreement.

Submissions of GUVNL

43. GUVNL which is a Respondent No. 7 in Petition No. 41/MP/2019 has submitted that the Petitioner NKTCL was evidently using the non-availability of permission under Section 164 of the Act which was for a very limited period as an excuse for non-performance of the contract over all these years. Even assuming the best case of force majeure in terms of the previous decision of the APTEL, the effect on implementation of the project was only for a few months. However, there has been no progress over all these years, which establishes that the Petitioner has been using force majeure only as an excuse to avoid its contractual obligation. GUVNL has further submitted that the beneficiaries have been put to substantial loss and prejudice as they had to make alternate arrangements for drawing power in view of the non-implementation of the said transmission system by the Petitioner. GUVNL has submitted that PGCIL in its affidavit dated 17.8.2020 has specifically stated that due to inordinate delay as well as uncertainty in implementation of the scheme by NKTCL, alternative corridors were planned and commissioned subsequently and hence, the transmission scheme under the scope of NKTCL is not required under current circumstances on technical grounds. The Petitioner cannot be permitted to

avoid the consequences of its default as provided in the TSA. The Petitioner is liable to pay the damages as provided for in the TSA, being liquidated damage for non-performance of its contractual obligations. GUVNL has submitted that prayer of the Petitioner for return of the bank guarantee is liable to be rejected.

Submissions of MSEDCL

44. MSEDCL which is Respondent No. 3 in Petition No. 41/MP/2019 has submitted that there has been no progress over all these years in the transmission project in question. The Petitioner, in order to wriggle out of its responsibility in the project, has been litigating time and again only to avoid its contractual obligation in implementation of its project. MSEDCL has further submitted that in pursuance to the directions of the Commission, CTU vide its affidavit dated 17.8.2020 has categorically clarified that in view of the non-availability of the transmission system of the Petitioner due to the inordinate delay and uncertainty in the implementation of the transmission project and the constraint that were observed in the system, alternative transmission systems were planned and executed by the concerned parties. In the said affidavit it has been categorically mentioned that the Petitioner is not absolve from the liability of paying liquidated damages to LTTCs under the TSA. MSEDCL has further submitted that Article 6.4 of the TSA provides for the mode and manner of calculation of liquidated damages for delay in achieving COD of the project. Since the Petitioner has failed to implement the project, the Petitioner is duty bound to pay liquidated damages to LTTCs in terms of Article 6.4 of the TSA. MSEDCL has further submitted that in the light of the order dated 24.1.2019 in Review Petition No. 4/RP/2018, the LTTCs including MSEDCL are not required to prove their losses in order to claim liquidated damages. MSEDCL has further submitted that encashment of Performance Bank Guarantee is the consequence of

failure on the part of the Petitioner to achieve SCOD and the said remedies are available to the LTTCs including MSEDCL in addition to the remedy of claiming liquidated damages under the TSA.

Proceedings before the Commission

45. During hearings of the matter, the Learned Senior Counsel for the Petitioners submitted that the present petitions have been filed for seeking assessment as to whether the transmission project as a whole or in part or with modification are required and if so, what should be the scope of work and for seeking necessary advice from CEA to assess the requirement or redundancy of the transmission schemes. Learned Senior Counsel submitted that APTEL has granted liberty to the Petitioners to approach the Commission for redressing their grievances. Learned Senior Counsel further submitted that during the course of the hearing of the Appeals before the APTEL, the beneficiaries/LTTCs had raised the issue with regard to the requirement of the Transmission Projects in the present circumstances. Learned Senior Counsel further referred to the replies of TANGEDCO and MPPMCL who have categorically stated that the transmission projects are not required any more. Learned Counsel for TANGEDCO submitted that as per the load flow study carried out by the procurers the transmission systems are not required.

46. The Commission vide Record of Proceedings (RoP) dated 16.5.2019 directed CEA to assess the requirements of North Karanpura Augmentation and Talcher-II Augmentation transmission systems in the current and future scenarios and submit the report in this regard. The Commission vide the same RoP also directed TANGEDCO to submit a copy of the load flow study carried out by the Procurers. The Commission during the hearing on 11.6.2000 directed CTU to submit on affidavit

as to whether in the current circumstances, the transmission projects are required or not after carrying out consultations with concerned stake holders including CEA.

Affidavit of the Central Transmission Utility (CTU)

47. Pursuant to the direction of the Commission during the hearing on 11.6.2000, a meeting was held on 29.7.2020 by CEA with participation of the Officers of CTU and the representatives of the constituents of Western Region, Northern Region, Southern Region and Eastern Region. CTU vide its affidavit dated 17.8.2020 has placed the minutes of the said meeting on record. With regard to “Augmentation of Talcher-II Transmission System” and “North Karanpura Transmission System”, the following was decided in the said meeting:

“18. After deliberations, the following was concluded:

(a) Due to inordinate delay and uncertainty in implementation of the scheme by M/s TTCL, the transmission scheme under the scope of TSP is presently not required on technical grounds only as either investment in alternate corridors development has already been made or alternate scheme has already been planned for implementation.

(b) Decision taken in the meeting with regards to the technical requirement of transmission system to be developed by M/s TTCL shall be without prejudice to the rights of LTTCs under the TSA and the pending legal cases before various forums.

(c) SPS at Talcher Stage-II generation may be reviewed at appropriate forum.

(d) The matter regarding enhancement of fault level at Jeypore/Gazuwaka and operation of HVDC at rated capacity may be dealt separately in RPC-TP meetings.

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24. After deliberations, it was concluded that due to inordinate delay as well as uncertainty in implementation of the scheme by M/s NKTCL. Alternate corridors were planned/commissioned subsequently. Hence, the transmission scheme under the scope of TSP is not required under current circumstances on technical grounds only as either investment in alternate lines has already been made or alternate scheme has already been planned for implementation. However, this shall not absolve rights of LTTCs under the Transmission Service Agreement (TSA) with M/s NKTCL.

25. It was decided that the above views of all the stakeholders for both schemes viz. Augmentation of Talcher-II Transmission System and North Karanpura Transmission System awarded to M/s Talcher-II Transmission Company Limited (TTCL) and M/s North Karanpura Transmission Company Limited (NKTCL) respectively may be communicated to CERC in line with ROP issued in Petition No. 40/MP/2019. Further,

the decision taken in the meeting about the technical requirement of transmission system to be developed by M/s TTCL and M/s NKTCL shall be without prejudice to the rights of LTTCs under the respective TSAs and the pending legal cases before various forums.”

48. CTU has submitted that in the light of the decision taken in the above mentioned meeting, the transmission scheme under the scope of TSP is presently not required on technical grounds as either investment in development of alternate corridors has already been made or alternate scheme has already been planned for implementation. CTU has further submitted that decision taken in the meeting with regard to the technical requirement of transmission system to be developed by M/s TTCL and M/s NKTCL shall be without prejudice to the rights of LTTCs under the respective TSAs.

Hearing dated 14.12.2021

49. During the final hearing on 14.12.2021, the Learned Senior Counsel for the Petitioners submitted that in view of the decision taken by the stakeholders in the meeting held under the aegis of CEA, the transmission systems are no more required and therefore, the Petitioners be relieved of their contractual obligations under the TSA and the Contract Performance Guarantees be released to the Petitioners. Learned counsels for LTTCs submitted that the failure on the part of the Petitioners to implement the transmission systems led to the alternate arrangements being made for system strengthening and evacuation of power and therefore, Contract Performance Guarantee should be encashed for breach of the terms of the TSAs.

Analysis and Decision

50. The present petitions have been filed by the Petitioners pursuant to the liberty granted by the APTEL in order dated 1.2.2019 in Appeal No. 200 of 2015 and

Appeal No. 201 of 2015. For the sake of convenience, the relevant portions of the said order are extracted as under:

“7. In view of the submissions of the learned counsel for the Appellants, as stated supra, the instant two appeals, being Appeal Nos. 200 of 2015 and 201 of 2015, stand disposed of reserving liberty to the Appellants to file the necessary applications for redressing their grievances before the first Respondent/CERC, New Delhi within a period of two weeks from the date of the receipt of this Order.

8. The liberty is also reserved to the Appellants in the event the prayers sought in the applications to be filed by the Appellants before the first Respondent/CERC are not considered or rejected by the first Respondent/CERC, the Appellants are permitted to file the appeals before this Tribunal questioning the correctness of the order impugned dated 02.09.2015 in Petition Nos. 19/MP/2013 and 20/MP/2013 and also against the order passed on the applications filed by the Appellants before the first Respondent/CERC. With these observations the instant two appeals, being No. 200 of 2015 and 201 of 2015, on the file of the Appellate Tribunal for Electricity, New Delhi stand disposed of.”

51. It is evident from the above order that the APTEL has not examined the legality, propriety or correctness of the Commission's order dated 2.9.2015 in Petition No. 19/MP/2013 and Petition No. 20/MP/2013 while disposing the Appeal No. 200 of 2015 and Appeal No. 201 of 2015. On the request of the Petitioners, the APTEL has disposed of the said appeals with liberty to the Petitioners to file necessary application before this Commission for redressal of their grievances. Pursuant thereto, the Petitioners have filed the petitions with grounds and prayers substantially different from those raised in Appeal No. 200 of 2015 and Appeal No. 201 of 2015. The APTEL has further granted liberty to the Petitioners to challenge the order dated 2.9.2015 in Petition No.19/MP/2013 and Petition No.20/MP/2013 and the order to be passed in the present petitions in case the prayers sought in the present petitions are not considered or rejected. Thus, the order dated 2.9.2015 has neither been set aside nor been stayed but is open to challenge in future if the Petitioners desire so. In so far as the present status of the order dated 2.9.2015 is concerned, it is still valid and binding on the Petitioners and the Commission being

functus officio in the matter cannot revisit any of the issues decided in the same order. Keeping the above legal principles in view, we are proceeding to examine the grounds raised and the prayers made in the instant petitions by the Petitioners.

52. The main prayer of the Petitioners in the present petitions pertains to carrying out an assessment as to whether the transmission projects namely, augmentation of Talcher-II Transmission System and North Karanpura Transmission System, are required as a whole or in part or with modification and if so, what should be the scope of work and to seek advice from the CEA to assess the requirement or redundancy of the projects. The other prayers are consequential in nature in the sense that if the projects are required, the Petitioners have sought revision of timelines, cost and tariff of the projects to cater to the force majeure as already held by APTEL to enable the project to be executed and if the projects are no longer required, the Petitioners have sought to be relieved from the duty and responsibility of executing the transmission projects and return of Contract Performance Guarantee. Additionally, the Petitioners have sought a declaration to be entitled for recovery of the expenditure of Rs.25 crore made in the projects.

53. In support of the above prayers, the Petitioners have pressed four grounds which have been examined in the subsequent paragraphs.

Ground (a): The projects are delayed not for any reasons attributed to the Petitioners

54. The Petitioners have advanced the ground that on account of delay in grant of Section 164 approval, the Petitioners' bankers withdrew their sanction and though the Petitioners had applied for renewal of Section 68 approval before the date of expiry, the same has not been granted by MoP. APTEL in its judgment dated

2.12.2013 in Appeal No. 139 of 2013 and Appeal No. 140 of 2013 has held that delay in obtaining the Central Government's approval under Section 164 of the Act is to be construed as force majeure. The Petitioners have submitted that APTEL's judgment was never implemented as the beneficiaries did not accede to the request of the Petitioners for mitigating the impact of force majeure by reworking the schedule date of commercial operation of the projects and escalation of cost. The Petitioners have strenuously argued that the Petitioners may not be held responsible for non-implementation of the projects since the performance of their obligation was prevented and hindered due to force majeure event. The Respondent TANGEDCO has submitted that there was no court order restraining the Petitioner TTCL from performing its part of the contract and it was the Petitioner who on its own did not proceed with the project despite the Commission granting time of 30 months from 1.10.2015 to complete the project. GUVNL submitted that the Petitioner NKTCL was using non-availability of the permission under Section 164 of the Act which was for a limited period as an excuse for non-performance of the contract over all these years. As a result, the LTTCs have been put to substantial loss and prejudice in view of the non-implementation of the transmission system by the Petitioner. MPPMCL has submitted that the Petitioner NKTCL has failed to complete the transmission project in accordance with the Transmission Service Agreement which has resulted in breach of contract. MSEDCL has submitted that there has been no progress of the project over all these years and the Petitioner has been litigating time and again to avoid its contractual obligations under the TSA.

55. We have considered the submissions of the Petitioners and the LTTCs. The Commission granted license to NKTCL and TTCL to implement the Augmentation of Talcher-II Transmission System and North Karanpura Transmission System within



the stipulated timeline for each of the elements as mentioned in respective Transmission Service Agreement. Approvals under Section 68 of the Act were accorded by Ministry of Power on 8.12.2008. The Petitioners applied for authorization under Section 164 of the Act on 9.11.2010 and authorizations under the said Section were issued by Ministry of Power on 11.8.2011. During the pendency of its application with Ministry of Power for Section 164 approval, the Petitioner approached the Commission by filing Petition No. 169/2010 and Petition No. 170/2010 seeking extension of the date of commercial operation of the projects and escalation of input/capital cost. The Commission in its order dated 9.5.2013 held that time taken for authorization under Section 164 of the Act is not a case of force majeure. However, the APTEL in its order dated 2.12.2013 in Appeal No. 139 of 2013 and Appeal No. 140 of 2013 held that the delay in obtaining the Central Government's approval in conferring the power of Telegraph Authority under Section 164 of the Act is to be construed as force majeure. Relevant findings of the APTEL in the said order are extracted as under:

“36. To sum up. In the light of above discussion, we are of the view that the power of Telegraph Authority under 164 of the 2003 Act is essential for laying transmission line both from prior consent of land owner as well as from telephonic or telegraph message point of views. Hence, the delay in obtaining the Central Government's approval in conferring power of the Telegraph Authority is to be construed to be a force majeure.”

56. Therefore, only the period of delay in obtaining Section 164 approval which was a matter of few months was considered as force majeure by APTEL. The force majeure event consequent to the grant of Section 164 approval ceased to exist. The consequence of the force majeure event shall accrue in terms of the TSAs. In this connection, Article 11.6 and Article 117 of the TSAs are relevant which are extracted as under:

“11.6 Duty to perform and duty to mitigate.



To the extent not prevented by a Force Majeure Event, the Affected Party shall continue to perform its obligations as provided in this Agreement. The Affected Party shall use its reasonable efforts to mitigate the effect of any event of Force Majeure as soon as practicable.”

57. As per the above provisions of the TSA, an Affected Party is contractually bound to continue to perform its obligations as provided in the TSA to the extent not affected by Force Majeure event. As held by APTEL, both TTCL and NKTCL were affected by force majeure on account of delay in grant of Section 164 approval. For the period affected by force majeure, TTCL and NKTCL may be discharged from performance of their obligations under the TSAs.

58. The Petitioners are entitled for reliefs for force majeure events in terms of Article 11.7 of the TSA. Clauses (a) and (b) of Article 11.7 of the TSA which are relevant for the purpose are extracted as under:

11.7 Available relief for a Force Majeure Event

Subject to this Article 11,

(a) no party shall be in breach of its obligations pursuant to this Agreement except to the extent the performance of its obligations was prevented, hindered or delayed due to a Force Majeure Event;

(b) every Party shall be entitled to claim relief for a Force Majeure Event affecting its performance in relation to its obligations under this Agreement.”

59. Thus, the TSAs enjoin that no party shall be in breach of its obligations pursuant to the TSA except to the extent its performance was prevented, hindered or delayed due to force majeure event. However, after the grant of section 164 approval, there is no embargo or impediment on NKTCL and TTCL to discharge their obligations under the TSA as the force majeure event on account of delay in grant the powers of Telegraph Authority by the Central Government ceased to exist.

60. Further, Article 11.7(b) of the TSAs provides that every party shall be entitled



to claim relief under Force Majeure affecting its performance in relation to its obligations under the Agreements. The obligations of the TSPs are provided in Article 4.1 of the TSAs which are extracted as under:

“4.1 TSP’s obligations in development of the Project:

Subject to the terms and conditions of this Agreement, the TSP at its own cost and expense shall observe, comply with, perform, undertake and be responsible:

- a. *For procuring and maintaining in full force and effect all Consents, Clearances and Permits, required in accordance with Law for development of the Project;*
- b. *For financing, constructing, owning and commissioning each of the Element of the Project for the scope of work set out in Schedule 2 of this Agreement in accordance with*
 - i. *The Grid Code, the grid connectivity standards applicable to the Transmission Line and the sub-station as per the Central Electricity Authority (Technical Standards for Connectivity to the Grid) Regulations 2007 and as amended from time to time and following Regulations as and when notified by CEA:*
 - *CEA (Technical Standards for construction, operation and maintenance of Electrical Plants and Electric Lines) Regulations, 2008*
 - *CEA (Safety requirements for construction, operation and maintenance of transmission lines) Regulations, 2008*
 - *CEA (Grid Standards for operation and maintenance of transmission lines) Regulations, 2008*
 - *CEA (Safety and electricity supply) Regulations, 2008*
 - ii. *Prudent Utility Practices and the Law;*
Not later than the Scheduled COD as per Schedule 3 of this Agreement;
- c. *For entering into a Connection Agreement with the CTU/STU (as applicable) in accordance with the Grid Code.*
- d. *For owning the Project throughout the term of this Agreement free and clear of any encumbrances except those expressly permitted under Article 15 of this Agreement;*
- e. *To co-ordinate and liaison with concerned agencies and provide on a timely relevant information with regard to the specifications of the project that may be required for interconnecting the Project with the Interconnection Facilities.*
- f. *For providing all assistance to the Arbitrators as they may require for the performance of their duties and responsibilities;*
- g. *To provide to the Long Term Transmission Customers with a copy to CEA, on a monthly basis, progress reports with regard to the Project and its execution (in accordance with Agreed Form) to enable the Long Term Transmission Customers/CEA to monitor and co-ordinate the development of the Project matching with the Interconnection Facilities.*
- h. *To comply with all its obligations undertaken in this Agreement.”*

61. Thus, as per Article 4.1 of the TSAs, TTCL and NKTCL are responsible, among other things, for procuring and maintaining in full force and effect all Consents, Clearances and Permits, required in accordance with Law for



development of the project and also for financing, constructing, owning and commissioning each of the elements of the Project for the scope of work set out in Schedule 2 of the TSAs in accordance with Grid Code and various regulations of the Commission. Schedule 2 of the TSAs sets out the project specification and scope of the project, along with the timeline for achieving the COD of the different elements of the project.

62. Article 4.3 of the TSAs provides for time for commencement and completion of the projects. The said Article is extracted as under:

“4.3 Time for Commencement and Completion:

a. The TSP shall take all necessary steps to commence work on the Project from the Effective Date of the Agreement and shall achieve Scheduled COD of the Project in accordance with the time schedule specified in Schedule 3 of this Agreement.

b. The COD of each Element of the Project shall occur no later than the Scheduled COD or within such extended time to which the TSP shall be entitled under Article 4.4 hereto.”

63. Thus, Article 4.3(b) of the TSAs clearly provides that the COD of each element shall be no later than the Scheduled COD or within such extended time to which TSP shall be entitled under Article 4.4.

64. Article 4.4.2 of the TSAs deals with extension of time when an element cannot be commissioned by Scheduled COD on account of any force majeure event. Article 4.4.2 is extracted as under:

“4.4 Extension of time:

4.4.2 In the event that an Element or the Project cannot be commissioned by its Scheduled COD on account of any Force Majeure Event as per Article 11, the Scheduled COD shall be extended, by a ‘day for day’ basis, for a maximum period of one hundred and eighty (180) days. In case the Force Majeure Event continues even after the maximum period of one hundred and eighty (180) days, the TSP or the Majority Long Term Transmission Customers may choose to terminate the Agreement as per the provisions of Article 13.5.”

65. Thus, the TSAs provide for extension of SCOD for a maximum period of 180 days and if the force majeure event continues beyond 180 days, the TSP of majority of LTTCs may choose to terminate the Agreement as per Article 13.5.

66. Article 6.4.1 of the TSAs deal with liquidated damages for delay in achieving COD. Article 6.4.1 of the TSAs is extracted as under:

“6.4.1 If the TSP fails to achieve COD of any Element of the Project or the Project by the Element’s/Project’s Scheduled COD as extended under Articles 4.4.1 and 4.4.2, then the TSP shall pay to the Long Term Transmission Customer(s), as communicated by the Lead Long Term Transmission Customer(s), in proportion to their Allocated Project Capacity as on the date seven (7) days prior to the Bid Deadline, a sum equivalent to 3.33% of Monthly Transmission Charges applicable for the Element of the Project (in case where no elements have been defined, to be on the Project as a whole)/Project, for each day of delay up to sixty (60) days of delay and beyond that time limit, all the rate of the percent(5%) of the Monthly Transmission Charges applicable to such Element/Project as liquidated damages for such delay and not as penalty without prejudice to Long Term Transmission Customers’ any rights under the Agreement.”

67. From a combined reading of Article 11.7, Article 4.1, Article 4.3, Article 4.4 and Article 6.4.1 of the TSAs, it emerges that on account of force majeure event affecting the TSP, in this case TTCL and NKTCL, the available relief is in the form of extension of SCOD commensurate with the period of force majeure, with a maximum period of 180 days and waiver of liability to pay liquidated damages for the extended period beyond SCOD. There is no provision in the TSA to grant relief in the form of reworking out the cost or tariff on account of the force majeure events. Thus, even though SCOD can be extended for a maximum period of 180 days as per the TSAs, there is no provision for financial compensation in the form of revision of cost or tariff for an event of force majeure. However, before the APTEL the Petitioners were seeking working period of 30 months, 36 months and 42 months for the respective elements from the date of grant of authorization under Section 68 of the Act and for

escalation of cost.

68. The APTEL in its judgement dated 2.12.2013 held that the delay in obtaining the Central Government's approval conferring the power of telegraph authority is to be construed as force majeure. Section 164 authorisation was granted on 11.8.2011 and with such grant, the force majeure event has been mitigated. Section 68 approval was due for expiry on 7.12.2011 before which the Petitioners were required to commence the work on the project. Thus, even though Section 164 authorisation was received almost four months before the expiry of Section 68 approval, the Petitioners choose not to commence the work on the projects. Therefore, non-execution of the projects even after mitigation of force majeure event on the grounds that Section 68 approval had expired are squarely attributable to the Petitioners TTCL and NKTCL.

Ground (b): Fundamental basis of TSAs stands altered and eroded as projects are not required any more

69. The Petitioners have submitted that the fundamental basis of the TSAs stands altered and eroded as projects are not required any more as per the submissions made by TANGEDCO and other beneficiaries before APTEL. The Petitioners have submitted that they are unable to implement and execute the transmission projects due to lack of clarity whether the transmission projects are required or not.

70. It is pertinent to mention that the Petitioners were required to perform their obligations under the TSA to the extent the performance of their obligations was prevented, hindered or delayed due to a Force Majeure Event. Consequent to the judgement dated 2.12.2013 of the APTEL in Appeal No.139 of 2013 and Appeal No.140 of 2013, the Petitioners filed in Petition No. 19/MP/2013 and Petition No. 20/MP/2013 before the Commission seeking extension of COD of the different



elements of the projects and enhancement of the transmission charges on account of price escalation in material and labour, increase in compensation for ROW, and increase in cost due to IDC. The Commission after considering the submissions of the Petitioners, LTTCS and CEA decided vide order dated 2.9.2015 the importance of implementation of the transmission projects awarded to the Petitioners in the following terms:

“38. Central Electricity Authority has clearly indicated that the projects awarded to NKTCL and TTCL are critical for transmission of power. With regard to transmission system for which license has been granted to NKTCL, CEA has stated that non-implementation/delay of the transmission lines which are to be utilized for evacuation of surplus power of the Eastern Region and Open Access Applications in the Eastern Region, would affect transmission of power from the Eastern Region up to load centers in the Northern Region. As regards the transmission systems for which license has been granted to TTCL, CEA has stated that power from Talcher-II STPS (2000 MW) having SR constituents as its beneficiaries is evacuated through Talcher-Kolar bi-pole HVDC line. Talcher-II Augmentation scheme has been planned as a backup transmission system to cater to pole outage of HDVC line. Uncertainty in commissioning of Talcher-II augmentation scheme will affect the reliability of evacuation of power from Talcher-II STPS to SR. The respondent beneficiaries such as PSPCL, NSEDCL, KSEBL, TANGEDCO and UPPCL have also emphasized the necessity and criticality of these transmission lines. In our view, implementation of these strategically important projects cannot be held hostage to the contractual disputes between NKTCL/TTCL and the LTTCS. Public interest requires that there is finality and clarity with regard to implementation of these projects.”

71. After noting the criticality and necessity of the transmission projects, the Commission sought firm commitment from the Petitioners to implement the transmission projects within a period of 30 months from 1.10.2015. However, the Petitioners, without showing any commitment to implement the projects, challenged the said order before the APTEL in Appeal No.200 of 2015 and Appeal No.201 of 2015 and subsequently, sought disposal of these appeals with liberty to approach the Commission for redressal of their grievance. Thus, as on the date of the order dated 2.9.2015 of the Commission in Petition No. 19/MP/2013 and Petition No. 20/MP/2013, CEA and LTTCS had emphasized the criticality and necessity of the transmission projects. It is on account of the failure of the Petitioners that alternative

arrangements and planning had to be done to meet the requirements of LTTCs. Thus, as on 2.9.2015 the projects in their original forms were necessary and critical for the reliability of evacuation of power from Talcher-II STPS to Southern Region and for transmission of power from Eastern Region to load centres in Northern Region. If the fundamental basis of TSAs stands altered and eroded and projects are not required any more today, it is because the Petitioners failed to implement the projects in time when these were critically required.

Ground (c): The Transmission Service Agreements stand frustrated

72. The Petitioners have submitted that non-renewal of Section 68 Statutory Permission and inordinate delay in authorization under Section 164 which prevented the performance of Transmission Service Agreement were never in contemplation of parties on the date of signing of the Transmission Agreement. The Petitioners have submitted that the stand taken by the LTTCs that NKTCL Augmentation Scheme and Talcher-II Augmentation Scheme are no longer required or have become redundant has made the performance of the TSAs impossible and hence the TSAs stand frustrated.

73. As already discussed in this order, the period of force majeure on account of delay in obtaining the Section 164 authorization was for a brief period for which there is a provision in the TSA to extend the SCOD commensurately. However, the Petitioners did not start execution of the project even after receipt of the Section 164 approval, allowed the Section 68 approval to lapse and pursued the matter in the legal forums. As per Article 11.6 of the TSAs, the Petitioners were required to continue to perform their obligations to the extent not prevented by force majeure event. Under Article 11.7 of the TSAs, no party shall be in breach of its obligation

pursuant to the agreement accept to the extent the performance of its obligation was prevented or hindered or delayed due to force majeure event. After the grant of Section 164 approval, there was no embargo on the Petitioners to execute the project. Non-execution of the projects by the Petitioners after mitigation of the event of force majeure has resulted in breach of the contractual provisions by the Petitioner.

Ground (d): Independent assessment mandated as to whether the projects are required or not

74. The Petitioners have submitted that in the light of the position taken by TANGEDCO and other beneficiaries before APTEL there is a requirement to seek necessary advice from CEA whether the transmission projects as a whole or in part or with modification are required and if so, what should be the scope of work. The Petitioners have submitted that if the transmission projects are not required, the Petitioners may be relieved from their obligations under the TSA and their contract performance guarantee be returned.

75. The Commission directed the CTU to submit on affidavit as to whether in the current circumstances, the transmission projects are required or not after carrying out consultations with concerned stakeholders including CEA. Pursuant to the above directions, a meeting was held on 29.7.2020 by CEA with participation of the officers of CTU and the representative of the constituents of Eastern Region, Northern Region and Western Region. CTU has placed the said affidavit on record.

76. We have gone through the minutes of the meeting by CEA held on 29.7.2020. It is noticed that the scope of work under the augmentation of Talcher-II Transmission System consists of the following:

- (a) Talcher-II-Rourkela 400 kV D/C (Quad) line
- (b) Talcher-II-Behrampur 400 kV D/C line
- (c) Behrampur-Gazuwaka 400 kV D/C line
- (d) Establishment of 2X315 MVA, 400/220 kV substation at Behrampur

Further, the scope of work of North Karanpura Transmission System consists of the following:

- (a) Lucknow – Bareilly 765 kV S/C line
- (b) Bareilly – Meerut 765 kV S/C line
- (c) Agra – Gurgaon (ITP) 400 kV D/C (Quad) line
- (d) Gurgaon (ITP) – Gurgaon (POWERGRID) 400 kV D/C (Quad) line
- (e) Gurgaon (ITP) 400/200 kV GIS Substation
- (f) Sipat / Korba pooling station – Seoni 765 kV S/C line

77. Based on the competitive bidding, M/s Reliance Transmission Company Limited emerged as a successful bidder and the SPVs namely TTC and NKTCL were acquired on 27.4.2010. The scheduled date of completion of transmission lines under TTCL was 27.12.2012 and the scheduled date of completion of transmission line under the scope of NKTCL was 20.11.2013.

78. The status of different lines of Talcher-II Transmission System as discussed in the meeting dated 29.7.2020 is as under:

“6. Based on bidding under TBCB, M/s Reliance Transmission Company Limited (M/s RTCL) emerged as the successful bidder and SPV viz. M/s Talcher-II Transmission Company Limited (M/s TTCL) was acquired by M/s RTCL on 27.4.2010. The scheduled date of completion was 27.10.2012.

7. He mentioned that the Talcher-Rourkela 400 kV line was planned with high capacity conductor (Quad Moose) to transfer power from ER to SR via WR, in the event of contingency of Talcher-Kolar HVDC. In absence of this line by M/s TTCL, additional high capacity lines between ER and WR corridor, viz. Sundargarh (Jharsuguda)- Dharamjaygarh 765 kV 2xD/c lines and Sundargarh (Jharsuguda) – Raipur Pool 765 kV D/c line were planned to meet the system requirements, which have already been commissioned. In view of this, presently no major benefit is expected with implementation of Talcher II- Rourkela 400 kV D/c (Quad) line, as investment has already been made in alternate transmission systems.

8. He informed that Talcher II- Behrampur-Gazuwaka 400 kV line was planned to augment ER-SR inter-regional transfer capacity through Gazuwaka 2X500 MW HVDC back-to-back station and also to provide power supply to southern part of Odisha at Behrampur. This system was also planned to enhance the fault level at



Gazuwaka, so that additional power through Gazuwaka HVDC back-to-back could be transferred to SR which was then under acute power shortage condition. Due to inordinate delay in taking up implementation of above transmission line & substation at Behrampur by M/s TTCL, in the 1st meeting of ERSCT held on 16-7-2018, Pandiabili- Narendrapur- Theruvali- Jeypore 400 kV D/C line along with 400/220 kV substation at Narendrapur and 400 kV switching station at Theruvali was planned as intra-State scheme in Odisha (to be implemented by M/s OPTCL). This corridor is almost in parallel to Talcher-II- Behrampur- Gazuwaka corridor and Narendrapur substation would be in close proximity to Behrampur S/s. Thus, this corridor would strengthen power supply situation in southern part of Odisha and would also enhance the fault level in Jeypore and Gazuwaka areas, which was otherwise expected from the above scheme awarded for implementation to M/s TTCL.

9. OPTCL representation supporting the observations of CTU mentioned that there has been inordinate delay in taking up of implementation of Talcher II- Rourkela 400kV D/C line by M/s TTCL, however, to maintain system reliability and security, investment has been made for augmentation of corridors through Sundargarh (Jharsuguda) – Dharamjaygarh 765 kV 2xD/c lines, Sundargarh (Jharsuguda) – Raipur Pool 765 kV D/c line and Angul-Srikakulam 765 kV D/c line which have already been commissioned. In the event, under current circumstances, no constraints are being observed in ER-WR-SR and ER-SR corridors. Besides this they have already taken up the proposal of Pandiabili- Narendrapur- Theruvali- Jeypore 400 kV D/c line, which will be more or less parallel to Talcher-Behrampur-Gazuwaka line, so the transmission scheme under the scope of M/s TTCL may not be required now technically. However, scheme for enhancement of fault level at Gazuwaka and transfer of power to growing load center at Behrampur/Narendrapur area may be reviewed separately. BSPTCL (Bihar), Jharkhand and West Bengal representatives supported the views of OPTCL.

10. ERPC informed that due to uncertainty in implementation of subject scheme by M/s TTCL, augmentation of transmission corridors between ER-SR as well as ER-WR-SR have been carried out significantly over the years through other alternative schemes, therefore, under current circumstances, above transmission system under the scope of M/s TTCL is not required on technical ground. However, issue for enhancement of fault level at Jeypore/ Gazuwaka needs to be deliberately separately.

11. Representative of NTPC mentioned that presently SPS is existing with Talcher TPS and Talcher-Kolar HVDC line, wherein in case of pole outage of Talcher-Kolar HVDC, NTPC has to trip/back-down generation at Talcher Stage-II.

12. Director (SO), POSOCO informed that with the present available transmission system there may not be constraints under 'N-1' contingency (with one pole outage and other pole in metallic return mode operation) for power evacuation from Talcher TPS. However, with one pole outage and other pole operating under ground return mode, the power, the power order on the HVDC line is reduced to 150 MW. Basically, GRM operation during single pole outage is same as Bipole outage of Talchar-Kolar HVDC line (as only 150 MW power flow can take place). It was decided that the SPS at Talcher TPS with 'N-2' contingency may be reviewed at appropriate forum, as this is an operational matter.

13. He further mentioned that requirement of the subject ISTS schemes may also be seen from foreseeable future point of view. CTU representative clarified that the same has already been looked into, in fact in view of uncertainty over completion of

transmission scheme under the scope of M/s TTCL, the corresponding transmission scheme is not being considered in future study cases from last few years.

14. Director (PSP&A-II), CEA mentioned that southern Odisha grid is relatively weaker, which necessitates operation of Gazuwaka HVDC below its rated capacity. The transmission scheme of M/s TTCL was not only to augment the transmission system in southern Odisha but also to enhance fault level at Gazuwaka. Accordingly, he requested that the scheme of M/s TTCL vis-à-vis the parallel intra-state system of OPTCL may be reviewed to ascertain the better one. Towards this, OPTCL mentioned that they will implement their intra-state system in next 2-3 year timeframe, which will augment the power supply scenario in southern Odisha and also enhance fault level at Jeypore/Gazuwaka. It was decided that the matter regarding enhancement of the fault level at Jeypore/Gazuwaka may be addressed separately.

15. Representative of Tamil Nadu and Telangana were also of the view that with available and under-construction parallel inter-regional corridors towards SR from NEW grid, under current circumstances, there may not be requirement of the transmission scheme under the scope of M/s TTCL on technical ground.

16. Member Secretary, SRPC mentioned that earlier there was no option during outage of Talcher-Kolar HVDC pole other than the power be transferred through Gazuwaka back-to-back which is not the case now. Earlier the SR was connected through HVDC only while now, it is connected through no. of 765 kV lines. Accordingly, the subject scheme may not be required in the present conditions. He stated that this view has also been taken up in 33rd SRPC meeting held on 17.2.2018.

17. All the constituents were of the view that due to inordinate delay and uncertainty in implementation of the ISTS scheme by M/s TTCL, looking into the need for maintaining system reliability and security, investments were made for development of alternate corridors. So, under current circumstances, the ISTS scheme under the scope of M/s TTCL may not be required now on technical grounds. However, this shall not prejudice LTTCs rights under the Transmission Service Agreement (TSA) with M/s TTCL.

18. After deliberations, the following was concluded:

- (a) Due to inordinate delay and uncertainty in implementation of the scheme by M/s TTCL, the transmission scheme under the scope of TSP is presently not required on technical grounds only as either investment in alternate corridors development has already been made or alternate scheme has already been planned for implementation.
- (b) Decision taken in the meeting with regards to the technical requirement of transmission system to be developed by M/s TTCL shall be without prejudice to the rights of LTTCs under the TSA and the pending legal cases before various forums.
- (c) SPS at Talcher Stage-II generation may be reviewed at appropriate forum.
- (d) The matter regarding enhancement of fault level at Jeypore/Gazuwaka and operation of HVDC at rated capacity may be dealt separately in RPC-TP meetings.”

79. The status of different lines of North Karanpura Transmission System as discussed in the meeting dated 29.7.2020 is as under:

“22. Based on bidding under TBCB, M/s Reliance Transmission Company Limited (M/s RTCL) emerged as the successful bidder and SPV viz. M/s North Karanpura Transmission Company Limited (M/s NKTCL) was acquired by M/s RTCL on 20.05.2010. The scheduled date of completion was 20.11.2013.

23. He further mentioned the element wise present requirement of the scheme, which is given as below:

23.1. Sipat/Korba PS (renamed as Bilaspur PS) – Seoni 765 kV S/C line

CGM (CTU-Plg), POWERGRID informed that the 765/400kV, 3x1500MVA Sipat/Korba PS (renamed as Bilaspur PS) was planned for pooling for power from a number of generation projects envisaged in Chhattisgarh area as well as surplus power from ER including North Karanpura Generation Project through Ranchi Dharmjaygarh PS – Bilaspur PS 765kV line as well as Ranchi – Sipat 400kV D/c line and Sipat – Bilaspur PS 765kV 2xS/c line. The subject transmission line i.e. Bilaspur PS – Seoni 765kV S/c (3rd) line was planned for onward dispersal of power from Bilaspur PS.

The Bilaspur PS was commissioned in Apr'12 and Ranchi – Dharamjaygarh PS – Bilaspur PS 765kV line was commissioned in Apr'14. However, in the absence of Bilaspur PS – Seoni 765kV S/c (3rd) line, constraints were observed towards onward transfer of power from Bilaspur PS with reliability. The matter was discussed in the 37th Standing Committee meeting on Power System Planning of WR held on 05.09.2014, wherein alternate Bilaspur PS – Rajnandgaon – Warora PS 765kV D/c line was planned for dispersal of power from Bilaspur PS. The same was commissioned in Mar'19. Accordingly, due to inordinate delay and uncertainty in implementation of Bilaspur PS – Seoni 765kV S/c (3rd) line by M/s NKTCL, an alternate arrangement for dispersal of power from Bilaspur PS was planned and implemented.

Director (PSP&A-1), CEA stated that Sipat – Bilaspur PS 765kV S/c (3rd) line and Bilaspur PS – Rajnandgaon 765kV D/c line was planned under Additional Transmission System Strengthening for Sipat STPS.

Director (SO), POSOCO stated that considering availability of alternate transmission system established due to uncertainty in implementation of subject line by M/s NKTCL, in the current circumstances, technically, the subject transmission line is not required.

CE (R&C), GETCO has submitted that M/s NKTCL was selected pursuant to selection under Competitive Bidding Process and signing of TSA with LTTCs including GUVNL for developing the transmission system as per scope under TSA. The decision taken in the meeting with regards to the requirement of transmission system to be developed by M/s NKTCL shall be without prejudice to the rights of GUVNL under the TSA and the pending legal cases before various forums. MSETCL also reiterated the same.

After detailed deliberations, it was concluded that under current circumstances, implementation of Bilaspur PS – Seoni 765kV S/c (3rd) line is not required technically,



as investment has already been made in alternate transmission system due to inordinate delay and uncertainty in implementation of the line by M/s NKTCL. Further, decision taken in the meeting with regards to the technical requirement of transmission system to be developed by M/s NKTCL shall be without prejudice to the rights of LLTCs under the TSA and the pending legal cases before various forums.

23.2. Lucknow – Bareilly 765kV S/c & Bareilly – Meerut 765kV S/c (2nd) line

CGM (CTU-Plg.), POWERGRID informed that the above corridor was proposed to provide a strong interconnection between ER & NR and to facilitate transfer of power from generation projects in ER to NR with reliability and security.

As per the present power scenario, NR imports power from other surplus regions to meet its load demand. As most of the generation projects got materialized in Odisha & Chhattisgarh, major quantum of power to NR is imported via WR through Agra-Gwalior 765kV, Gwalior-Jaipur 765kV Corridor, +800kV Champa Kurukshetra HVDC and other inter-regional links.

Further, a large quantum of Solar capacity is being implemented in Rajasthan and considering the load generation scenario, it is likely that power would flow towards ER from NR. Over the period of time, due to inordinate delay and uncertainty in implementation of above lines by M/s NKTCL, alternate high capacity 400kV corridors such as Bareilly-Kashipur-Roorkee-Meerut have been developed. Technically, the envisaged Lucknow-Bareilly-Meerut 765kV S/c (2nd) line in the current circumstance is not required.

23.3. Agra – Gurgaon (ITP) 400kV D/C (Quad) line, Gurgaon (ITP) – Gurgaon (POWERGRID) 400kV D/C (Quad) line & Gurgaon (ITP) 400/220kV GIS Substation

CGM (CTU-Plg.), POWERGRID informed that above mentioned system was planned considering anticipated increase in load demand of Gurgaon. Considering inordinate delay and uncertainty in implementation of above lines and substation by M/s NKTCL, alternate strengthening scheme in & around Gurgaon was planned through 400/220kV ISTS substations at Kadarapur, Sohna Road, Prithala & Gurgaon (POWERGRID) & their interconnections with ISTS network. Further, HVPNL has also established Daultabad 400/220kV substation to facilitate growing demand in Gurgaon area.

Representatives of UP, Haryana, Delhi & POSOCO expressed that already alternate corridors have been commissioned/planned and as such, above transmission system is technically not required under current circumstances. However, UP stated that this system was agreed long back and the cost of transmission system may be lesser in comparison to the system, if taken up as new scheme for implementation now. Further, POSOCO stated that most of the RE generation in NR is coming up in Rajasthan area, hence, power import requirement of NR from ER & WR is likely to be reduced in future. CEA & CTU clarified that considering the foreseeable future, due to availability of alternate corridors, subject transmission system is technically not required.

24. After deliberations, it was concluded that due to inordinate delay as well as uncertainty in implementation of the scheme by M/s NKTCL. Alternate corridors were planned/commissioned subsequently. Hence, the transmission scheme under the scope of TSP is not required under current circumstances on technical grounds only as either investment in alternate lines has already been made or alternate scheme

has already been planned for implementation. However, this shall not absolve rights of LTTCs under the Transmission Service Agreement (TSA) with M/s NKTCL.

25. It was decided that the above views of all the stakeholders for both schemes viz. Augmentation of Talcher-II Transmission System and North Karanpura Transmission System awarded to M/s Talcher-II Transmission Company Limited (TTCL) and M/s North Karanpura Transmission Company Limited (NKTCL) respectively may be communicated to CERC in line with ROP issued in Petition No. 40/MP/2019. Further, the decision taken in the meeting about the technical requirement of transmission system to be developed by M/s TTCL and M/s NKTCL shall be without prejudice to the rights of LTTCs under the respective TSAs and the pending legal cases before various forums.”

80. It emerges from the minutes of the meeting extracted above that on account of the delay in implementation of the transmission system by the Petitioners namely, TTCL and NKTCL, the transmission systems within their scope of work are no more required on technical grounds as either investment in alternate lines has been made or alternate scheme has been planned for implementation. Therefore, the Petitioners are solely responsible for rendering the transmission systems covered under the scope of Talcher-II Transmission System and North Karanpura Transmission System as redundant having no utility for the LTTCs. It is pertinent to note that all the stakeholders are of the unanimous view that the decision regarding the redundancy of the transmission line within the scope of work of Talcher-II Transmission System and North Karanpura Transmission System shall not absolve the rights of LTTCs under the Transmission Service Agreements.

81. In the light of the above discussion, the Commission is of the view that the transmission systems within the scope of work awarded to TTCL and NKTCL are no more required under the present circumstances since alternative arrangements have already been made or are under implementation. Any decision to go ahead with the implementation of the transmission projects within the scope of work awarded to the Petitioners, TTCL and NKTCL will be redundant and not serve any purpose. Considering all the factors in totality, the Commission is of the view that the

transmission systems under the scope of Talcher-II Transmission System and North Karanpura Transmission System should be abandoned.

82. The next question arises whether the Petitioners are entitled for the return of the performance bank guarantee. Evidently, the Petitioners have failed to implement the project within the scheduled COD and even the extended timeline granted by the Commission vide its order dated 2.9.2015 in Petition No. 19/MP/2013 and Petition No. 20/MP/2013. It is noted that there is no stay on the operation of the said order dated 2.9.2015. When the Petitioners failed to achieve the COD by SCOD or extended SCOD, the provisions of Article 6.4.1 and Article 6.5.1 of the TSAs come into operation. Article 6.4.1 and Article 6.5.1 are extracted as under:

“6.4.1 If the TSP fails to achieve COD of any Element of the Project or the Project by the Element’s/Project’s Scheduled COD as extended under Articles 4.4.1 and 4.4.2, then the TSP shall pay to the Long Term Transmission Customer(s), as communicated by the Lead Long Term Transmission Customer(s), in proportion to their Allocated Project Capacity as on the date seven (7) days prior to the Bid Deadline, a sum equivalent to 3.33% of Monthly Transmission Charges applicable for the Element of the Project (in case where no elements have been defined, to be on the Project as a whole)/Project, for each day of delay up to sixty (60) days of delay and beyond that time limit, all the rate of per cent(5%) of the Monthly Transmission Charges applicable to such Element/Project as liquidated damages for such delay and not as penalty without prejudice to Long Term Transmission Customers’ any rights under the Agreement.

6.5.1 If the TSP fails to achieve COD of any of the Elements on their respective Scheduled COD specified in this Agreement, subject to conditions mentioned in Article 4.4 the long term transmission customers shall have the right to encash the contract performance guarantee and appropriate in their favour as liquidated damages an amount specified in Article 6.4.1 without prejudice to the other rights of the Long Term Transmission Customers under this Agreement.”

83. In the light of the above provisions, the LTTCs are at liberty to recover the liquidated damages by invoking the contract performance guarantee.

84. Prayer (a), Prayer (b) and Prayer (c) of the present Petitions are answered in terms of the above.

85. The Petitioners has prayed for a declaration that the Petitioners are entitled to recover the expenditure so far spent on the projects to the tune of Rs.25 crores. Since we have held that the Petitioners have failed to discharge their obligations under the TSAs, the said prayer of the Petitioners is rejected.

86. The Prayer (d) of the present Petitions is answered accordingly.

87. The Petitions are disposed of in terms of the above.

Sd/-
(P.K. Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I.S. Jha)
Member

sd/-
(P.K. Pujari)
Chairperson

