

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 164/MP/2021**

**Coram:**

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

**Date of Order: 25<sup>th</sup> February, 2023**

**In the matter of**

Petition under Section 79 of the Electricity Act, 2003 read with Article 11 and Article 12 of the Transmission Service Agreement dated 20.9.2016.

**And**

**In the matter of**

**Kohima-Mariani Transmission Limited,  
6<sup>th</sup> Floor, Chanakya,  
Off. Ashram Road, Ahmedabad – 380 009**

**..... Petitioner**

**Vs**

**1. The Chief General Manager,  
Assam Electricity Grid Corporation Limited,  
Bijulee Bhawan (First Floor)  
Paltanbazar, Guwahati – 781001**

**2. The Chief Engineer,  
Department of Power, Government of Arunachal Pradesh,  
Vidyut Bhawan, Department of Power,  
Zero Point Tinali, Itanagar, 791 111**

**3. The Managing Director,  
Manipur State Power Distribution Company Limited,  
3rd Floor, New Directorate Building,  
Near 2nd MR Gate, Imphal-Dimapur Road,  
Imphal – 795001**

**4. The Director (Distribution),  
Meghalaya Energy Corporation Limited,  
Lumjingshai, Short Round Road,  
Shillong-793001  
Meghalaya, India**

**5. The Superintending Engineer T&G,  
Department of Power, Government of Nagaland,  
Electricity House, A.G. Colony,**

Kohima, Nagaland – 797001

**6. The Commissioner & Secretary,**  
Department of Power, Government of Mizoram,  
Kawlphetha Building, New Secretariat Complex,  
Khatla, Aizawl, Mizoram, 796001

**7. The Add. General Manager (Transmission Circle),**  
Tripura State Electricity Corporation Limited,  
Bidyut Bhaban, Banamalipur,  
Agartala, Tripura

**8. The Chairman-cum-Managing Director,**  
Power Grid Corporation of India Limited,  
B-9, Qutab Institutional Area,  
Katwaria Sarai, New Delhi-110016

.....Respondents

**The following were present:**

Ms. Aparajita Upadhyay, Advocate, KMTL  
Shri Shubham Arya, Advocate, PGCIL  
Shri Ravi Nair, Advocate, PGCIL  
Shri Yogesh Dalal, KMTL  
Shri V C Sekhar, PGCIL

**ORDER**

The Petitioner, Kohima-Mariani Transmission Limited ('KMTL'), has filed the present Petition under Section 79 of the Electricity Act, 2003 (hereinafter referred to as 'the Act') read with Article 4.4.2, Article 11 and Article 12 of the Transmission Service Agreement ('TSA') dated 20.9.2016 primarily claiming (i) extension of Scheduled Commercial Operation Date ('SCOD') based on the factors beyond the control of the Petitioner, and (ii) relief on account of Change in Law events. The Petitioner has made the following prayers:

(a) *Allow the present Petition and declare that the commercial operation of the Elements of the Project under the TSA dated 20.09.2016 (TSA) was delayed on account of the various unforeseen and uncontrollable factors i.e. (i) force majeure events and (ii) due to delay in provision of the interconnection facilities as stipulated in the TSA;*

(b) *Direct extension of the SCOD for all the Elements of the Project till 31.12.2020 in accordance with the relevant provisions of the TSA dated 20.09.2016 read with inter alia MoP's Circular 27.07.2020;*

- (c) *Direct that the 'Expiry Date' under the TSA is the date which is 35 years from the actual commercial operation date i.e. 31.12.2020;*
- (d) *Hold and declare that KMTL is not liable for any financial implications due to delay in achieving commercial operation of the Project;*
- (e) *Hold and declare that the following events amount to a Change in Law event under Article 12.1.1 of the TSA dated 20.09.2016, namely:*
  - (i) *Impact of GST Laws;*
  - (ii) *Introduction of Land Compensation by way of State Government notifications*
  - (iii) *Increase in unit rates of Tree/Crop by way of various State Government notifications; and*
- (f) *Direct Respondents to compensate KMTL in terms of paragraph 233 above on account of Change in Law compensation along with interest/carrying cost @ 18% per annum from the date of impact till reimbursement by the Respondents; and*
- (g) *Grant such order, further relief(s) in the facts and circumstances of the case as this Commission may deem just and equitable in favour of KMTL”.*

2. It is pertinent to note that originally, the Petitioner had filed the present Petition seeking only the extension of SCOD till the actual Commercial Operation Date along with relief for grant of liberty to approach the Commission for seeking compensation on account of time and cost overrun, Change in Law, prolongation cost, reduction in output, additional expenses incurred due to Covid-19 pandemic, etc. on account of delay due to force majeure events. However, during the admission hearing of the matter on 18.11.2021, the Commission observed that the since the sufficient time had already elapsed from the Commercial Operation Date of the Petitioner's Project, the Petitioner ought to have approached the Commission quantifying its claims for compensation on all accounts and that such piece-meal approach in dealing with the reliefs of time extension and compensation on account of time and cost overrun may cause multiplicity of the petitions. In view of the above, the Petitioner was suggested either to amend the present Petition for inclusion of all the reliefs on account of Force Majeure and Change in Law events or to file a fresh Petition seeking such consolidated reliefs. Pursuant to the above, the Petitioner vide affidavit dated 26.11.2021 has sought to amend the present Petition and filed an

amended Petition seeking consolidated reliefs as already noted in paragraph 1 of this order.

3. The Petitioner is a subsidiary of Kalpataru Power Transmission Limited ('KPTL'), which was selected as a successful bidder through tariff based competitive bidding under Section 63 of the Act to establish the Transmission System for North-Eastern Region Strengthening Scheme (NERSS)-VI on Build, Own, Operate and Maintain basis (hereinafter referred to as 'the Project') and to provide the transmission service to the Long-Term Transmission Customers ('LTTCs') of the Project which required establishing the transmission system comprised of the following elements:

<b>Element</b>	<b>Description of Element</b>
Element 1	7 x 167 MVA - 400/220 kV, sub-station at New Kohima
Element 2	Imphal - New Kohima 400 kV D/c transmission Line
Element 3	New Kohima – New Mariani 400 kV D/c transmission line

4. The Petitioner was incorporated as a Special Purpose Vehicle ('SPV') by Bid Process Coordinator (in short, 'BPC'), namely, PFC Consulting Limited ('PFCCL') for the purpose of developing and implementing the Project under Tariff Based Competitive Bidding route. In the bid process conducted by PFCCL, KPTL participated and emerged as a successful bidder and consequently, Letter of Intent was issued by PFCCL to KPTCL on 17.1.2017. In accordance with the bidding documents, KPTL acquired 100% of the shareholding in the Petitioner Company by executing a Share Purchase Agreement with PFCCL on 31.3.2017. Under the TSA, Assam Electricity Grid Corporation Limited ('AEGCL') has been appointed as the lead LTTC to represent all the LTTCs for discharging the rights and obligations specified therein. The Commission in its order dated 10.7.2017 in Petition No.

89/TL/2017 granted the transmission licence to the Petitioner for inter-State transmission of electricity to implement the Project and vide order dated 6.7.2017 in Petition No. 90/AT/2017 adopted the transmission charges as quoted by the Petitioner for the Project.

5. According to the Petitioner, all three elements of the Project, as per the TSA, were required to achieve the commercial operation by 31.7.2020. It is stated that though the elements were energised in November and December, 2020, the Project comprising of all three elements was considered to be commissioned only on 31.12.2020 i.e. after PGCIL commissioned its interconnecting facilities and upon commencement of flow of active power. The Petitioner has submitted that the delay in the achieving of COD of the Project has been on account of various events beyond the control of the Petitioner. The Petitioner has further submitted that it has also been required to incur the additional expenditure on account of Change in Law events during the implementation of the Project and is, therefore, entitled to Change in Law reliefs under the TSA.

**Petitioner's Submissions:**

6. The Petitioner has mainly submitted as under:

(a) The extension of SCOD has been sought due to delay in commissioning of the Project on account of (i) outbreak of Covid-19 pandemic; (ii) heavy rainfall and RoW; and (iii) failure on part of PGCIL in providing the inter-connecting facilities.

***Outbreak of Covid-19***

(b) The continuous lockdowns being imposed on account of Covid-19 pandemic in the States of Assam, Nagaland, and Manipur and the quarantine requirements being imposed by the local authorities severely impacted the progress of the work at Element 2 of the Project.

(c) On 27.7.2020, Ministry of Power vide its circular acknowledged that the owing to the outbreak of Covid-19 pandemic, there is obvious disruption in the supply chain and manpower and accordingly, to off-set the said difficulties/Force Majeure event, the Ministry of Power decided to grant a standard extension of 5 months in commissioning of inter-State transmission projects which were under construction as on 25.3.2020.

(d) As apparent from the language of the said circular, the grant of extension of scheduled commissioning date by a standard period of 5 months is mandated for those ISTS projects which were under construction as on 25.3.2020 and whose scheduled commissioning date was not prior to such date. The Project of the Petitioner is squarely covered within the ambit of the MoP circular dated 27.7.2020 and entitled to an extension of 5 months in SCOD so that the terms of the Project remain unaffected.

***Delay due to heavy rainfall and RoW***

(e) The Petitioner suffered a delay in completion of construction of Element 2 on account of RoW issues and heavy rainfall in the area which restricted the access to the Project site. It is a settled position of law that delay caused in commissioning of the project due to unavoidable circumstances like resistance faced at the project site and heavy rain is relevant factor to be considered while ascertaining the overall delay in commissioning of the project. In the regard, reliance has been placed on the order of this Commission dated 30.8.2017 in Petition No. 205/TT/2016 in the matter of PGCIL v. RRVPNL & Ors., dated 24.1.2019 in Petition No. 248/MP/2016 in the matter of Kudgi Transmission Ltd. v. BESCL & Ors., and the judgment of Appellate Tribunal for Electricity (APTEL) dated 31.10.2007 in Appeal Nos. 159,162 and 167 of 2005 in the matter of North Eastern Power Corp. Ltd. v. Assam State Electricity Board.

***Delay due to failure on part of PGCIL for providing the inter-connection facilities***

(f) Works for all elements of the Petitioner's Project was completed in all respect by 21.10.2020 and in fact, the works of Element 1 & Element 3 were completed within the SCOD as stipulated in the TSA. However, there was a delay in

energization of the elements on account of non-readiness of the interconnection facilities i.e. upstream system to be constructed by PGCIL on behalf of LTTCs.

(g) For Element 2, even though the Petitioner faced delay in completion of construction of the said element on account of force majeure events till 14.10.2020, the Petitioner faced the further delay in energizing and commissioning of Element 2 as PGCIL could not complete its respective scope of works within the scheduled time. PGCIL on behalf of LTTCs was obliged to complete the necessary interconnection facilities at Imphal and New Mariani sub-station and the delay in energization and commissioning of the Petitioner's elements was on account of non-readiness of the interconnecting facilities, namely, (a) Downstream: Non-readiness of transmission line to connect Element 1 to 220/33 kV existing Zhadima sub-station to be developed by DoP, Government of Nagaland, (b) Upstream: Non-readiness of interconnection facilities to be constructed by PGCIL i.e. 2 nos. of 400 kV bays at Imphal (PGCIL) substation, and (c) Upstream: Non-readiness of inter-connection facility to be constructed by PGCIL i.e. 2 Nos. of 400 kV line bays at New Mariani (PGCIL) sub-station.

(h) New-Mariani sub-station achieved the successful trial operation as late as 31.12.2020 after being energized on 30.12.2020 and on account of delay caused by PGCIL on behalf of LTTCs incompleteness of the interconnection facilities at New Mariani sub-station, Element 3 of the Project continued to remain idle. It was only after several follow-ups and multiple requests that the Petitioner was permitted to energize Element 3 on 7.12.2022 by way of a temporary arrangement.

(i) POSOCO on 17.12.2020 issued the certificate for completion of idle charging of Element 2 & Element 3 respectively *inter-alia* unequivocally stating that the active power flow could not be established as the upstream/downstream systems to be provided by PGCIL in terms of Schedule 2 & Schedule 3 of the TSA were not ready.

(j) The provisions of the TSA envisage the provision of the inter-connection facilities to be provided by LTTCs and PGCIL to construct and complete the same in terms of Schedule 2 & Schedule 3 of the TSA on behalf of LTTCs. No

liability, whatsoever, can be imposed on the Petitioner for non-availability of such system by PGCIL.

(k) POSOCO vide its letter dated 29.12.2020 has assented to the Petitioner being entitled to the payment of transmission charges within the PoC regime with effect from 1.1.2021 and therefore, the scope of adjudication before this Commission is to grant of extension of time on account of various events that were beyond the control of the Petitioner and direct that the 'Expiry Date' of the TSA is the date which is 35 years from the actual date of commercial operation i.e. 31.12.2020.

(l) The delay in providing the interconnection facilities has been recognized as a force majeure event and in this regard, reliance has been placed on the judgment of APTEL dated 21.3.2018 in Appeal No. 176 of 2015 in the matter of Chamundeswari Electricity Supply Co. Ltd. v. Saisudhir Energy (Chitradurga) Pvt. Ltd. and order of this Commission dated 24.1.2019 in Petition No. 248/MP/2016 in the matter of Kudgi Transmission Ltd. v. BESCL & Ors.

(m) The Petitioner has claimed the Change in Law reliefs on account of (i) promulgation of Integrated Goods and Services Act, 2017 and the Central Goods and Services Tax Act, 2017 read with Goods and Services Tax Act of relevant States i.e. Assam, Nagaland and Manipur; (ii) introduction of compensation towards 'damages' in terms of notifications issued by the Government of Assam, Manipur & Nagaland in 2017, 2018 and 2019 respectively; and (iii) increase in the unit rates for tree/crop compensation by Horticulture/Forest/Administrative Bodies of various States.

### ***Imposition of GST***

(n) On 12.4.2017, the Government of India introduced a unified indirect tax structure in the form of GST Laws thereby repealing the then-existing various Central and State level taxes. The Government of India enacted the Integrated Goods and Services Tax Act, 2017 and the Central Good and Services Act, 2017 and this was implemented w.e.f 1.7.2017 which thereby increased the recurring/ non-recurring expenditure of the Petitioner during the implementation of the Project in the construction phase.



(o) On 28.6.2017 and 29.6.2017, the Petitioner had engaged the EPC contractors, namely, KPTL for supply of equipment and services for implementation of Element 2 & Element 3 and Techno Electric and Engineering Co. Ltd. ('Techno'), for supply of equipment and services for implementation of Element 1. Pursuant to the introduction of GST Laws, the EPC contracts of the Petitioner raised the additional claims towards the ancillary works which could not have been avoided during the course of implementation of the Project. Accordingly, the GST claims of the Petitioner comprise of (i) impact of GST Laws on contract executed with Techno for implementation of Element 1, (ii) impact of GST Laws on contracts executed with KPTL for implementation of Element 2 & Element 3, (iii) impact of GST on other incidental expenses incurred by the Petitioner during the course of execution work for implementation of the Project, (iv) impact of taxes paid by the Petitioner for claim raised by EPC contractors related to Project cost, and (v) impact of GST on increase in unit rates of tree/crop payment made by EPC contractors.

***Land compensation***

(p) In 2015, Ministry of Power vide the MoP Guidelines, 2015 *inter alia* requested all the States/UTs to take a suitable decision regarding adoption of the MoP Guidelines, 2015, which were issued for determining the compensation for land considering that the acquisition of land is a State subject under the Indian Constitution. As on cut-off date i.e. 18.11.2016, the aforesaid MoP Guidelines were not implemented by the Government of Assam, Manipur and Nagaland i.e. the States wherein the Project has been set-up/implemented.

(q) However, pursuant to the cut-off date, the Government of Assam, Manipur and Nagaland published separate notifications by way of which the MoP Guidelines, 2015 for the payment of land compensation were adopted. The said notifications have significantly affected the amount incurred by the Petitioner towards land compensation, which the Petitioner was neither supposed to factor nor could have factored in while submitting its bid.

(r) The Commission has upheld the notifications for land compensation by the State Government beyond the cut off date as being a Change in Law event and in this regard, reliance has been placed on the Commission's Order dated 25.01.2021 in Petition No. 265/MP/2020 titled as Powergrid Warora

Transmission Limited. vs. MSEDCL and Ors, Order dated 29.01.2021 in Petition No. 264/MP/2020 titled as Powergrid Parli Transmission Limited. vs. MSEDCL and Ors, Order dated 16.06.2021 passed in Petition No. 453/MP/2019 titled as Sipat Transmission Limited vs. MSEDCL & Ors. and Order dated 28.10.2021 in Petition No. 610/MP/2020 titled as Powergrid Jabalpur Transmission Ltd. vs. MSEDCL & Ors.

***Increase in unit price for tree/crop compensation***

(s) Pursuant to the cut-off date, the cost towards compensation for trees/ crops that was considered by the Petitioner at the time of bidding was raised by the concerned/competent local authorities of the respective States in which the Project has been implemented. These competent local authorities of the respective State Government(s) qualify as Indian Government Instrumentality under the TSA and the revision in the rates of tree/crop compensation by them squarely falls within the ambit of Article 12 of the TSA.

(t) Total increase in the Project cost due to the above Change in Law events is as under:

Sr. No.	Change in Law Event	Impact (INR)
1	Impact due to GST	54,55,98,959
1.1	Impact due to GST on Element 1 viz. contracts executed with M/s Techno Engineering and Electrical Co. Ltd. (" <i>Techno</i> ")	8,08,82,729
1.2	Impact due to GST on Element 2 and Element 3 viz. contracts executed with Kalpataru Power Transmission Ltd. (" <i>KPTL</i> ")	35,63,18,685
1.3	Impact due to GST incurred by KMTL on other incidental expenditure.	47,56,923
1.4	Impact due to GST incurred by KMTL on the claims raised by Techno and KPTL (i.e., KMTL's EPC Contractor)	8,13,98,286
1.5	Impact due to GST on the payment made for crop/tree felling for construction of Element 2 and Element 3	2,22,42,336
2	Introduction of land compensation.	72,27,26,076
3	Impact due to increase in unit rates of tree/crop compensation.	14,95,39,569
Total		141,78,64,604

(u) The Petitioner is entitled to interest/carrying cost @ 18% per annum from the effective date of Change in Law event until the same is allowed by the appropriate authority by an order/judgment and thereafter, till the date of payment of increased amount incurred towards the Change in Law by the Respondents to the Petitioner.

It is well settled law that the compensation under Change in Law is based on the restitution of the party to the same financial position, which as per the settled principle of law includes carrying cost from the date of impact. Therefore, as a relief for the occurrence of the Change in Law event i.e. imposition of land compensation; increase in tree/crop compensation and the GST Laws which became effective from 1.7.2022, the Petitioner is entitled to claim carrying cost specifically in view of the principle of restitution inbuilt/envisaged in Article 12 of the TSA and the general law applicable to grant of carrying cost/interest. If the Petitioner's claim for interest/ carrying cost is denied, then mere compensation after the lapse of time will have diminished value and severely affect the economic position of the Petitioner.

7. The matter was admitted on 21.4.2022 and notice(s) was issued to the parties to file their respective replies and rejoinders. Pursuant to the above, the reply has been filed by the Respondents, Power Grid Corporations of India Limited and AEGCL and the Petitioner has also file its rejoinders thereof.

**Reply of Power Grid Corporation of India Limited (PGCIL):**

8. The Respondent, PGCIL vide its reply dated 18.5.2022, has mainly submitted as under:

(a) The Petitioner has alleged that there has been a delay in commissioning of PGCIL's assets, namely, (i) that the interconnection facilities under the scope of PGCIL at Imphal sub-station were commissioned on 22.8.2020 as against the SCOD of 31.7.2020; and (ii) that the interconnection facilities under the scope of PGCIL at New Mariani sub-station were commissioned on 31.12.2020 as against the SCOD of 31.7.2020.

(b) PGCIL has also filed a Petition being Petition No. 45/TT/2022 for approval of transmission tariff for transmission assets under Project - 'POWERGRID works associated with North Eastern Region Strengthening Scheme-VI (NERSS-VI)' for the tariff period 2019-14 wherein the above two assets are covered. In the above Petition, PGCIL has given justification for the time over-run in commissioning of

the assets including 2 Nos. of 400 kV line bays at New Mariani (POWERGRID) sub-station for termination of New Kohima-New Mariani 400 kV Double Circuit line in Petition No. 45/TT/2022. In the said tariff Petition, PGCIL has submitted following qua timelines of subject line bays:

<b>Asset</b>	<b>SCOD</b>	<b>DOCO</b>	<b>Delay (in days)</b>
2 no. 400 kV line bays at Imphal S/s (for termination of Imphal-New Kohima 400kV D/c line under TBCB)	<b>31.7.2020</b> (as per IA) and	1.8.2020 (Proposed)	Nil
2nos. 400 kV line bays for termination of 400kV D/C New Kohima– New Mariani line (Line under TBCB scope) at 400/220 kV New Mariani sub-station	<b>31.12.2021</b> (as per MoP's Notification* dated 27.7.2020)	1.1.2021	Nil

*[\*Ministry of Power in the letter dated 27.07.2020 allowed an extension of Scheduled Commercial Operation Date (SCOD) by 5 months to mitigate the issues of disruption in supply chains and Man power, caused due to outbreak of Covid-19 Pandemic. The letter is applicable for all the Inter-State transmission projects whose SCOD date is after date of lockdown i.e. 25.3.2020.]*

(c) With respect to Element No. 1 of the Petitioner - 400/220kV, 2x500 MVA S/S at New Kohima, no works for the said sub-station were in scope of PGCIL and as such no delay in commissioning the said sub-station is attributable to PGCIL. The construction works were completely under the scope of the Petitioner. Thus, the delay in commissioning of sub-station was attributable to the Petitioner.

(d) As regards two (2) 400 kV line bays at Imphal (POWERGRID) substation for termination of Imphal- New Kohima 400 kV D/c line of the Petitioner i.e. Element 2 is concerned, PGCIL has completed its scope of work within SCOD and claimed COD as 1.8.2020 under Regulation 5(2) of Tariff Regulations, 2019 as the associated transmission line under the scope of the Petitioner was not ready. There was no delay in commissioning of the above bays. The said transmission line was charged and has achieved actual COD on 13.10.2020 when the Petitioner's line was ready. The same is evident from CEA's Monthly Progress Report of Transmission Projects awarded through TBCB for the month of July 2021.

(e) The Certificate of Completion of Idle charging of 400 kV New Kohima Bay at Imphal (POWERGRID) substation, as issued by POSOCO on 6.8.2020 clearly notes that *Active Power Flow in the above-mentioned bay could not be established as only Bays at Imphal sub-station were charged and the 400 kV Imphal-New Kohima Line was not ready.*

(f) Reliance placed by the Petitioner on the date of commissioning of bus reactor to contend that PGCIL's associated bays were ready on 22.8.2020 is misplaced. The Petitioner is wrongly referring to the commissioning of the bus-reactor as the date of commissioning of the above bays. The commissioning of bus reactor by PGCIL was not even a part of the scope of work under the TSA. As per TSA, PGCIL was required to provide only 2 Nos. of line bays at Imphal sub-station. Further, PGCIL was implementing the bus reactor for system strengthening of North Eastern Region Grid under another project namely, 'POWERGRID works associated with North Eastern Region Strengthening Scheme-VI (NERSS-VI)' and the said bus reactor was not at all related to the Petitioner's works under the present Project.

(g) The Petitioner is placing reliance on the letter dated 20.9.2020 from PGCIL to state that the bays were only commissioned on 22.8.2020. A perusal of the said letter would clearly establish that the line bays were charged on 30.7.2020. The letter does not state that it is only consequent upon the charging of the 1x125 MVAR bus reactor that the line bays can be said to be completely or successfully charged. In fact, the above said communication was only a regular information exchange with the Petitioner to share the commissioning schedule of PGCIL's assets.

(h) In any event, the delay in executing the PGCIL's scope of work squarely falls within the extended timeline as provided in the MoP's Notification dated 27.7.2020 and in terms of the above Notification, the SCOD of the said asset is extended from 31.7.2020 to 31.12.2020. Therefore, no liability for delay in commissioning of the above asset be imposed upon PGCIL as the delay period is covered by MoP's Notification dated 27.7.2020.

(i) No monetary claim qua PGCIL has been contended or prayed for. The Petitioner is only claiming for extension of SCOD on account of certain force majeure events and one of the events contended by the Petitioner is delay in providing inter-connection facilities to be provided by PGCIL. In this context, the extension sought by the Petitioner of SCOD till 31.12.2020 may be considered by the Commission, without any monetary/financial liability on PGCIL.

## **Rejoinder to PGCIL's Reply**

9. The Petitioner, vide its rejoinder dated 7.6.2022, has mainly submitted as under:

(a) It is denied that delay in commissioning of Element 2 was not attributable to the Petitioner but was delayed due to force majeure events i.e. COVID-19, continuous rainfall and RoW issues. Element 2 was finally ready by 14.10.2020 and the same was duly informed to Regional Inspectoral Organisation ('RIO') and Chief Electrical Inspector, CEA ('CEI'). Thereafter, on 19.10.2020, the CEI granted provisional approval for energisation of Element 2 in view of not being able to carry out physical inspection due to COVID-19. In fact, it is PGCIL's own submission that Element 2 was completed on 13.10.2020. The energisation of Element 2 was done on 13.11.2020.

(b) Without prejudice to the above, readiness of PGCIL's Line Bays-1 before Element 2, does not affect the contractual right of KMTL seeking extension of SCOD based on *force majeure*. The Petitioner is claiming extension of SCOD to the actual date of commercial operation of the whole Project comprising of all Elements, after PGCIL's interconnecting facilities/associated works were commissioned i.e. 31.12.2020.

(c) In this regard, the Element 1 & Element 3 of the Project were ready for charging on 24.7.2020 and were deemed commissioned on 31.7.2020 i.e. on SCOD. The Element 2 was, however, delayed due to *force majeure* events and was completed only on 14.10.2020. Subsequently, the Element 1 & Element 2 were energised on 13.11.2020 and 7.12.2020 respectively. Schedule 3 of the TSA prescribes that payment of transmission charges shall only be considered after successful commissioning of all three Elements. Since the Element 3 was energised only on 7.12.2020 i.e. with a temporary arrangement after multiple requests by KMTL to PGCIL in view of non-completion of line bays-2 by PGCIL, the Petitioner was required to wait for energising Element 3 after energising Element 1 and Element 2. Otherwise, the Project was commissioned on 7.12.2020 and could be considered to have achieved commercial operation on 10.12.2020 (72 hours after commissioning).

(d) As the active power flow in Element 3 could be achieved only after line bays-2 were ready, the Petitioner has considered the actual COD on 31.12.2020. The extension of SCOD is thus sought till 31.12.2020 i.e. the same time as PGCIL's line bays-2 were commissioned.

(e) Assuming without admitting that PGCIL commissioned Line Bays-1 within SCOD, it is an admitted position that commissioning of Line Bays-2 was delayed due to *force majeure* events. As Element 3 was energised on 7.12.2020 and Line Bays-2 commissioned only on 31.12.2020, the active power flow started through the grid and the Petitioner's Project achieved COD on 31.12.2020.

(f) The extension of SCOD of the Project is squarely covered by the extension granted by the MoP *vide* its circular dated 27.7.2020. The said circular granted extension of scheduled commissioning date by a standard period of 5 months mandated for those ISTS projects which were under construction as on 25.3.2020 and whose scheduled commissioning date was not prior to such date (like the instant Project). Thus, the Petitioner's Project is entitled to an extension of 5 months in the SCOD so that the term of the Project remains unaffected.

### **Reply of Assam Electricity Grid Corporation Limited**

10. The Respondent No.1, Assam Electricity Grid Corporation Limited (AEGCL), *vide* its reply dated 1.10.2022, has mainly submitted as under:

(a) Impact of Covid-19 pandemic and continuous lockdown has affected the operation to all Respondents. MoP *vide* its circular dated 27.7.2020 in the context of 'Extension to TSP/Transmission Licensee for completion under construction inter-State transmission Project' has already granted an extension of five months in respect of SCOD to all the inter-State transmission projects which were under construction as on date of lock-down i.e. 25.3.2020 and in view of this, the Commission may consider as deemed appropriate based on the event of facts in the completion of the works as per the TSA for extension of SCOD.

(b) Under the GST impact, the Petitioner has claimed the additional taxes of Rs.8,13,98,286/- based on the EPC Contractor's claim mentioned wherein KPTL, its EPC contractor, has claimed interest on delayed payment which is



purely attributable to the Petitioner for delay in payments and over if the Petitioner is claiming additional tax impact of Rs. 3,81,77,464/-. The interest on delayed payment cannot be considered as the Project cost and the GST impact over it. After implementation of GST Laws in July, 2017, the Petitioner has submitted pre-GST amount for the additional expenses due to Covid-19 pandemic. It is clearly evident that the Petitioner has substantially claimed higher ex-works costs and claimed higher GST impact over and above.

(c) As per Article 5.1.2 and Article 5.1.4 of the TSA, the Petitioner shall be responsible for acquisition of land and other allied works including the acquisition of land for location specific sub-station and seeking access to the site and other places where the Project is being executed at its own costs including payment of any crop compensation or any other compensation as may be required. The Petitioner has submitted that in 2015, MoP vide its MoP Guidelines, 2015, had *inter-alia* requested all the States/UTs to take a suitable decision regarding adoption of MoP Guidelines. Thus, the Petitioner was aware of the Guidelines and the same were implemented by the Governments of Assam, Manipur and Nagaland. It is the Petitioner who is responsible for payment of land compensation as per Article 5 of the TSA and the impact of the land cost due to re-land compensation notification is not provided.

(d) As to the claim for increase in unit price for tree/crop compensation, as per Article 5 of the TSA, the land related expenses are completely attributable to the Petitioner and it cannot claim any financial compensation in this regard. Thus, the Commission may disallow such claims made by the Petitioner.

### **Rejoinder to AEGCL's Reply**

11. The Petitioner, vide its rejoinder dated 24.10.2022, has mainly submitted as under:

(a) AEGCL has not disputed the prayer of the Petitioner seeking extension of SCOD to match with actual COD of the Project i.e. 30.12.2020. AEGCL has in fact admitted that Covid-19 pandemic and the resultant lockdown has impacted the operations of all Respondents and this shows that AEGCL is cognizant of the effects of Covid-19 pandemic and the lockdown which is a force majeure event.



AEGCL has also relied upon MoP's circular dated 27.7.2020 granting a blanket extension of five (5) months in SCOD of the Projects which were under construction as on 25.3.2020 and has accordingly, requested this Commission to grant relief to the Petitioner upto 31.12.2020 for such force majeure event under the provisions of the TSA.

(b) The Petitioner has claimed only additional tax on account of expenses incurred due to Covid-19 pandemic. The claims of the Petitioner are only with respect to additional tax paid by it. During the spread of Covid-19, Government of India as well as the State Government mandated that the employers are required to pay the salary to the labours along with providing food and accommodation during lockdown period. Moreover, there were no transporting facilities available to facilitate movement of labour to their respective villages/towns and hence, in order to comply with the Govt.'s mandate, the Petitioner undertook steps to compensate its EPC contractors towards the idling of the labour during the lockdown period. The Petitioner has paid the above compensation to EPC contractors albeit with a delay caused by lockdown and restriction imposed due to Covid-19 and after thorough assessment of the additional claims by its Board of Directors which could approve the same in November, 2021.

(c) AEGCL's contention that per Article 5 of the TSA, the Petitioner being responsible for land acquisition at its own cost, cannot seek the Change in Law compensation for land acquisition is contrary to the express provisions of TSA. Article 12.2.1 provides for Change in Law relief during construction period and it is a restitutive clause which seeks to compensate TSP for any additional expenditure incurred during construction period on account of Change in Law. Article 5 as relied on by AEGCL can in no way act as an exception to Article 12.2.1. It is clarified that the Petitioner is not claiming any compensation for land acquisition but is only claiming Change in Law relief on account of land compensation for Right of Way of transmission line introduced by the State Governments of Assam, Manipur and Nagaland. Moreover, Article 5.1.4 of the TSA is only applicable to land for substation and not right of way for transmission lines.

(d) AEGCL has further contended that the Petitioner was aware of the MoP's Guidelines which were notified in 2015 and therefore, it was responsible for paying the land compensation. However, the said contention is misleading. While the MoP Guidelines were notified in 2015, the same only encouraged the State Governments to adopt the compensation provided therein. It was left open to the State Government to adopt the compensation. However, it was only when the State Government of Assam, Manipur and Nagaland adopted these guidelines and issued notifications in this regard, such revised compensation rate became applicable to the Petitioner's Project.

(e) As the Change in Law impact due to increase in unit rate of tree/crop compensation, the prevailing rate of compensation for damage to tree/crop as on cut-off date was substantially lower than what was prescribed by the Governmental Agencies of the districts where the Petitioner's transmission lines are located in the years 2017-2021. The rates have been revised by Indian Governmental Instrumentalities, which have resulted in additional expenditure to the Petitioner during the construction period and accordingly, the same qualify as Change in Law event under Article 12.1 of the TSA for which the Petitioner is entitled to relief under Article 12.2.1 of the TSA. AEGCL by its letter dated 17.3.2021 had given its categorical no objection to the Petitioner with respect to the payment of revised compensation as assessed by District Administrator of Golaghat, Assam. In view of the same, AEGCL cannot now be allowed to make such objection to the Petitioner's legitimate claims.

12. The matter was finally heard on 22.9.2022 and after hearing the learned counsel for the Petitioner and PGCIL, the order was reserved in the matter. The Petitioner was also directed to file certain additional details/information, which have been furnished by the Petitioner vide its additional affidavit dated 8.10.2022.

### **Analysis and Decision**

13. We have considered the submissions of the Petitioner and the Respondents and have also perused the documents on record. The following issues arise for our consideration:

**Issue No. 1: Whether the Petitioner has complied with the provisions of the TSA before approaching the Commission for claiming relief under Force Majeure and Change in Law?**

**Issue No. 2: Whether the Petitioner is entitled for time extension under Force Majeure?**

**Issue No. 3: Whether the claims of the Petitioner are covered under Change in Law in terms of the TSA?**

**Issue No. 4: What reliefs, if any, should be granted to the Petitioner in the light of the answers to the above issues?**

The above issues have been dealt with in succeeding paragraphs.

**Issue No. 1: Whether the Petitioner has complied with the provisions of the TSA before approaching the Commission for claiming relief under Force Majeure and Change in Law?**

14. The Petitioner has claimed relief under Article 11 (Force Majeure) of the TSA.

Article 11.5.1 of the TSA provides as under:

*“11.5 Notification of Force Majeure Event*

*11.5.1 The Affected Party shall give notice to the other Party of any event of Force Majeure as soon as reasonably practicable, but not later than seven (7) days after the date on which such Party knew or should reasonably have known of the commencement of the event of Force Majeure. If an event of Force Majeure results in a breakdown of communications rendering it unreasonable to give notice within the applicable time limit specified herein, then the Party claiming Force Majeure shall give such notice as soon as reasonably practicable after reinstatement of communications, but not later than one (1) day after such reinstatement. Provided that such notice shall be a pre-condition to the Affected Party’s entitlement to claim relief under this Agreement. Such notice shall include full particulars of the event of Force Majeure, its effects on the Party claiming relief and the remedial measures proposed. The Affected Party shall give the other Party regular reports on the progress of those remedial measures and such other information as the other Party may reasonably request about the Force Majeure.*

*11.5.2 The Affected Party shall give notice to the other Party of (i) the cessation of the relevant event of Force Majeure; and (ii) the cessation of the effects of such event of Force Majeure on the performance of its rights or obligations under this Agreement, as soon as practicable after becoming aware of each of these cessations.”*

15. Under Article 11.5.1 of the TSA, an affected party shall give notice to the other party of any event of Force Majeure as soon as reasonably practicable, but not later than seven days after the date on which the party knew or should have

reasonably known of the commencement of the event of Force Majeure. It further provides that such notice shall be a pre-condition to the affected party's entitlement to claim relief under the TSA.

16. The Petitioner has also claimed relief under Article 12 (Change in Law) of the TSA. Article 12.3.1 of the TSA provides as under:

***“12.3 Notification of Change in Law Event***

*12.3.1 If the TSP is affected by a Change in Law in accordance with Article 12.1 and wishes to claim relief for such Change in Law under this Article 12, it shall give notice to Lead Long Term Transmission Customer of such Change in Law as soon as reasonably practicable after becoming aware of the same.*

*12.3.2 The TSP shall also be obliged to serve a notice to Lead Long Term Transmission Customer even when it is beneficially affected by a Change in Law.*

*12.3.3 Any notice served pursuant to Articles 12.3.1 and 12.3.2 shall provide, amongst other things, precise details of the Change in Law and its effect on the TSP.”*

17. Article 12.3 of the TSA provides that if the TSP is affected by a Change in Law in accordance with Article 12.1 and wishes to claim relief for such Change in Law, it shall give notice to the lead LTTC as soon as reasonably practicable after being aware of the same. It further provides that any notice served pursuant to Article 12.3.1 and Article 12.3.2 of the TSA shall provide amongst the other things, precise details of Change in Law and its effect on the TSP.

18. Insofar as Change in Law is concerned, it is noticed that the Petitioner has placed on record the various Change in Law notices issued by it intimating the lead LTTC/LTTCs about the occurrence of Change in Law events and the implication of such Change in Law events onto the Petitioner. For enactment of GST Laws, the Petitioner had issued the Change in Law notices on 25.8.2017, 30.1.2020, 6.9.2021, 15.11.2021 and on 6.4.2022. For the notification(s) stipulating the land compensation

as issued by the State Governments, the Petitioner had issued the Change in Law notices to lead LTTC/LTTCs on 29.8.2017, 3.4.2018, 18.2.2019 and on 27.5.2019. Moreover, the Petitioner vide its letters dated 6.1.2020, 15.5.2020, 29.7.2020, 8.9.2020, 29.9.2020, 14.10.2020, 30.11.2020, 7.11.2020, 19.12.2020, 21.1.2021, 12.2.2021 and 25.3.2021 had intimated the lead LTTC about the expenses to be incurred towards land compensation requesting it to take note of the same and to consider the same for necessary compensation as per Article 12.2 of the TSA. With regard to Change in Law claim of increase in unit price for tree/crop compensation, the Petitioner had issued the Change in Law notices to lead LTTC/LTTCs on 27.5.2019, 28.5.2019, 1.2.2021, 24.2.2021, 26.2.2021, 9.3.2021, 25.3.2021 and on 23.4.2021. In view of the above, we find that the Petitioner has complied with the requirement of prior notice of Change in Law event in terms of the Article 12.3 of the TSA.

19. The Petitioner has also placed on record the various notices issued by it invoking the Force Majeure clause under the TSA. With regard to the outbreak of Covid-19 pandemic and consequent restriction imposed in the various parts of the Country, the Petitioner had invoked the Force Majeure as per Article 11 of the TSA vide its letters dated 21.3.2020, 25.3.2020, 26.3.2020, 22.7.2020, 30.7.2020, 31.8.2020, 8.9.2020 and 29.9.2020, *inter-alia*, requesting AEGCL to consider the above event as force majeure and to grant necessary extension of time upon the completion of the Project. Further, the Petitioner under its letter dated 31.8.2020 had also intimated the LTTCs about the difficulties being faced on account of incessant rainfall and RoW issues. Moreover, the Petitioner vide its letter dated 22.9.2020 had also intimated the LTTCs about the resolution of the pending RoW hindrance in respect of Element 2. As regards the force majeure claim of delay in providing of

interconnecting facilities by PGCIL, while the Petitioner appears to have issued the various letters to the LTTCs intimating them about the readiness of the Elements, declaration of deemed COD of the Elements as per provisions of TSA, their readiness and successful energization, etc., it is noticed that the delay on the part of PGCIL in making available the interconnecting facilities is also ascribed as force majeure event by the Petitioner only vide its letter dated 7.3.2021. However, whether this letter can be said to meet the requirements of force majeure notice under the TSA is a different aspect, which we do not find any need to examine for coming to any logical conclusion, on account of a view taken by us in the subsequent paragraphs of this order. Thus the issue is answered accordingly.

**Issue No.2: Whether the Petitioner is entitled for time extension under Force Majeure?**

20. The Petitioner has sought extension of SCOD under Article 11 (Force Majeure) read with Article 4.4.2 of the TSA on account of the occurrence of force majeure events during the construction/ implementation of the Project, which have led to the delay in achieving the commercial operation of the Project. The Petitioner has referred to MOP circular dated 27.7.2020 allowing extension of SCOD for five months. The original SCOD of the project was 31.7.2020 and the Petitioner is seeking extension till 31.12.2020.

21. The provisions of the TSA with regard to “Force Majeure” are extracted hereunder:

*“11.3 Force Majeure*

*A ‘Force Majeure’ means any event or circumstance or combination of events and circumstances including those stated below that wholly or partly prevents or unavoidably delays an Affected Party in the performance of its obligations under this Agreement, but only if and to the extent that such events or circumstances are not within the reasonable control, directly or indirectly, of the Affected Party and could*

not have been avoided if the Affected Party had taken reasonable care or complied with Prudent Utility Practices:

*(a) Natural Force Majeure Events:*

*Act of God, including, but not limited to drought, fire and explosion (to the extent originating from a source external to the Site), earthquake, volcanic eruption, landslide, flood, cyclone, typhoon, tornado, or exceptionally adverse weather conditions which are in excess of the statistical measures for the last hundred (100) years,*

*(b) Non-Natural Force Majeure Events:*

*i. Direct Non-Natural Force Majeure Events:*

- *Nationalization or compulsory acquisition by any Indian Governmental Instrumentality of any material assets or rights of the TSP; or*

- *the unlawful, unreasonable or discriminatory revocation of, or refusal to renew, any Consents, Clearances and Permits required by the TSP to perform their obligations under the RFP Project Documents or any unlawful, unreasonable or discriminatory refusal to grant any other Consents, Clearances and Permits required for the development/ operation of the Project, provided that a Competent Court of Law declares the revocation or refusal to be unlawful, unreasonable and discriminatory and strikes the same down; or*

- *any other unlawful, unreasonable or discriminatory action on the part of an Indian Governmental Instrumentality which is directed against the Project, provided that a Competent Court of Law declares the action to be unlawful, unreasonable and discriminatory and strikes the same down.*

*ii. Indirect Non - Natural Force Majeure Events.*

- *act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action; or*

- *radioactive contamination or ionising radiation originating from a source in India or resulting from any other Indirect Non-Natural Force Majeure Event mentioned above, excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Site by the Affected Party or those employed or engaged by the Affected Party; or*

- *industry wide strikes and labour disturbances, having a nationwide impact in India.*

*11.4 Force Majeure Exclusions*

*11.4.1 Force Majeure shall not include (i) any event or circumstance which is within the reasonable control of the Parties and (ii) the following conditions, except to the extent that they are consequences of an event of Force Majeure:*

*(a) Unavailability, late delivery, or changes in cost of the machinery, equipment, materials, spare parts etc. for the Project;*

*(b) Delay in the performance of any contractors or their agents;*

*(c) Non-performance resulting from normal wear and tear typically experienced in transmission materials and equipment;*

*(d) Strikes or labour disturbance at the facilities of the Affected Party;*



(e) *Insufficiency of finances or funds or the agreement becoming onerous to perform; and*

(f) *Non-performance caused by, or connected with, the Affected Party`s:*

*i. negligent or intentional acts, errors or omissions;*

*ii. failure to comply with an Indian Law; or*

*iii. breach of, or default under this agreement or any Project Documents.*

.....

#### *11.6 Duty to perform and duty to mitigate*

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

22. Further, Article 4.4 of the TSA provides as under:

#### *“4.4 Extension of Time*

*4.4.1 In the event that the TSP is prevented from performing its obligations under Article 4.1 (a), (b) and (e) by the stipulated date, due to any Long Term Transmission Customers’ Event of Default, the Scheduled COD shall be extended, by a ‘day to day’ basis, subject to the provisions of Article 13”*

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

In the light of the provisions of Force Majeure, the claim(s) of the Petitioner have been examined. The Petitioner has submitted that construction of Project was delayed for the reasons beyond its control on the certain counts, namely (a) Outbreak of Covid-19 pandemic and consequent lockdown; (ii) Heavy rainfall and RoW issues; and (iii) failure on part of PGCIL in providing inter-connection facilities.

#### **(i) Outbreak of Covid-19 and consequent lockdowns:**

23. The Petitioner has submitted that due to outbreak of Covid-19 pandemic and the consequent lockdown/restrictions imposed in the various parts of country including in the States where the Project was located impacted the construction



works of the Project and substantial reduction in day to day output due to multi-fold reasons including lack of workforce, etc. The Petitioner under the force majeure notices issued to the lead LTTCs had highlighted the various difficulties being encountered by the Petitioner at the Project site, including reduction in the output on account of the continuous extension of lockdown due to the overarching Covid-19 pandemic in the States of Manipur, Nagaland and Assam. The Petitioner had, however, taken all reasonable steps to mitigate the losses and was continuing its work albeit under the social distancing norms to ensure that the commissioning of the Project is achieved at the earliest. It has been submitted by the Petitioner that the MoP vide its circular dated 27.7.2020 acknowledged the disruption in supply chain and manpower owing to the outbreak of Covid-19 pandemic and granted a standard extension of 5 months in commissioning of inter-State transmission projects which were under construction as on 25.3.2020. The above circular granting carte blanche extension of time for 5 months for under construction of inter-State transmission projects also establishes the effect of Covid-19 pandemic as a force majeure event.

24. The Respondent, AEGCL has submitted that the Covid-19 pandemic and continuous lockdown has affected the operation to all Respondents and MoP vide its circular dated 27.7.2020 in the context of 'Extension to TSP/Transmission Licensee for completion under construction inter-State transmission Project' has already granted an extension of five months in respect of SCOD to all the inter-State transmission projects which were under construction as on date of lock-down i.e. 25.3.2020 and in view of this, the Commission may consider the appropriate based on the event of facts in completion of the works as per the TSA for extension of SCOD.

25. We observe that MoP vide its order dated 27.7.2020 in the subject matter of “Extension to TSP/Transmission Licensees for completion of under construction inter-State transmission projects” has decided as under:

“... ”

No. 3/1/2020-Trans  
Government of India  
**Ministry of Power**  
Shram Shakti Bhawan, Rafi Marg,  
New Delhi- 110001, Dated: 27th July, 2020

To

1. Chairperson, Central Electricity Authority, New Delhi.
2. COO, CTU-Plg, POWERGRID, Gurugram

*Sub: Extension to TSP/ Transmission Licensees for completion of under construction inter-state transmission projects*

*I am directed to state that transmission utilities have pointed out that construction activities at various transmission project sites have been severely affected by the nationwide lockdown measures announced since 25th March, 2020 to contain outbreak of COVID-19 and have requested for extension of Scheduled Commercial Operation Date (SCOD) to mitigate the issues of disruption in supply chains and manpower, caused due to outbreak of COVID-19 pandemic.*

*2. It has been, therefore, decided that;*

*i. All inter-state transmission projects, which were under construction as on date of lock-down i.e. 25th March 2020, shall get an extension of five months in respect of SCOD*

*ii. This order shall not apply to those projects, whose SCOD date was prior to 25th March 2020,*

*iii. Start date of Long Term Access granted to a generator by CTU based on completion of a transmission line, whose SCOD is extended by 5 months due to COVID-19 as mentioned above at point (i), shall also be extended by 5 months.*

*3. This issues with the approval of Competent Authority. ....”*

26. In the aforesaid order, Ministry of Power, taking into the account the construction activities at the various transmission projects sites having been severely affected by the nationwide lockdown measures announced since 25.3.2020 to contain the outbreak of Covid-19 and the request of the transmission utilities for extension of SCOD to mitigate the issues of disruption in supply chains & manpower

caused due to outbreak of Covid-19, decided that all inter-State transmission projects which were under construction as on date of lockdown i.e. 25.3.2020 shall get an extension of 5 months in respect of SCOD provided the SCOD of these projects was post 25.3.2020. It is also relevant to note that the above order of the MoP is in nature of generic order/blanket order applicable to all the transmission licensees whose projects fall under the criteria specified therein and as such does not require the individual licensee to substantiate/make out its case for availing the dispensation provided under the said order. In the present case, the Project of the Petitioner was under construction as on the date of lockdown i.e. 25.3.2020 and SCOD of the Project was 31.7.2020 i.e. post 25.3.2020 and therefore, the dispensation provided by the MoP vide its order dated 27.7.2020 in the form of the extension of SCOD for the period of 5 months squarely applies in the case of the Petitioner. Accordingly, the Petitioner is entitled to extension of five months in respect of the SCOD of its Project. In the present case, all the Elements of the Project were declared to have achieved the commercial operation on 31.12.2020 and accordingly, the Petitioner has prayed for extension of SCOD for all the Elements of the Project till 31.12.2020. The extension in SCOD as sought by the Petitioner is squarely covered within extension of 5 months as allowed by the MoP vide its order dated 27.7.2020 and therefore, we hereby allow the extension of SCOD for all the Elements of Project till 31.12.2020. Consequently, the Petitioner shall not be liable to any adverse financial implication i.e liquidate damages under the TSA till the extended SCOD of 31.12.2020.

27. The Commission having already extended the SCOD of the Petitioner's Project till 31.12.2020, as prayed for the by the Petitioner, on basis of the order of MoP dated 27.7.2020 and consequently, having held that the Petitioner shall not be

liable to any adverse implication under the TSA till such period, we do not find it necessary to examine the other grounds of delays in commissioning of the Project as raised by the Petitioner. In observing so, we are, however, aware of the contrary submissions of the Petitioner and PGCIL with regard to timely completion of Element 2 by the Petitioner and the corresponding inter-connection facilities – 2 Nos. of bays at Imphal S/s within the scope of PGCIL. Insofar as the interconnection facilities for the Element 3 of the Petitioner's Project i.e. 2 Nos. of 400 kV line bays at New Mariani S/s, PGCIL has, among others, also relied upon the very same circular of MoP dated 27.7.2020 permitting the extension of SCOD for the period of 5 months. However, these issues do not assume significance in the present case since the scope of the present Petition is limited to the entitlement(s) of the Petitioner under the provisions of the TSA and we have already held that the Petitioner will not be liable for any adverse implication for delay in achieving commercial operation of the Project within the original SCOD under the TSA. Moreover, the Petitioner has also not prayed for any monetary relief against PGCIL with regard to delay in coming up of interconnection facilities of 2 Nos. of 400 kV line bays at New Mariani S/S. The issue is answered accordingly.

**Issue No. 3: Whether the claims of the Petitioner are covered under Change in Law in terms of the TSA?**

28. The provisions of the TSA with regard to Change in Law are extracted as under:

***“12.1 Change in Law***

*12.1.1 Change in Law means the occurrence of any of the following after the date, which is seven (7) days prior to the Bid Deadline resulting into any additional recurring/non-recurring expenditure by the TSP or any income to the TSP:*

- The enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law;*

- *A change in the interpretation or application of any Law by Indian Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of Law;*
- *The imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier:*
- *A change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents Clearances and Permits;*
- *Any change in the licensing regulations of the Appropriate Commission, under which the Transmission License for the Project was granted if made applicable by such Appropriate Commission to the TSP:*
- *any change in the Acquisition Price; or*
- *any change in tax or introduction of any tax made applicable for providing Transmission Service by the TSP as per the terms of this Agreement.”*

29. Perusal of the above provisions of Article 12 in the TSA reveals that for an event to be declared as ‘Change in Law’, its occurrence has to be after seven days prior to the bid deadline and should result into any additional recurring/ non-recurring expenditure by TSP or any income to TSP.

30. The cut-off date for reckoning the Change in Law events - a date seven days prior to the bid deadline - was 18.11.2016. In the light of the above provisions of Change in Law, the claims of the Petitioner with regard to Change in Law events, which have occurred after cut-off date during the construction period, have been examined in the subsequent paragraphs.

**(i) Enactment of GST Laws:**

31. The Petitioner has submitted that pursuant to the cut-off date i.e. 18.11.2016, the Government of India introduced the unified indirect tax structure in the form of Integrated Goods and Service Tax Act, 2017 and Central Goods and Services Act, 2017 thereby repealing the then-existing various Central and State level taxes which

led to the increase in recurring/non-recurring expenditure to the Petitioner during the implementation of Project in the construction phase. The Petitioner has categorised the impact of the GST Laws under the following heads:

**(a) Impact due to levy of GST/imposition of GST Laws on contracts for Element 1 i.e. New Kohima sub-station**

32. Pursuant to execution of the TSA, the Petitioner had entered into the two separate agreements with its EPC contractor, Techno, namely, (i) Supply Agreement dated 29.6.2017 for design, testing, manufacturing and supply of plant and equipment including all required material for setting up of sub-station, and (ii) Service Agreement dated 29.6.2017 for survey, design, preparation of drawing, purchase of sub-station land and relevant development thereof, installation, testing and commissioning of sub-station, which were further amended on 17.7.2021. In terms of the said agreements, Techno vide its letters dated 12.10.2020 and dated 16.2.2020 conveyed the Petitioner regarding additional impact/ expenditure incurred by it on account of introduction of GST Laws. The Petitioner vide its letter dated 6.9.2021 also informed the LTTCs about aforesaid additional impact including the detailed price schedule with quantity, unit price, impact of GST and other relevant details. The total impact of the GST w.r.t Element No.1 - New Kohima sub-station works out to Rs. 8,08,82,729/- which has been duly ratified by an auditor certificate dated 14.2.2022.

**(b) Impact due to levy of GST/imposition of GST Laws on contracts for Element 2 and Element 3**

33. The Petitioner has submitted that on 28.6.2017, it executed two separate agreements with KPTL, namely, (i) Line Supply Agreement for supply of towers, line material and other equipment for transmission lines in NRESS-VI, and (ii) Line Erection Agreement for erection service of lines of transmission system in NRESS-

VI. Pursuant to the promulgation of GST Laws, KPTL vide its letter dated 6.6.2019 revised the Supply Agreement amount from Rs.356.69 crore to Rs. 369.28 crore and amount Erection Agreement amount from Rs. 462.30 crore to Rs. 485.34 crore. Thus, due to the imposition of GST Laws, the Petitioner was required to incur an additional expense of Rs. 35.63 crore on the Supply Contract and Erection Agreement executed between the Petitioner and KPTL. The Petitioner has also placed on record an auditor certificate dated 15.9.2021 ratifying the aforesaid amount.

**(c) Impact due to levy of GST/imposition of GST Laws upon the expenses incurred by the Petitioner under the various heads of expenditure**

34. The Petitioner has submitted that during the course of implementation of the Project, the Petitioner itself has also incurred other incidental expenditures including but not limited to engineering services, surveillance services, financial services, etc. and due to the promulgation of GST Laws pursuant to the cut-off date, the expenditure incurred by the Petitioner towards aforesaid services towards the tax component has increased, which was not contemplated by the Petitioner at the time of submitting its bid. The Petitioner indicated that it has incurred additional expenditure during the construction period of Project due to implementation of GST Laws to the tune of Rs. 47,56,923/- which has been duly ratified by the auditor certificate dated 30.12.2021.

**(d) Impact due to levy of GST/implementation of GST Laws on expenditure incurred towards the claims raised by Techno and KPTL**

35. The Petitioner has submitted that pursuant to completion of work, the Petitioner's EPC contractors-Techno and KPTL raised certain claims which were incurred by them during the course of implementation of the Project but the demand of aforesaid additional claims was delayed due to frequent lockdowns and restriction

on travelling imposed by the Government of India and State Governments of Assam, Nagaland and Manipur. The Petitioner has submitted that its Board of Directors approved the additional claims as sought by the EPC contractor after the discussion and deliberation for a few months on 15.11.2021 upon finding them to be genuine and essential for development/implementation of the Project. The Petitioner has submitted that KPTL and Techno had incurred the addition cost on, *inter alia*, piling and foundation strengthening, reconstruction of approach road after rain, recasting of foundation, additional machinery to clear landslide, strengthening the bridge, road due to landslide, etc. and the Petitioner had been required incur the additional tax burden of Rs. 8,13,98,286/- on the additional works undertaken by its EPC contractors during the construction period due to promulgation of GST Laws. The Petitioner has placed on record an auditor certificate dated 12.4.2022 ratifying the aforesaid amount.

**(e) Impact due to levy of GST/implementation of GST Laws on tree/crop compensation paid by KPTL – EPC contractor of the Petitioner**

36. The Petitioner has submitted that as per Clause 3 of the Service Agreement with KPTL dated 28.6.2017, it was KPTL's obligation to obtain the Right of Way clearance for the transmission lines, utility shifting including tree cutting and making payment towards tree, crop, tea garden compensation as per the relevant provisions of the Indian Telegraph Act, 1885 and the Act. Accordingly, KPTL paid the additional tree/ crop compensation as per the revised rates issued by the various authorities of the State and claimed this additional cost from the Petitioner which resulted in the Petitioner incurring GST expenditure of Rs. 2,22,42,336/- on payment of such tree compensation by KPTL. The Petitioner has submitted that the aforesaid impact of the GST Laws is duly ratified by an auditor certificate dated 21.3.2022.



37. We have considered the submissions made by the Petitioner. Change in Law has been defined in Article 12.1.1 as “the occurrence of any of the following after the date, which is seven (7) days prior to the Bid Deadline resulting into any additional recurring/non-recurring expenditure by the TSP or any income to the TSP”. Thus, any event specified in the bullets under Article 12.1.1 which have occurred after the date which is seven days prior to the bid deadline and which result into any additional recurring or non-recurring expenditure to the TSP or income to the TSP shall be covered under Change in Law. The Commission in its order dated 17.12.2018 in Petition No.1/SM/2018 in the matter of “Additional tax burden on transmission licensees on introduction of Goods and Service Tax compensation cess” has held that the introduction of GST with effect from 1.7.2017 constitutes a Change in Law event. In the said order, the Commission has also directed that TSPs shall work out and provide the details of increase or decrease in the tax liability in respect of the introduction of GST to the LTTCs duly supported by the auditor’s certificate and the additional expenditure on account of GST shall be reimbursed by the LTTCs as per the relevant provisions of the TSA. The relevant extract of the order dated 17.12.2018 in Petition No. 1/SM/2018 is reproduced below:

*“27. From the forgoing, it is observed that due to varied nature of such taxes, duties and cess etc. that have been subsumed/abolished on introduction of GST, it is not possible to quantify the resulting impact in a generic manner for all the TSPs. The abolition of taxes, duties, cess, etc. on the introduction of GST are “Change in Law” events and the savings arising out of such “Change in Law” should be passed to the beneficiaries of the TSPs. Similarly, the introduction of GST has also resulted in imposition of new or increase in existing taxes, duties, cess etc. which constitute “Change in Law” events and accordingly the additional impact due to introduction of GST shall be borne by the beneficiaries. The details of the increase or decrease in the taxes, duties, cess etc. shall be worked out by the TSPs and the beneficiaries. The TSPs should provide the details of increase or decrease in the taxes, duties, cess etc. supported by Auditor Certificate and relevant documents to the beneficiaries and refund or recover the amount from the TSPs due to the decrease or increase in the taxes, duties, cess etc. as the case may be. Since the GST liveable on the transmission licensees pertain to the construction period, the impact of GST shall be disbursed by the beneficiaries to the transmission licensees in accordance with the provisions in the TSA regarding relief for Change in Law during construction period. In*

*case of any dispute on any of the taxes, duties, cess etc., the beneficiaries may approach the Commission.*

**Summary**

28. *Summary of our decision in the order is as under:-*

*(a) Introduction of GST with effect from 1.7.2017 shall constitute a Change in Law event if the cut-off date (7days prior to the bid deadline) as per the relevant TSA falls on or after 1.7.2017.*

*(b) The differential between the taxes subsumed in GST and the rates of GST on various items shall be admissible under Change in Law.*

*(c) The TSPs shall work out and provide the details of increase or decrease in the tax liability in respect of introduction of GST to the beneficiaries/Long Term Transmission Customers duly supported by Auditor's Certificate.*

*(d) The additional expenditure on account of GST shall be reimbursed by the beneficiaries/Long Term Transmission Customers as per the relevant provisions of the TSA regarding Change in Law during the construction period or operating period, as the case may be.*

*(e) In case of dispute, either party is at liberty to approach the Commission in accordance with law."*

38. In the present case, as on cut-off date i.e. 18.11.2016, there was no GST. Subsequently, the Parliament and State Legislative Assemblies, in order to introduce a unified indirect tax structure, have introduced a fresh set of taxation laws, which replaced various Central and State level taxes, through various enactments (GST Laws) which came into effect from 1.7.2017. Since the additional recurring and non-recurring expenditure which has been incurred by the Petitioner is through an Act of Parliament after the cut-off date, i.e. 18.11.2016, the same is covered under Change in Law. The relief for additional expenditure incurred by the Petitioner due to introduction of GST on (i) contracts executed with EPC contractor for implementation of Element 1; (ii) contracts executed with EPC contractor for implementation of Element 2 and Element 3, (iii) expenses incurred by the Petitioner during the course of execution of works for implementation of the Project; and (iv) unit rates of tree/crop payments made by its EPC contractors shall be admissible on the capital expenditure incurred as on the commercial operation of the Project. The Petitioner has also placed record the auditor certificates dated 15.9.2021, 30.12.2021,

14.2.2022 and 3.1.2022 indicating the pre and post GST tax implications along with the incremental GST impact under the above four heads. The aforesaid details clearly indicate the applicable GST rates on the various elements under the EPC contracts and the applicable GST @ 18% on the expenses incurred by the Petitioner during course of execution of works and on tree/crop compensation payments made by its EPC contractors.

39. However, insofar as the Petitioner's claim for GST impact on additional claims raised by its EPC contractors to the tune of Rs. 8,13,98,286/- is concerned, as rightly pointed out by the Respondent, AEGCL, the said amount consist of GST impact of Rs. 4,18,14,354/- (Rs. 3,81,77,464 + Rs.36,36,890/-) (as evident from auditor certificate dated 12.4.2022) on the delayed payments by the Petitioner to its EPC contractors, which cannot be passed on the LTTCs/ beneficiaries of the Project. This additional GST liability on the delayed payments by the Petitioner has arisen entirely on account of its own action i.e. delay in approval of the additional claims by its Board of Directors and such self-inflicted additional impact, in our view, cannot be passed on to the LTTCs/ beneficiaries. Insofar as the balance of the additional expenditure incurred under this head, keeping in view the specific submissions of the Petitioner, we approve the additional expenditure due to GST impact as Change in Law relief under the TSA. However, the claim has to be strictly with respect to additional tax expenditure due to introduction of GST i.e. difference of tax incidence between the GST regime and pre-GST regime. While claiming the Change in Law compensation on account of introduction GST Laws, the Petitioner and the LTTCs may carry out the reconciliation of incremental expenditure due to GST impact by taking into account tax rates in Pre-GST regime and post GST regime, exhibiting

clear and one to one correlation with the Project activities and invoices raised as backed by auditor certificate.

**(ii) Increase in unit price for tree/crop compensation**

40. The Petitioner has submitted that pursuant to the cut-off date i.e. 18.11.2016, the cost towards compensation for tree/crop that was considered by the Petitioner at the time of bidding was revised by the concerned/competent local authorities of the respective States in which the Project has been implemented and these competent local authorities of the respective State Government(s) qualify as the Indian Government Instrumentality under the TSA. A district-wise claims of the Petitioner concerning the changes/revisions in unit price for tree/crop compensation are as under:

***(a) Increase in unit rate of tree/crop compensation in State of Manipur***

41. The Petitioner has submitted that on 20.3.2019, the Agricultural Officer, Manipur issued a letter specifying the rate of Paddy (local) fine and Potato (Red local) as Rs. 25/- and Rs. 60/- respectively as rate of compensation as against the rate Rs. 18/- and Rs.50/- respectively prevailing at the time of bidding as intimated by the Agricultural Officer, Manipur itself vide letter dated 25.3.2021. Thus, the compensation for tree/crop were released by KMTL in terms of the rate published by Agricultural Officer, Manipur, vide letter dated 20.3.2019 which were substantially higher from the rates as on 2019. The revision in rates of tree/crop compensation by the Agricultural Officer, Manipur, which is Indian Governmental Instrumentality, is squarely covered within the ambit of the Article 12.1.1 of the TSA and accordingly, the Petitioner is entitled to be granted relief in terms thereof for an additional expenditure of Rs. 20,39,287/- incurred by the Petitioner towards a Change in Law event.

***(b) Increase in unit rate of tree/crop compensation in Kohima, Nagaland***

42. The Petitioner has submitted that on 1.5.2018, a meeting was convened for fixation of rate to be paid for damage to land along with tree/crop compensation in Kohima District and pursuant to which the Office of Deputy Commissioner, Kohima issued minutes of aforesaid meeting dated 2.5.2018 basis which the Petitioner was releasing the tree/crop compensation at the rates deliberated in the said meeting. However, on 16.2.2019, the Office of Deputy Commissioner, Kohima notified the rate for compensation for damages of tree/plantation/land within Kohima and the rate stipulated therein were higher than the prevailing rates which were deliberated in the meeting held on 1.5.2018. Thus, the Petitioner is entitled to be granted relief in terms of Article 12.1.1. of the TSA towards the additional expense of Rs. 11,39,555/- incurred by the Petitioner towards the Change in Law event i.e. revision of tree/crop compensation by the Deputy Commissioner, Kohima.

***(c) Increase in unit rate of tree/crop compensation in Wokha, Nagaland***

43. The Petitioner has submitted that as on 23.1.2014 i.e. prior to the cut-off date, the Deputy Commissioner, Wokha had issued the rates for tree/crop compensation which were considered by the Petitioner while submitting its bid. However, on 18.1.2019, upon the request/representation of the land owners for revision in tree/crop compensation, a meeting was held on 12.3.2019 among the Deputy Commissioner and the land owners in which the discussions took place regarding, *inter alia*, revision in crop/tree compensation and the rates demanded by the land owners were unanimously agreed to and thereafter, on 3.4.2019, the revised rates were published by the Deputy Commissioner, Wokha. The said rates were, however, partially modified by the Office of Deputy Commissioner, Wokha on 21.5.2019. The Petitioner has submitted that it has been required to incur an additional expenditure

to the tune of Rs. 9,97,97,630/- due to change in unit rates of tree/crop compensation post the cut-off date by the Deputy Commissioner, Wokha and accordingly, the Petitioner is entitled to be granted relief in terms of Article 12.2.1 of the TSA for the above additional expenditure incurred due to Change in Law event.

***(d) Increase in unit rate of tree/crop compensation in Jorhat, Assam***

44. The Petitioner has submitted that at time of submission of bid it had considered the rates of crop/tree unit compensation as published by the Additional Deputy Commissioner, Jorhat on 7.8.2014. However, in response to the Petitioner's request to Circle Officer, Mariani Revenue Circle, Jorhat and District Agricultural Officer, Jorhat dated 6.10.2017 to provide the rates for land, tree and crop compensation in Jorhat Revenue Circle, the Deputy Commissioner vide its letter dated 9.7.2018 provided the rates as notified on 30.6.2018, which revised rates as published earlier on 7.8.2014. Thus, the Petitioner is entitled to be granted relief in terms of Article 12.2.1 of the TSA towards the addition expense of Rs. 2,05,92,061/- incurred by it towards Change in Law event i.e. revision of tree/crop compensation by Deputy Commissioner, Jorhat post the cut-off date.

***(v) Increase in unit rate of trees/crop compensation in Golaghat, Assam***

45. The Petitioner has submitted that at the time of bid, the tree/crop compensation payable by the Petitioner was based on the unit/zirat values which were fixed in the year 2013 and the unit/zirat rates of crop compensation applicable in Golaghat district were intimated to the Petitioner by the District Agricultural Officer, Golaghat vide letter dated 7.9.2017 and by the Deputy Commissioner, Golaghat vide letter dated 21.12.2017, which were considered by the Petitioner for releasing the compensation for tree/crop. Thereafter, the amount towards tree compensation was revised in the meeting held on 29.10.2020 at Golaghat, which

was presided by the Deputy Commissioner, Golaghat, on the basis of report of all concerned officers including circle officers of Golaghat, District Agricultural Officer and Divisional Forest Officer, Golaghat and further vide letter dated 16.1.2021, the Deputy Commissioner directed the Petitioner to pay the compensation value as per Zirat value fixed on 29.10.2020 for all tree/crop compensation for the Project since its implementation. Accordingly, the Petitioner is entitled to be granted relief in terms of Article 12.2.1 of the TSA towards additional expenditure of Rs. 2,59,71,036/- incurred by it towards Change in Law event i.e. revision of tree/crop compensation by Deputy Commissioner, Golaghat. The Petitioner has also submitted that the lead LTTC, AEGCL vide its letter dated 17.3.2021 also issued no objection to payment of revised compensation as assessed by the District Administration of Golaghat within the purview of TSA.

46. The Petitioner has submitted that in all it has incurred an additional expense of Rs. 14,95,39,569/- due to increase in unit rates of tree/crop issued by the various administrative offices of the States of Manipur, Nagaland and Assam, which have been duly ratified by an auditor certificate dated 3.1.2022.

47. *Per contra*, the Respondent, AEGCL has submitted that as per Article 5.1.2 and Article 5.1.4 of the TSA, the Petitioner shall be responsible for acquisition of land and other allied works including the acquisition of land for location specific sub-station and seeking access to the site and other places where the Project is being executed at its own costs including payment of any crop compensation or any other compensation as may be required. Accordingly, the Change in Law claims of the Petitioner for land compensation and increase in unit rate for tree/crop compensation cannot be allowed under Change in Law.

48. We have considered the submissions made by the parties. As such there cannot be any dispute to the fact that the provisions of the Act as well as the Telegraph Act providing for payment of compensation/damages in course of implementation of transmission project were already there as on the cut-off date and accordingly, the Petitioner was required to factor into such amount at the prevalent rates in its quoted tariff. However, the Petitioner cannot be expected to factor into any subsequent changes/revision thereof post its submission of bid and such changes/revision effected by the competent authority, which qualifies to an Indian Governmental Instrumentality under the TSA, amount to a Change in Law for which the Petitioner has to be held entitled to an appropriate compensation as per the provisions of the TSA for the incremental expenditure incurred by the Petitioner. In view of the above, we now proceed to examine the district/State-wise claims of the Petitioner concerning such change/ revision in the unit price for tree/crop compensation.

49. We have considered the submissions of the Petitioner and perused the letters of Agricultural Officer, Government of Manipur, Department of Agriculture dated 20.3.2019 and dated 25.3.2021 as relied upon by the Petitioner. It is noticed that the Agricultural Officer, Manipur vide its letter dated 20.3.2019 has only specified the per kg rates of certain crops including Paddy (local) fine and Potato (red) local as on 20.3.2019 at the Imphal Khwai Bazar. Similarly, at the request of the Petitioner, the Agricultural Officer, Manipur vide its letter dated 25.3.2021 has only provided the per kg rates of above two crops in the year 2016. However, nowhere these letters indicate that per kg rates specified by the Agricultural Officer are the notified/regulated rates applicable for the paying the crop compensation to the



affected land owners. On the contrary, the letter dated 20.3.2019 indicates that rates specified for the crops therein are the prevailing rates at the Imphal Khawi Bazar. The letters of Agricultural Officer merely specifying the applicable/prevaling rates of the certain crops at the Bazar cannot be construed as revision/increase in such rate by such Agricultural Officer or an Indian Governmental Instrumentality attracting the provision of Change in Law. The change/revision in the rate of crops at market over a period of time – driven by the market forces and not by an Indian Government Instrumentality - cannot come within the purview of the Change in Law. Accordingly, the Change in Law claim of the Petitioner on this count is rejected.

50. With regard to Kohima, Nagaland, the Petitioner has submitted that it was releasing the tree/crop compensation in terms of the rates deliberated in a meeting held on 1.5.2018 with Deputy Commissioner, Kohima. However, subsequently, on 16.2.2019, the Office of Deputy Commissioner, Kohima, Nagaland notified the rates for compensation for damage of tree/plantation/land within Kohima which were higher than the rate that were deliberated in the meeting held on 1.5.2018 and the consequently, the Petitioner has been required to incurred the additional expenditure to tune of Rs.11,39,555/- due to revision of tree/ crop compensation by the Deputy Commissioner, Kohima. We have considered the submissions of the Petitioner and have examined the minutes of the meeting held on 1.5.2018 and letter of Office of Deputy Commissioner, Government of Nagaland, Kohima dated 16.2.2019.

51. We have considered the submissions of the Petitioner and have examined the minutes of the meeting held on 1.5.2018 and the notification of Office of Deputy Commissioner, Government of Nagaland, Kohima dated 16.2.2019. Vide notification dated 16.2.2019, the Office of Deputy Commissioner, Kohima revised the per unit

rate of tree/compensation that had been fixed in meeting held on 1.5.2018 and this led to the increase in per unit rate of tree/crop compensation to be payable by the Petitioner. Since such increase is post the cut-off date and the Deputy Commissioner – an Indian Government Instrumentality, such revision in per unit rate of tree/crop compensation would squarely fall under the Change in Law provision under the TSA. Thus, the Petitioner will be entitled to Change in Law compensation as provided in the TSA for the additional expenditure incurred by it due to revision/increase in the rates of tree/crop compensation by the Deputy Commissioner, Kohima in terms of its Notification dated 16.2.2019 as issued post the cut-off date.

52. With regard to Wokha, Nagaland, the Petitioner has submitted that as on the cut-off date, the applicable rates for tree/crop compensation were as per the notification of the Deputy Commissioner, Wokha dated 23.1.2014. However, subsequently, the rates specified therein were revised by the Deputy Commissioner on 3.4.2019 pursuant to representation made by the land owners and a meeting held on 12.3.2019 in this regard. The Petitioner has also submitted that rates specified by the Deputy Commissioner on 3.4.2019 were subsequently, partially modified on 21.5.2019 and both these notifications of Deputy Commissioner, Wokha dated 3.4.2019 and 21.5.2019, which led to the additional expenditure to the Petitioner to tune of Rs. 9,97,97,630/- amount to Change in Law. We have considered the submissions of the Petitioner and also perused the various letters of Deputy Commissioner, Wokha relied upon by the Petitioner. It is noticed that at the time of bidding, the applicable rates of compensation for damages to the tree/plants within the Wokha District were governed in term of the Notification of the Office of Deputy Commissioner, Wokha dated 23.1.2014. Accordingly, the Petitioner was required to factor into the tree/crop compensation at such rate in quoted tariff. However,

subsequently, in view of the representation of the land owners with regard to the insufficient/lower rates, the Deputy Commissioner, Wokha vide Notification dated 3.4.2019 notified the revised rates of compensation for damages to crops/trees/ plantation/orchard within the Wokha district. These revised rates, thereafter, were further partially modified by the Deputy Commissioner vide Notification dated 21.5.2019. The Deputy Commissioner, Wokha is an Indian Government Instrumentality as defined in the TSA and the revision in the unit rate of tree/ crop compensation by the Deputy Commissioner in terms of the Notification issued by it squarely fall within the definition of Change in Law. Accordingly, the Petitioner will be entitled to Change in Law compensation as provided in the TSA for the additional expenditure incurred by it due to revision/increase in the rates of tree/crop compensation by the Deputy Commissioner, Wokha in terms of its Notification dated 3.4.2019 and 21.5.2019 post the cut-off date.

53. With regard to Jorhat, Assam, the Petitioner has submitted that as on cut-off date, the prevalent rates for crop/tree compensation as published by the Additional Deputy Commission on 7.8.2014 were considered by the Petitioner. However, subsequently, in response to the request of the Petitioner to Circle Officer, Jorhat and District Agriculture Officer, Jorhat along with Additional Deputy Commissioner, Jorhat to provide rates for land, tree and crop compensation in Jorhat, the Deputy Commissioner vide its letter dated 9.7.2018 provided that rates as notified on 30.6.2018, which is higher than the rates specified on 7.8.2018 and this led to the additional expenditure of Rs. 2,05,92,061/- due to such revision in tree/crop compensation amount by the Deputy Commissioner, Jorhat.

54. We have considered the submissions made by the Petitioner. The Petitioner has submitted that at the time of bidding, it had factored into the tree/crop compensation at the rate as specified/ published by the Additional Deputy Commissioner in the meeting held on 7.8.2014. However, subsequently, when the Petitioner sought the applicable rates from the concerned authorities, the Deputy Commissioner, Jorhat vide its letter dated 9.7.2018 provided the Petitioner the revised rates notified on 30.6.2018. There cannot be any dispute on the aspect that the revision in the tree/crop compensation by the Deputy Commissioner, Government of Assam, Jorhat post the cut-off date would amount to Change in Law and for the incremental expenditure incurred by the Petitioner due to such revision in rates, the Petitioner is entitled to compensation as provided in the TSA. However, it is observed that the rates of compensation for trees/crops as fixed by the Additional Deputy Commissioner, Government of Assam, Jorhat vide minutes of meeting held on 7.8.2014 were in connection to the acquisition of land for NH-37 four-laning and other land acquisition matters. Hence, prior to claiming Change in Law relief for the additional expenditure incurred under this head, the Petitioner shall satisfy the LTTCs in this regard and shall furnish the details to the LTTCs, that the rates fixed in the year 2014 continued to remain valid till the cut-off date i.e. 18.11.2016. In other words, the Petitioner shall undertake that there had been no revision in the rates of compensation for tree/crops as specified vide minute of meeting held on 7.8.2014 till 18.11.2016 in respect of any land acquisition/ transmission line projects and in the event, there had been any changes in the said rates for the subsequent land acquisition projects prior to 18.11.2016, the Petitioner shall liable to revise its Change in Law claim accordingly.

55. With regard to Golaghat, Assam, the Petitioner has submitted that it had been communicated the applicable rates of crop compensation by the District Agricultural Officer, Government of Assam, Golaghat and Deputy Commissioner, Government of Assam Golaghat vide their letters dated 7.9.2017 and 21.12.2017 respectively and the said rates were fixed back in year 2013. Thereafter, the amount towards tree compensation was revised on 29.10.2020 in a meeting presided by the Deputy Commissioner, Golaghat and, the Deputy Commissioner vide its letter dated 16.1.2021 directed the Petitioner to pay the compensation as per the rates fixed on 29.10.2020 for all tree/crop compensation for the Project since its implementation. The Petitioner has submitted that due to the above revision of tree/crop compensation by the Deputy Commissioner, Golaghat, it has been required to incur the additional expenditure of Rs. 2,60,00,000/-.

56. We have considered the submissions made by the Petitioner. The Petitioner has stated that at the time of submission of bid, it had considered the tree/crop compensation rates fixed in year 2013, which was communicated to it by the concerned officials vide their letters dated 7.9.2019 and 21.12.2017 and on this basis, the Petitioner was releasing the tree/crop compensation. However, the Deputy Commissioner, Golaghat, in a meeting held on 29.10.2020, revised the said rates on the basis of the reports of all concerned officers including circle officers, District Agricultural Officer and Divisional Forest Officer, etc. Further, the Deputy Commissioner vide its letter dated 16.1.2021 directed the Petitioner to pay the compensation at values fixed on 29.10.2020 for all tree/crop compensation for the Project since its implementation. The revision in the rates of tree/crop compensation by the Deputy Commissioner, Golaghat, an Indian Government Instrumentality, after the cut-off date squarely amounts to a Change in Law event under the TSA.

Accordingly, the Petitioner shall be entitled to the Change in Law relief under the TSA for the additional expenditure incurred by it due to revision in the rates of tree/crop compensation by the Deputy Commissioner, Golaghat post the cut-off date.

### **Land Compensation**

57. The Petitioner has submitted that in the year 2015, the MoP vide Guidelines, 2015, *inter-alia* requested all States/UTs to take a suitable decision regarding adoption of the MoP Guidelines, 2015. The MoP Guidelines were issued for determining the compensation for land considering that the acquisition of land is a State subject under the Constitution and as on cut-off date i.e. 18.11.2016, the MoP Guidelines were not implemented by the Governments of Assam, Manipur and Nagaland i.e. the States where in the Project has been implemented. However, pursuant to the cut-off date, the Governments of Assam, Manipur and Nagaland published separate notification by way of which MoP Guidelines, 2015 for payment of land compensation were adopted and these notifications have significantly affected the amount incurred by the Petitioner towards the land compensation.

58. The Petitioner has submitted that on 10.3.2017, the Government of Assam vide Notification published in the State Gazette, notified the rates for payment of compensation towards damages in regard to RoW for transmission line. The Assam Notification specified the payment methodology of compensation towards “damages” as stipulated in Section 67 and Section 68 of the Act read with Section 10 and Section 16 of Indian Telegraph Act, 1885. The said notification, *inter-alia*, stipulated (i) compensation @ 85% of the land value as determined by the Deputy Commissioner/BTC or any other competent authority based on Circle rate/Guideline value /Stamp Act rates for tower base area impacted severely due to installation of tower/pylon structure, and (ii) compensation towards diminution of land value in the

width of RoW corridor due to laying of transmission line and imposing certain restriction at a maximum rate of 15% of land value as determined by Deputy Commissioner or any other competent authority based on Circle rate/Guideline value/ Stamp Act rates.

59. The Petitioner has submitted that on 28.3.2018, Government of Manipur also notified the methodology for payment of compensation towards damages with regard to RoW and provided the compensation on the similar line as provided under the notification issued by the State of Assam. The Petitioner has submitted the said notification, has been said to be applicable only for those new transmission lines/projects and on remaining portion of on-going transmission lines/project from the date of issuance of the said notification.

60. The Petitioner has submitted that on 16.2.2019, the Office of Deputy Commissioner, Kohima notified the rates of compensation for damages to tree/plantation/land and in the said notification, it was, *inter-alia*, stipulated that (i) land rates to be compensated in full (i.e. 100%) as determined by the rates fixed, (ii) damage around the RoW corridor to be compensated for as per existing rates, and (iii) approach road, damage compensation will be given to the landowners. The Petitioner has submitted that though the Deputy Commissioner, Kohima incorporated MoP Guidelines, 2015, however, the same was applied with certain modifications i.e. the compensation for foundation with respect to the Petitioner was increased from nil to 100% as while incorporating the rates, it was stated that the compensation paid for damage to the land shall be 100% and there was no mentioning about any payment for stringing work. The Petitioner has submitted that on 3.4.2019, the



Deputy Commissioner, Wokha also notified the rates of compensation for damages for crop/trees/plantation/orchard/land.

61. The Petitioner has submitted that the above notifications issued by the State Governments of Assam, Nagaland and Manipur required the compensation to be made to the land owners so as to obtain consent and clearance for the execution of the Project and as such fulfil the requirement of provisions of Article 12.1.1 of the TSA. The Petitioner has further submitted that the Commission has upheld the notifications for land compensation issued by the State Governments beyond the cut-off date as being a Change in Law events in its various orders including order dated 25.1.2021 in Petition No. 265/MP/2020 (PWTL v. MSEDCL and Ors.), order dated 29.1.2021 in Petition No. 264/MP/2020 (PPTL v. MSEDCL and Ors.), order dated 16.6.2021 in Petition No. 453/MP/2019 (STL v. MSEDCL and Ors.) etc. The Petitioner has submitted that, on reconciliation of account towards payment of land compensation upto 30.9.2021, the actual amount disbursed to the beneficiaries by the Petitioner is Rs. 72,27,26,076/- which has been duly ratified by an auditor certificate.

62. We have considered the submissions made by the parties. The aspect as to the notification/order issued by the State Government notifying the uniform rate of land compensation (for tower base & RoW along the corridor) for construction of transmission line in the State thereby adopting/implementing the rates of compensation recommended under the MoP Guidelines dated 15.10.2015, whether constitutes a Change in Law or not, has been considered by the Commission in its various orders. In this regard, we may refer to the order dated 25.1.2021 in Petition No.265/MP/2020 in the matter of Power Grid Warora Transmission Ltd. v. MSEDCL

and Ors. The relevant portion of the said order dated 25.1.2021 is extracted as under:

*“57. In the present case, as on cut-off date, the prevalent Policy governing the land compensations for laying of transmission line in the State of Maharashtra was the Government Order No. Sankirna 021/Pra.Kra.29/Urja-4 issued by Industry, Power & Labour Department, Govt. of Maharashtra dated 1.11.2010. According to the said GR of 2010, compensation for tower base was categorized into four categories – 25% of market value for dry irrigated lands, 50% of market value for wet irrigated lands, 60% of market value for irrigated and fruit bearing land and 65% of market value for non-agricultural land, while there was no provision for land compensation along the corridor of transmission line. However, as per Policy issued by Industry, Power & Labour Department, Government of Maharashtra, vide Government Order No.Dhoran-2016/Pra.Kra.520/Urja-4 dated 31.5.2017, compensation for tower base is required to be paid at twice the total amount of ready reckoner rate/ market rate irrespective of type of land and in addition 15% of the total amount of ready reckoner rate/ market rate for the transmission line corridor (except for the Brihan Mumbai Municipal corporation and its suburban area). Similarly, in the State of Madhya Pradesh, there was no provision of land compensation for tower base and corridor of transmission line as on cut-off date. However, subsequently as per the ‘Guidelines’ issued by the Revenue Department, Government of Madhya Pradesh vide Circular No. R/3283/2016/7/2A dated 11.5.2017, the compensation for tower base @85% of market value of land and the compensation for the transmission line corridor @15% of the market value of land are required to be paid.*

*58. MPPMCL has submitted that the documents of the Governments of Maharashtra and Madhya Pradesh relied upon by the Petitioner are not ‘notifications’ and don’t qualify to be ‘Law’ under the TSA and are merely general Guidelines. Perusal of both these documents i.e. Policy dated 31.5.2017 issued by the Government of Maharashtra vide Government Order No. Dhoran- 2016/Pra.Kra.520/Urja-4 and Guidelines dated 11.5.2017 issued by Government of Madhya Pradesh vide Circular No. R/3283/2016/7/2A reveals that these are directions of the State Governments which are binding on the State authorities for determination of compensation for transmission lines.*

*61. Thus, ‘Law’ under TSA includes any statute, ordinance, rule, regulation, notification, order or code or any interpretation of any of them by an Indian Governmental Instrumentality having force of law. Therefore, the Policy dated 31.5.2017 issued by Industry, Power & Labour Department, Government of Maharashtra vide an order bearing No.:Dhoran-2016/Pra.Kra.520/Urja-4 dated 31.5.2017 and ‘Guidelines’ dated 11.5.2017 issued by the Revenue Department, Government of Madhya Pradesh would qualify as ‘Law’ under the TSA and their introduction/ implementation being after the cut-off date in the present case, qualify them as a Change in Law event in terms of Article 12.1.1 of the TSA.*

*62. In contrast with the MoP's Guidelines, Policy/ Guidelines issued by the Government of Maharashtra/ Madhya Pradesh are not merely recommendatory or are general guidelines, rather their provisions are to be applied by the State authorities mandatorily. In other words, the Policy/ Guidelines issued by the State Governments prescribing the rates of land compensation for laying of transmission lines have force of law.*

*64. In light of the above, we are of the view that Policy and Guidelines issued by the Governments of Maharashtra and Madhya Pradesh respectively regarding land*

compensation constitute Change in Law in terms of the TSA and accordingly, the Petitioner is entitled to increase in transmission charges on account of additional expenditure incurred towards payment of land compensation in terms of the above policies....”

63. In the present case, the Petitioner has submitted that prior to the cut-off date, the competent authorities were not awarding the land compensation for construction of transmission line in the States of Assam, Manipur and Nagaland. However, it is noticed that pursuant to the cut-off date, the Government of Assam vide Notification No.PEL.219/201/91 dated 10.3.2017, as published in the State Gazette on 16.5.2017, adopted the methodology for payment of compensation towards damages in regard to RoW for transmission lines as recommended under the MoP's Guidelines dated 15.10.2015 and stipulated (i) compensation @ 85% of land value as determined by the Deputy Commissioner or any other competent authority based on Circle rate/ Guideline Value/ Stamp Act rates for tower base area impacted severely due to installation of tower, and (ii) compensation towards diminution of land value in the width of RoW corridor due to laying of transmission line at a maximum rate of 15% of land value as determined by Deputy Commissioner or any other competent authority based on the Circle rate/Guideline value/ Stamp Act rates. Further, the said Notification was made effective from the date of MoP Guidelines i.e. 15.10.2015 and was made applicable for the new transmission lines/projects where constructions have started after 15.10.2015. Thus, the Project of the Petitioner was squarely covered under the said Notification. The Government of Assam qualifies to be an Indian Government Instrumentality and the above Notification as “Law” under the TSA. Thus, the said Notification issued by the Government of Assam, post the cut-off date, stipulating the uniform rate of the land compensation to be payable in respect of the implementation of transmission lines, in our view, squarely qualifies to be a Change in Law under the TSA and accordingly, for the land compensation paid

by the Petitioner under/in terms of the said Notification, the Petitioner is entitled to Change in Law relief as provided in the TSA. Similarly, the Notification issued by the Government of Manipur dated 28.3.2018, whereby the Government of Manipur also adopted the methodology for payment of compensation towards damages in regard to RoW for transmission lines as recommended under the MoP's Guidelines dated 15.10.2015 for the State of Manipur and stipulated the compensation at the rates similar to the rates for State of Assam as noted above, post the cut-off date, constitutes a Change in Law under the provision of TSA. Consequently, the Petitioner will also be entitled to the Change in Law relief as stipulated in the TSA for the additional expenditure towards land compensation paid under/in terms of Notification dated 28.3.2018 of Government of Manipur.

64. Similarly, for the State of Nagaland, the Government of Nagaland, through Deputy Commissioners, Kohima & Wokha vide Notifications dated 16.2.2019 and 3.4.2019 also notified for the first time the applicable rate, for land compensation for laying of transmission line within the respective district. Thus, the Notifications by Deputy Commissioners, Kohima & Wokha have force of law and would thus qualify as 'Law' under the TSA. We wish to add that the Collector including the Deputy Commissioner represents "The State" within the meaning of Section 80 of the Civil Procedure Code. The introduction of new compensation mechanism by Deputy Commissioner Notifications being after the cut-off date in the present case would qualify as a Change in Law event in terms of Article 12.1.1 of the TSA. Accordingly, the Petitioner is entitled to additional expenditure against land compensation paid by it in terms of the aforesaid Notifications under the Change in Law.

65. The Commission observes that the Petitioner in the present Petition has not made any submission as regards compensation considered towards normal crop and damages in terms of Section 67 and Section 68 of the Act read with Section 10 and Section 16 of Indian Telegraph Act, 1885 or any other legal/policy framework of the State at the time of submission of the bid. The Petitioner has also not submitted any of the orders of District Collector/Magistrate or any other State Authority to justify the cost considered at the time of submission of the bid over and above which the additional recurring/non-recurring expenditure needs to be considered under the Change in Law provisions of the TSA. Further, the said information has not been submitted for any of the three States under consideration herein. However, the Petitioner has submitted that prior to the cut-off date, the competent authorities were not awarding the land compensation for construction of transmission line in the States of Assam, Manipur and Nagaland.

66. Accordingly, it would be impossible to ascertain the incremental impact of aforesaid Change in Law notifications. As per the TSA, only *'additional recurring/non-recurring expenditure by the TSP'* can be allowed under Change in Law. It is the bidder's responsibility to establish before the Commission the incremental expenditure it had to incur on account of a Change in Law event. The Commission cannot allow the entire RoW compensation on account of issuance of aforesaid notifications in the three States based on the submission of the Petitioner that, prior to the cut-off date, the competent authorities were not awarding the land compensation for construction of transmission line in the States of Assam, Manipur and Nagaland. It is inconceivable that the transmission licensee did not incorporate land compensation in the bid for all the three States. Even in the order dated 25.1.2021 in Petition No.265/MP/2020 quoted as above, the Commission allowed

incremental expenditure over and above the prevalent Policy dated 1.11.2010 governing the land compensations for laying of transmission line in the State of Maharashtra i.e. Government Order No. Sankirna 021/Pra.Kra.29/Urja-4 issued by Industry, Power & Labour Department, Govt. of Maharashtra. Accordingly, while the Government Notifications have been allowed as Change in Law, only additional expenditure over and above what was incorporated in the bid shall be allowed under Change in Law.

67. In light of the above, the Petitioner, while claiming the additional land compensation on account of the aforesaid Notifications of the State Government (after the bid submission) shall furnish an undertaking to the LTTCs on an affidavit disclosing the applicable land compensation rates being considered by the concerned authorities as on the cut-off date and/or the land compensation having been factored into by the Petitioner at the time of placing of its bid. It would be incumbent upon the Petitioner to deduct such amount from its total land compensation claims based on the Notifications/ Orders existing at the time of bid submission.

### **Carrying Cost**

68. The Petitioner has prayed for interest/carrying cost @ 18% per annum from the effective date of Change in Law event until the same is allowed by the appropriate authority by an order/judgment and thereafter, till the date of payment of the increase amount incurred towards the Change in Law events by the Respondents to the Petitioner. The Petitioner has submitted that carrying cost is the nature of compensation for money denied at the appropriate time as held by the APTEL in the judgment dated 20.12.2012 in Appeal No. 150 [SLS Power Ltd. v. APERC] and in the judgment dated 13.4.2018 in Appeal No. 210 of 2017 [Adani

Power Ltd. v. CERC & Ors.]. It is also submitted that the Hon'ble Supreme Court in the case of Uttar Haryana Bijli Vitran Nigam Ltd. v. CERC and Anr. [(2019) 5 SCC 325] has upheld the judgment of APTEL dated 13.4.2018 in Appeal No. 210 of 2017 and allowed carrying cost to the generation company in terms of Article 13.2 of the PPA therein. The Petitioner has submitted that failure to grant the carrying cost would defeat the underlying principle of restitution and render the Change in Law otiose. It is settled law that compensation under Change in Law is based on the principle of restitution of the party to the same financial position which as per settled principle of law includes carrying cost from the date of impact. Therefore, as a relief for the occurrence of Change in Law event, the Petitioner is entitled to claim carrying cost, specifically in view of the principle of restitution inbuilt/envisaged in Article 12 of the TSA and the general law applicable to the grant of carrying cost/interest.

69. We have considered the submissions made by the Petitioner. The issue of entitlement of carrying cost in terms of the provisions of the TSA had been considered by the Commission vide its order dated 16.6.2021 in Petition No. 453/MP/2019, wherein the Commission disallowed carrying cost in absence of the restitutionary principle in the TSA. However, the said order was challenged by the licensee before the APTEL in Appeal No. 238 of 2021 wherein the APTEL vide its order dated 27.9.2019 remitted the said issue back to the Commission for re-examination/fresh visit in view of the law declared by the Hon'ble Supreme Court and by the APTEL on the subject matter including vide judgment dated 15.9.2022 in Appeal No. 256 of 2019 & batch in the case of Parampujya Solar Energy Private Ltd. v. CERC and Ors. ('Parampujya Case').



70. The Commission in Petition No. 453/MP/2019 had examined the matter after hearing the parties. The Commission vide its order dated 15.2.2023 allowed the carrying cost subject to outcome of the decision of the Hon'ble Supreme Court in Civil Appeal No. 8880 of 2022 in the case of Telangana Northern Power Distribution Company Ltd. & Anr. V. Parampujya Solar Energy Pvt. Ltd. & Ors. Relevant portion of the said order dated 15.2.2023 is extracted as under:

*“31. We have considered the submissions made by the Petitioner and Respondents with regard to carrying cost. The Commission had denied carrying cost in the impugned order relying on judgement dated 13.4.2018 in Appeal No. 210 of 2017 in Adani Power Limited v. Central Electricity Regulatory Commission and Ors, wherein it was held that since Gujarat Bid-01 PPA had no provision for restoration to the same economic position, the decision of allowing carrying cost will not be applicable. However, the APTEL has differentiated its earlier judgment dated 13.4.2018 in the matter of Adani Power Limited v. CERC & Ors. (Appeal No. 210 of 2017) in the case of Parampujya judgment to allow carrying cost in the following manner:*

*“51. The PPAs contain identical terms on the subject of “Relief for Change in Law” in the following form:*

*“12.2.1 The aggrieved Party shall be required to approach the Central Commission for seeking approval of Change in Law.*

*12.2.2 The decisions of the Central Commission to acknowledge a Change in Law and the date from which it will become effective, provide relief for the same, shall be final and governing on both parties.”*

*[Emphasis supplied]*

71. Restitution is a principle of equity which is generally invoked by the adjudicatory authorities – Courts and Tribunals – to render substantial justice and, in this context, we may quote the following observations of Supreme Court in judgment reported as *South Eastern Coalfields Ltd v. State of Madhya Pradesh & Ors. (2003) 8 SCC 648:*

.....  
72. As ruled in above mentioned case, absence of prohibition in law or contract against award of interest to recompense for delay in payment is also significant. As already quoted earlier, in the case of *Uttar Haryana Bijli Vitran Nigam Ltd(supra)*, the Supreme Court has upheld the view that in terms of restitutionary principle, the affected party is to be given the benefit of restitution “as understood in civil law.

73. The claim arising out of change in law provisions, across all kinds of PPAs under bidding route, is essentially a claim for compensation, the objective being to relieve the affected party of the impact of change in law on its revenues or cost or by way of additional expenditure. The word “compensation” simply means anything

given to make things equal in value, anything given as an equivalent, to make amends for loss or damage.

74. As has been pointed out, carrying cost, wherever allowed, has been granted generally at the rate of interest prescribed for Late Payment Surcharge (“LPS”) in as much as, it also relates to amount paid towards deferred payments. Hon’ble Supreme Court in a recent decision rendered on 24.08.2022 in *Uttar Haryana Bijli Vitran Nigam Ltd. &Anr. v. Adani Power (Mundra) Ltd. &Anr.* 2022 SCC OnLine SC 1068, has observed that since the funds arranged by the developer are based on interest rate framework followed by scheduled commercial banks, the affected developer ought to be compensated in the same way.

75. The cardinal rule of interpretation is that words have to be read and understood in ordinary, natural and grammatical meaning. [S. Ganapathraj Surana v. State of T.N. 1993 Supp (2) SCC 565]. The crucial words are “provide relief”. The word relief is defined by Black’s Law Dictionary as under:

“Deliverance from oppression, wrong, or injustice. In this sense it is used as a general designation of the assistance, redress, or benefit which a complainant seeks at the hands of a court, particularly in equity. It may be thus used of such remedies as specific performance, or the reformation or rescission of a contract.”

76. The meaning of the expression “relief”, explained in P Ramanatha Aiyar’s *Advanced Law Lexicon* is similar:

“Relief:

(a) Deliverance from some hardship, burden or grievance; legal redress or remedy; the lightening or removal of any burden.

(b) Aid or assistance given to those in need, especially, financial aid provided by the state.

(c) The redress or benefit, especially equitable in nature (such as an injunction or specific performance), that a party asks of a Court.—Also termed remedy. (Black, 7th Edn., 1999)

(d) Legal remedy for wrongs.

(e) “Relief” means the remedy which a Court of Justice may afford in relation to some actual or apprehended wrong or injury. [ 5 A. 345 (FB)]

(f) The word “relief” necessarily implies the pre-existence of a wrong. An action is not given to one who is not injured, ‘actio non datur non dammi ficato’. [33 Bom. 509 : 11 Bom LR 85 : 5 MLT 301 : 2 IC 701 ]”

77. \*\*\*\*\*

78. The use of the word “relief” in the context of adjudicatory process, simply means the remedy which the adjudicatory forum may afford “in regard to some actual or apprehended wrong or injury” or something which a party may claim as of right, or making the affected party “feel like easing out of ... hardship”. [Sarsuti v. Kunj Behari Lal, 1883 SCC On Line All 85; Santhamma v. Kerala State 2019 SCC On Line Ker 1265; Commissioner of Income-Tax v. R.B. Jodhamal Kuthiala, 1963 SCC On Line Punj 403; Dipti Aggarwal v. Ashish Chandra, 2017 SCC OnLine Cal 8835; Mewar

*Sugar Mills Ltd. v. Chairman Central Board of Direct Taxes and Ors. (09.10.1998 - DELHC)]. In Kavita Trehan v. Balsara Hygiene Products Ltd AIR (1995) SC 441, it was held by the Supreme court that jurisdiction to make restitution is inherent in every court and can be exercised whenever justice of the case demands.*

79. *While construing the contract, purposive interpretation of its terms is requisite [Nabha Power Limited vs. Punjab State Power Corporation Limited & Anr. (2018) 11 SCC 508]. This principle must be borne in mind while comprehending the scope and width of expression “provide relief” used in Article 12.2.2 in the PPA. For this, the statutory framework, as indeed the contractual clauses, will have to be kept in consideration.*

80. *The Central Commission is the sector regulator vested with wide powers to act in furtherance of the objectives enshrined in the Electricity Act, 2003. Section 61 of the said enactment guides its functions expecting the authorities established by this legislation to follow “commercial principles”, act so as to ensure optimum returns on the investments, promote generation from renewable sources of energy and, most importantly, strike a balance between consumers’ interest and recovery of cost of electricity in a reasonable manner.....*

81. *It is in this light that Hon’ble Supreme Court in the case of Energy Watchdog (supra) ruled, albeit in the context of Section 63, that the Regulatory Commission must exercise its functions in accordance with law and guidelines and in situations where no such guidelines exist, it may avail of its “general regulatory powers” under Section 79(1)(b).*

82. *We have already noted that the PPAs which were subject matter of decisions in the case of Adani Power Ltd (supra) and GMR Warora Ltd (supra) contained change in law clauses structured differently from the shape in which they occur in the present PPAs, the words “provide relief” not having been used in the former. The judgment dated 13.04.2018 of this tribunal in Adani Power Ltd.(supra) did not even consider the question as to whether the principle of time value of money would apply in examining the impact of change in law once change in law had been approved. The said decision for present purpose is, thus, sub silentio. When the judgment in the said case was carried in appeal to the Hon’ble Supreme Court leading to decision reported as Uttar Haryana Bijli Vitran Nigam Ltd (UHBVNL) (supra), the challenge was not in relation to what had been denied by this tribunal as the first appellate forum and, therefore, it is not correct to say that the issue stands settled by the said judgment. We are, at the same time, conscious of the fact that while upholding the relief to the extent granted in the case of Adani Power Ltd (supra), the Supreme Court by judgment reported as UHBVNL (supra) had observed that it would be fallacious to say that the claim of restitution was being put forward “on some general principle of equity”, the amount of carrying cost in that case being “relatable to Article 13 of the PPA” (the change in law clause).*

83. *In the present cases, the claim for compensation of SPPDs is primarily founded not on principles of equity but on the contractual clause stating that the affected party is entitled to approach the Commission which shall “provide relief” in relation to the impact of the change in law event if it has resulted in “any additional recurring /non-recurring expenditure”. The purpose of the change in law clause in the PPAs is to relieve the SPPDs of the additional burden. Since the impact of the new tax (GST or Safeguard Duty on Imports, as the case may be) would come from the date of enforcement of the new laws, the relief intended to be afforded under the contracts cannot be complete unless the said burden is allowed to be given a pass through from the date of imposition of the levy. Unlike the PPA in UHBVNL (supra)*

wherein the phraseology of change-in-law provision was exhaustive, the words “provide relief” in present PPAs are open ended, not qualified in any manner so as to be given a restrictive meaning in order to treat the date of adjudication of the claim by the regulatory authority as the effective date or to justify denial of carrying cost burden for the period anterior thereto. In our reading, the expression “provide relief” is of widest amplitude and cannot be read to limit its scope the way the contesting respondents seek to propagate or the way the Central Commission has determined.

84. It is in the above context that we accept that the regulatory powers of the Central Commission ought to have been properly exercised to do complete justice to the claims for compensation it having been denied by depriving the SPPDs of their legitimate expectation of relief vis-à-vis the burden of carrying cost as well, rendering the dispensation partially unfair.

85. There is one more justification for the view we are taking in the matter and that stems from the provision contained in Section 70 of Indian Contract Act, 1872 which relates to the obligation of person enjoying benefit of a non-gratuitous act.

86. It was pointed out, and there was no denial offered, that the respondent distribution licensees had been deriving benefit of non-payment of GST component during the period the claims of change in law were pending adjudication before the Central Commission. As noted earlier, it is the burden of the SPPDs to pay (to the revenue) the new levies from the date(s) of enforcement of the corresponding laws.

87. As pointed out by learned counsel for Mahoba, under the PPA there is an obligation on the part of SPPDs to ensure “continuance of supply of power throughout the term of Agreement”. It is inherent in this that SPD, in order to continue to supply, must reconfigure or repower the plant, if so required, by installing additional modules after the COD since the contractual clause does not create any distinction as to expenditure pre or post COD, for purposes of change-in-law compensation. The plea for relief concerning post COD cannot be rejected, the expenditure incurred being not meant to be gratuitous, the intent instead being to discharge contractual responsibilities. We may quote the following passage from judgment of Hon’ble Supreme Court in State of West Bengal v. BK Mondal, AIR 1962 SC 779, in the context of Section 70 of the Indian Contract Act, 1872

88. The procurers cannot derive undue benefit on this account, not the least at the cost of the SPPDs who could never conceivably have intended to discharge their tax burden as a gratuitous act. Since the burden of carrying cost is a consequence directly flowing from the change in law event, the relief in such regard cannot be complete unless this part of the additional expenditure is also allowed as pass-through.

32. 33 & 34. \*\*\*\*\*

35. It is reiterated that the APTEL has directed the Commission to take a fresh view on the issue of carrying cost in light of the law developed on carrying cost based on the previous judgments including the Parampujya judgment dated 15.9.2022. While allowing the claim for carrying cost in the Parampujya judgment, the APTEL granted relief not on principles of equity but on the interpretation of contractual terms. Thus, this would be the binding principle for adjudication of the present issue as regards the issue of carrying cost is concerned. Accordingly, we proceed to deal with the present matter in terms of the provisions of the TSA.



36. Since the Change in Law claims in the present Petition pertain to Construction period, the relevant Article for relief is Article 12.2.1 (“During Construction Period”). It is noted that not only the word ‘Relief’ is used in the heading of Article 12.2 (“Relief for Change in Law”), Article 12.2.4 gives meaning to relief envisaged in the Article 12.2 by using the term ‘compensation’. The text ‘determination of the compensation mentioned above in Articles 12.2.1 and 12.2.2’ used in Article 12.2.4 indicates that the relief envisaged in Article 12.2.1 and 12.2.2 is a compensatory relief for Change in Law.

37. Further, Article 12.2.1 prescribes compensation towards increase in project cost during construction period in terms of increase in non-escalable transmission charges. However, if the impact of Change in Law continues in the operating period or an event of Change in Law occurs in operating period, the responsibility of determination of ‘compensation’ rests with the Appropriate Commission under Article 12.2.2 of the TSA. It is for such situations that the APTEL in Parampujya judgment has observed that the Commission ought to exercise its regulatory powers under Section 79(1)(b) to do complete justice to the claims for compensation.

38. \*\*\*\*\*

39. In light of the above, the question that arises is whether carrying cost can be granted in accordance with provisions of Article 12.2 of the TSA. The APTEL has observed in the Parampujya judgment that the judgment dated 13.4.2018 of the APTEL in Adani Power Ltd.(supra) did not consider the question as to whether the principle of time value of money would apply in examining the impact of Change in Law once Change in Law had been approved. However, the same needs to be considered for the present matter in light of the subsequent development of law on carrying cost, provisions of Article 12.2 of the TSA and, particularly, in accordance with the following guiding principles laid down in the Parampujya judgment.

(a) the use of the word “relief” in the context of adjudicatory process, simply means the remedy which the adjudicatory forum may afford “in regard to some actual or apprehended wrong or injury” or something which a party may claim as of right, or making the affected party “feel like easing out of ... hardship”. [Sarsuti v. Kunj Behari Lal, [1883 SCC OnLine All 85]; Dipti Aggarwal v. Ashish Chandra, [2017 SCC OnLine Cal 8835]. In Kavita Trehen v. Balsara Hygiene Products Ltd [AIR (1995) SC 441], it was held by the Supreme court that jurisdiction to make restitution is inherent in every court and can be exercised whenever justice of the case demands.

(b) the word ‘compensation’ simply means anything given to make things equal in value, anything given as an equivalent, to make amends for loss or damage.

(c) Grant of carrying cost is affording to the party affected the time value of money. [Indian Council of Enviro-Legal Action v. Union of India & Ors. (2011) 8 SCC 16; Torrent Power Limited v. GERC & Ors., [2019 SCC OnLine APTEL 110]; Uttar Haryana Bijli Vitran Nigam Ltd. & Anr. v. Adani Power (Mundra) Ltd. & Anr. [2022 SCC OnLine SC 1068]. In Vidarbha Industries Power Limited v. Axis Bank Limited [2022 SCC OnLine SC 841], the Hon’ble

Supreme Court held that “the law must ensure that time value of money is preserved, and that delaying tactics in these negotiations will not extend the time set for negotiations at the start”.

(d) Principle of restitution is now part of the regime on Change in Law reflecting public policy [Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021].

(e) Restitution is a principle of equity which is generally invoked by the adjudicatory authorities – Courts and Tribunals – to render substantial justice. Absence of prohibition in law or contract against award of interest to recompense for delay in payment is also significant [South Eastern Coalfields Ltd v. State of Madhya Pradesh & Ors. (2003) 8 SCC 648].

(f) In terms of restitutionary principle, the affected party is to be given the benefit of restitution “as understood in civil law” [Uttar Haryana Bijli Vitran Nigam Limited (UHBVNL) v. Adani Power Limited and Ors. (2019) 5 SCC 325].

(g) The claim arising out of Change in Law provisions, across all kinds of PPAs under bidding route, is essentially a claim for compensation, the objective being to relieve the affected party of the impact of Change in Law on its revenues or cost or by way of additional expenditure.

(h) Jurisdiction to make restitution is inherent in every court and can be exercised whenever justice of the case demands. [Kavita Trehan v. Balsara Hygiene Products Ltd AIR (1995) SC 441].

40. Change in Law has been defined in the TSA dated 24.6.2015 as “occurrence of any of the following after the date, which is seven (7) days prior to the Bid Deadline resulting into any additional recurring / non-recurring expenditure by the TSP or any income to the TSP”. Accordingly, an event of Change in Law may result into additional recurring as well as non-recurring expenditure or income for the TSP. The Commission has allowed various Change in Law events to the Petitioner vide order dated 16.6.2021 and granted relief in terms of increase in non-escalable transmission charges under Article 12.2.1 of the TSA. As regards carrying cost, the APTEL in its judgment dated 13.4.2018 in Appeal No. 210 of 2017 observed that there could be substantial time lag between the occurrence of a Change in Law event and approval by the Commission during which the generator had to incur additional expenses during the period of adjudication of Change in Law in the form of working capital to cater to the requirement of impact of Change in Law event in addition to the expenses made due to Change in Law. The relevant extract of the judgment is as under:

“ix In the present case we observe that from the effective date of Change in Law the Appellant is subjected to incur additional expenses in the form of arranging for working capital to cater the requirement of impact of Change in Law event in addition to the expenses made due to Change in Law. As per the provisions of the PPA the Appellant is required to make application before the Central Commission for approval of the Change in Law and its consequences. There is always time lag between the happening of Change in

Law event till its approval by the Central Commission and this time lag may be substantial.”

41. Similar observations regarding requirement of additional finances to meet the expenditure incurred on account of Change in Law have been made by Hon'ble Supreme Court of India in the judgment dated 24.8.2022 in *Uttar Haryana Bijli Vitran Nigam Ltd. &Anr. v. Adani Power (Mundra) Ltd. &Anr.* [2022 SCC OnLine SC 1068] as under:

“17. In the instant case, the respondent No. 1 – Adani Power had to incur expenses to purchase the FGD and install it in view of the terms and conditions of the Environment Clearance given by Ministry of Environment and Forests, Union of India, in the year 2010. For this, it had to arrange finances by borrowing from banks. The interest rate framework followed by Scheduled Commercial banks and regulated by the Reserve Bank of India mandates that interest shall be charged on all advances at monthly rests. In view of the matter, the respondent No. 1 – Adani Power is justified in stating that if the banks have charged it interest on monthly rest basis for giving loans to purchase the FGD, any restitution will be incomplete, if it is not fully compensated for the interest paid by it to the banks on compounding basis.”

42. Thus, the requirement of additional finance is a recurring expense during the operating period from the COD of the project till approval of Change in Law by the Commission. The said recurring expense, namely carrying cost flows directly out of Change in Law event and is nothing but time value of money. Article 12.2.2 is of wide amplitude which allows the Commission to determine compensation for Change in Law without any prohibition on award of interest/carrying cost to recompense for delay in payment [*South Eastern Coalfields Ltd v. State of Madhya Pradesh & Ors.* [(2003) 8 SCC 648]. Denial of carrying cost would defeat the objective of compensatory relief envisaged in Article 12.2.2 read with Article 12.2.4 in the operating period.

43 & 44.....

45. We have considered the submission made by the Petitioner. We are of the considered opinion that since the carrying cost is allowed on the principle of compensation for the loss suffered by the Petitioner on account of time lag in adjudication of the Petition, the rate of carrying cost needs to be deliberated in light of rate of interest for the working capital arranged by the Petitioner.

46. In this regard, the Commission in its order dated 17.9.2018 in Petition No. 235/MP/2015 (*AP(M)L v. UHBVNL & Ors.*) had decided the issue of carrying cost as under:

“24. After the bills are received by the Petitioner from the concerned authorities with regard to the imposition of new taxes, duties and cess, etc. or change in rates of existing taxes, duties and cess, etc., the Petitioner is required to make payment within a stipulated period. Therefore, the Petitioner has to arrange funds for such payments. The Petitioner has given the rates at which it arranged funds during the relevant period. The Petitioner has compared the same with the interest rates of IWC as per the Tariff Regulations of the Commission and late payment surcharge as per the PPA as under:



<i>Period</i>	<i>Actual interest rate paid by the Petitioner</i>	<i>Working capital interest rate as per CERC Regulations</i>	<i>LPS Rate as per the PPA</i>
2015-2016	10.68%	13.04%	16.29%
2016-2017	10.95%	12.97%	16.04%
2017-2018	10.97%	12.43%	15.68%

25. It is noted that the rates at which the Petitioner raised funds is lower than the interest rate of the working capital worked out as per the Regulations of the Commission during the relevant period and the LPS as per the PPA. Since, the actual interest rate paid by the Petitioner is lower, the same is accepted as the carrying cost for the payment of the claims under Change in Law.

26. The Petitioner shall work out the Change in Law claims and carrying cost in terms of this order. As regards the carrying cost, the same shall cover the period starting with the date when the actual payments were made to the authorities till the date of issue of this order. The Petitioner shall raise the bill in terms of the PPA supported by the calculation sheet and Auditor's Certificate within a period of 15 days from the date of this order. In case, delay in payment is beyond 30 days from the date of raising of bills, the Petitioner shall be entitled for late payment surcharge on the outstanding amount."

47. In line with above order of the Commission, in the instant case, the Petitioner shall be eligible for carrying cost at the actual rate of interest paid by the Petitioner for arranging funds (supported by Auditor's Certificate) or the rate of interest on working capital as per applicable CERC Tariff Regulations or the late payment surcharge rate as per the TSA, whichever is the lowest. Once a supplementary bill is raised by the Petitioner in terms of this order, the provision of Late Payment Surcharge in the TSA would kick in if the payment is not made by the Respondents."

71. In line with above, the Petitioner shall be eligible for carrying cost at the actual rate of interest paid by the Petitioner for arranging funds (supported by Auditor's Certificate) or the rate of interest on working capital as per applicable CERC Tariff Regulations or the late payment surcharge rate as per the TSA, whichever is the lowest. Once a supplementary bill is raised by the Petitioner in terms of this order, the provision of Late Payment Surcharge in the TSA would kick in if the payment is

not made by the Respondents.

72. It is pertinent to mention that in the Parampujya case, the Hon'ble Supreme Court vide Order dated 12.12.2022 in Civil Appeal No.8880 of 2022 in the case of Telangana Northern Power Distribution Company Ltd. & Anr. v. Parampujya Solar Energy Pvt. Ltd. & Ors. has held as under:

*“2. Pending further orders, the Central Electricity Regulatory Commission (CERC) shall comply with the directions issued in paragraph 109 of the impugned order dated 15 September 2022 of the Appellate Tribunal for Electricity. However, the final order of the CERC shall not be enforced pending further orders.”*

Thus, the directions with regard to carrying cost in this order which were issued in the light of the principles decided by APTEL in judgement dated 15.9.2022 in Appeal No.256 of 2019 (Parampujya Solar Energy Ltd Vs. CERC) & batch appeals shall not be enforced and will be subject to further orders of the Hon'ble Supreme Court in Civil Appeal No. 8880 of 2022 in the case of Telangana Northern Power Distribution Company Ltd. & Anr. V. Parampujya Solar Energy Pvt. Ltd. & Ors. Thus the issue is answered accordingly.

**Issue No. 4: What reliefs, if any, should be granted to the Petitioner in the light of the answers to the above issues?**

73. Article 12.2 of the TSA provides for relief for Change in Law as under:

*“12.2 Relief for Change in Law*

*12.2.1 During Construction Period:*

*During the Construction Period, the impact of increase/decrease in the cost of the Project in the Transmission Charges shall be governed by the formula given below:*

*For every cumulative increase/decrease of each **Rupees Two Crore Eight Lakh Ninety Six Thousand Only (Rs. 2,08,96,000/=)** in the cost of the Project up to the Scheduled COD of the Project, the increase/decrease in non-escalable Transmission Charges shall be an amount equal to 0.32 percent (0.32%) of the Non-Escalable Transmission Charges.”*

74. All reliefs on account of Change in Law have been claimed by the Petitioner for the construction period. Accordingly, as per Article 12.2.1 of the TSA, for every cumulative increase/decrease of each Rupees Two Crore Eight Lakh Ninety-Six Thousand Only (Rs. 2,08,96,000/-) in the cost of the Project up to the Scheduled COD of the Project, the increase/decrease in Non-Escalable Transmission Charges shall be an amount equal to zero point three two percent (0.32%) of the Non-Escalable Transmission Charges. Thus, in terms of the findings of the Commission in the foregoing paragraphs, the Petitioner shall re-compute the increase in the cost of Project, to be supported by Chartered Accountant certificate, and accordingly, shall be entitled to corresponding increase in Non-Escalable Transmission Charges as provided under Article 12.2.1 of the TSA.

75. After CoD of the transmission system, the Petitioner has been recovering transmission charges for the Project under the provisions of the Central Electricity Regulatory Commission (Sharing of inter-State transmission Charges and Losses) Regulations, 2020. Therefore, the impact of Change in Law payable to the Petitioner shall be recovered in accordance with the provisions of Regulation 15(2)(b) (second bill to the DICs) of the Central Electricity Regulatory Commission (Sharing of inter-State transmission Charges and Losses) Regulations, 2020.

**Summary of Decision:**

76. The summary of our decision in terms of the forgoing paragraphs of this order is as under:

<b>Sr.</b>	<b>Particulars</b>	<b>Decision</b>
<b>A</b>	Extension of SCOD of the Project till 31.12.2020	Allowed
	Change in Law	
<b>B</b>	<b>Increased Taxes due to GST Laws on</b>	
	Transmission Lines by KPTL (EPC Contractor)	Allowed

	Substation by Techno (EPC Contractor)	Allowed
	Miscellaneous works by KMTL	Allowed
	Taxes on additional Project cost claimed by KPTL and Techno	Partly Allowed
	GST on Tree/Crop compensation	Allowed
<b>C</b>	<b>Increased Unit Rates of crop/tree paid by KMTL</b>	
	Manipur crop	Disallowed
	Nagaland - Wokha Part I	Allowed
	Nagaland - Wokha Part II	Allowed
	Nagaland - Kohima	Allowed
	Assam - Jorhat	Allowed subject to observations made in paragraph 54
	Assam - Golaghat	Allowed
<b>D</b>	<b>Increased Land Compensation</b>	
	Assam - Govt. Notification dated 10.3.2017	Allowed subject to observation in made in Paragraphs 66 & 67
	Manipur- Govt. Notification dated 28.3.2018	Allowed subject to observation in made in Paragraphs 66 & 67
	Nagaland- Orders of DCs of Kohima & Wokha	Allowed subject to observation in made in Paragraphs 66 & 67
<b>E</b>	Carrying Cost	Allowed subject to observations made in paragraph 72

77. The Petition No. 164/MP/2021 is disposed of in terms of the above discussions and findings.

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

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

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