

**CENTRAL ELECTRICITY REGULATORY COMMISSION
New Delhi**

**Review Petition No. 27/RP/2022
in
Petition No. 145/TT/2018**

Coram:

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

Date of Order : 16th January, 2023

In the matter of:

Petition for review of order dated 14.3.2022 in Petition No. 145/TT/2018 under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 read with Order 47 of the Civil Procedure Code, 1908.

And

In the matter of:

Mahan Energen Limited,
(Formerly Known as Essar Power M.P. Limited),
Adani House, C-105, Anand Niketan,
New Delhi-110021.

.... Review Petitioner

Vs.

1. Essar Power Transmission Company Limited,
Lower Ground Floor, Hotel Conclave Boutique,
A-20, Kailash Colony, New Delhi-1100048.
2. Central Transmission Utility of India Limited,
(Formerly known as Power Grid Corporation of India Limited),
Plot No.2, Near August Kranti Marg,
Sector 29, Gurugram, Haryana- 122001.
3. Power System Operation Corporation Limited,
National Load Despatch Centre,
B-9, Qutub Institutional Area,
Katwarai Sarai, New Delhi-110016.
4. Western Region Power Committee,
F-3, MIDC Area, Marol, Opposite SEEPZ,



Central Road, Andheri East, Mumbai-400093.

5. Essar Steel India Limited,
27th km on Surat-Hazira Road,
Hazira District, Surat, Gujarat-394270.
6. M.P. Power Management Company Limited,
Block No.11, Shakti Bhawan,
Vidyut Nagar, Jabalpur-482008.

...Respondents

For Petitioner : Shri Sanjay Sen, Sr. Advocate, MEL
Shri Hemant Singh, Advocate, MEL
Shri Robin Kumar, Advocate, MEL
Shri M.R. Krishna Rao, MEL
Shri Chintan Mankad, MEL
Shri Vyom Shah, MEL
Shri Tanmay Vyas, MEL

For Respondent : Shri Maninder Singh, Sr. Advocate, EPTCL
Shri Anand K. Ganesan Advocate, EPTCL
Ms. Swapna Seshadri, Advocate, EPTCL
Shri Amal Nair, Advocate, EPTCL
Ms. Sugandh Khanna, Advocate, EPTCL
Shri P. S. Das, CTUIL
Shri Ajay Upadhyay, CTUIL
Shri Bhaskar Wagh, CTUIL
Shri Pratyush Singh, CTUIL
Shri Swapnil Verma, CTUIL
Shri Siddharth Sharma, CTUIL
Shri Ranjeet Singh Rajput, CTUIL

ORDER

The instant Review Petition has been filed by Mahan Energen Limited (MEL), Review Petitioner (formerly known as Essar Power M.P. Limited [EPMPL]) seeking review of the order dated 14.3.2022 in Petition No.145/TT/2018 (filed by Essar Power Transmission Company Limited [EPTCL]), whereby transmission tariff from COD to 31.3.2019 of 400 kV D/C Mahan-Sipat Transmission Line along with associated bays at Mahan and Sipat and 2x50 MVAR line reactors at Sipat Pooling Sub-station, 2x50 MVAR line reactors at Mahan Pooling Sub-station and 1x80 MVAR, 420 kV switchable bus reactor at Mahan TPS along with its associated 400



kV bay (hereinafter referred to as 'the transmission asset') was approved under the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (hereinafter referred to as the "2014 Tariff Regulations").

Background

2. Brief facts leading to filing of the present Review Petition are as follows:

- (a) The Commission vide order dated 14.3.2022 in Petition No. 145/TT/2018, taking into consideration EPMPL's letter dated 21.8.2009, wherein EPMPL had agreed to bear the additional tariff on account of change in the conductor configuration of Mahan-Sipat Transmission Line, held that the additional tariff on account of increase in cost of Mahan Sipat Transmission Line due to change in conductor configuration from triple moose conductor to quad moose conductor will be exclusively borne by EPMPL.
- (b) On the basis of the Commission's aforesaid order dated 14.3.2022, the CTUIL raised bilateral invoice dated 23.5.2022 on the Review Petitioner seeking payment of ₹291,30,17,620/- for the period commencing from September, 2018 to December, 2021 and invoice dated 2.6.2022 upon the Review Petitioner seeking a payment of ₹6,05,88,063/- for the billing month of June, 2022.
- (c) Aggrieved with the aforesaid order of the Commission dated 14.3.2022 in Petition No.145/TT/2018 and the invoices dated 23.5.2022 and 2.6.2022 issued by CTUIL, the Review Petitioner has filed the instant Review Petition contending that it is not liable to bear the transmission charges.
- (d) Delay of 65 days in filing the present Review Petition was condoned by the Commission in Interlocutory Application (IA) No. 51/IA/2022 vide order dated



21.11.2022 while admitting the instant Review Petition. The Commission further directed the Respondents to file their reply in the matter. Thereafter, the Respondents, MPPMCL and EPTCL filed their reply vide affidavits dated 9.12.2022 and 12.12.2022 respectively. The Review Petitioner filed its rejoinders to the replies of MPPMCL and EPTCL vide separate affidavits dated 19.12.2022.

3. The matter was heard on 20.12.2022 and after hearing the parties, the Commission reserved order in the matter.

Submissions of the Review Petitioner

4. The main submission of the Review Petitioner is that there are certain material facts and submissions which were not placed before the Commission during the course of proceedings in Petition No. 145/TT/2018. Therefore, the present Review Petition is filed. The Review Petitioner has made the following submissions in its Review Petition:

I. No transmission charges can be levied against the Review Petitioner on account of conclusion of the Corporate Insolvency Resolution Process (CIRP) against Essar Power M.P. Limited (EPMPL)

(a) During the proceedings in Petition No. 145/TT/2018, the fact that EPMPL was undergoing CIRP under the provisions of the IBC, 2016 was not disclosed before the Commission.

(b) Pursuant to the filing of proceedings of Petition No. 145/TT/2018, an application under Section 7 of IBC 2016 was preferred before National Company Law Tribunal (NCLT), Principal Bench, New Delhi by one of the financial creditors, i.e. ICICI Bank Ltd. being Company Petition No. (B) 683



(PB)/2020 against EPML. NCLT admitted the said Application on 29.9.2020, and also appointed an Interim Resolution Professional (IRP).

- (c) Subsequent to this, on 10.10.2020, the IRP made a public announcement in Form-A inviting/filing claims by the creditors (both operational and financial) against the erstwhile EPML in terms Regulation 6(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. CTUIL was well aware of this and attended the CRIP despite that it chose not to disclose the same before the Commission in proceedings of Petition No.145/TT/2018.
- (d) Later, on 25.11.2020, the IRP issued Information Memorandum in terms of Section 29 of the IBC 2016, indicating the assets and liabilities of the Corporate Debtor meant to be dealt in CIRP showing financial position of the Corporate Debtor to the Prospective Resolution Applicant(s). The creditors list of erstwhile EPML uploaded on the website of said company also did not mention about the claim of CTUIL/EPTCL qua the transmission charges. Thus, no claim/demand was raised either by EPTCL or by CTUIL in the Information Memorandum dated 25.11.2020 and in the creditor list version 5 pursuant to claims received and updated on 11.5.2021 with respect to transmission charges arising out of Petition No. 145/TT/2018. However, in the said list, the claim of CTUIL towards relinquishment compensation was mentioned as 'Government dues'.
- (e) After detailed analysis of the aforesaid Information Memorandum issued by IRP qua all the claims that were made against the Corporate Debtor, Adani Power Limited, the parent Company of the Review Petitioner, submitted its Final Resolution Plan on 11.5.2021 with amendment on 12.5.2021.



- (f) Eventually, on 1.11.2021, NCLT under section 31 of the IBC, 2016 approved the Resolution Plan submitted by Adani Power Limited (for erstwhile EPMPL) meaning thereby that all the past liabilities whether crystallized or uncrystallized stood extinguished. Further, NCLT also adjudged the claim of CTUIL qua relinquishment compensation as 'Nil'.
- (g) CTUIL participated in the said IBC proceedings initiated against erstwhile EPMPL and filed I.A. No. 3015/2021 seeking admission of Rs. 26,325,400,000/- as operational debt against the erstwhile EPMPL. However, the said operational debt was disallowed by the NCLT.
- (h) Pursuant to the above, the Review Petitioner took charge of erstwhile EPMPL on 16.3.2022.
- (i) Pursuant to the impugned order, CTUIL issued invoice and letter dated 23.5.2022, whereupon the Review Petitioner, on 7.6.2022 issued a letter to CTUIL informing that bilateral transmission charges cannot at all be imposed upon the Review Petitioner owing to the aforesaid IBC proceedings. Meanwhile, CTUIL raised another bilateral invoice dated 2.6.2022 upon the Review Petitioner seeking a payment of Rs. 6,05,88,063/- for the billing month of June, 2022, in response to which the Review Petitioner vide its letter dated 15.6.2022 informed CTUIL that the bilateral transmission charges cannot at all be imposed upon the Review Petitioner in view of the said IBC proceedings.
- (j) In terms of section 3(6) of the IBC 2016 which defines claim, CTUIL being an operational creditor by virtue of invoice dated 23.5.2022 in respect of transmission charges, whether it was reduced to judgment/ writing or not, was not only at liberty, but was also under an obligation to submit its claim towards such charges with the IRP. However, CTUIL never raised a demand with



respect to transmission charges before the IRP, Committee of Creditors for NCLT.

- (k) In view of the judgment of Hon'ble Supreme Court in the matter of Ghanshyam Mishra and Sons Private Ltd. v. Edelweiss Asset Reconstruction Company Limited, reported in 2021 SCC Online SC 313, the claims of any third party(s), if any of which does not find place in the approved Resolution Plan, shall stand automatically extinguished with the approval of the Resolution Plan.
- (l) Further, in view of the judgment in the matter of Essar Steel India Ltd. Committee of Creditors v. Satish Kumar Gupta, reported in (2020) 8 SCC 531, the Hon'ble Supreme Court laid down that a successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by it has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who would successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. The principle of law as settled by the Hon'ble Supreme Court in this judgment has been recognized by the Commission vide order dated 11.11.2021 in Petition No. 92/MP/2020 in the matter of Raigarh Energy Generation Limited v. Power Grid Corporation of India Limited.
- (m) From the combined reading of Section 3(6), 3(11) and 5(21) of the IBC, 2016 it is clear that that an operational debt is nothing but a claim whether or not



deduced by a judgment, which is payable to an entity including Government authorities.

- (n) In the background of above facts, the Review Petitioner was never informed about the alleged claim/demand of 24% of the transmission charges from September, 2018 to December, 2021 which is a past due against the erstwhile EPMPPL and not the Review Petitioner.

II. Once LTA for the use of ISTS is relinquished, then no transmission charges can be levied, rather only relinquishment compensation can be levied.

- (a) Another material aspect which was not placed on record during the proceedings of Petition No.145/TT/2018 is that the erstwhile EPMPPL executed a BPTA dated 1.8.2012 with CTUIL for the purpose of seeking LTA of 1200 MW. However, vide its letters dated 10.4.2017 and 30.4.2018, the erstwhile EPMPPL relinquished its 'entire' LTA of 750 MW and 450 MW respectively.
- (b) The said relinquishment was duly accepted by CTUIL vide its letters dated 19.5.2017 and 30.5.2018 for 750 MW (with effect from 12.4.2017 and 450 MW with effect from 4.5.2018, respectively).
- (c) Accordingly, the entire LTA of erstwhile EPMPPL stood relinquished as on May, 2018 and the above relinquishment was accepted by PGCIL/ CTUIL without any condition of continued obligation to pay transmission charges for the alleged dedicated portion of the transmission line.
- (d) From the Combined reading of sections 2(47), 2(72), 38 and 39 of the 2003 Act and Regulations 14, 15 and 26 of the 2009 Connectivity Regulations, the transmission charges are nothing but LTA charges which have to be paid till the existence of the open access (LTA).
- (e) Therefore, once the LTA has been fully relinquished/ surrendered, the entity, in terms of Regulation 18 of the 2009 Connectivity Regulations, ceases to be



an LTTC, and the said entity/ generator is no longer liable to pay any transmission charges/ ISTS charge and is only liable to pay relinquishment compensation.

- (f) Accordingly, there is no basis under law both for EPTCL as well as CTUIL to raise the bill/ invoice for transmission charges bilaterally on MEL for the period post May 2018 as is done by CTUIL in the present case.
- (g) The Commission while determining the transmission charges of EPTCL in Petition No. 145/TT/2018, passed a provisional order dated 14.3.2019 allowing provisional recovery of tariff by EPTCL. However, even after passing of the provisional order, no transmission charges were levied upon the erstwhile EPMPPL which clearly meant that CTUIL had accepted that the LTA of the erstwhile EPMPPL stood relinquished and on account of the same, no transmission charges could be levied upon it.

(III) Reasons as set out in the Review Petition ought to be considered as 'sufficient' reasons, in order to review/recall the impugned order dated 14.3.2022 in Petition No. 145/TT/2018

- (a) Material facts put forth in the instant petition were never placed by any of the parties, especially CTUIL which itself participated in the IBC proceedings initiated against the erstwhile EPMPPL. As such, the Review Petitioner, under the new Management, was never in a position to have placed on record the information and documents which have now been placed on record.
- (b) The Commission vide Record of Proceedings (RoP) dated 29.7.2022, had reserved the present Review Petition on admissibility/ maintainability. Subsequently, the Commission vide order dated 21.11.2022, admitted the instant Review Petition specifically observing that there is a 'sufficient reason' for reviewing the impugned order.



5. MPPMCL in its reply has made the following submissions:
- (a) In terms of Commission's order dated 14.3.2022 in Petition No. 145/TT/2018, MPPMCL is within the purview of 76% of the capital cost included in PoC computation and liability corresponding to remaining 24% capital cost cannot be included in the PoC computation as the issue in relation to division of capital cost i.e. 24% to be borne by EPMPPL and 76% to be included in PoC, cannot be disturbed.
 - (b) The ground raised by the Review Petitioner that EPTCL and CTUIL failed to apprise this Commission about the pendency of IBC proceedings and failed to make any demand/claim qua the transmission charges with regard to Petition No. 145/TT/2018 is baseless.
 - (c) The Review Petitioner is mixing the two issues, namely, relinquishment of LTOA with additional tariff (i.e 24%) on account of change in conductor configuration (from triple moose conductor to quad moose conductor) of the 400 kV Mahan-Sipat Transmission Line. The Commission while taking cognizance of the letter dated 21.8.2009 of EPMPPL as well as CTUIL's 'no objection' letter dated 8.5.2009, approved amendment to the transmission license of EPTCL vide order dated 15.9.2009 in Petition No. 157/2007. Accordingly, additional tariff on account of change in the configuration of conductor is required to be borne by EPMPPL as committed by EPMPPL in its letter dated 21.8.2009.
 - (d) No documentary evidence is given by the Review Petitioner to show that surrender of LTOA was approved by the Competent Authority or that any compensation was paid to CTUIL by the Review Petitioner after surrendering the LTOA rights w.e.f. 4.5.2018.



- (e) In terms of the above, the transmission tariff on account of increase in the cost of Mahan Sipat Transmission Line due to change in conductor configuration (i.e. 24%), should either be borne by Review Petitioner or by the transmission license, EPTCL. However, in no case, the same should be passed on to beneficiaries.
- (f) As per Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 2009, review of an order is applicable only for correction of clerical or arithmetical mistake arising from an accidental slip or omission, and that, no new facts/documents can be presented in a review petition.

6. In response, the Review Petitioner has refuted the submissions of MPPMCL and reiterated the submissions made by it in the Review Petition. However, the Review Petitioner has made the following additional submissions:

- (a) The conduct of EPTCL was to protect its sister Company (EPMPL) till the time it undergoes CIRP under the provisions of IBC 2016 and for this very reason EPTCL deliberately and wilfully chose not to seek relief qua exclusive levy of transmission charges against erstwhile EPMPL.
- (b) EPTCL did not place on record TSA dated 20.10.2008 executed between EPTCL and EPMPL in Petition No. 145/TT/2018, where Clause 4 provided that EPMPL shall pay one/twelfth of Annual Transmission Charges in accordance with the Commission's 2004 Tariff Regulations. On 4.6.2010 a supplementary/amended TSA was executed and on 20.1.2011, a second supplementary TSA was executed in which Schedule-I was amended for change in the configuration from triple moose conductor to quad moose conduct.



- (c) The Commission notified the 2010 Sharing Regulations which necessitated that the transmission charges for the entire ISTS were to be socialized amongst all the users of such ISTS in the form of Point of Connection (PoC) Charges/ Sharing Mechanism. Further, as per Regulation 13 and Regulation 14 of the 2010 Sharing Regulations, all existing arrangements/ agreements for payment of transmission charges were to be modified/ aligned with the 2010 Sharing Regulations.
- (d) Owing to the promulgation of the 2010 Sharing Regulations, the said TSA dated 17.8.2012, was terminated by a 'Deed of Termination' executed between EPTCL and erstwhile EPMPPL together with amendments carried out thereunder. In view of the termination of the said TSA, no question of payment of any bilateral transmission charges by erstwhile EPMPPL arises now, and that the letter dated 21.8.2009 stands obliterated pursuant to the termination of the said TSA.
- (e) The transmission asset/ system was never a dedicated system and was conceptualized/ established as a part of ISTS for which no exclusive levy of transmission charges can take place.
- (f) In terms of Sections 38, 39 and 40 of the Act, 'transmission charges' are payable for the 'use' of the transmission system of either CTUIL, STU or a transmission licensee, and that the word 'use' encapsulated thereunder, is nothing but 'open access'. Without there being open access/ use of transmission system, no entity is liable to pay transmission charges for the transmission system developed/ established by CTUIL, STU or a transmission licensee.



- (g) Regulation 2(l), Regulation 2(m) and Regulation 26 of the 2009 Connectivity Regulations provide that the transmission charges for use of ISTS have to be recovered from the Long-Term Transmission Customers (LTTCs), which are nothing but the customers who have been granted LTOA.
- (h) The relinquishment of LTA by the erstwhile EPMPPL was approved by the Commission vide its order dated 7.10.2019 in Petition No. 187/MP/2017. The said order not only reduced the LTA of 1200 MW to 1100 MW, but also approved the relinquishment of the entire LTA quantum.
- (i) The Commission can entertain Review Petition under Regulation 103-A of its Conduct of Business Regulations, 1999. Even otherwise, the Commission has the power of review under Section 94(1)(f) of the Act read with Order 47 Rule 1 of the Civil Procedure Code, 1908.

7. The gist of submissions made by EPTCL is as follows:

- (a) The impugned order dated 14.3.2022 has also been assailed by the Review Petitioner/ MEL before the APTEL vide DFR No. 492 of 2022 and APTEL has granted an interim order dated 18.11.2022 in the matter. The grounds taken by the Review Petitioner in the instant Review Petition are near identical to the grounds taken in the Appeal before the APTEL and, therefore, review is nothing but an Appeal in disguise.
- (b) The Review Petitioner has merely mentioned that review is being sought invoking the ground of “any other sufficient reasons”. Review of the impugned order dated 14.3.2022 does not satisfy the provisions of Order 47, Rule 1 of the Code of Civil Procedure, 1908.



- (c) EPMPPL was acquired by Adani Power Limited under CIRP, hence it cannot be made liable for any dues not provided for in the Resolution Plan prior to the date of acquisition is untenable.
- (d) Since there was no debt payable by the Review Petitioner to EPTCL, EPTCL was not in the category of a 'creditor'. Having been paid 100% charges, there was no occasion for CTUIL/ EPTCL to raise any claim for any 'debt' during this period as per Section 2(11) and Section 5(20) of the IBC 2016 at the time when IBC proceedings were continuing is untenable.
- (e) The tariff determined for the ISTS transmission assets go towards recovery of capital cost invested by an ISTS licensee over the life of the assets which is 35 years. The bill raised by CTUIL cannot be described as an 'operational debt' under Section 5(21) of the IBC 2016.
- (f) The regulatory billing of transmission charges is neither a 'claim' as per section 3(6) of IBC 2016 nor CTUIL is an 'operational creditor' as per Section 5(20) of the IBC 2016. CTUIL could not have raised any claim in the CIRP proceedings since the tariff design and recovery does not amount to a claim being made by a 'corporate debtor'.
- (g) The determination, recovery and sharing of transmission tariff is a prerogative of the Commission alone and is governed by various Regulations framed by the Commission such as the 2009 Tariff Regulations, the 2014 Tariff Regulations and the 2010 Sharing Regulations.
- (h) EPTCL is an ISTS licensee, and is only concerned with recovery of tariff for providing continuous availability of its transmission line.
- (i) The terms 'claim', 'debt', 'operational creditor', and, 'operational debt' in the IBC 2016 clarify that right to recover a capital cost which has accrued to EPTCL on



14.3.2022 cannot be described as 'claim' or an 'operational debt'. By extension, CTUIL cannot also be described as an 'operational creditor'.

- (j) Reliance placed by the Review Petitioner on the judgement of Hon'ble Supreme Court in the matter of Ghanshyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd., is completely misplaced as the said judgment cannot be applied in a vacuum and 'clean slate' principle does not mean a regulatory recovery for which order was not then passed, ought also to be imagined and claimed in the CIRP proceedings by the CTUIL. The order with regard to sharing of transmission charges was passed by the Commission on 14.3.2022.
- (k) The reliance placed by the Review Petitioner on the judgement of Essar Steel India Ltd. Committee of Creditors v Satish Kumar Gupta is also incorrect as being irrelevant to the regulatory mechanism of recovery of a Commission.
- (l) The Review Petitioner's submission that it had relinquished the LTA granted to it by CTUIL and, therefore, is not liable to pay transmission charges is incorrect. The Review Petitioner is confusing the terms 'transmission charges' and 'Long Term Access Charges'. The transmission charges lead to recovery of capital cost of a transmission asset while LTA charges are payable towards providing long term access to the transmission system. CTUIL has not raised any bill on Review Petitioner claiming LTA charges. The bill raised is only for transmission charges for a dedicated portion to Review Petitioner of a transmission line which is in terms of the regulations and order passed by the Commission.
- (m) The Review Petitioner is confusing 'LTA charges' and 'Relinquishment Charges', with tariff order which deals with only the 'transmission tariff' for recoupment of capital cost incurred by the transmission licensee. The



relinquishment of LTA has nothing to do with the liability of the Review Petitioner to bear the additional 24% of the capital cost since LTA had been granted on balance network i.e., 76% of the capital cost.

- (n) CTUIL's letter dated 1.8.2012 granting LTOA to the Review Petitioner indicates that LTOA was granted for "triple moose" conductor. The quad moose conductor was not part of LTOA approval and as such it cannot be a part of the relinquishment of the said LTOA.
- (o) The recovery of capital cost through transmission charges is distinct from LTOA or STOA charges. The Review Petitioner is trying to confuse the issue by contending that payment of STOA charges is sufficient when the same has nothing to do with the recovery of additional 24% capital cost.
- (p) The LTA charges or the relinquishment charges is on the network on which LTA was granted, i.e., 76% of the capital cost. On the dedicated portion (i.e., the 4th conductor or the quad moose conductor) - 24% of the capital cost, there is neither levy of LTA charges nor STOA charges nor relinquishment charges.
- (q) The Commission in order dated 8.3.2019 in Petition No. 92/MP/2015 has clearly mentioned that determination of relinquishment charges shall not be applicable for dedicated transmission line and would be limited to the transmission lines/sub-stations covered under the system augmentation as per the BPTA/LTA Agreement. The BPTA Agreement of the Review Petitioner dated 7.1.2009 clearly mentions the evacuation system as Mahan TPS-WR Pooling Station (near Sipat) 400 kV D/C triple moose conductor. The relinquishment, therefore, cannot include the quad moose conductor.



- (r) As per Regulation 8(8) of the 2009 Connectivity Regulations, the generator has to pay the cost of a dedicated asset which is being used by the generator even if he abandons or delays his project.
- (s) EPTCL was receiving its entire transmission charges from the PoC Pool till 14.3.2022. Beyond this date, 76% ought to have been paid by CTUIL to EPTCL through PoC pool and the remaining 24% ought to have been paid by the Review Petitioner in an uninterrupted manner.

8. In response, the Review Petitioner has refuted the submissions of EPTCL and reiterated its submissions as made in the Review Petition. The Review Petitioner has mainly made the following additional submissions:

- (a) During pendency of present Review Petition as well as Petition No. 195/MP/2022 filed by EPTCL before the Commission, EPTCL on 12.9.2022 approached the Hon'ble Delhi High Court by way of Writ Petition (C) No. 13651/2022 seeking direction to WRLDC to comply with Regulation 7 of the LPS Rules, 2022 and regulate STOA of MEL for non-payment of transmission charges, in the alternative direct MoP and PFC Consulting Ltd., to enable transmission licensees such as the Petitioner to upload status of payment on the PRAAPTI portal. Hon'ble High Court on 4.11.2022 merely directed PFC Consulting Limited (the operator of PRAAPTI Portal) to expedite the process of allowing inter-state transmission licensees (like EPTCL) to get access to the said portal for the purpose of uploading the alleged outstanding dues payable by users of transmission system.
- (b) CTUIL thereafter issued a letter dated 11.11.2022 instructing National Load Despatch Centre (part of POSOCO, now known as Grid Controller of India Limited) to regulate/ curtail the power of the Review Petitioner. Consequently,



POSOCO issued e-mail dated 12.11.2022, directing the power exchanges to regulate STOA of the Review Petitioner and as such the power of Review Petitioner was curtailed with effect from 00:00 Hrs on 13.11.2022.

- (c) On account of the above, the Review Petitioner filed an application, being CM Application No. 48790/2022 in W.P (C) No. 13651/2022 and the Hon'ble Delhi High Court vide order dated 15.11.2022, disposed of the said Application granting liberty to the Review Petitioner to approach the Central Commission.
- (d) EPTCL in Petition No. 145/TT/2018 for determination of transmission tariff of Stage-II of its licence i.e. 400 kV D/C Mahan-Sipat transmission line did not pray for exclusive/ bilateral levy of transmission charges upon its sister Company (EPMPL). EPTCL further did not plead that tariff for the above change in configuration of the transmission system should be levied bilaterally upon the erstwhile EPMPL and this fact was brought on record by EPTCL in IA No. 47/IA/2020 in Petition No. 145/TT/2018. On initiation of IBC proceedings against erstwhile EPMPL, EPTCL filed IA No. 75/IA/2021 in Petition No. 145/TT/2018 wherein it placed on record the letter dated 21.8.2009, before the Commission which stated that due to increase in the construction cost of Mahan-Sipat Line with changed configuration (from Triple Conductor to Quad Moose Conductor) would not be passed onto MPEB. The above facts go to show that the intention of EPTCL was to protect its sister Company EPMPL from the levy of bilateral transmission charges.
- (e) Reliance placed by EPTCL on the order dated 8.3.2019 in Petition No. 92/MP/2015 contending that relinquishment charges are not applicable for any



alleged dedicated system is also misplaced as from the perusal of the TSA, it is clearly established that transmission system built by EPTCL is not a dedicated system, rather the same is a part of ISTS.

- (f) On other issues like payment of transmission charges, relinquishment of LTOA, etc., identical reply is given by the Review Petitioner as is given in the rejoinder of MPPMCL. Hence, the same is not being repeated here.

Analysis and Decision

9. We have considered the submissions of the Review Petitioner, MPPMCL and EPTCL and have perused the record. First of all, we think it proper to deal with the contentions of the parties whether the present Review Petition can be considered by the Commission within the compass of Section 114 read with Order XLVII Rule 1 of the CPC or Regulation 103A of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 2009.

10. MPMCL has contended that Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 2009, provides for review of an order for correction of clerical or arithmetical mistake and that, no new facts/documents can be presented in a Review Petition. EPTCL has contended that review of the impugned order is sought by the Review Petitioner on the ground of 'any other sufficient reasons' while perusal of the impugned order makes no case for review of the impugned order on this count as it does not satisfy the provisions of Order 47 Rule 1 of the Code of Civil Procedure, 1908.

11. On the other hand, the Review Petitioner has contended that the Commission vide order dated 21.11.2022, while admitting the instant Review



Petition has observed that the fact of EP MPL undergoing CIRP under IBC 2016 is of material significance in Petition No.145/TT/2018 and failure to bring it to the notice of the Commission is a 'sufficient reason' for review of the impugned order. Thus, there is no basis for the Respondents to contend that the present Review Petition is not maintainable.

12. We have considered the above contentions of the parties. To address the above submissions of the parties on the issue of maintainability of Review Petition, we refer to the provisions of Order XLVII Rule 1(1) of the Code of Civil Procedure, 1908, which provides for application for review which reads as follows:

"Any person considering himself aggrieved

- a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,*
- b) by a decree or order from which no appeal is allowed, or*
- c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the court which passed the decree or made the order."*

13. It is not in dispute that during the pendency of Petition No. 145/TT/2018, EP MPL was undergoing CIRP under the provisions of IBC before the NCLT and this fact was not brought to the notice of the Commission during the proceedings. The Commission in impugned order dated 14.3.2022 had observed that additional tariff on account of increase in the cost of Mahan-Sipat Transmission Line due to change in conductor configuration, on the request of EP MPL and EPTCL, from triple moose conductor to quad moose conductor is to be borne by EP MPL. Since EP MPL underwent CIRP under IBC before NCLT, the Commission, prima facie, admitted the



instant Review Petition. Accordingly, we now proceed to examine the present Review Petition.

I. Once the LTA for the use of ISTS is relinquished, then no transmission charges can be levied, rather only relinquishment compensation can be levied

14. The Review Petitioner has contended that erstwhile Company (EPMPL) had relinquished its entire LTOA vide letters dated 10.4.2017 and 30.4.2018 for 750 MW (with effect from 12.4.2017) and 450 MW (with effect from 4.5.2018) respectively which was accepted by the CTUIL vide letters dated 19.5.2017 and 30.5.2018. Thus, the Review Petitioner contends that there is no basis under the law both for EPTCL as well as CTUIL to raise the bill/ invoice for transmission charges bilaterally on the Review Petitioner post May, 2018.

15. MPPMCL has contended that no documentary evidence is given by the Review Petitioner to show that surrender of LTOA was approved by the Competent Authority or that any compensation was paid by the Review Petitioner to the CTUIL after surrendering the LTOA. MPPMCL has further contended that the additional tariff of 24% was on account of change in conductor configuration and is payable by erstwhile EPMPL to EPTCL.

16. EPTCL has contended that the submission of the Review Petitioner that after relinquishment of LTA granted to it by the CTUIL, it is not liable to pay transmission charges is baseless. EPTCL has further contended that the Review Petitioner is confusing the terms 'transmission charges' and 'Long Term Access Charges'. EPTCL has also contended that transmission charges lead to



recovery of capital cost of a transmission asset while LTA charges are payable towards providing long term access to the transmission system.

17. We have considered the above contentions of the parties and have perused the record. On examination of the contentions of parties, we are of the view that relinquishment of LTA and payment of transmission charges are two different issues and they have been inter-mingled here. Therefore, we first deal with the issue of relinquishment of LTA here and the issue of payment of transmission charges is considered separately in this order.

18. On perusal of the record, we notice that erstwhile EPMPPL through its letters dated 10.4.2017 and 30.4.2018 had relinquished its LTA of 750 MW and 450 MW respectively. CTUIL vide letters dated 19.5.2017 and 30.5.2018 relinquished the LTA quantum of 750 MW from 12.4.2017 and 450 MW from 4.5.2018 respectively. The said letters of CTUIL state that relinquishment of LTA was subject to charges in terms of order in Petition No. 92/MP/2015. Thus, the contention of MPPMCL that grant of surrender of LTA and its acceptance are not supported by documentary evidence are misplaced. Therefore, the same are rejected.

19. Now, the issue which needs to be answered is whether the relinquishment was with respect to triple moose conductor or quad conductor. Accordingly, we answer this issue as follows:

Whether relinquishment of LTA was with respect to triple moose conductor or quad conductor?

20. EPTCL has contended that quad moose conductor is a dedicated system of the Review Petitioner. Referring to the Commission's order dated 8.3.2019 in



Petition No. 92/MP/2015, EPTCL has contended that determination of relinquishment charges shall not be applicable for dedicated transmission line and would be limited to the transmission lines/sub-stations covered under the system augmentation as per the BPTA/LTA Agreement. EPTCL has also contended that BPTA of the Review Petitioner dated 7.1.2009 mentions the evacuation system as Mahan TPS-WR Pooling Station (near Sipat) 400 kV D/C triple moose conductor and as such the relinquishment cannot include the quad moose conductor.

21. No concrete reply to the above contentions of EPTCL has been given by the Review Petitioner on whether relinquishment was in respect of triple moose conductor or quad moose. However, the Review Petitioner has contended that neither EPMPPL nor CTUIL brought on record TSA dated 20.10.2008 executed between erstwhile EPMPPL and EPTCL, subsequently amended on 4.6.2010 and 20.1.2011. It is contended that the Commission notified the 2010 Sharing Regulations whose Regulation 13 and Regulation 14 provide that all existing arrangements/ agreements for payment of transmission charges were to be modified/ aligned with the Sharing Regulations. Accordingly, TSA dated 17.8.2012 was executed between erstwhile EPMPPL and CTUIL while earlier TSA dated 20.10.2008 with amendments was terminated by erstwhile EPMPPL and EPTCL on 29.3.2014. The Review Petitioner has contended that the TSA dated 17.8.2012 is for the transmission system including quad moose conductor built by EPTCL became part of the ISTS, and that transmission charges for the use of such system of EPTCL are to be shared as per the 2010 Sharing Regulations.

22. We have considered the above contentions of EPTCL and the Review Petitioner. We have also perused the BPTA executed between the CTUIL and



erstwhile EPMPL on 7.1.2009, which, *inter alia*, states that for transmission system strengthening for transfer of power from Mahan TPS-WR Pooling Station (near Sipat) 400 kV D/C (Triple Moose Conductor) line is needed. We have also perused the letter of CTUIL dated 1.8.2012 addressed to erstwhile EPMPL, which indicates that the transmission strengthening requirement (dedicated part) was in respect of WR Pooling Station (near Sipat)-Mahan TPS 400 kV D/C Triple Moose Conductor. This letter further states that EPMPL shall ensure availability of above identified System Strengthening Scheme at its own cost before commencement of LTOA. Further, CTUIL vide its affidavit dated 14.1.2023 has enclosed letter dated 22.4.2020 which was written in response to the queries raised by erstwhile EPMPL vide letter dated 20.2.2020 on the information provided by CTUIL vide letter dated 23.1.2020. It is evident from the relinquishment charges provided in the letter that relinquishment of LTA was with respect to Triple moose conductor. The table provided in the letter dated 22.4.2020 by CTUIL is extracted as under:

“Point (e), (f), (h): *Element-wise stranded capacities attributable to M/s EPMPPL in terms of relinquishment of 1100 MW along with the bifurcation of relinquishment charges separately for dedicated line and identified transmission system for LTA is tabulated below:*

Transmission System	Base Case Power Flow (MW)	Relinquished Case Power Flow (MW)	Stranded Capacity (MW)	% Stranded Capacity (= Stranded Cap./Loadability x100)	YTC (Rs. Lacs.)	Yearly Stranded Capacity Charges (Rs Lacs)	Remarks
Mahan TPS – Biaspur PS 400kV D/c (Triple)line					41631.5	41631.5	Entire YTC apportioned with dedicated Transmission line
Gandhar (NTPC) – Hazira (Essar Steel) 400kV D/c					7397.69	7397.69	Entire YTC apportioned with dedicated Transmission line



Mahan-Vindhyachal	317	-280	37	4.233	297.33	12.59	Stranded Cap. Charges = YTC x %Stranded 100
Mahan – Korba STPS	253	52	201	22.997	297.33	68.38	Stranded Cap. Charges = YTC x %Stranded 100
					Total	49,110	

23. On conjoint reading of both BPTA dated 7.1.2009 and the said letters of CTUIL dated 1.8.2012 and 22.4.2020, it is evident that relinquishment of LTA was in respect of triple moose conductor only.

III. No transmission charges can be levied against the Review Petitioner on account of the conclusion of the CIRP against EP MPL

24. The Review Petitioner has contended that pursuant to the filing of Petition No. 145/TT/2018, EPTCL did not disclose the fact that erstwhile EP MPL was undergoing CIRP under the provisions of the IBC 2016 before the NCLT, New Delhi in Company Petition No. (B) 683 (PB)/2020. It is further contended that no claim was raised against the erstwhile EP MPL before the IRP till 11.5.2021 with respect to transmission charges arising out of Petition No. 145/TT/2018. However, in the list of IRP, the claim of CTUIL towards relinquishment compensation was mentioned as 'Government dues'. It is contended that CTUIL participated in the said IBC proceedings initiated against erstwhile EP MPL and sought admission of Rs. 26,325,400,000/- as operational debt against the erstwhile EP MPL. However, the said operational debt was disallowed by the NCLT. The Review Petitioner took charge of erstwhile EP MPL on 16.3.2022, thereupon CTUIL issued invoices for bilateral transmission charges to the Review Petitioner. The Review Petitioner contended that the bilateral transmission charges cannot at all be imposed upon the



Review Petitioner in view of the said IBC proceedings and in view of the judgments of Hon'ble Supreme Court in the matter of *Ghanshyam Mishra and Sons Private Ltd. v. Edelweiss Asset Reconstruction Company Limited* and *Essar Steel India Ltd. Committee of Creditors v. Satish Kumar Gupta* (supra).

25. As against this, MPPMCL has contended that additional tariff of 24% on account of change in configuration of conductor is required to be borne by EPMPPL as confirmed by it in its letter dated 21.8.2009 and in no way it can be passed on to MPPMCL.

26. EPTCL has contended that no debt was payable by the Review Petitioner to EPTCL and as such EPTCL was not in the category of a 'creditor' before the NCLT in IBC 2016 proceedings of the erstwhile EPMPPL. EPTCL has further contended that LTA charges or the relinquishment charges are on the network on which LTA was granted i.e. 76% of the capital cost, while the Review Petitioner has to bear the additional cost of 24% of the capital cost.

27. In response, the Review Petitioner has contended that neither EPTCL nor CTUIL or erstwhile EPMPPL placed on record TSA dated 20.10.2008 executed between erstwhile EPMPPL and EPTCL alongwith its amendments on 4.6.2010 and 20.1.2011 during the proceedings of 145/TT/2018. The Review Petitioner has further contended that in view of Regulation 13 and Regulation 14 of the 2010 Sharing Regulations and execution of TSA dated 17.8.2012 between erstwhile EPMPPL and CTUIL and termination of earlier TSA with amendments on 29.3.2014, the transmission system including quad moose conductor built by EPTCL became part of the ISTS, and that transmission charges for the use of such system of EPTCL are to be paid as per the 2010 Sharing Regulations.



28. We have considered the above contentions of the parties and have perused the impugned order. The Review Petitioner's contention is that it cannot be saddled with any new liability after completion of CIRP. As stated above, the additional cost pertaining to quad moose conductor was agreed to be borne by EPMPL vide letter date 21.8.2009, on the basis of which the transmission licence of EPTCL was amended. Perusal of record reflects that there is categorical admission on the part of erstwhile EPMPL to bear the additional tariff on account of change in conductor configuration from triple moose conductor to quad moose conductor of 400 kV Mahan-Sipat Transmission Line through letter dated 21.8.2009 and CTUIL had also approved the amendment of the transmission licence vide letter dated 8.5.2009. Accordingly, the Commission had rightly arrived at the finding that 'additional tariff on account of increase in cost of Mahan-Sipat Transmission Line due to change in conductor configuration from triple moose conductor to quad moose conductor, is required to be determined that will be borne by EPMPL'.

29. As regards relinquishment, EPMPL relinquished the entire LTA of 750 MW and 450 MW vide its letters dated 10.4.2017 and 30.4.2018 respectively. the said relinquishment was duly accepted by CTUIL vide its letters dated 19.5.2017 and 30.5.2018 for 750 MW (with effect from 12.4.2017 and 450 MW with effect from 4.5.2018, respectively). The amount claimed by CTUIL as dues in IBC proceedings pertained to relinquishment charges for triple moose conductor in terms of order dated 8.3.2019 in Petition No. 92/MP/2015.

30. Had the facts relating to execution of TSA dated 20.8.2008 alongwith its amendments, execution of fresh TSA dated 17.8.2012 on promulgation of the 2010 Sharing Regulations, termination of earlier TSA dated 20.8.2008 with amendments



by deed of termination on 29.3.2014 or the fact that EPMPPL was before the NCLT in CIRP, would have come in our knowledge at the time when we were adjudicating Petition No. 145/TT/2018, no material change would have been there in our findings as the Commission imposed liability on the erstwhile EPMPPL based on the consent letter dated 21.8.2009 given by EPMPPL to EPTCL. Further, the payment liability for period prior to culmination of IBC proceedings in terms of the impugned order dated 14.3.2022 is beyond the scope of the review jurisdiction.

31. We find it apt here to refer to the judgment dated 8.8.2013, of Hon'ble Supreme Court in the matter of *Kamlesh Verma v. Mayawati & Ors. in Review Petition (Crl.) No. 453 of 2012 in W.P. (Crl.) 135 of 2009*, which observed as follows:

“13. In a review petition, it is not open to the Court to re-appreciate the evidence and reach a different conclusion, even if that is possible. Conclusion arrived at on appreciation of evidence cannot be assailed in a review petition unless it is shown that there is an error apparent on the face of the record or for some reason akin thereto.

This Court, in Kerala State Electricity Board v. Hitech Electrothermics and Hydropower Ltd. and Ors. MANU/SC/0477/2005 : (2005) 6 SCC 651, held as under:

10....In a review petition it is not open to this Court to reappreciate the evidence and reach a different conclusion, even if that is possible. Learned Counsel for the Board at best sought to impress us that the correspondence exchanged between the parties did not support the conclusion reached by this Court. We are afraid such a submission cannot be permitted to be advanced in a review petition. The appreciation of evidence on record is fully within the domain of the appellate court. If on appreciation of the evidence produced, the court records a finding of fact and reaches a conclusion, that conclusion cannot be assailed in a review petition unless it is shown that there is an error apparent on the face of the record or for some reason akin thereto. It has not been contended before us that there is any error apparent on the face of the record. To permit the review Petitioner to argue on a question of appreciation of evidence would amount to converting a review petition into an appeal in disguise.”



32. In light of the above, the Commission is of the view that the Review Petitioner has failed to point out any error apparent on the face of record in order dated 14.3.2022 within the purview of Order 47 Rule 1 CPC.

33. The Review Petition No.27/RP/2022 is disposed of in terms of the above.

Sd/-
(P. K. Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I. S. Jha)
Member

