

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 92/MP/2018

Coram:

Shri P.K. Pujari, Chairperson

Shri Arun Goyal, Member

Shri P. K. Singh, Member

Date of Order: 06.06.2022

In the matter of:

Petition under Section 79(1)(c) read with 79(1)(f) of the Electricity Act, 2003, inter-alia, seeking a direction to PGCIL to pay a sum of Rs.112.39 crore, being the financial loss suffered by the Petitioner, on account of delay in commencement of the Long-Term Access granted to the Petitioner, due to delay in implementation of the transmission system falling in the scope of PGCIL's obligations, along with interest on the same till the date of payment of the amount by PGCIL to the Petitioner.

And

In the matter of :

Shiga Energy Private Limited,
5th Floor, DLF Building No. 8,
Tower – C, DLF Cyber City,
Phase – II, Gurugram,
Haryana - 122002

...Petitioner

VERSUS

1. Power Grid Corporation of India Limited,
B – 9, Qutub Institutional Area,
Katwaria Sarai,
New Delhi - 110016

Also at:

Saudamini, Plot No.2, Sector 29,
Near IFFCO Chowk, Gurugram,
Haryana 122001

2. Government of Sikkim,
Energy & Power Department,
KaziRoad,
Gangtok – 737101, Sikkim

...Respondents

Parties Present:

Shri Deepank Yadav, Advocate, SEPL

Ms. Swapna Seshadri Advocate, PGCIL
Shri Aditya Dubey , Advocate, PGCIL
Ms. Suparna Srivastava, Advocate, CTUIL
Shri Tushar Mathur, Advocate, CTUIL
Ms. Soumya Singh, Advocate, CTUIL
Shri Raghvendra Kumar, Advocate, State of Sikkim
Shri Bimal Aggrawal, SEPL
Shri Vijay Kumar, SEPL

ORDER

Shiga Energy Private Limited (hereinafter referred as 'the Petitioner') has filed the present Petition seeking compensation of ₹112.39 crore from PGCIL towards the financial loss suffered by it on account of delay in implementation of the transmission system under the scope of PGCIL and the consequent delay in commencement of the Long-Term Access (LTA) granted to it, along with interest till the date of payment. The Petitioner has made the following prayers:

- a. Pass an Order directing Respondent No. 1 to pay a sum of Rs.112.39 crores, being the financial loss suffered by the Petitioner on account of delay in commencement of the Long-Term Access granted to the Petitioner, due to delay in implementation of the 'Transmission System' falling in the scope of Respondent No. 1 along with interest on the same till the date of payment of the amount by Respondent No. 1 to the Petitioner;
- b. In the alternate to prayer (a) pass an Order directing Respondent No. 1 to pay a sum of Rs.101.59 crores, being the IDC charges of the Petitioner to its lenders under the financing documents, as also the preliminary & pre-operative expenses and additional claims of contractors engaged in the THEP, on account of delay in commencement of the Long Term Access granted to the Petitioner, due to delay in implementation of the Transmission system falling in the scope of Respondent No. 1 along with interest on the same till the date of payment of the amount by Respondent No. 1 to the Petitioner;
- c. Pass an ad-interim Order directing Respondent No. 1 to forthwith pay an amount of Rs 98.51 crores as interim compensation towards the claim made in prayer (a) or (b), as the case may be;
- d. Pass such other or further orders as the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

Submissions of the Petitioner

2. The Petitioner has made the following submissions:

a) The Petitioner has entered into an Implementation Agreement dated 3.9.2008, with the State of Sikkim for setting up a Hydro Electric Project in Tashiding District on Rangit river, of capacity 2x48.5 MW (hereinafter referred to as the 'Tashiding Hydro-Electric Project/ THEP'). Subsequently, the Petitioner applied to PGCIL for grant of 'Long Term Open Access' for evacuation of power from its project.

b) In pursuance to the said application, PGCIL vide its letter dated 26.05.2009 forwarded its intimation for providing the Long Term Open Access. In terms of Annexure- 3 thereof, the dedicated part of the 'Transmission System' , being "*Tingting- New Melli 220 Kv D/c line with Twin moose conductor, one ckt via Tashiding, along with associated line bays*" being routed through the proposed pooling point sus-bstation near Tingting/Tashiding, was initially to be implemented by the Petitioner herein along with its Tingting Project.

c) Subsequently, in the Minutes of Meeting held on 28.12.2010 between the Petitioner and PGCIL along with other project developers, the revised scope of the Petitioner's responsibility in implementation of the transmission system (drawl line) has been intimated by PGCIL, as transmission system (drawl line) up to Tashiding-Pooling station near Tashiding 220KV D/c line and accordingly rest of the transmission line from Tashiding – Pooling station near Tashiding 220KV D/c line to New-Melli Pooling station was removed/taken out from the Petitioner's scope of the implementation of the transmission system.

d) The Petitioner and PGCIL entered into a Long Term Access Agreement dated 19.10.2011. As per Annexure 1 of the said LTAA, the Long-Term Access ('LTA') with reference to the THEP was to commence from February 2014. Further, in terms of Annexure 2 of the LTAA, and also as agreed upon earlier between the parties vide Minutes of Meeting dated 28.12.2010, the implementation of Transmission system (drawl line) from Tashiding–Pooling station near Tashiding 220KV D/c line to New-Melli Pooling station was not to be a part of the Petitioner's scope of implementation of the transmission system. PGCIL, being the other party to the LTAA, was to get the said transmission system implemented, which as per Annexure-3 of the LTAA, was to be done through Respondent No. 2. In terms of Annexure-2 of the LTAA, the Petitioner's

scope of implementation of the transmission system was limited only to the direct injection/drawl line up to Tashiding-Pooling station near Tashiding 220kV D/c line.

e) On account of Writ Petitions filed by local residents before the Hon'ble Supreme Court of India (which were transferred by the Supreme Court of India to the Hon'ble High Court of Sikkim), against the implementation and execution of the THEP, certain interim orders were passed by the Hon'ble High Court which affected the implementation of the Petitioner's project. As a result of such unforeseen circumstances beyond the control of the Petitioner, the COD of THEP got extended beyond its scheduled date.

f) In the meanwhile, the Petitioner and Respondent No. 1 herein entered into a Transmission Service Agreement ('TSA') dated 30.01.2014, to govern the provisions of inter-state transmission services.

g) In terms of an understanding reached between PGCIL and Govt. of Sikkim in February 2015, the 'Transmission System' to be implemented through Respondent No. 2 (being the "Legship" substation and the Transmission line from "Legship" to "New Melli"), was to be undertaken by Respondent No. 1 herein.

h) The Petitioner kept the PGCIL informed about commissioning of its project by December 2016. Accordingly, the Petitioner requested PGCIL to carry out the work related to the construction of the "Legship" Substation and the Transmission line from "Legship" to "New Melli" on a priority basis to avoid any delay in power evacuation of THEP. In the meantime, during the 10th Connectivity & LTA Meeting of Eastern Region held on 25.05.2015, it was discussed and recorded in the Minutes thereof that the Commissioning schedule of THEP would be December 2016 and further that the Petitioner was constructing its scope of the dedicated 'Transmission System'. The said Minutes further recorded the request of the Petitioner to expedite the implementation of the "Legship" substation and "Legship"–"New Melli" Transmission Line.

i) Since, PGCIL had yet not awarded the construction works of the Transmission System falling in its scope i.e. "Legship" Pooling Station–"New

Melli” 220kV D/c Line along with the “Legship” Pooling Station and also taking note the commissioning of THEP by December 2016, the Central Electricity Authority (‘CEA’) vide its letter dated 04.11.2015 requested PGCIL to start the aforesaid construction works at the earliest so as to complete the transmission line and the pooling station in the same time frame of the generation project i.e. December 2016.

j) In a meeting held on 23.11.2015 (being the Meeting on ‘Power evacuation system for Jorethang HEP and Tashiding HEP in Sikkim constraints’), after considering the respective stands of the participants therein (which amongst the Petitioner and Respondent No. 1 herein also included the representatives of the CEA as also the National Load Despatch Centre/ ‘NLDC’), it was agreed that PGCIL should expedite the commissioning of the “Legship” pooling station and the “Legship”–“New Melli” Transmission line, so as to match with the commissioning schedule of the Project, whose expected COD is December 2016. It was further agreed that in case of delay in completion of the Legship Pooling Station, the Legship- New Melli Transmission Line may be bypassed at the Legship Pooling Station. Moreover, PGCIL agreed that the construction of GIS Bays would be accorded top priority so as to complete construction of the said bays along with THEP, i.e. on or before December 2016.

k) The Petitioner vide its letters dated 29.12.2015 and 19.01.2016, once again informed the CEA and PGCIL respectively, that the project is likely to be commissioned by COD December, 2016 and requested that the works related to the Legship–New Melli Transmission Line be matched with the completion of the said Project, which is expected to achieve COD in December 2016.

l) The Petitioner vide its letters dated 02.03.2016 & 23.03.2016 brought PGCIL to notice that the works related to “Legship” substation, 220kV D/c Transmission Line from “Legship” Pooling Station to “New Melli” sub-station, and the associated 2 numbers GIS Bays at “New Melli” had not yet been awarded by Respondent No. 1 herein.

m) The aforesaid factum of the works relating to “Legship”–“New Melli” Transmission line being yet not awarded by PGCIL came to be further noted in

the Minutes of Meeting dated 1.4.2016 taken by the Member (PS), CEA. Considering the delay in awarding the Transmission line Projects to be constructed by Respondent No. 1 in relation to the THEP, the Petitioner requested for an interim arrangement i.e. transmission line from THEP to “Legship” Pooling Station and Transmission line from “Legship” Pooling Station to “New Melli” Sub-station be directly connected bypassing the “Legship” Pooling Station to evacuate power from THEP. The said request was acknowledged and agreed by PGCIL to enable evacuation of power without any hold up. In all such view, the CEA advised PGCIL to expedite the construction of 220kV D/c “Legship”–“New Melli” line and 220/132 kV “Legship” Sub-Station at the earliest so as to complete the same before December 2016 to avoid constraint of power evacuation from the THEP.

n) The Petitioner vide its letter dated 28.04.2016 reminded Respondent No. 2 that the works for the Transmission Line from “Legship” to “New Melli” have not been awarded by the Respondent No. 1. It was further stated that the Petitioner would have to bear an expenditure of about Rs.10 crore every month of delay in evacuation of power after completion of THEP towards interest to project lenders (being ‘Power Finance Corporation Ltd.’ and ‘IFCI Ltd.’) and overheads. In view of the above, Respondent No. 2 was requested to take immediate action for completion of the Transmission line.

o) Once again, in the Meeting of Joint Coordination Committee for High Capacity Corridor for IPPs in Eastern Region (being the 9th Meeting) held on 10.06.2016 with reference to THEP, it was remarked that the Transmission System under the scope of Respondent No. 1 herein was to be expedited. That the interim arrangement of bypassing the “Legship” Pooling Station, as agreed in the Minutes of the Meeting dated 23.11.2015 (being the Meeting on ‘Power evacuation system for Jorethang HEP and Tashiding HEP in Sikkim constraints’) was reaffirmed in the Minutes of the Meeting dated 13.06.2016 of the 18th Standing Committee of Power System Planning of Eastern Region.

p) The parties had also agreed to an additional interim arrangement. If the bays at “New Melli” for termination of “Legship”–“New Melli” 220 kV D/c line are not ready, then a LILO of one circuit of “New Melli”–“Rangpo” 220 kV D/c line be

implemented at a suitable location near “New Melli”, to be further connected with “Tashiding”–“New Melli” line so as to form “Tashiding”–“New Melli”, “Tashiding”–“Rangpo” and “New Melli”–“Rangpo” 220 Kv S/c lines.

q) The Petitioner vide its letters dated 03.10.2016 and 13.10.2016, addressed to the CEA and the Respondent No. 2, respectively, highlighted that the completion of the Transmission line works, falling within the scope of PGCIL, was vital to match with the commissioning schedule of THEP by December 2016, so as to avoid loss of 1.17 Million units of clean energy per day and also the increase in the Interest During Construction (‘IDC’) to the lenders of the Project, which would render THEP unviable. The Petitioner also apprised the CEA as also Respondent No. 2 that the Petitioner is expecting to complete the Transmission line works within its scope, by October 2016.

r) In the meeting dated 04.10.2016 chaired by the Chief Engineer (PSPM) to review the construction progress of Transmission system *inter alia* associated with THEP, it was made known that PGCIL had much belatedly awarded the 220 kV D/c “Legship”–“New Melli” line in July 2016 to one M/s KEC, for construction of approximate 10 km Transmission line, with the detailed survey yet not complete. Taking note of the same, the Chief Engineer (PSPM) advised M/s KEC to submit an action plan within 1 week for completion of the Transmission line by 15.12.2016 and submit weekly reports of the status of the progress.

s) Pursuant to the aforesaid meeting, the CEA vide its letter dated 20.10.2016 expressed regret to PGCIL that M/s KEC had not submitted any action plan, as was agreed to be done in the Meeting dated 04.10.2016. Accordingly, the CEA requested PGCIL to look into the said matter so that the construction of the 220 kV D/c “Legship”–“New Melli” line is completed on a priority basis and that THEP gets commissioned as per the schedule in December 2016.

t) M/s KEC and PGCIL, after much delay, submitted the progress of Transmission line in the meeting dated 16.11.2016 chaired by the Chief Engineer (PSPM), CEA. A perusal of the said Minutes would show that the Respondent No. 1 committed to complete the works by January 2017. In

response, PGCIL vide its letter dated 29.11.2016, informed it would make best efforts to complete the Transmission line by March 2017.

u) The Petitioner vide its letter dated 12.12.2016 brought to the specific notice of PGCIL that in case the line from “Legship” to “New Melli” was not completed in time, the same would result in a loss of approximately Rs.10 Crore per month towards additional IDC besides loss of revenue against sale of power.

v) The Petitioner vide its letter dated 29.12.2016 informed PGCIL that it had successfully completed the dry commissioning of one unit of THEP, with its Second unit being planned to be completed by end of December, as mentioned in various Meetings. Further, PGCIL was also apprised that the 220 kV D/c Transmission line from THEP to “Legship” sub-station (falling within the scope of work of the Petitioner herein) was also expected to be completed by end of December 2016.

w) In furtherance of its aforesaid letter dated 29.12.2016, the Petitioner notified the completion of the dry commissioning of both units as also the construction of the 220 kV D/c Transmission line from THEP to “Legship” sub-station, which fell within its scope. By way of the said communication, the Petitioner once again requested for the completion of the Transmission line from “Legship” sub-station to “New Melli” sub-station, which was required for the evacuation of power from THEP.

x) The gross delays in the execution of the works by Respondent No. 1 was once again notified by the Petitioner in its letter dated 10.04.2017, 13.04.2017 & 01.05.2017, wherein, the aspect of the works, falling within the scope of PGCIL, being only half completed had been highlighted, which in effect was resulting in generation/ revenue loss of more than Rs.100 crore.

y) After gross and inordinate delay, the work of 220 kV D/c “Legship” Pool (Tingmoo) to “New Melli” Transmission lines were completed on 10.10.2017.

z) Pursuant thereto, the Petitioner declared COD of both the Units of its project on 06.11.2017. It is clear from the facts as stated above that the delay in completion of the Transmission system is solely attributable to PGCIL, on account of which the Petitioner has suffered financial loss of Rs.112.39 crore.

aa) In order to pay the consequent IDC and other charges, so as to prevent the account from being declared 'Non-Performing Asset' (NPA) by the lenders the Petitioner was compelled to obtain additional loans. The said additional liabilities and the difficulties being faced by the Petitioner to service the dues have arisen solely on account of the breach committed by PGCIL, which alone is liable and responsible for the same. The Petitioner vide its letter dated 27.11.2017 requested PGCIL to pay an amount of Rs.112.39 crore as compensation. However, PGCIL has not given any reply.

Submissions of Respondents

3. Respondent No.1, PGCIL in its reply vide affidavit dated 18.12.2018 has mainly submitted as under:

a) The status of Petitioner's generation project was reviewed in the Connectivity and LTOA meeting of IPPs in ER held on 28.12.2010, wherein the Petitioner had mentioned that all clearances have been received and E&M and civil packages are ready for award. Further, it was mentioned that project is expected to materialize by Oct 2013 and Petitioner shall sign BPTA and furnish Bank Guarantee by Mar 2011. Accordingly, it was decided to grant LTA to Petitioner. In line with decision taken in the meeting, LTA was granted to Petitioner by its intimation dated 10-01-2011. Therein, LTA start date was mentioned as "Oct 2013 (subject to commissioning of the generation project and availability of the transmission system).

b) Pursuant to LTA grant, the Petitioner entered into a Long Term Access Agreement (LTAA) on 19.10.2011 for transmission of power from its project through use of open access in ISTS where under, the connectivity of the Petitioner's generation project with the ISTS network at New Melli sub-station (via pooling station and transmission line of Respondent No. 2) was agreed and recorded to be through the dedicated line implemented by the Petitioner and the intervening transmission line to be implemented by the Government of Sikkim. Despite this categorical recording in the LTAA as regards the implementation of connectivity system by the Petitioner and Government of Sikkim, the Petitioner has wrongly contended that Respondent No.1, being the other party to the

LTAA, was to get the said transmission system implemented. Thus, the very premise on which the Petitioner has based its present claim is totally misplaced.

c) Ministry of Power vide letter dated 10.10.2014 conveyed its approval for a comprehensive scheme for strengthening of transmission and distribution in the States of Arunachal Pradesh and Sikkim. The scheme was to be implemented as a central sector scheme through Respondent No.1 at an estimated cost of Rs.4,754.42 crore with the completion schedule of 48 months from the date of release of first installment (post investment approval). The entire cost of the project was to be borne by the Government of India through the Plan Scheme of Ministry of Power. Upon commissioning of the transmission system, the same was to be transferred to the owner State which was to be responsible for carrying out the operation and maintenance and other related activities at its own cost as per the terms and conditions in the Memorandum of Understanding to be signed in that behalf between Respondent No.1 and Government of Arunachal Pradesh/Sikkim. The broad scope of work under the scheme was also indicated for each of the States of Arunachal Pradesh and Sikkim.

d) CEA in its meeting dated 23.02.2015 deliberated upon the comprehensive scheme for strengthening of transmission and distribution system in North-Eastern Region and Sikkim. In the said meeting, the representative of the Government of Sikkim informed that the establishment Dikchu and Legship pooling station have been overlooked during the finalization of scope of work for the comprehensive scheme for Sikkim. At both the pooling stations, power from a number of hydro projects in Sikkim was to be pooled; power from Tashiding was to be pooled at Legship sub-station. The representative further requested to include construction of 220 kV D/c transmission line with HTLS/twin moose conductor from Legship 220 kV pooling station (State Government) to the New Melli 220 kV (PGCIL) pooling station and construction of 220/132 kV, 2x50 MVA pooling station at Legship under the comprehensive scheme. After discussions, the revised scope of works for the comprehensive scheme was agreed considering the aforesaid additions/modifications. In this manner, the Legship pooling station and the 220kV D/c transmission line from Legship pooling station to New Melli sub-station of Respondent No.2 (hereinafter collectively referred to as "Legship-New Melli" transmission assets) also came to be included in the comprehensive transmission system strengthening scheme approved by

the Government of India for the States of Arunachal Pradesh and Sikkim. That being so, it could never be the case (of the Petitioner) that it was Respondent No.1 who was responsible for providing the connectivity system for enabling the Petitioner to evacuate power, whether under the LTA or through the STOA in the interim.

e) On 22.04.2015, the Government of Sikkim entered into a Memorandum of Understanding (MoU) with PGCIL for implementing its portion of the comprehensive transmission strengthening scheme approved by the Government of India through Respondent No.1 acting "*as its agent*" and "*Project Management Consultant*". The said implementation was to be done with funds being directly released to Respondent No.1 by the Government of India to meet the actual cost of the project along with consultancy fee @12% of actual executed cost of the project

f) The completion period as per the scope of works was provided in clause 9 of the MoU to be 48 months from the date of release of first installment of funds. This scope of work also included construction of the Legship-New Melli transmission assets. Upon physical readiness of any transmission line/sub-station and upon successful commissioning and test-charging, Respondent No.2 was to immediately take over the project (in full or in part) and commence operation and maintenance of the same (clause 11).

g) The Petitioner was aware that the Legship-New Melli transmission assets is under implementation by Respondent No.1 as per the MoU dated 22.04.2015 entered into between Respondent No.1 and the Government of Sikkim. The same is also evident from Petitioner's various correspondences dated 05.03.2015, 18.03.2015, 07.04.2015, 21.04.2015, 23.06.2015, 05.08.2015 and 24.09.2015. In fact, in letters dated 07.04.2015 and 23.06.2015, the Petitioner categorically acknowledged that the Legship-New Melli transmission assets were being implemented by the Government of Sikkim.

h) In the 10thConnectivity and LTA meeting of Eastern Region held on 25.05.2015 also, Respondent No.1 had informed that under the comprehensive scheme for Sikkim being funded by the Government of India through Ministry of

Power, including the Legship-New Melli transmission assets, was being constructed by it *“on behalf of Government of Sikkim”*.

i) In furtherance of the MoU dated 22.04.2015, Respondent No.1 floated a Notice Inviting Tender (NIT) for the contracted works along with other lines of comprehensive transmission strengthening scheme in August, 2015. However, the price quoted by the bidders in response to the said NIT were found to be very high and as such, PGCIL was constrained to annul the said NIT. This position was informed in the CEA meeting held on 01.04.2016 wherein it was reiterated that the PGCIL had tried to award the scheme but due to hostile terrain and prevailing socio-political situation in the States, there had been limited response from the bidders at a very high cost. In the meantime, the Petitioner had begun pressurizing PGCIL through correspondences and also through meetings at various forums to complete implementation of transmission assets matching with the commissioning schedule of its project in December, 2016. This was done even if it had been agreed under the MoU that the works would be executed within a period of 48 months from the date of release of first installment of funds (which was released on 19.12.2014). However, due to urgency informed by the Petitioner of the execution of the assets and in best efforts to avoid any bottleneck in power evacuation from the Petitioner's project (as discussed in the CEA meeting dated 23.11.2015), the contract for construction of the line was awarded to M/s. KEC International Ltd. in July, 2016 as a special case.

j) Even after award of the contract, the execution could not start immediately because of excessive rain and certain commercial issues such as road permit, TIN No. and TAN No. etc. which were to be given by the Government of Sikkim; any delay on this account could not be attributable to Respondent No.1. Finally, the issue of TIN No. was resolved on 15.10.2016 and the issue of TAN No. was resolved on 02.12.2016. Meanwhile, the work of foundation had started at site. However, all erection work was stopped by local public on 16.12.2016 demanding allocation of 30% service contract work to them. The work could resume in full swing from 10.01.2017 only after intervention by the Government of Sikkim. Forest clearance for the line was applied by Respondent No.1 after completion of route alignment and detailed

survey on 27.11.2016 and clearance for the same was received on 12.05.2017. The clearance of RoW was the responsibility of Government of Sikkim. However, the progress of work was hampered due to local agitation and the work was frequently stopped by local people demanding huge compensation. No progress could be achieved in more than 100 working days for foundation, erection and stringing activities.

k) The work was further affected severely from 15.06.2017 due to escalation of violence in hills of North Bengal (Darjeeling) for demand of Gorkhaland and transportation of material was completely crippled. The labourers for the transmission line construction work who were brought from outside the region also deserted the site due to apprehension of violence. The line was about to be completed in the month of July, 2017 when a tower at location No.15/0 collapsed due to heavy land slide and rolling of boulders from adjacent hills. The foundation also got damaged and rectification of the same took substantial time after complete de-stringing and dismantling of the towers. Finally, the line could be completed on 11.10.2017 and was charged on 12.10.2017, which was much before the period of 48 months from the receipt of first installment of funds (on 19.12.2014). Accordingly, vide letter of even date, Respondent No.1 informed Respondent No.2 that the line was ready for charging. Thereafter, the Petitioner proceeded with performing the works related to commissioning of its generation project and declared the project commercially operational from 06.12.2017. Thus, despite various hindrances, Respondent No.1 completed the work of implementing the Legship-New Melli transmission assets as an agent of Respondent No.2 on consultancy works basis within the contracted period under the MoU.

l) An interim arrangement for power evacuation from the Petitioner's project till the commissioning of Legship pooling sub-station and 2 numbers 220 kV GIS line bays at New Melli was agreed to in the 18th Standing Committee Meeting on Power System Planning in Eastern Region held on 13.06.2016. Presently, the generation project of the Petitioner is connected to the grid through the interim arrangement agreed in the said meeting.

m) PGCIL vide letter dated 29.11.2016 informed the status of implementation of sub-station/line to the Petitioner and reiterated that even though the delay in

implementation of the subject transmission assets matching with the generating station's commissioning schedule could not be attributed to it, Respondent No.1 was making best efforts to complete the assets at the earliest.

n) The Petitioner vide its letter dated 17.01.2017 informed Respondent No.2 about the commissioning of both units of its generating station and also the 220 kV dedicated transmission line from the project to the Legship sub-station. The Petitioner also informed that evacuation of power from its project is only possible *"once the transmission line from Legship to new Melli being built by Sikkim government is completed"*. The Petitioner further informed that in case of any delay, the company would have to incur an additional interest burden on the loan to the extent of Rs.10 crores per month and therefore, requested Respondent No.2 for completion of the transmission assets at the earliest to avoid loss of power and revenue both to the project and to the State.

o) The Petitioner vide letter dated 27.11.2017 raised a claim against PGCIL for the compensation of Rs.112.39 crore for alleged losses suffered by it on account of delays and breaches committed by Respondent No.1 for completing the transmission line work falling within its scope under the LTAA. In response PGCIL, vide its letter dated 23.02.2018 denied the Petitioner's claims.

p) PGCIL was clearly acting as an agent of the Government of Sikkim for discharging the responsibilities for and on its behalf as the owner of the Legship-New Melli transmission assets under the MoU dated 22.04.2015 and therefore, the Petitioner has no right to raise a claim of compensation for alleged losses suffered by it on account of any alleged delays and breaches in implementing the said transmission assets.

q) It is settled law that an agent cannot be held responsible for the defaults committed by its principal. The Hon'ble Supreme Court in *Prem Nath Motors Ltd. v. Anurag Mittal, AIR 2009 SC 569* has dealt with the relationship of agent and principal and held that in view of the provisions of Section 230 of the Indian Contract Act, 1872 an agent is not liable for the acts of a disclosed principal. Further, the same principle was also established in *Sitaram Motilal Kalal v. Santanuprasad Jaishankar Bhatt, AIR 1966 SC 1697*.

r) Thus, it is clear that where the relationship of principal and agent is established, the agent cannot be sued when the principal has been disclosed. In the present case, not only the Government of Sikkim was clearly known to be the owner of the Legship-New Melli transmission assets, it was also clear beyond doubt by way of various meetings and correspondences with the Petitioner that Respondent No.1 was only constructing the said line as an agent of the Government of Sikkim. Thus, the Petitioner could not by any stretch of imagination hold PGCIL liable for delays.

IA 9/2019

4. The Petitioner vide Affidavit dated 2.1.2019 filed IA 9/2019 in instant Petition along with amended petition, seeking amendment to prayers of Petitioners and submitted as follows:

- a) Petitioner reaffirms and reasserts its pleadings and claims as raised in the present Petition. However, without prejudice to the same, considering the stand taken by Respondent No. 1, the Petitioner – as a measure of abundant caution, and of not wanting the ultimate award, if any, in its favour being rendered a paper award – is seeking to amend its relief clause, as under, by including therein an alternate relief qua Respondent No. 2.

“cc. In the alternate to the aforesaid Prayers (a) to (c), pass an order with regards to the said prayers qua Respondent No. 2 herein;”

As a sequitor to the aforesaid amendment, Para 4 of the Petition also stands amended as under:

*“4. Respondent No. 2 herein is the Govt. of Sikkim, represented through its Energy & Power Department, **and which** Respondent No. 2 is being impleaded as a proper party to the present Petition.”*

5. The IA 9/2019 was heard on 4.7.2019 and vide ROP the following has been recorded:

“Learned counsel for the Petitioner submitted that it had filed an Interlocutory Application (I.A) seeking amendment in the prayer by including an alternate relief qua the Respondent No. 2, Government of Sikkim. Learned counsel requested to issue notice on the IA.

2. Learned counsel for PGCIL objected to the I.A and submitted that the words used by the Petitioner in the IA "as a measure of abundant caution", in view of the reply filed by PGCIL "passing the buck" to the Government of Sikkim. Learned counsel further

submitted that the Petitioner has unequivocally stated that it is not amending its cause of action which has been pleaded in the Petition only qua PGCIL rather the Petitioner has reaffirmed and reasserted its pleadings and claims "as raised in the present Petition", meaning thereby that the Petitioner's grievance and the resultant claim continues to be against PGCIL and not against the Government of Sikkim. Learned counsel submitted that the amendment must be sought for bringing the real question in controversy between the parties to the fore. Learned counsel sought permission to file additional submission on the amended Petition.

3. After hearing the learned counsel for the Petitioner and the Respondent, the Commission allowed the I.A and directed to issue notice to the Government of Sikkim on the amended Petition. Accordingly, I.A No. 9/2019 was disposed of."

6. As per above Commission allowed the amended Petition.

Submissions of Petitioner in amended Petition

7. Petitioner reiterated its submissions as filed in main petition along with addition of prayer as follows:

"cc. In the alternate to the aforesaid Prayers (a) to (c), pass an order with regards to the said prayers qua Respondent No. 2 herein;"

Rejoinder of the Petitioner to the reply of PGCIL

8. The Petitioner in its rejoinder vide Affidavit dated 14.10.2019 filed on 15.11.2019 to the reply filed by PGCIL has submitted as follows:

a) From perusal of the records of the case (including the communications addressed by the Petitioner herein and the various minutes of the joint meetings between the parties) as also the averments contained in the Petition, it is clear that the obligation of implementation of the transmission assets matching with the commissioning of Petitioner's power project was that of PGCIL.

b) Ministry of Power vide letter dated 10.10.2014 had conveyed approval for "Comprehensive Scheme for Strengthening of Transmission & Distribution System in Arunachal Pradesh & Sikkim" which, *inter-alia*, included the implementation of the transmission system for the Petitioner's power project (being 'Tashiding Hydro Electric Project' / 'THEP'). The said transmission system was to be implemented as a Central Sector Scheme through Power Grid Corporation of India Ltd. The entire cost of the project was to be borne by Government of India through the Plan Scheme of Ministry of Power. In fact,

PGCIL was to be paid entire cost of the project by Gol including the Consultancy fee as per the Sanction Order by Government of India (Gol) toward its services that were to be provided for implementation of the Project.

c) Furthermore, as per the aforementioned Ministry of Power's letter dated 10.10.2014, upon commissioning of the transmission system, the same was to be transferred to the Government of Sikkim/Respondent No. 2, which would then be responsible for carrying out operation & maintenance and other related activities, at its own cost, as per the terms and conditions in an MOU to be signed in this regard between PGCIL and Government of Sikkim. Pursuant to the same, and in this context, an MOU came to be entered into between the Government of Sikkim and PGCIL on 22.4.2015, as required for in the aforementioned MoP's letter dated 10.10.2014. Therefore, PGCIL's reliance upon Memorandum of Understanding (MoU) dated 22.04.2015 entered into between itself and the Government of Sikkim to aver that as per the said MoU, PGCIL was merely acting as an agent and a 'Project Management Consultant' for the Government of Sikkim, is misconceived.

d) PGCIL has directly entered into agreement for long term open access with Petitioner herein to complete the transmission system before commissioning of the power plant of the Petitioner, wherein Govt. of Sikkim, the Respondent No. 2 is not a party. As per Gol's letter dated 10.10.2014, Govt. of Sikkim, the Respondent No. 2 was responsible only for O&M of the transmission system and the transmission system was supposed to be transferred to Govt. of Sikkim, the Respondent No. 2 only after commissioning by PGCIL.

e) A perusal of the LTAA would show that the Transmission system (being the Transmission lines and pooling stations/substations etc.) as referred to therein, was expressly subject to 'changes' & 'modifications' and that in case the same was required to be implemented by Respondent No. 1 herein, then the same would form part of the said LTAA.

f) Further, regarding timeline of 48 months, the same was for entire scheme and was not meant that entire 48 months will be taken for the subject transmission system while PGCIL was obligated under the provisions of LTAA

dated 19.10.2011 to ensure readiness of transmission system for evacuation of power from the Petitioner's power project matching commissioning of Petitioner's power project. From time to time, as directed by CEA, the Petitioner and the Govt. of Sikkim, the Respondent No. 2, through various communications and meetings requested to accord priority to complete the transmission system for Petitioner's project considering the urgent commissioning status of the project.

g) Even after signing of MOU dated 22.04.2015 between Govt. of Sikkim, the Respondent No. 2 and PGCIL, PGCIL had not awarded contract to any agency for commissioning of transmission asset till July 2016. The same was only awarded on 27.07.2016 to KEC with a delay of 15 months from the date of signing of MOU with Govt. of Sikkim, the Respondent No. 2 in spite of knowing well in advance that Petitioner's project would be commissioned by December, 2016.

h) In various communications by the Petitioner to PGCIL and in various meetings held amongst PGCIL, Petitioner (the project developers), CEA and the Govt. of Sikkim (Respondent No. 2) it was stated and noted that Petitioner's project will get commissioned by December, 2016 and that the transmission system for evacuation of power from Petitioner's project should be completed on priority by PGCIL before December, 2016. In fact, after noting that the award of contract by PGCIL for completion of transmission system for Petitioner's project has not been completed yet, CEA vide its letter dated 04.11.2015 directed PGCIL to complete the transmission system for Petitioner's project at the earliest as the project was likely to be commissioned in December, 2016. Further, as per meeting held on 23.11.2015 by CEA, PGCIL was directed to complete the line by December 2016. Govt. of Sikkim (Respondent No. 2) vide its letter dated 01.04.2016 requested PGCIL to take up the transmission works related to Petitioner on a priority as Petitioner's power project was expected to be commissioned by end of 2016.

i) PGCIL changed its stance in respect of completion of transmission line works for project of the Petitioner several times - to January, 2017 in meeting dated 16.11.2016; to March, 2017 vide letter dated 29.11.2016; to May, 2017 in meeting dated 27.03.2017; to August, 2017 in meeting dated 16.06.2017; and to

15.07.2017 vide letter dated 21.06.2017. The transmission line was finally completed on 10.10.2017.

j) PGCIL provided the Petitioner the said interim arrangement through short term open access only in the month of October, 2017 against its obligation to provide the same by December, 2016 i.e. after a delay of around 10 months after completion of dry commissioning and testing of the Petitioner's project. The long term open access came to be operationalized only on. 23.02.2019.

k) In terms of an understanding reached between Respondent No. 1 and Respondent No. 2, the 'Transmission System' to be implemented through Respondent No. 2 (being the "Legship" substation and the Transmission line from "Legship" to "New Melli") was undertaken by Respondent No. 1 to be built.

l) The admitted factual position is that the Transmission System was duly modified and with its execution required to be done by PGCIL as duly agreed to by it in various minutes of meetings. In fact, PGCIL even went on to make commitments and gave assurances regarding its execution and completion. Therefore, it is misleading for PGCIL to contend that it had no privity of contract of with the Petitioner qua the Legship-New Melli transmission Assets.

Reply of Govt. of Sikkim (Energy & Power Department), Respondent No.2

9. Respondent No.2, Government of Sikkim, Energy & Power Department vide Affidavit dated 10.12.2019 has submitted as follows:

a) Respondent No.2 requested CEA and the MoP to include the power evacuation system i.e. 220KV D/C transmission line from 220/132 KV Legship pool sub-station (proposed under comprehensive scheme) to 220 KV New Melli sub-station (under Power Grid) in the sanctioned comprehensive scheme in view of the difficulty expressed by Power Developer i.e THEP to construct the said line. Accordingly the Respondent No.1 approved and agreed to work on the revised scheme vide letter dated 03rd May, 2016.

b) The responsibility of Implementation of the comprehensive scheme was given to PGCIL by MOP with completion schedule of 48 months from date of

release of first installment i.e. up to Dec 2018. Sikkim requested to CEA and MoP to include power evacuation system from 220/132kV Lehsgip pool substation to 220kV New Melli line substation in the sanctioned comprehensive scheme. Accordingly, the Respondent No. 1 approved and agreed to work on the revised scheme vide letter dated 3.5.2016. MoU was signed between Government of Sikkim, Energy and Power Department and PGCIL on 22.4.2015 for the implementation of scheme. NIT for the revised scope of work was floated in August 2015. But the bidding process had to be annulled due to exuberantly high prices. Thereafter, in view of the urgency in constructing the said line, the work was awarded to M/s KEC International Ltd. as a special case in July 2016. CEA granted approval of energizing 220kV D/C transmission line of 2x48.5MW Tashiding HEP constructed by the generator. The intimation regarding completion of 220 KV D/C Legship Pool S/S to New Melli line (under comprehensive scheme) was communicated to Respondent No. 2 by Respondent No. 1 on 10.10.2017.

c) The power developer THEP through Chief Technical Advisor, Shiga Energy Private Limited at Geyzing West Sikkim requested Chief Electrical Inspector, Govt. of Sikkim vide their letter No.THEP/Shiga/E&M/SM/ 084 dated 06/02/2017 for physical inspection and necessary technical clearances for charging of 220 KV D/C transmission line for power evacuation of THEP from the 11/220 KV sub-station at Tashiding (Power House Location) to Legship pool sub-station (under comprehensive scheme) having a length of 8.4 Kms constructed by the power developer itself. Accordingly, the Chief Electrical Inspectorate deputed Engineers/Technical experts for physical inspection and technical clearances required under regulation 43 of the Central Electricity Authority (Measures related to safety and electric supply) Regulations 2010 on 28th March, 2017.

d) The technical officers deputed for the work advised/suggested Shiga Energy Private Limited to rectify some of the short comings regarding safety requirements as per regulations and compliance thereof in the said transmission line. Thereafter, again a team of officers from inspectorate visited the work site of the said transmission line on 17th June, 2017 and 15th September, 2017 to review the technical and safety measures as required under relevant regulation

and necessary compliance by the company. Finally, the Electrical Inspectorate granted approval for energizing of 8.5 Km length of 220 KV D/C transmission line of 2x48.5 MW Tashiding HEP constructed by the power developer as required under Regulation 43 of the Central Electricity Authority on 26.09.2017.

e) The Petitioner has no right to claim for the bottled up energy from January 2017 to September 2017 as these documents clearly prove that the evacuation system of their portion of line was not commissioned in January 2017 and it did not apply for grant of connectivity in the Intra-State Grid in January 2017. All the connectivity agreements, clearances from Inspectorate and other compulsory documents for charging of their line were obtained by it only in September 2017. In the meantime, Petitioner company submitted an application to State Transmission Utility (STU) seeking grant of connectivity of its part of the transmission line in the intra-state transmission system on 09.08.2017.

f) Since the construction of 220/132 kV Legship Pooling sub-station was delayed, it was decided by CEA, Central transmission utility(CTU) and State transmission utility(STU) jointly to allow inter connection of 220kV line of Shiga (Petitioner) with 220kV line constructed under Comprehensive scheme by Power Grid for evacuation of power from Tashiding HEP as interim arrangement. The decision taken was in line with the decision of the 36th Technical Coordination Committee/Eastern Regional Power Committee held at Bhuwaneshwar, Odisha. Accordingly connection agreement was signed by Shiga with Power Department, Sikkim for connectivity in intra-state grid on 04/09/17. The certificate was issued by the Chief Engineer Power Department for grant of connectivity as purely temporary arrangement and would remain effective till the commissioning date of 220/ 132 kV Legship pooling sub-station.

g) As the Petitioner had been allowed to draw and inject power under the instructions of the CEA as an interim measure, it has no case for loss and compensation. The claims made by the Petitioner company that it suffered loss on account of delay on part of the Respondent No. 2 herein are without any basis and are de-hors the records.

Rejoinder of the Petitioner to the reply of Govt. of Sikkim

10. The Petitioner in its rejoinder vide affidavit dated 23.12.2019 to the reply filed by Government of Sikkim, the Respondent No.2 has submitted as follows:

a) It is denied that the transmission system within the scope of the Petitioner Company got delayed on account of the reasons attributable to the Petitioner.

b) On account of Writ Petitions filed by local residents before the Hon'ble Supreme Court of India (which were transferred by the Supreme Court of India to the Hon'ble High Court of Sikkim), against the implementation and execution of the THEP, certain interim orders were passed by the Hon'ble High Court which affected the implementation of the THEP. As a result of such unforeseen circumstances, beyond the control of the Petitioner, the COD of THEP got extended beyond its scheduled date. For the reasons stated hereinabove, the extension of the COD was approved by Respondent No. 2 vide its letter dated 23.02.2015 to the Petitioner.

c) The COD of December, 2016 was never disputed by the Respondents and did not have any impact in so far as the Transmission System which was to be built by Respondent No.1.

d) It is denied that Respondent No. 2 requested the Central Electricity Authority (CEA) and the MOP to include the power evacuation system i.e. 220KV D/C transmission line from 220/132 KV Legship pool substation (proposed under comprehensive scheme) to 220 KV New Melli sub-station (under Power Grid) in the sanctioned comprehensive scheme in view of the difficulty expressed by Power Developer i.e. THEP to construct the said line, as averred by the Respondent No.2. As per Annexure-3 of the 'Long Term Access Agreement' (LTAA) signed between the Petitioner and Respondent No. 1 dated 19.10.2011, the transmission system under the scope of Respondent No. 2 is as under:

Transmission system under the scope of Govt. of Sikkim

- Establishment of 220 kV Gas Insulated Pooling Station near Tashiding
- Pooling station near Tashiding – New Melli 220 kV D/c with twin moose conductor.

e) A perusal of Annexure-3 of the LTAA would reveal that it was clearly mentioned that the above said transmission system viz. 220 kV Gas Insulated Pooling station near Tashiding and Pooling station near Tashiding to New Melli 220 kV D/c line is under the scope of Respondent No.2 and shall be completed matching the COD of the Petitioner's Project. Since, as per the LTAA dated 19.10.2011 itself, the completion of the said transmission system was responsibility of Respondent No. 2, it is wholly erroneous and misconceived on the part of Respondent No. 2 to state that in view of the difficulty expressed by the Petitioner to construct the said line, Respondent No.2 had approached CEA & MoP to include the said transmission system in the sanctioned comprehensive scheme.

f) The Petitioner applied to Respondent No. 1 for grant of 'Long Term Open Access' for evacuation of power from the THEP. In pursuance to the said application, Respondent No. 1 vide its communication dated 26.05.2009 forwarded its intimation for providing the Long Term Open Access. In terms of Annexure-3 thereof, the dedicated part of the 'Transmission System', with reference to THEP, being "*Tingting- New Melli 220 Kv D/c line with Twin moose conductor, one ckt via Tashiding, along with associated line bays*" being routed through the proposed pooling point substation near Tingting/Tashiding, was initially to be implemented by the Petitioner herein along with Tingting Project. However, subsequently, in the Minutes of Meeting held on 28.12.2010 between the Petitioner and Respondent No. 1 along with other project developers, the revised scope of the Petitioner's responsibility in implementation of the transmission system (drawl line) has been intimated by Respondent No. 1/PGCIL, as transmission system (drawl line) up to Tashiding-Pooling station near Tashiding 220KV D/c line and accordingly rest of the transmission line from Tashiding-Pooling station near Tashiding 220KV D/c line to New-Melli Pooling station was removed/taken out from the Petitioner's scope of the implementation of the transmission system.

g) With reference to the aforesaid, the Petitioner [as a *Long Term Transmission Customer (LTTC)*] and Respondent No. 1 herein [as '*CTU*'/ '*Inter-State Transmission Licensee (ISTS Licensee)*'] entered into a Long Term Access Agreement (hereinafter referred to as "**LTAA**") for purposes of granting

long term access to LTTC by ISTS, in accordance with the Central Electricity Regulatory Commission (Grant of Connectivity, Long-Term Access and Medium-Term Open Access in Inter State Transmission and Related Matters) Regulations, 2009 (hereinafter referred to as 'the Regulations').

h) As per Annexure-1 of the said LTAA, the Long-Term Access ('LTA') with reference to the THEP was to commence from February 2014. By the said commencement date, the works related to the 'Transmission System' for LTA were to be completed and implemented and accordingly the commencement date was to coincide and match with the time frame for completion of the Project by the Petitioner and declaration of the Commercial Operation Date ('COD') thereof, as indicated in the said Annexure to the LTAA. Further, in terms of Annexure-2 of the LTAA, and as had been earlier agreed upon between the parties herein in the aforementioned Minutes of Meeting dated 28.12.2010, the implementation of Transmission system (drawl line) from Tashiding–Pooling station near Tashiding 220KV D/c line to New-Melli Pooling station was not part of the Petitioner's scope of implementation of the transmission system. Respondent No. 1, being the other party to the LTAA, was to get the said transmission system implemented, which as per Annexure-3 of the LTAA, was to be done through Respondent No. 2. In terms of Annexure-2 of the LTAA, the Petitioner's scope of implementation of the transmission system was limited only to the direct injection/drawl line up to Tashiding-Pooling station near Tashiding 220kV D/c line.

i) In terms of an understanding reached between Respondent No. 1 and Respondent No. 2 in February 2015, the 'Transmission System' to be implemented through Respondent No. 2 (being the "Legship" substation and the Transmission line from "Legship" to "New Melli"), was undertaken by Respondent No. 1 herein to be built by it.

j) The Petitioner addressed a letter dated 06.02.2017 to Respondent No. 2 certifying that the entire electrical installation of the power house, sub-station and switchyard and the 220kV double circuit transmission line has been constructed, tested as per the guidelines of Indian Electricity Rules confirming the statutory requirement of the relevant portions. It was stated that the Tashiding Hydro

Electric Project units (2x48.5MW), its associated 11/220kV transformers and switchyard with associated 220kV double circuit transmission line from Tashiding HEP (Kagathang) sub-station to Legship Pooling Station was ready for charging. Accordingly, vide the said communication, the Petitioner requested Respondent No. 2 to issue a formal first charging clearance certificate of the power station, step-up transformer, substation and 220kV transmission line, which was required for commissioning of the project.

k) The Ex-Chief Engineer, CEA, Government of India on behalf of respondent No. 2 visited the site during 27th to 29th March, 2017 and advised some compliances to be observed by the Petitioner vide its communication dated 28.03.2017. It would be relevant to mention herein that the Ex-Chief Engineer, CEA, Government of India in its communication dated 28.03.2017 addressed to the Petitioner herein remarked that the transmission line of the Petitioner was ready, but it was yet to be terminated at the Legship Pooling Point. It was further stated that the PLCC Test (to ascertain the healthiness of the protection system of the line) could be performed only after both ends of the transmission line were properly terminated.

l) The item-wise compliance report concerning the observations made in the aforementioned site inspection were submitted by the Petitioner to Respondent No. 2 vide its communication dated 03.04.2017.

m) That the Office of the Chief Electrical Inspector, Government of Sikkim vide its letter dated 28.04.2017 addressed to the Petitioner granted statutory approval for first charging of Tashiding Hydro Electric power station with associated 11/220kV sub-station as required under Regulation 43 of the Central Electricity Authority (measures related to safety and Electric Supply) Regulations, 2010. It is evident from the above that the Respondent No. 2 in its reply has given an incomplete and distorted picture.

n) Electrical Inspectorate, Government of Sikkim, vide its communication dated 25.09.2017 addressed to the Petitioner herein, referred to the inspection of the transmission line carried out on 15.09.2017. A perusal of the said communication would show that the towers mentioned therein were found to be

okay as per specifications and were in fact also been so verified on 10.06.2017. In fact, the said communication remarked that the transmission line of THEP, under the scope of the Petitioner, was ready and which was temporarily connected to Tower No. 1 of Respondent No. 1, which was to be terminated at the pooling point at New Melli, which was within the scope of Respondent No. 1. The said communication of the Electrical Inspectorate of Respondent No. 2 required the performance of certain tests after both ends of the transmission line were properly terminated (which could be done after completion of the transmission system by Respondent No. 1). In other words, therefore, the said communication dated 25.09.2017 further revealed the delay on part of Respondent No. 1 in executing the transmission assets falling within its scope, basis which Respondent No. 2 herein consequently delayed in issuing the said clearance and approval for the transmission line in the scope of the Petitioner.

o) Respondent No. 2 vide its communication dated 26.09.2017, granted approval for energizing of 220kV Double Circuit Transmission Line of 2 x 48.5 MW, Tashiding Hydro Electric Project, as required under Regulation 43 of the Central Electricity Authority (measures related to safety and Electric Supply) Regulations, 2010.

p) The aforementioned clearance and approval, in any event, would have been of no consequence in the absence of completion of the transmission assets falling within the scope of Respondent No. 1 i.e. the Petitioner could not have commenced supply of power without the entire transmission system having been commissioned. Therefore, Respondent No. 2 by referring & relying upon the aforementioned clearance and approval and time consumed therein (which, as aforementioned, was on account of the lackadaisical approach of Respondent No. 1 in completing the transmission line within its scope, with no default on the part of the Petitioner herein), to aver that the Petitioner has no right to claim for the bottled up energy from January 2017 to September 2017, as the clearances were given only in September 2017, is seeking to take advantage of its own wrongs and wrongs of Respondent No.1 in completing transmission line within its scope, and is, in fact, putting a premium thereto. Respondent No. 2 cannot in the garb of its own wrongs and wrongs of Respondent No.1 in completing

transmission line within its scope, deny the rightful and legitimate entitlements of the Petitioner herein.

q) The Petitioner addressed a communication dated 21.06.2016 to Respondent No. 2 seeking information to be furnished for signing of Connection Agreement to intra-state transmission system. By way of the said letter, the Petitioner requested Respondent No. 2 to consider the case of the Petitioner on top priority basis, as the Petitioner's project would be ready for commissioning by end of 2016. Having received no response, the Petitioner sent a reminder dated 23.11.2016 to Respondent No. 2. Despite such reminder, Respondent No. 2 did not furnish the requisite information which constrained the Petitioner herein to issue repeated reminders dated 02.06.2017 and 09.08.2017. Pursuant to all such efforts being made by the Petitioner, the Connection Agreement came to be signed on 04.09.2017.

Written Submission of the Parties

11. The Petitioner and PGCIL have filed their respective written submissions and the same has also been considered.

Analysis and Decision

12. The Petitioner has submitted that it is seeking compensation of Rs.112.39 crore from PGCIL or in the alternative from Government of Sikkim towards the financial loss suffered by the Petitioner on account of delay in commencement of the Long Term Access (LTA) granted to the Petitioner due to delay in implementation of the transmission system falling under the scope of PGCIL.

13. The Petitioner has submitted that pursuant to LTA application of the Petitioner for Hydro Electric Project in Tashiding District (THEP Project"), PGCIL vide its letter dated 26.5.2009 intimated grant of LTOA. The Long-Term Access Agreement ('LTAA') was entered between the Petitioner and PGCIL on 19.10.2011. As per the LTAA, PGCIL was to get the said transmission system implemented through

Government of Sikkim, Respondent No. 2.

14. The Petitioner has submitted that it completed its project in December, 2016. However, it could not evacuate power because the transmission assets (“Legship Sub-station” and the transmission line from “Legship” to “New Melli”) under the scope of PGCIL were not completed. The transmission assets achieved COD on 10.10.2017. Thereafter, it declared COD of both the Units of THEP on 6.11.2017. The delay in completion of the transmission system is solely attributable to Respondent No. 1 and it resulted in delay in evacuation of power from THEP. The Petitioner was not able to evacuate power from January 2017 up to 10.10.2017. Hence, the Petitioner suffered financial loss to the tune of Rs.112.39 crore and has sought refund of the same from Respondent No.1. The Petitioner has alternatively prayed for IDC amounting to Rs.101.59 crore incurred during the period from January 2017 to 10.10.2017 and in support of which it has placed the Auditor’s certificate on record.

15. Respondent PGCIL has submitted that the Government of Sikkim entered into a Memorandum of Understanding (MoU) with PGCIL on 22.4.2014 for implementing its portion of the comprehensive Transmission Strengthening Scheme approved by the Government of India. Referring to Article 1, Article 2 and Article 9 of the MoU, PGCIL has submitted that it is the “Project Management Consultant” and, therefore, it is acting as the “agent” of the Government of Sikkim and there is no direct contractual relationship with the Petitioner. The implementation of the said project was to be done with funds being directly released to PGCIL by the Government of India to meet the actual cost of the project along with consultancy fee @12% of actual executed cost of the project. The Petitioner was always aware that the Legship New Melli transmission assets were being implemented by PGCIL as

per the MoU dated 22.4.2015 entered into between PGCIL and the Government of Sikkim. PGCIL is only acting as an agent of the Government of Sikkim. Therefore, the Petitioner cannot raise a claim against PGCIL towards compensation for alleged losses suffered by it. As per the MoU, the work was to be executed within a period of 48 months from the date of release of first installment and same was released on 19.12.2014. The line was completed by PGCIL on 11.10.2017 and was charged on 12.10.2017 which was much before the period of 48 months from the receipt of first installment. Hence, PGCIL has discharged its obligations and cannot be held liable to pay compensation. If the Petitioner has to raise any dispute against PGCIL, the same has to be resolved as per Department of Public Enterprise (DPE) and this court does not have the jurisdiction. PGCIL has placed reliance on Hon'ble Supreme Court judgments in Prem Nath Motors Vs. Anurag Mittal, AIR 2009 SC 569 and Sitram Motilal Vs. Santanuprasad Jaishankar Bhatt AIR 1966 SC 1697 and Commission's order dated 2.4.2016 in Petition No.110/MP/2016 wherein it was observed that the agent cannot be held liable for the defaults committed by principal.

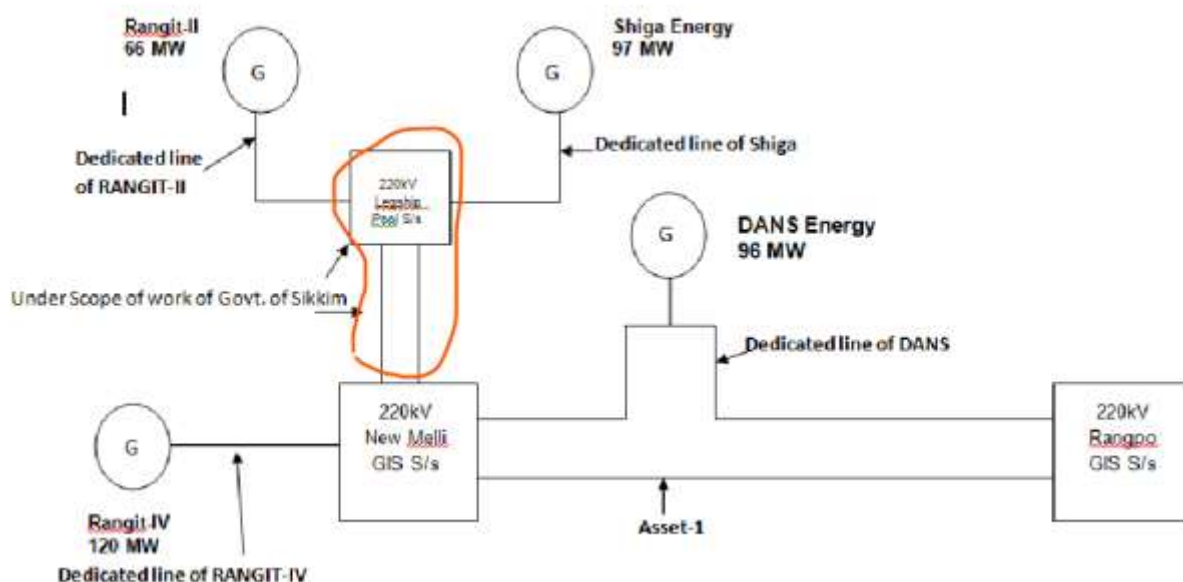
16. Respondent No. 2, the Government of Sikkim has submitted that the claim made by the Petitioner that it suffered a loss on account of delay in completion of transmission system on part of Respondent No.2 is without any basis. The Petitioner has failed to make out any case for payment of compensation as no loss has been suffered by the Petitioner. As the construction of 220/132 kV Legship Pooling Sub-station was delayed, CEA allowed inter connection of 220 kV line of the Petitioner with 220 kV line constructed by PGCIL for evacuation of power from THEP as an interim arrangement and it was effective till the commissioning date of 220/132 kV Legship Pooling Sub-station by PGCIL. Respondent No. 2 has further submitted that the physical inspections and technical clearances shows that the Petitioner was not

ready with its transmission assets in January 2017 and all the connectivity agreements, technical clearances and documents for charging of the line under the Petitioner's scope were obtained only in September, 2017.

17. The Petitioner has refuted claims of Respondent No. 2 that it was not ready citing various communications inter-alia for first charging with respondent No 2 starting February 2017.

18. We have considered the submissions of Petitioner and Respondents and perused the documents available on record. The only issue which arises for our consideration is whether Petitioner is entitled for compensation under LTAA due to delay in implementation of the transmission system associated with Petitioner.

19. The entire issue revolves around the implementation of Legship pooling station and Legship-New Melli transmission line. The Single line diagram highlighting (circled) the transmission assets which were allegedly delayed is as follows:



20. We have perused the LTA grant and the LTA Agreement.

21. The LTA has been granted to the Petitioner on target region basis vide intimation dated 26.05.2009 which provides as under:

“The Long term access of the following is PERMITTED with requirement of additional system strengthening as per the details given below:-

<p>(a) Name of the injecting utility</p> <ul style="list-style-type: none"> • Point(s) of injection of power (nearest EHV Substation and Ownership of EHV substations) • Name(s) of concerned SLDC 	<p>As per Annexure 1</p> <p>1. Melli & Rangpo</p> <ul style="list-style-type: none"> • Sikkim SLDC/ERLDC
<p>(b) Name of drawee utility/region</p> <ul style="list-style-type: none"> • Point(s) of drawl of power (Nearest EHV Substations and Ownership of EHV substations) • Name of concerned SLDC 	<p>As per Annexure 2</p> <p>Concerned beneficiary state LDCs of Western and Northern regions.</p>
<p>(c) Quantum of transmission capacity permitted.</p>	<p>As per detail indicated at Annexure</p>
<p>(d) (i) Transmission Strengthening requirement (Dedicated part):</p> <p>(d) (ii) Transmission system requirement(common strengthening)</p>	<p>As per annexure 3</p> <p>The developers shall ensure availability of above identified scheme at its own cost before Schedule commissioning of generating units</p> <p>As per Annexure-4</p>
<p>(e) Date of commencement of open access:</p>	<ul style="list-style-type: none"> • Date of commencement of above long term open access would be schedule date of commissioning of generating units in phased manner as indicated in Annexure-2 • Availability of transmission system to be built progressively by POWERGRID as per Annexure-4 <p>(1) In the interim period between the commissioning of the generation project and commissioning of the indicated transmission, the generation project would be allowed connectivity to ER Grid for transfer of power to their beneficiaries through short term open access as per the available Long Term Open Access for generation projects in Sikkim.</p>

Annexure 1

Names of Applicant for Grant of Long Term Open Access coming up in Sikkim (injecting Utilities)

1. PTC India Limited for Teesta Urja Ltd. LTOA applicant of Teesta III HEP.
2. Lanco Energy Pvt. Ltd. Developing Teesta VI HEP
3. DANS Energy Pvt. Ltd. Developing Jorethang HEP
4. Jal Power Corporation Ltd. Developing Rangit IV HEP
5. TT Energy Pvt. Ltd. Developing Tingting HEP
- 6. Shiga Energy Pvt. Ltd. Developing Tashiding HEP**
7. Madhya Bharat Power Corporation Ltd. Developing Ronginichu HEP
8. Gati Infrastructure Ltd. Developing Chuzanchen HEP
9. Gati Infrastructure Bhasmay Power Pvt. Ltd. Developing Bhasmay HEP

Annexure 2

List of Phase-1 Gen Projects

Sr. No.	Name of the Developer/ Open Access applicant	Name of the Generation Plant	Capacity Power to be transferred	Tentative Beneficiaries	Generation expected to Commence from
1.	Teesta Urja Ltd./PTC	Teesta-III	200x6=1200 MW	PSEB-340MW, HPGCL-200MW, UPPCL- 200MW, Rajasthan Discom-100MW	August, 2011
	Lanco Energy Pvt. Ltd	Teesta-VI	125x4=100 MW	MSEDCL (Maharashtra)	Nov. 2012
	DANS Energy Pvt. Ltd	Jorethang	48x2=96 MW	NR/WR	Dec, 2011
	Jal Power Corporation Ltd	Rangit-IV	40x3=120 MW	NR/WR	June, 2013
	Shiga Energy Pvt. Ltd.	Tashiding	48.5x2=97 MW	NR/WR	June, 2012
	TT Energy Pvt. Ltd	Tingting	49.5x2=99 MW	NR/WR	March, 2012
	Madhya Bharat Power Corporation Ltd	Ronginichu	48x2=96 MW	Chattisgarh	March 2012
	Gati Infrastructure Ltd	Chuzanchen	49.5x2=99 MW	PSEB, DVB, HSEB, BSEB	March, 2010
	Gati Infrastructure Bhasmay Power Pvt. Ltd	Bhasme	25.5x2=51 MW	NR/WR	March, 2012
	<i>Total</i>		<i>2358 MW</i>		

Annexure-3

Dedicated Part of transmission system to be implemented by Generation project developer and its schedule of commissioning.

Up to Pooling Station at New Melli/Kishanganj

1. With Teesta-III Generation Project
 - Teesta-III Kishanganj 400kV D/c line with Quad Moose conductor along with associated line bays.
2. With Teesta-VI Generation Project
 - Teesta-VI – New Melli 220kV D/c line with Twin Moose conductor along with associated one bays.

3. *With Jorethang&Rangit-IV Generation Project*

- *Jorethang – New Melli 220kV D/c line with Single moose conductor, one ckt via Rangit-IV, along with associated line bays.*

4. *With Tingting&Tashiding Generation Project*

- *Tingting – New Melli 220kV D/c line with Twin moose conductor one ckt via Tashiding, along with associated line bays.*

[The line would be routed through the proposed pooling point substation near Tingting/Tashiding]

Annexure-4

Transmission system under the scope of POWERGRID

Part –A: Transmission System for development of pooling station at Kishanganj in Northern Part of West Bengal/Bihar.

- *LILO of Siliguri(Existing)-Purnea 400 KV D/C line(quad) at New pooling station Kishanganj.*
- *LILO of Siliguri (Existing)-Purnea 400 KV D/C line (on which reconductoring is being carried out) at Kishanganj with the higher capacity (HTLS) conductor*
- *LILO of Siliguri-Dalkhola 220 kV D/c line at new pooling station in Northern part of West Bengal/Bihar*
- *LILO of Gangtok-Melli 132 S/C line upto Rangpo pooling point, where Chuzachen-Rangpo 132 kV D/c would be connected so as to form Chuzachen-Gangtok and Chuzachen-Melli 132 kV S/C line.*
- *New 2x315 MVA, 400 kV Sub-station at Kishanganj alongwith associated bays.*

Part-B: Transmission System for development of pooling substations within Sikkim and transfer of power to a new pooling station Kishanganj in Northern Part of West Bengal/Bihar

- *LILO of Teesta III-Kishanganj 400 KV D/c line (quad) at New Delhi*
- *Ranpo-New Melli 220 kV D/C line (with twin Moose conductor)*
- *LILO of Gangtok-Rangit 132 kV S/c line at Ranpo and termination of Gangtok-Rangpo/Chujachen and Melli-Rangpo/Chujachen 132 line (constructed under Part-A through LILO of Gangtok-Melli 132 S/c upto Rangpo) at Rangpo sub-station.*
- *LILO of Teesta V-Siliguri 400 kV D/c line at New Delhi*
- *Kishanganj-Patna 400 kV D/c (quad) line*
- *Establishment of 220/132 kV, 3x100MVA Gas insulated Substation at Rangpo*
- *Establishment of 10x167MVA, 1 phase, 400/220kV Gas insulated substation at New Melli*

The dedicated part for Tashiding project of petitioner under the scope of generation developer has been provided vide the LTA intimation as quoted above as “***Tingting – New Melli 220kV D/c line with Twin moose conductor one ckt via Tashiding, along with associated line bays.***”

22. The LTA Agreement entered into by Petitioner with PGCIL dated 19.10.20211

provides as under:

“

Annexure-1

Details of LTA for Generation Projects in Sikkim

Sr. No.	Applicant	Gen. Project Capacity (MW)	LTA applied for (MW)	Commencement of LTA	Location	Time Frame (Unit wise)	Long Term Access Granted (MW)				Period of Long Term Access (Year)
							WR	SR	NR	ER	
1.	Tashiding (Shiga Energy Pvt. Ltd.)	97	97	February, 2014	Tashiding West Dt	Unit#1: 48.5 MW: Feb. 2014 Unit#2; 48.5MW: Mar., 2014	48.5	-	48.5		25
2.	Tingting (TT Energy Pvt. Ltd.)	99	99	May, 2014	Yuksum West Dt.	Unit#1: 49.5 MW: May. 2014 Unit#2; 49.5MW: June., 2014	49.5	-	49.5		25
3.	Dickchu (Sneha Kinetic Power Projects Ltd.)	96	96	December, 2013	East Dt.	Unit#1: 32 MW: Sept. 2013 Unit#2; 32MW: October ., 2013 Unit#3 32MW; Dec., 13	48		18		25
4.	#Pannan (Himagiri Hydro energy Ltd.)	300	300	January, 2015	North Dt.	Unit#1: 75 MW: Jan. 2015 Unit#2; 75MW: - Unit#3 75 MW; - Unit#4 75 MW: -	-		-		-
5.	#Lethang (KHC Lethan Hydro Project Pvt. Ltd.)	95	106	October 2014	West Dt.	Unit#1: 32 MW: Oct.2014 Unit#2; 32MW: Nov., 2014 Unit#3 32 MW; Dec., 2014	-		-		-

”

Annexure -2

Transmission system (direct injection drawl line) to be implemented by Long Term Customer or ISTS Licensee(s)

Sl. No	Name of Scheme & Elements
1	Tingting HEP (99 MW) (Under the Scope of Generation Developer) <ul style="list-style-type: none"> Tingting –Pooling station near Tashiding 220 kV D/C line
2	Tashiding HEP (97 MW) (Under the Scope of Generation Developer) <ul style="list-style-type: none"> Tashiding-Pooling station near Tashiding 220 kV D/c line
3	Dikchu HEP (96 MW) (Under the Scope of Generation Developer) <ul style="list-style-type: none"> LILO of Gangtok-Mangan 132 kV D/c line with Zebra conductor
4	#Lethang HEP (96MW) (Under the Scope of Generation Developer) <ul style="list-style-type: none"> Lethang HEP-Pooling station near Tashiding 220kV D/c
5	#Pannan HEP (300 MW) (Under the Scope of ISTS Licensee) <ul style="list-style-type: none"> Pannan HEP-Mangan 400 kV D/c line

Transmission system for transmission of power to be developed by ISTS Licensee (completion schedule shall be as finalized with ISTS Licensee through Tariff Bases Competitive Bidding)

<i>Sl. No.</i>	<i>Name of Scheme & Elements</i>
<i>1</i>	<i>Pannan-Mangan 400 kV D/c **</i>
<i>2</i>	<i>Establishment of 4x105 MVA, Single Phase, 400/132 Gas Insulated Pooling Station at Mangan</i>
<i>3</i>	<i>LILO of Teesta-III-Kishanganj 400 KV D/C line at Mangan</i>
<i>4</i>	<i>Mangan-Kishanganj 400 kV D/c line with quad moose conductor #</i>
<i>5</i>	<i>New Melli-Rangpo 220 kV D/c with twin moose conductor (2nd) #</i>

*** these lines would be taken up upon receipt of LTA application and issue of LTA intimation to Pannan and Lethan HEP*

this line would be taken up alongwith receipt of LTA application for additional generation projects in the upper part of Sikkim

Transmission System under the scope of Govt. of Sikkim.

- *Establishment of 220 kV Gas Insulated Pooling Station near Tashiding*
- *Pooling station near Tashiding-New Melli 220 KV D/c with twin moose conductor*
- *Gangtok-Mangan 132 kV D/c line with Zebra conductor*

Note:

- 1. The termination of the line as well as location of pooling station/sub-station is subject to changes depending upon final survey and physical constraints, if any,*
- 2. In case of any major development, if there is any change in the transmission system to achieve overall optimization of the system, then above details would be modified accordingly.*
- 3. In case of the above system or the associated bays of any of the above, transmission system is to be implemented by POWERGRID, the same would form part of this Agreement.*

23. On perusal of the LTA Agreement as quoted in paragraph 22 above, it is clear that following transmission assets were under the scope of Government of Sikkim:

- *Establishment of 220 kV Gas Insulated Pooling Station near Tashiding (Legship)*
- *Pooling station near Tashiding (Leghsip)–New Melli 220 kV D/c with twin moose conductor*

24. The transmission system to be developed by ISTS licensee is recorded in Annexure-3 which does not include the system under the scope of Government of Sikkim.

25. We observe that the Ministry of Power vide letter dated 10.10.2014 conveyed its approval for a comprehensive scheme for strengthening of transmission and distribution in the States of Arunachal Pradesh and Sikkim to be implemented as a central sector scheme through PGCIL with entire cost of the project to be borne by the Government of India. Upon commissioning of the transmission system, the same was to be transferred to the State which was to be responsible for carrying out the operation and maintenance and other related activities at its own cost as per the terms and conditions in the Memorandum of Understanding to be entered into by PGCIL and the respective State Government. The MOP scheme included construction of the Legship pooling station and Legship-New Melli transmission assets.

26. PGCIL and Government of Sikkim entered into the MoU dated 22.4.2015 for implementing the scheme. The implementation was to be done with funds being directly released to PGCIL by the Government of India to meet the actual cost of the project along with consultancy fee @12% of actual executed cost of the project. The MOU provides as under:

“

4.0 **CONSULTANCY FEES**

Consultancy fee payable for the service to be provided by POWERGRID for implementation of scope of work will be as per approval letter issued by MoP vide letter No.F.No.3/23/2011-Trans, dated 10th October 2014 i.e @12% of the actual executed project cost (less land and R&R cost), (as worked out in page 2 of 2 of Annexure –I to Appendix-I of this MOU). Based on presently estimated cost of the project, consultancy fees works out to Rs. 131.82 Crore (including Service Tax @12.36%).

.....

8.1 For the purpose of execution of works under this MoU, the entire work of Transmission lines and substations shall be divided into multiple contract packages to be executed by various contractors. The contract shall be awarded on open tender basis by POWERGRID on behalf of EPDS and through fully transparent process. The guidelines issued in this behalf by Central Vigilance Commission (CVC) shall be followed by POWERGRID. The contracts shall be awarded by POWERGRID on behalf of the "Owner" in line with the works and procurement policies and procedures of POWERGRID for timely execution of the project.

27. We note that the Petitioner vide its letter dated 28.4.2016 requested the Energy & Power Department, the Government of Sikkim to complete the transmission line by December, 2016. The relevant extracts of said letter is as under :

"Subject: Evacuation of power from tashiding Project. construction of 220 KV line from Legship to New Meili

Dear Sir.

We thank you very much for the visit of your officers to our project site on 24th of this month to assess the progress. The construction is in advanced stage and confident to achieve the COD by Dec 2016. The progress of the project on all components is already submitted to the team.

*We have started the construction of the transmission line from the project to the Legship and plan to complete before end of July 2016. **We find the transmission line from Legship to New Meili which is under the scope of Sikkim Govt has been still not awarded by-the Power Grid (the 'executing entity) and we have not received any schedule of the completion of the line.** The completion of this line is very important for evacuation and we informed the same to your Dept many occasions starting from April 2015.*

We like to bring to your kind notice that there will be an expenditure of around Rs 10 (ten) crores to 'the company for every month of delay in evacuation after completion of the project towards interest and overheads. We request your good selves to Take required immediate action and complete the transmission line by Dec 2016 matching our completion of the project

28. We observe that in the letter dated 28.4.2016 the Petitioner had requested the Government of Sikkim for the completion of transmission line from Legship to New Meili, acknowledging that the same line was under the scope of the Government of Sikkim.

29. We also observe that the Petitioner vide its various letters had approached the Ministry of Power, PGCIL and the Government of Sikkim for speedy completion of transmission line from Legship to New Meilli. One of such letters is dated 13.4.2017

addressed to the Chief Secretary, Government of Sikkim, which is reproduced as under:

*"The Chief Secretary
Govt. of Sikkim,
Kazi road, Gangtok-737101*

*Reference: our letter No SEPL/TSG/E&M/11/15/026 dated 17th January, 2017
Subject: Tashiding HE Project, Sikkim- Evacuation of Power*

Dear Sir,

This is further to our letter on SEPL/TSG/E&M/11/15/026 dated 17th January, 2017 vide which had requested your kind support and held so that the transmission line from Legship to New Melli could be completed at the earliest.

As already informed, we have successfully completed the dry commissioning of both the units of our Tashiding (97MW) Hydroelectric Project in December, 2016 itself. However, on account of the non-completion of the transmission line from Legship to New Melli, we are unable to evacuate power.

As per the minutes of the meeting of the 16th Standing Committee on Power System of Eastern Region held on 02.05.2014 at NRPC, New Delhi, it was deliberated that

"Transmission system of Tashiding HEP (97MW)

- Immediate evacuation system (under the scope Generation Developer)
 - Tashiding –Legship 220 kV D/C line**
- Common Transmission system under the scope of Govt. of Sikkim
 - Establishment of 220 kV Substation at Legship*
 - Legship-New Melli 220 kV D/c with twin moose conductor**

As per the above, Sikkim Government has to construct the transmission line from Legship to New Melli. Sikkim Govt had placed an order on PGCIL for the transmission line from Legship substation to New Melli substation in February, 2015 under the Comprehensive Scheme. PGCIL in July, 2016 subcontracted the transmission line work to KEC.

Unfortunately, the progress of the transmission line from Legship to New Melli is still slow. As per the contract place by PGCIL on KEC this transmission line had to be completed by March, 2017. We understand approximately 50% of the total work has been completed till date. A concentrated effort from Sikkim Government/PGCIL/KEC to resolve all the local issues & necessary mobilization of required manpower would definitely expedite the progress of work.

You would appreciated if the work is not completed before beginning of May, 2017 the monsoon season would be missed resulting in generation /revenue loss of more than Rs.100 Crore. Further, we are already suffering IDC charges of Rs.10 Crore/month since December, 2016.

We again sincerely seek your support and cooperation so that the Tashiding HE Project could start generation before the monsoon commences to avoid loss of power and revenue both the project and to Sikkim state.

Thanking you in advance for your kind support. "

30. We observe that in the letter dated 13.4.2017 the Petitioner had reiterated that Government of Sikkim was to construct the transmission line from Legship to New Melli for which the Government of Sikkim had given the contract to PGCIL.

31. We have gone through the series of letter exchanged between the Petitioner and PGCIL, Ministry of Power, CEA and Government of Sikkim. We note that from the very beginning, the Petitioner was well aware that the transmission line for the evacuation of power from its project was within the scope of Government of Sikkim. In fact, in its letter dated 28.4.2016 addressed to the Government of Sikkim, the Petitioner has specifically stated that PGCIL is an executing agency for the completion of transmission line. The same was also reiterated by the Petitioner in its letter dated 13.4.2017.

32. It is not in dispute that PGCIL had entered into the MoU dated 22.4.2015 with Government of Sikkim. The Petitioner was aware that the Legship-New Melli transmission assets were being implemented by Respondent No.1 as per the MoU dated 22.04.2015 entered into between Respondent No.1 and the Government of Sikkim. It is a settled law under the Contract Act that only parties to a contract can enforce or be subject to the benefits or obligations under that contract. The privity of contract is the relationship that exists between the parties to an agreement. The doctrine of privity of contract provides that only a party to a contract has right to sue to enforce the contract. In other words, the doctrine of privity of contract provides that a contract confirm the right and imposes liability only on its contracting parties and any third party cannot sue or be sued under the terms of the contract.

33. Section 230 of the Indian Contract Act, reads as under:

"230. Agent cannot personally enforce, nor be bound by, contracts on behalf of principal-In the absence of any contract to that effect, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them.

Presumption of contract to contrary.-Such a contract shall be presumed to exist in the following cases:-

(1) where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad;

(2) where the agent does not disclose the name of his principal;

(3) where the principal, though disclosed, cannot be sued."

34. Under Section 230 of the Indian Contract Act, it is laid down that unless a contract so provides, an agent cannot be bound by or enforce the contract personally, where it has acted for his principal. Therefore, if a third party knows the existence and identity of the principal, then all legal liability lies with the principal. The only exception to this is when an agent exceeds his or her authority. In that case, the agent has not acted with authority and becomes personally responsible to the third party. If the agent did not have authority, but the principal later ratifies the contract, then the principal will be liable for the contract.

35. In the present case, the Petitioner was well aware that the PGCIL was merely an executing entity and the scope of work for the subject transmission line was under Government of Sikkim. Therefore, PGCIL cannot be held liable for the delay in execution of Legship pooling station and transmission line from Legship to New Melli.

36. Keeping in view above discussions, prayers of the Petitioner arrayed as (a), (b) and (c) in the present petition are not fit to be allowed and accordingly, they are decided against the Petitioner.

37. The Petitioner vide the amended petition has claimed compensation from the Respondent No.2, Government of Sikkim for delay of transmission assets. We observe from the LTA intimation that the assets under dispute (Legship pooling

station and transmission line from Legship to New Melli) were originally under the scope of the Petitioner as a dedicated transmission system. Respondent No. 2 has submitted that it was the Petitioner, who citing difficulty in constructing the said transmission system, requested Government of Sikkim to get it included in the comprehensive scheme. This implies that the assets came under the scope of Government of Sikkim subsequently as recorded in the LTA Agreement. We observe that the transmission assets under dispute are a part of intra-state transmission system. The Petitioner has entered into Connection Agreement with the Power department, Government of Sikkim on 4.9.2017. We observe that the jurisdiction for any dispute vis-a-vis the intra-state transmission system lies with the concerned State Commission. Therefore, the Petitioner is at liberty to approach the Appropriate Commission for adjudication of the dispute relating to the intra-state transmission system.

38. Accordingly, the Petition No. 92/MP/2018 is disposed of in terms of the above discussions and findings.

Sd/
(P. K. Singh)
Member

Sd/
(Arun Goyal)
Member

Sd/
(P.K. Pujari)
Chairperson