

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 514/MP/2020  
and  
Petition No. 49/MP/2021**

**Coram:**

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

**Date of Order: 4<sup>th</sup> February, 2022**

**Petition No. 514/MP/2020**

**In the matter of**

Petition under Section 63 and 79(1)(c) and 79(1)(f) of the Electricity Act, 2003 seeking reliefs due to the occurrence of certain Force Majeure and Change in Law events under the Transmission Service Agreement dated 6.8.2009.

**And**

**In the matter of**

**East-North Interconnection Company Limited,  
F-1, The Mira Corporate Suites,  
Ishwar Nagar, Okhla Crossing,  
Mathura Road, New Delhi-110 065**

**...Petitioner**

**Vs**

- 1. Jodhpur Vidyut Vitran Nigam Limited,  
New Power House, Industrial Area,  
Jodhpur – 342 003**
- 2. Jaipur Vidyut Vitran Nigam Limited,  
Vidyut Bhawan, Janpath,  
Jaipur – 302 005**
- 3. Ajmer Vidyut Vitran Nigam Limited,  
Old Power House, Hathi Bhatta,  
Jaipur Road, Ajmer**
- 4. BSES Yamuna Power Limited,  
Shakti Kiran Building,  
Karkardooma, New Delhi – 110 092**

- 5. BSES Rajdhani Power Limited,**  
BSES Bhawan, Nehru Place,  
New Delhi – 110 019
  
- 6. North Delhi Power Limited,**  
(Now known as Tata Power Delhi Distribution Limited)  
Sub Station Building, Hudson Lines,  
Kingsway Camp, New Delhi – 110 009
  
- 7. New Delhi Municipal Corporation,**  
Palika Kendra Building,  
Opposite Jantar Mantar Building,  
Parliament Street, New Delhi – 110 001
  
- 8. Uttarakhand Power Corporation Limited,**  
Urja Bhawan, Kanwali Road,  
Dehradun, 248 00, Uttar Pradesh
  
- 9. Paschimanchal Vidyut Vitran Nigam Limited,**  
Victoria Park,  
Meerut – 250 001, Uttar Pradesh
  
- 10. Poorvanchal Vidyut Vitran Nigam Limited,**  
Hydel Colony, Bhikharipur,  
Post: DLW, Varanasi – 221 004, Uttar Pradesh
  
- 11. Dakshinanchal Vidyut Vitran Nigam Limited,**  
220 kV Vidyut Sub-Station,  
Mathura Agra by pass road,  
Sikandra, Agra – 282 007, Uttar Pradesh
  
- 12. Madhyanchal Vidyut Vitran Nigam Limited,**  
4-A, Gokhle Marg,  
Lucknow-226 00, Uttar Pradesh
  
- 13. Uttar Haryana Bijli Vitran Nigam Limited,**  
Vidyut Sadan, Plot No. 16-C,  
Sector-6, Panchkula- 134 109, Haryana
  
- 14. Dakshin Haryana Bijli Nigam Limited,**  
Vidyut Sadan, Vidyut Nagar,  
Hissar- 125 005, Haryana
  
- 15. Punjab State Electricity Board,**  
The Mall,  
Patiala-147 001, Punjab
  
- 16. Power Development Department,**  
Mini Secretariat, Jammu,  
Jammu& Kashmir-180 001

**17. Himachal Pradesh State Electricity Board,**  
Vidyut Bhawan,  
Shimla-171 004, Himachal Pradesh.

**18. North Central Railway,**  
Subedarganj, Allahabad- 211 033, Uttar Pradesh.

**19. UT Chandigarh,**  
Chandigarh Administration,  
Sector-9, Chandigarh.

...Respondents

**Petition No. 49/MP/2021**

**In the matter of**

Petition under Section 61, Section 63 and Section 79(1) (f) of the Electricity Act, 2003 read with the statutory framework and the Transmission Service Agreement dated 2.1.2014 executed between NRSS-XXIX Transmission Limited and its Long-Term Transmission Customers *inter alia* for seeking relief for certain Change in Law events that have impacted the Project and reimbursement of additional expenditure incurred towards necessary use of helicrane for implementation of the Project.

**And**

**In the matter of**

**NRSS-XXIX Transmission Limited,**  
C-2, Second Floor, The Mira Corporate Suites,  
Ishwar Nagar, Okhla Crossing,  
Mathura Road, New Delhi-110 065

...Petitioner

**Vs**

**1. U.P. Power Corporation Limited,**  
14th Floor, Import Export & Payment Circle,  
Shakti Bhawan Extention Building,  
14, Ashok Marg,  
Lucknow-226 001, Uttar Pradesh

**2. AD Hydro Power Limited,**  
Bhilwara Towers, A-12, Sector 1,  
Noida 201301, Uttar Pradesh.

**3. Haryana Power Purchase Centre,**  
Shakti Bhawan, Energy Exchange,  
Room No.446, Top Floor, Sector 6,  
Panchkula- 134109, Haryana

**4. Punjab State Power Corporation Limited,**  
Thermal Shed, T 1-A, Thermal design,  
Near 22 No. Phatak,  
Patiala -147001, Punjab

**5. Himachal Sorang Power Pvt. Limited,**  
901 B,9th Floor, Time Tower,  
M.G.Road,  
Gurgaon-122 009, Haryana

**6. Adani Power Limited,**  
Mundra, Achalraj, Opposite Mayor Bungalow,  
Law Garden, Ahemdabad-380 006, Gujarat

**7. Rajasthan Discoms Power Procurement Centre,**  
Shed No. 5/4, Vidyut Bhawan,  
Janpath, Jyoti Nagar,  
Jaipur - 302 005, Rajasthan.

**8. Jaipur Vidyut Vitran Nigam Limited,**  
Vidyut Bhawan,Janpath, Jyoti Nagar,  
Jaipur - 302 005, Rajasthan.

**9. Ajmer Vidyut Vitran Nigam Limited,**  
Vidyut Bhawan, Panchsheel Nagar,  
Makarwali Road, Ajmer – 305 004, Rajasthan.

**10. Jodhpur Vidyut Vitran Nigam Limited,**  
New Power House, Industrial Area,  
Jodhpur - 342 003, Rajasthan

**11. Lanco Anpara Power Limited,**  
Plot No. 397, Udyog Vihar, Phase 3,  
Gurgaon - 122 016, Haryana.

**12. Lanco Green Power Private Limited,**  
Plot No. 397, Udyog Vihar, Phase-III,  
Gurgaon – 122 016, Haryana.

**13. Power Development Department,**  
Government of J&K, Srinagar,  
SLDC Building, Room No. 1/27, Mini Block,  
Civil Secretariat,  
Jammu.

**14. North Central Railway,**  
DRM office, Nawab Yusuf Road,  
Subedarganj,  
Allahabad - 211 001, Uttar Pradesh

**15. Jaiprakash Power Ventures Limited,**  
A Block, Sector-128,  
Noida - 201 304, Uttar Pradesh

**16. BSES Yamuna Power Limited,**  
2<sup>nd</sup> Floor, B Block, Shakti Kiran Building,

Near Karkardooma Court, New Delhi – 110 092.

**17. BSES Rajdhani Power Limited,**  
2<sup>nd</sup> Floor, B-Block, Behind Nehru Place Bus Terminal,  
Nehru Place, New Delhi - 110 019.

**18. Tata Power Delhi Distribution Limited,**  
33 KV sub-station Building,  
Hudson Lane, Kingsway Camp,  
New Delhi – 110 009.

**19. New Delhi Municipal Corporation,**  
NDMC, Palika Kendra,  
Sansad Marg, New Delhi – 110 001.

**20. Electricity Wing of Engineering Department,**  
Union Territory of Chandigarh, Electricity OP Circle,  
Chandigarh – 160 011.

**21. Power Grid Corporation of India Limited,**  
Saudamini, Plot No. 2, Sector-29,  
Gurgaon - 122 001, Haryana

**22. PTC (Budhil), PTC India Limited,**  
2<sup>nd</sup> Floor, NBCC Tower,  
15, Bhikaji Cama Place,  
New Delhi - 110 066.

**23. PTC (Everest), PTC India Limited,**  
2<sup>nd</sup> Floor, NBCC Tower,  
15, Bhikaji Cama Place,  
New Delhi - 110 066.

**24. Uttarakhand Power Corporation Limited,**  
Urja Bhawan, Kanwali Road,  
Dehradun – 248 001.

**25. Himachal Pradesh State Electricity Board,**  
Vidyut Bhawan, Kumar House Complex Building II,  
Shimla - 171 004.

**26. REC Transmission Projects Company Limited,**  
ECE House, 3<sup>rd</sup> Floor,  
Annexe-II, 28A, KG Marg,  
New Delhi - 110 001.

...Respondents

**The following were present:**

Shri Basava Prabhu Patil, Sr. Advocate, ENICL & NRSSTL  
Shri Deep Rao Palepu, Advocate, ENICL & NRSSTL  
Ms. Harneet Kaur, Advocate, ENICL & NRSSTL

Ms. Parichita Chowdhury, Advocate, ENICL & NRSSTL  
Shri Balaji Sivan, ENICL & NRSSTL  
Shri TAN Reddy, ENICL & NRSS XXIX  
Shri Gaurav Kumar, ENICL & NRSSTL  
Shri Harshit Gupta, ENICL & NRSSTL

## **ORDER**

### **Petition No. 514/MP/2020**

The Petition No. 514/MP/2020 has been filed by the Petitioner, East North Interconnection Company Limited ('ENICL'), under Section 63 and Section 79(1)(c) and 79(1)(f) of the Electricity Act, 2003 (hereinafter referred to as "the Act") seeking reliefs on account of occurrence of Force Majeure and Change in Law events in terms of Article 11 and Article 12 of the Transmission Service Agreement ('TSA') dated 6.8.2009. The Petitioner has made the following prayers:

*"(a) Declare that the collapse of the towers forming part of the PB Line due to a sudden and unprecedented change in the course of the river Ganga is a Force Majeure Event in terms of Article 11 of the TSA;*

*(b) Declare that the Petitioner would not be liable in any manner for a breach of its obligations under the TSA for the period consumed in restoration of the PB Line between August 2018 until December 2019 due to the occurrence of the above Force Majeure Event in terms of Article 11.7(a) of the TSA;*

*(c) Declare that the Petitioner be duly compensated in the amount of Rs. 82.58 crore in terms of Article 11.7 of the TSA for the unforeseen and unavoidable additional expenditure incurred in restoring the operations of the PB Line, which collapsed pursuant to the occurrence of a Force Majeure event;*

*(d) Without prejudice to the above and in the alternate, declare that the restoration of the PB Line required to be carried out by the Petitioner in terms of the decision arrived at in the ERPC Meeting dated 13.02.2019 amounts to a deviation from the scope of work provided in the bidding documents and is a Change in Law event in terms of Article 12 of the TSA, entitling the Petitioner to claim compensation in the amount of Rs. 82.58 crore, as per Article 12.2 of the TSA, for the additional expenditure incurred by the Petitioner after the Cut-off Date in restoration of the PB Line."*

### **Petition No. 49/MP/2021**

2. The Petition No. 49/MP/2021 has been filed by the Petitioner, NRSS-XXIX Transmission Limited ('NRSSTL') under Section 61, Section 63, and Section 79(1)(f) of the Act seeking compensatory relief under Article 12 of the Transmission Service

Agreement dated 2.1.2014 on account of Change in Law events, which have adversely affected the construction of the 'Northern Region System Strengthening Scheme NRSS-XXIX'. The Petitioner has made the following prayers:

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

*(b) Declare that the unforeseen requirement of seeking forest clearance for the JS Line constitutes a Change in Law Event in accordance with Article 12 of the TSA;*

*(c) Declare that the increase in the rate of service tax and J&K General Sales Tax constitutes a Change in Law event in accordance with Article 12 of the TSA;*

*(d) Declare that the increase in the rate of J & K Value Added Tax constitutes a Change in Law event in accordance with Article 12 of the TSA;*

*(e) Declare that the imposition of the requirement of acquiring land through PNC Mode constitutes a Change in Law event in accordance with Article 12 of the TSA;*

*(f) Declare that the imposition of the requirement of seeking permission for cutting of apple orchids and walnut trees constitutes a Change in Law event in accordance with Article 12 of the TSA;*

*(g) Grant an appropriate increase in transmission tariff from the date of commissioning of the Project as sought in this Petition, so as to offset the adverse impact of the aforesaid Change in Law events; and*

*(h) Direct that the Petitioner is entitled to additional expenditure for use of helicrane for implementation of the SA Line....”*

3. Both the above matters were heard on 14.10.2021 and were reserved for orders. However, consequent upon notification of the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 (hereinafter referred to as “the Change in Law Rules”) by the Ministry of Power, Government of India on 22.10.2022, it was considered expedient for the ends of justice to rehear the matter. Hence, matters were re-listed for hearing on 11.1.2022 through video conferencing.

4. In the meantime, the Petitioners herein filed Original Petitions bearing OP No. 1 of 2022 and OP No. 2 of 2022 before the Appellate Tribunal for Electricity (in short, 'APTEL') under Section 121 of the Act seeking directions to the Commission to adjudicate and decide the Petitions filed and pending adjudication before the Commission on 22.10.2021 including the present Petitions and to pass consequential

orders. The prayers made in one of the Original Petitions, namely, OP No. 1 of 2022, are as under:

“(a) Admit and allow the present Petition filed under Section 121 of the Electricity Act, 2003;

(b) Direct CERC to decide Change in Law petitions filed prior to 22.10.2021;

(c) Direct CERC to pass final Orders in merits in Petition No. 49/MP/2021;

(d) In the interim, direct CERC to not pass any orders in Petition No. 49/MP/2021...”

5. In the aforesaid matters, the APTEL vide order dated 7.1.2022, *inter alia*, directed the Commission to bear in mind the contentions urged in the said Original Petitions before passing any further orders and also observed that the orders, if any, passed by the Commission during the interregnum will be subject to further direction of the APTEL in the Original Petitions.

6. Subsequently, the present Petitions were heard on 11.1.2022 and during the course of hearing, learned senior counsel for the Petitioners mainly submitted the following:

(a) In view of the recent orders passed by this Commission on the basis of the Change in Law Rules, the Petitioners have filed Original Petitions bearing DFR No. 6 of 2022 and DFR No. 7 of 2022 along with IA No. 19 of 2022 and IA No. 21 of 2022 before the APTEL under Section 121 of the Act, whereby the Petitioners have, *inter alia*, prayed for directions to the Commission to decide the Change in Law Petitions filed prior to 22.10.2021 and to pass final orders on merits in Petition No. 514/MP/2020 and Petition No. 49/MP/2021.

(b) APTEL vide order dated 7.1.2022 has issued directions to this Commission to keep in mind the submissions made in the aforesaid Original Petitions while dealing with the present Petitions and that the orders, if any, passed during the interregnum will be subject to the further direction of the APTEL. The IAs are listed for hearing before APTEL on 21.1.2020.

(c) The Change in Law Rules could not operate as a bar on this Commission's powers under Section 79 of the Act to grant declaratory relief to



the Petitioners. The Change in Law Rules can only supplement the powers vested upon the Commission under Section 79 of the Act and not supplant it. They cannot be a precursor to exercise the powers under the Section 79 of the Act.

(d) The right to approach the Commission as the appropriate forum for declaratory relief instead of waiting to follow the process under the Change in Law Rules is a substantive right, which cannot be divested retrospectively that too by the Change in Law Rules, which are creature of the parent statute i.e., the Act. By postponing the Petitioners' ability to claim declaratory relief, the Petitioners are being deprived of a substantive right, which can never be done retrospectively. Reliance was placed on the decisions of Hon'ble Supreme Court in the cases of SEBI v. Classic Credit Ltd. [(2018) 13 SCC 1], Rajender Bansal and Ors. v. Bhuru & Ors. [(2017) 4 SCC 202] Videocon Int. Ltd. v. SEBI, [(2015) 4 SCC 33], and CIT v. Dhadi Sahu, [Supp (1) SCC 257].

(e) The Petitions were reserved for orders prior to the Notification of the Change in Law Rules and ought not to be reopened on grounds of notification of the Change in Law Rules.

(f) In both the Petitions, it is necessary for the Commission to decide the Change in Law claims on merits as there is no precedent on whether the events claimed would qualify for Change in Law relief. Further, in Petition No. 49/MP/2021, UPPCL being the lead LTTC had already filed detailed reply refuting the Change in Law claims of the Petitioner and had rejected any liability to pay Change in Law compensation.

(g) Alternatively, the Commission may defer the decision in the Petitions while the Petitioners make representation to LTTCs under the Change in Law Rules. In case, they confirm the Change in Law claims of the Petitioners, the Commission may pass an appropriate order under Rule 3(8) of the Change in Law Rules. However, in case the claims are disputed, the Commission may proceed to pass an order on the merits as the matters have already been argued on merits.

7. Further, in terms of the liberty granted by the Commission, the Petitioner,

NRSSTL also filed an additional affidavit in Petition No. 49/MP/2021, wherein it has, *inter alia*, submitted as under:

(a) The Commission is well within its jurisdiction to grant declaratory reliefs with respect to Change in Law claims. The Change in Law Rules, being creature of the Act, cannot take away or dilute the powers vested in the Commission under Section 79 of the Act.

(b) It is settled law that rules made on matters permitted by the Act in order to supplement the Act cannot supplant the Act. A delegate cannot override the Act either by exceeding its authority or by promulgating provisions inconsistent with the Act. The Commission's power to adjudicate disputes involving transmission licensee ought not to be allowed to be whittled down through the Change in Law Rules as any such attempt will be ultra vires of the Act. In this regard, reliance has been placed on the decision of the Hon'ble Supreme Court in the case of J. K Industries Ltd. v. UoI [(2007) 13 SCC 673].

(c) Dismissing the Petitions would be to non-suit the Petitioners needlessly as if this Commission has been divested of all its powers under Section 79 of the Act. Such an approach may not be taken in view of the settled law. When declaratory relief has been sought, a party deserves adjudication by the Commission and the Change in Law Rules ought not to operate as bar to avenues available to party under Section 79 of the Act.

(d) The manner of recovery of Change in Law claims under TBCB Guidelines and Standard Bidding Documents issued by Ministry of Power under Section 63 of the Act crystallized in the TSA executed by the Petitioner ought not to be seen as having been changed retrospectively by the Change in Law Rules.

(e) It is a settled position of law that regulatory powers of this Commission can only be circumscribed if competitive bidding guidelines issued by the Central Government under Section 63 of the Act cover a specific aspect. Here, as there has been no change whatsoever in the TBCB Guidelines issued under the Act, there is no question of the Change in Law Rules narrowing the wide regulatory powers of the Commission under Section 79(1)(c) of the Act, that too long after the bidding has been completed and Project has been commissioned.

(f) The Change in Law Rules do not in any manner alter the right of the

transmission licensee to get a declaratory relief or the timing when such declaratory relief may be sought. In other words, the Change in Law Rules are completely silent on the Commission's power to award declaratory relief in accordance with Section 79 of the Act even before the Change in Law Rules are followed and, therefore, even the Change in law Rules on their own terms do not impose any bar whatsoever on the same. The Commission has itself granted declaratory reliefs on numerous occasions in exercise of its power under Section 79 of the Act. Reliance has been placed on the order dated 8.1.2020 in Petition No. 126/MP/2019, order dated 3.4.2018 in Petition No. 110/MP/2016, order dated 19.9.2018 in Petition No. 28/MP/2018 and order dated 25.6.2018 in Petition No. 216/MP/2016.

(g) It is a settled position of law that the court has to keep in mind presumption of prospectively and any new law which is promulgated ought to be applied prospectively unless the contrary is expressly specified. The Change in Law Rules create a right in favour of eligible entities to receive Change in Law compensation even in cases where no such contractual right may have existed in the past and, therefore, they put in place substantive new protocol to govern the recovery of Change in Law compensation. This is by no means merely procedural, but it is a significant substantive right being created with wide ranging commercial implications. In this regard, reliance has been placed on the decision of Hon'ble Supreme Court in the case of Monnet Ispat & Energy Ltd. v. UoI & Ors. [(2012) 11 SCC 1].

(h) It is also a settled position of law that rights of a party get crystallized on the day of institution of suit. Therefore, the law applicable on the date of filing of suit will continue to apply until the suit is adjudicated and/or disposed of. Further, the general principle is that a law which brings about a change in forum does not affect pending actions unless intention to the contrary is clearly shown.

(i) If the Petitioner is compelled to follow the Change in Law Rules, it is being denied the right to approach the Commission for declaratory relief in accordance with Section 79 of the Act. Forcing the Petitioner to postpone its claims for Change in Law relief before the Commission would amount to depriving it of an appropriate statutory forum for redressal of its grievances. If this is indeed the import of Change in Law Rules, such a result cannot be implemented qua the Petitioner because the Petitioner had instituted the Petition

well in advance prior to promulgation of the Change in Law Rules and, therefore, the law as it stood on the date of institution of the Petition must be the law that is applied in order to adjudicate the instant Petition. Reliance has been placed on the decisions of the Hon'ble Supreme Court in (i) SEBI v. Classic Credit Ltd., [(2018) 13 SCC 1], (ii) Rajender Bansal & Ors. v. Bhuru & Ors., [(2017) 4 SCC 202], (iii) Videocon International Ltd. v. SEBI, [(2015) 4 SCC 33], (iv) CIT v. Dhadi Sahu, [1994 Supp (1) SCC 257].

(j) Simplicitor dismissal of pending matters on account of promulgation of the Change in Law Rules would be interpreted as amounting to an avoidable abdication of responsibility by the Commission. The reliance has been placed on the decisions of APTEL dated 21.5.2021 in Appeal No. 104 of 2021 and Ors. and dated 5.2.2020 in Appeal No. 239 of 2015.

8. Further, as the APTEL by its orders dated 7.1.2022 has directed the Commission to bear in the mind the contentions urged in the Original Petitions, it would be relevant to take note of the submissions made by the Petitioners in the Original Petitions at this stage, even though majority of the submissions made therein have already been urged before this Commission and captured in the foregoing paragraphs.

9. The Petitioners in the Original Petitions filed before the APTEL have pleaded as under:

(a) The Change in Law Rules do not deal with the dispute resolution powers of Regulatory Commissions. Therefore, the Change in Law Rules will not apply to a scenario such as the present where the parties have approached the Commission since the beneficiaries have disputed the claims made. In such cases, the Commission exercises its powers under Section 79(1)(f) in addition to 79(1)(b) & 79(1)(c) of the Act. Since the Change in Law Rules do not deal with a situation where parties have disputed Change in Law claims, relegating the Petitioner to remedies under the Change in Law Rules is impermissible. Further, without prejudice, the Change in Law Rules contemplate a time period for notice by the affected party to verification of tariff adjustment by the Commission. Even

assuming that the Change in Law Rules are applicable, the time period prescribed under the Change in Law Rules has elapsed. The change in law claim has been disputed and the dispute has already been heard by the Commission and order has been reserved. Accordingly, the Petitioner ought not to be relegated to the Change in Law Rules.

(b) The Change in Law Rules apply prospectively and will not apply to Petitions filed before 22.10.2021, especially those wherein orders have been reserved, prior to 22.10.2021.

(c) The Change in Law Rules have not been intended for retrospective effect as is evident from the definition of Change in Law therein. Change in Law has been defined to mean such events which have taken place after determination of tariff under Section 62 or Section 63 of the Act.

(d) The Change in Law Rules were notified in exercise of rule-making power granted to the Central Government under Section 176 of the Act. Since Section 176 does not contain any provision for retrospective provisions, the Change in Law Rules can only operate prospectively. Reliance has been placed on the judgment of the Hon'ble Supreme Court in the case of Hukam Chand vs. Union of India & Batch, reported as [(1972) 2 SCC 601].

(e) Section 176 of the Act does not confer the power to frame rules with retrospective effect. This position has been confirmed by APTEL in its judgment dated 28.1.2021 in Appeal No. 170 of 2020 in the case of Damodar Valley Corporation v. Jharkhand State Electricity Regulatory Commission.

(f) The Change in Law Rules provide for a mechanism for recovery of monies/ compensation for Change in Law events and cannot be interpreted to apply to proceedings which have already been instituted prior to notification of the Change in Law Rules.

(g) The Change in Law Rules may only apply to proceedings which have been instituted post notification on 22.10.2021. It is settled law that the law, existing as on date of filing, will govern the dispute. This position was affirmed in (a) Hon'ble Supreme Court judgment in the case of Narendra Kishore Marwah & Ors. vs. Samundri Devi, reported as [(1987) 4 SCC 382], (b) Hon'ble Supreme Court judgment in the case of Ramesh Chandra vs. III Additional District judge &

Ors. reported as [(1992) 1 SCC 75 1 (Para 12)]; and (c) Hon'ble Madras High Court judgment in Bharath Kumar fain vs. Kanta Ben, reported as [1998 (II) CTC 111].

(h) If the Commission is allowed to effectively reset the process in matters filed before 22.10.2021, wherein orders have been reserved, it will result in inordinate delay and accumulation of costs, including carrying cost involved. Additionally, this shall lead to further uncertainty as disputes regarding existence/ admittance of a Change in Law event will invariably continue to subsist despite the Change in Law Rules.

(i) The approach adopted by the Commission of disposing of petitions filed prior to 22.10.2021 without adjudication on merits is contrary to the statutory duty and obligation of the Commission under Section 79 of the Act as well as being contrary to law.

(j) The Change in Law Rules do not provide for the mechanism to deal with proceedings which involve conjoint claims of Force Majeure, delay in payment and Change in Law, etc. In situations wherein both Force Majeure and Change in Law are being claimed (as in Petition No. 514/MP/2020), the Commission cannot bifurcate the claims and direct the Petitioner to proceed for Change in Law under the Change in Rules and adjudicate the Force Majeure claims.

10. The Petitioners have, in a nutshell, argued as follows. The prayers in petitions related to change in law (such as those of the Petitioners) need to be considered in the light of provisions of Section 79 of the Act and while doing so, the Commission need not look at the provisions of the Change in Law Rules notified by the Ministry of Power. The Change in Law Rules cannot operate as a bar on this Commission's powers under Section 79 of the Act to grant declaratory relief to the Petitioners and that the Change in Law Rules can only supplement the powers vested upon the Commission under Section 79 of the Act and not supplant it. The right to approach the Commission as the appropriate forum for declaratory relief instead of waiting to follow the process under the Change in Law Rules is a substantive right, which cannot be

divested retrospectively that too by the Change in Law Rules, which are creature of the parent statute i.e., the Act. The Change in Law Rules, being creature of Act, cannot take away or dilute the powers vested in the Commission under Section 79 of the Act. A delegate cannot override the Act either by exceeding its authority or by promulgating provisions inconsistent with the Act. The Commission's power to adjudicate disputes involving transmission licensee ought not to be allowed to be whittled down through the Change in Law Rules as any such attempt will be ultra vires of the Act.

11. We have considered the submissions made by the Petitioners. At the outset, we would like to mention that the Commission is not the appropriate forum to decide upon vires of the Change in Law Rules as regards it being consistent or not being consistent with the Act.

12. In our view, the contentions of the Petitioners that dismissal of the Petitions on account of the promulgation of the Change in Law Rules would amount to avoidable abdication of the responsibility by the Commission are misplaced in as much as they appear to be on the basis of incorrect reading of the provisions of Change in Law Rules. In our view, there is no question of abdication of the responsibility by the Commission entrusted under the Act. The Commission is simply giving effect to the provisions of the Change in Law Rules that aim to address the issues of delay in the recovering the additional costs incurred by the affected party due to Change in Law events and in order to do so, it provides a time bound mechanism for settlement of the claims of the affected party. On the contrary, if the contentions of the Petitioners that the Change in Law Rules only give an option to the affected party and that the Commission is required to adjudicate the disputes under Section 79(1)(f) of the Act irrespective of the whether affected party has followed the said Rules, are to be

accepted, it would defeat the entire purpose of promulgation of the Change in Law Rules. The affected parties seeking a declaration of each and every Change in Law prior to following the process or mechanism as per the Change in Law Rules will only lead to further delays, which the Change in Law Rules seek to remedy.

13. Further, the contentions of the Petitioners that giving effect to the provisions of the Change in Law Rules means whittling down the regulatory and adjudicatory powers of this Commission under the Act are also misplaced. In our view, the reliance placed by the Petitioners on the various earlier orders of this Commission are of no use as these orders were of prior to the promulgation of the Change in Law Rules, which now prescribe the process and mechanism for claiming Change in Law reliefs. It is no longer res-integra that discharge of Commission's functions under Section 79(1) of the Act, have got to be in conformity with the sub-delegated legislation, wherever such sub-delegated legislation is applicable. The Hon'ble Supreme Court in its judgment in the case of PTC India Limited v. Central Electricity Regulatory Commission, (2010) 4 SCC 603, has held as under:

*"40.....Accordingly, the Central Commission is set up under Section 76(1) to exercise the powers conferred on, and in discharge of the functions assigned to, it under the Act. On reading Sections 76(1) and 79(1) one finds that Central Commission is empowered to take measures/steps in discharge of the functions enumerated in Section 79(1) like to regulate the tariff of generating companies, to regulate the inter-State transmission of electricity, to determine tariff for inter-State transmission of electricity, to issue licenses, to adjudicate upon disputes, to levy fees, to specify the Grid Code, to fix the trading margin in inter-State trading of electricity, if considered necessary, etc.. These measures, which the Central Commission is empowered to take, have got to be in conformity with the regulations under Section 178, wherever such regulations are applicable. Measures under Section 79(1), therefore, have got to be in conformity with the regulations under Section 178. To regulate is an exercise which is different from making of the regulations. However, making of a regulation under Section 178 is not a pre-condition to the Central Commission taking any steps/measures under Section 79(1). As stated, if there is a regulation, then the measure under Section 79(1) has to be in conformity with such regulation under Section 178...."*

14. While the aforesaid decision of the Hon'ble Supreme Court was in context of the Regulations framed by the Commission under Section 178 of the Act, the ratio laid



down therein equally applies to the sub-delegated legislation notified by the Central Government under Section 176 of the Act. When such delegated legislation notified by the Central Government under Section 176 of the Act i.e. Change in Law Rules prescribe a process and mechanism for claiming a Change in Law reliefs and provide for intervention by the Commission in this process only at a particular stage, such Rules are required to be implemented and given effect to. We are absolutely clear in our view that the said Rules do not take away the power of adjudication of the Commission under Section 79(1) of the Act in any way but merely lays down a stage in the process when such power may be exercised by the Commission.

15. In cases where the tariff has been adopted by the Commission under Section 63 of the Act as in case of the present Petitioners, the Commission adjudicates under Section 79(1) of the Act within the contours of relevant PPA and the Bidding Guidelines. The Change in Law Rules promulgated interplays with the PPAs and hence, any adjudication under Section 79(1) of the Act by the Commission necessarily requires the Change in Law Rules to be brought within the contours. Therefore, we do not agree with the contentions of the Petitioner that the prayers in petitions related to Change in Law (such as those of the Petitioners) need to be considered by the Commission in the light of provisions of Section 79 of the Act, without looking at the provisions of the Change in Law Rules notified by the Ministry of Power.

16. The Commission has already considered the other contentions raised by the Petitioners in its various recent orders e.g. order dated 6.12.2021 in Petition No. 228/MP/2020 and order dated 19.1.2022 in Petition No. 700/MP/2020, wherein the Commission has already taken a view that the Change in Law Rules only provide for process and mechanism for timely recovery of the Change in Law claims and are, therefore, procedural law in nature.

17. The relevant provisions of the Change in Law Rules are extracted hereunder:

*“2(c) “change in law”, in relation to tariff, unless otherwise defined in the agreement, means any enactment or amendment or repeal of any law, made after the determination of tariff under section 62 or section 63 of the Act, leading to corresponding changes in the cost requiring change in tariff, and includes —*

*(i) -----*

*(ii) -----*

*(iii) -----*

*3. Adjustment in tariff on change in law— (1) On the occurrence of a change in law, the monthly tariff or charges shall be adjusted and be recovered in accordance with these rules to compensate the affected party so as to restore such affected party to the same economic position as if such change in law had not occurred.*

*(2) For the purposes of sub-rule (1), the generating company or transmission licensee, being the affected party, which intends to adjust and recover the costs due to change in law, shall give a three weeks prior notice to the other party about the proposed impact in the tariff or charges, positive or negative, to be recovered from such other party.*

*(3) The affected party shall furnish to the other party, the computation of impact in tariff or charges to be adjusted and recovered, within thirty days of the occurrence of the change in law or on the expiry of three weeks from the date of the notice referred to in sub-rule (2), whichever is later, and the recovery of the proposed impact in tariff or charges shall start from the next billing cycle of the tariff.*

*(4) The impact of change in law to be adjusted and recovered may be computed as one time or monthly charges or per unit basis or a combination thereof and shall be recovered in the monthly bill as the part of tariff.*

*(5) The amount of the impact of change in law to be adjusted and recovered, shall be calculated -*

*(a) where the agreement lays down any formula, in accordance with such formula;  
or*

*(b) where the agreement does not lay down any formula, in accordance with the formula given in the Schedule to these rules;*

*(6) The recovery of the impacted amount, in case of the fixed amount shall be —*

*(a) in case of generation project, within a period of one-hundred eighty months; or*

*(b) in case of recurring impact, until the impact persists.*

*(7) The generating company or transmission licensee shall, within thirty days of the coming into effect of the recovery of impact of change in law, furnish all relevant documents along with the details of calculation to the Appropriate Commission for adjustment of the amount of the impact in the monthly tariff or charges.*

*(8) The Appropriate Commission shall verify the calculation and adjust the amount of the impact in the monthly tariff or charges within sixty days from the date of receipt of the relevant documents under sub-rule (7).*

*(9) After the adjustment of the amount of the impact in the monthly tariff or charges under sub-rule (8), the generating company or transmission licensee, as the case may be, shall adjust the monthly tariff or charges annually based on actual amount recovered, to ensure that the payment to the affected party is not more than the yearly annuity amount.”*

18. As per the aforesaid, Rule 3(1) of the Change in Law Rules provides for adjustment of monthly tariff or charges, on the occurrence of Change in Law, so as to restore the affected party to the same economic position. Rule 3(2) of the Change in Law Rules provides for issuance of a three weeks' prior notice by the affected party (i.e. generating company or transmission licensee) to the other party about the proposed impact in tariff or charges to be recovered from such other party. Rule 3(3) of the Change in Law Rules requires the affected party to furnish the computation of impact in tariff or charges to be adjusted and recovered within thirty days of occurrence of Change in Law or on the expiry or three weeks from the date of notice as referred in Rule 3(2) of the Change in Law Rules, whichever is later, and provides for recovery of the proposed impact in tariff or charges from the next billing cycle.

19. Further, Rule 3(4) of the Change in Law Rules provides that the impact of Change in Law to be adjusted and recovered may be computed as one time or monthly charges or per unit basis or combination thereof. Rule 3(5) of the Change in Law Rules provides that the amount of the impact of Change in Law shall be calculated as per formula laid down in the agreement and in case, the agreement does not lay down the formula, then as per the formula given in the Schedule to the Rules. Rule 3(6) of the Change in Law Rules provides for the period over which the recovery of the impacted amount will persist. Rule 3(7) of the Change in Law Rules requires the affected party, i.e. generating company or transmission licensee, to

furnish all relevant documents along with details of calculation to the Commission for adjustment of amount of the impact in the monthly tariff or charges within thirty days of the coming into effect of the recovery of impact of Change in Law. Under Rule 3(8) of the Change in Law Rules, the Commission is required to verify the calculation and adjust the amount of such impact within sixty days from the date of receipt of the relevant documents. Rule 3(9) of the Change in Law Rules requires the generating company or transmission licensee to adjust the monthly tariff or charges annually based on actual amount recovered to ensure that the payment to them is not more than yearly annuity amount.

20. Thus, from a plain reading of the scheme of the Change in Law Rules in their entirety, it is apparent that the said Rules only provide for process and methodology for claiming relief in respect of Change in Law events and as such do not affect the substantive rights of the affected party in any manner. The Change in Law Rules neither take away the definition of the Change in Law defined in the agreement nor the entitlement of the compensation as per the formula prescribed in the agreement, if any.

21. The Petitioners have, however, vehemently argued that the Change in Law Rules can only be applied prospectively and since on the date of institution of the present Petitions, these Rules were not promulgated, they cannot come in the way of adjudication of the present Petitions in terms of the law prevailing as on the date of filing of the present Petitions. In support of the aforesaid submissions, the Petitioners have relied upon catena of decisions of Hon'ble Supreme Court as already noted in the foregoing paragraphs. However, the aforesaid contentions of the Petitioners are, in our view, misplaced. It is well settled that as a general rule, procedural law is presumed to be retrospective in absence of any contrary intent express or implied.

Therefore, having observed in the forgoing paragraphs that the Change in Law Rules are of the nature of procedural law qua Change in Law reliefs, we do not see any reason as to why said Rules ought not to be applied retrospectively. In this regard, we rely upon the decision of the Hon'ble Supreme Court in the case of Rajendra Kumar v. Kalyan, [(2000) 8 SCC 99] in which the following has been observed:

*“20. We do feel it expedient to record that the analysis as effected by the High Court stands acceptable and as such we refrain ourselves from dilating on this aspect of the matter any further. It is pertinent to add in this context that some differentiation exists between a procedural statute and statute dealing with substantive rights and in the normal course of events, matters of procedure are presumed to be retrospective unless there is an express ban on to its retrospectivity. In this context, the observations of this Court in the case of Jose Da Costa and Another v. Bascora Sadasiva Sinai Narcornim and Ors 1976 2 SCC 917 is of some relevance. This Court in paragraph 31 of the Report observed:*

*Before ascertaining the effect of the enactments aforesaid passed by the Central Legislature on pending suits or appeals, it would be appropriate to bear in mind two well-established principles. The first is that while provisions of a statute dealing merely with matters of procedure may properly, unless that construction be textually inadmissible, have retrospective effect attributed to them, provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment (Delhi Cloth and General Mills Co. Ltd. v. Income Tax Commissioner: AIR 1927 PC 242)*

...

*22. The law thus seems to be well settled that no person has, in fact, a vested right in procedural aspect one has only a right of prosecution or defence in the manner as prescribed by the law for the time being and in the event of any change of procedure by an Act of Parliament one cannot possibly have any right to proceed with the pending excepting as altered by the new legislation and as such we need not dilate on the issue any further.*

22. Further, while dealing with the aforesaid issue, the Commission in its order dated 6.12.2021 in Petition No. 228/MP/2021 (Mahindra Renewables Private Limited v. SECI) has observed as under:

*“13. it is a settled law that as a general rule, no law operates retrospectively unless it has been provided differently in the law itself, or with exceptions as have been delineated by Hon'ble Supreme Court. Hon'ble Supreme Court in the case of T.Kaliamurthi and Anr. v. Five Gori Thaikal Wakf and Ors. [2008 (9) SCC 306], dealing with law of limitation has succinctly laid down the principle as under (emphasis by us):*

22. *It is well settled that no statute shall be construed to have a retrospective operation until its language is such that would require such conclusion. The exception to this rule is enactments dealing with procedure. This would mean that the law of limitation, being a procedural law, is retrospective in operation in the sense that it will also apply to proceedings pending at the time of the enactment as also to proceedings commenced thereafter, notwithstanding that the cause of action may have arisen before the new provisions came into force. However, it must be noted that there is an important exception to this rule also. Where the right of suit is barred under the law of limitation in force before the new provision came into operation and a vested right has accrued to another.*

14. *It is also a settled principle of law that where a particular provision operates in a future, it cannot be said to be retrospective merely because within the sweep of its operation all existing rights are included. In this regard, it would be relevant to extract the decision of the Hon'ble Supreme Court in the case of Trimbak Damodhar Raipurkar v. Assaram Hiranman Patil, [(1962) Supp. (1) SCR700]:*

*“9. In this connection it is relevant to distinguish between an existing right and a vested right. Where a statute operates in future it cannot be said to be retrospective merely because within the sweep of its operation all existing rights are included.”*

23. In view of the above, the contentions of the Petitioners that the Change in Law Rules apply only prospectively and that they cannot be extended to apply to proceedings which were pending as on 22.10.2021 are misplaced and deserve to be rejected.

24. The Petitioners have submitted that the Change in Law Rules will not apply to a scenario such as the present where the Petitioner has approached the Commission since the beneficiaries have disputed the claims made by the Petitioners. The Petitioners have further submitted that since the Change in Law Rules do not deal with a situation where parties have disputed Change in Law claims, relegating the Petitioners to remedies under the Rules is impermissible and would amount to an empty formality. However, we are not in agreement with the aforesaid submissions of the Petitioner. In the Petition No. 514/MP/2020, none of the Respondents have filed any reply opposing the claims of the Petitioner therein whereas in Petition No. 49/MP/2021, only one of the LTTCS, i.e. UPPCL has filed its reply objecting to the Change in Law claims of the Petitioner and that too only on certain limited claims.

Hence, it would not be proper to term the requirement of following the process laid down in the Change in Law Rules an empty formality even at this stage. Besides, as already noted above, the Change in Law Rules are to facilitate time bound settlement of Change in Law claims and enable the affected party to start billing its proposed impact in tariff or charges due to Change in Law event pending verification and adjustment by the Commission. Hence, even apprehensions of the Petitioners regarding further delays in considering the Change in Law claims in case they are relegated to follow the Change in Law Rules are unfounded.

25. In view of foregoing discussions, the Petitioners are directed to approach the beneficiaries/LTTCs for settlement of Change in Law claims among themselves in terms of the Change in Law Rules and approach the Commission only in terms of Rule 3(8) of the Change in Law Rules.

26. The Petitioner in Petition No. 514/MP/2020 has also contended that since it has claimed relief for Force Majeure in addition to Change in Law events and both the claims are intermingled with each other, the Commission cannot bifurcate the claims. However, we are of the view that since the Change in Law claims have to be dealt with in line with the Change in Law Rules and keeping in view the directions issued by us to the Petitioner to approach the Commission only in terms of Rule 3(8) of the Change in Law Rules in the forgoing paragraph, it would be appropriate that the Force Majeure claims raised by the Petitioner therein be dealt with in a separate Petition. Accordingly, the Petitioner in Petition No. 514/MP/2020 is granted liberty to approach the Commission through a separate Petition in respect of its Force Majeure claims which shall be dealt with in accordance with law.

27. The Petition No. 514/MP/2020 and Petition No. 49/MP/2021 are disposed of in terms of the above discussions and findings. We have carefully considered the

contentions raised by the Petitioners before APTEL in Original Petitions filed by the Petitioners in APTEL and needless to say, this order is subject to outcome of the decision in the said Original Petitions.

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

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

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

sd/-  
**(P.K. Pujari)**  
Chairperson