

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 333/MP/2019

Coram:

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

Date of Order: 11th March, 2023

And

In the matter of

Revision and increase of tariff adopted due to Force Majeure and Change in Law Events resulting in the delay in the commercial operation of Nagapattinam-Salem-Madhugiri transmission system.

And

In the matter of

Petition under Section 63 and Sections 79 (1) (c) and (d) of the Electricity Act, 2003 read with Regulation 86 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 for allowing time overrun and cost overrun and the approval of increase in tariff adopted for Nagapattinam-Salem-Madhugiri Transmission System on account of Force Majeure and Change in Law events.

And

In the matter of

POWERGRID NM Transmission Limited,
(Previously known as Nagapattinam- Madhugiri
Transmission Company Limited)
'Saudamini', Plot No. 2, Sector 29,
Gurgaon-122 001.

...Petitioner

Vs

1. IL & FS Tamil Nadu Power Company Limited,
'D' Block, Naveen Pseudium, 4th Floor,
103, Nelson Manickkam Road,
Aminjikarai- 600 029, Chennai

2. Tamil Nadu Generation and Distribution Corporation Limited,
NPKRR Maaligai, 800,
Anna Salai-600 002,
Chennai.

3. Chief Engineer (PSPM)
Central Electricity Authority
PSPM Division, Sewa Bhawan
Rama Krishna Puram,
New Delhi-110 066

4. Chief Operating Officer,
Central Transmission Utility of India Limited,
Saudamini, Plot No.2, Sector-29,
Gurgaon-122001

....Respondents

The following were present:

Shri M. G. Ramachandran, Sr. Advocate, PGNMTL
Shri Shubham Arya, Advocate, PGNMTL
Ms. Poorva Saigal, Advocate, PGNMTL
Ms. Shikha Sood, Advocate, PGNMTL
Shri S. Vallinayagam, Advocate, TANGEDCO
Shri Hemant Singh, Advocate, ITPCL
Shri Lakshyajit Singh Bagdwal, Advocate, ITPCL
Shri Mridul Chakravarty, Advocate, ITPCL
Shri Burra Vamsi Rama Mohan, PGNMTL
Shri V. C. Sekhar, PGNMTL
Shri Prashant Kumar, PGNMTL
Shri Arjun Malhotra, PGNMTL
Ms. Supriya Singh, PGNMTL
Shri Sunil Thomas, PGNMTL
Dr. R. Kathiravan, TANGEDCO
Ms. R. Ramalakshmi, TANGEDCO
Shri R. Srinivasan, TANGEDCO

ORDER

The present Petition has been filed by the Petitioner, POWERGRID NM Transmission Limited (PNMTL), under Section 63, Section 79(1)(c) and Section 79(1)(d) of the Electricity Act, 2003 (hereinafter referred to as 'the Act') seeking extension of time from Scheduled Commercial Operation Date ('SCoD') to actual Commercial Operation Date ('CoD') and increase in quoted levelized tariff under Article 11 and Article 12 of the Transmission Service Agreement dated 2.2.2012 (in short 'TSA'), which has adversely affected the construction of the 'Transmission System associated with IPPs of Nagapattinam/ Cuddalore Area: Package-A' (in short, 'the Project'). The Petitioner has made the following prayers:

“(a) Admit and entertain the present petition under Section 63 read with Section 79 (1) (c) and (d) of the Electricity Act, 2003 for the due consideration of the time overrun and cost overrun in the execution and completion of the transmission project awarded to the Petitioner consisting of two transmission elements, namely(I)765 KV D/C Nagapattinam – Salem Line; and(II)765 KV S/C Salem – Madhugiri Line on account of prayed force majeure and Change in Law events that have occurred subsequent to submission of the bid and award of the project.

(b) Condone the delay of 308 days for execution of the 765 KV D/C Nagapattinam – Salem Line i.e. till 23.10.2016 when it was commissioned and 1133 days for the 765 KV S/C Salem – Madhugiri Line of the transmission project i.e. till 26.01.2019 when the same was commissioned as being on account of Force Majeure Events within the scope of the provisions of Article 11 and Change in Law events under Article 12 of the Transmission Service Agreement dated 2.2.2012 read with the Orders dated 9.5.2013, 20.6.2013 and 16.4.2014 passed by the Commission in Application Nos. 121/MP/2012 and 122/MP/2012;

(c) Grant an extension of Scheduled Commercial Operation Date of 765 KV D/C Nagapattinam – Salem Line upto 23.10.2016, 765 KV S/C Salem – Madhugiri Line upto 26.01.2019 and the Project upto 26.01.2019 i.e. the actual commercial operation date of the last element of the Project and waive any penalties or any other consequences thereof under the TSA dated 02.02.2012;

(d) Declare that the Petitioner shall be entitled to increase in quoted Levelized tariff by 10.45% i.e. 10.314 Crores per annum due to escalation of cost over and above base project cost by 10.45% from Feb.’12 to April’14 due to delay in grant of License/ adoption of Transmission Charges and clearance to commence the project owing to the Force Majeure Events to the above transmission project as more fully set out above.

(e) Declare that the Petitioner shall be entitled to further increase in quoted Levelized tariff by Rs. 48.151 Crores Per annum on account of Change in Law claim of Rs. 455.49 Crores during execution of the project as more fully set out above.

(f) Allow the Petitioner to recover the carrying cost in regard to increased tariff applicable for the past period up to the date of the Order.

(g) Pass such further order or orders as this Commission may deem just and proper in the circumstances of the case.”

Background of the case:

2. The Petitioner is a fully owned subsidiary of Power Grid Corporation of India Limited (‘PGCIL’), which was selected as a successful bidder through the tariff based competitive bidding under Section 63 of the Act to establish the transmission system associated with IPPs of Nagapattinam/Cuddalore Area-Package-A’ on Build, Own, Operate and Maintain (BOOM) basis comprising the following elements:

Sl.	Name of the Transmission Element	SCOD in months from
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No.		Effective Date
1	Nagapattinam Pooling Station-Salem 765 kV D/C line	36 months
2.	Salem-Madhugiri 765 kV S/C line	36 months

3. The Petitioner was incorporated as a Special Purpose Vehicle ('SPV') by Bid Process Coordinator (in short, 'BPC'), namely, PFC Consulting Limited (in short 'PFCCL') for the purpose of developing and implementing the Project under the Tariff Based Competitive Bidding route. PGCIL participated in the competitive bidding process conducted by PFCCL and on emerging as the successful bidder, Letter of Intent (LOI) was issued by PFCCL to PGCIL on 6.3.2012. In accordance with the bidding documents, PGCIL acquired 100% of the shareholding in the Petitioner Company by executing a Share Purchase Agreement with PFCCL on 29.3.2012. PGCIL also furnished the Contract Performance Guarantee of Rs. 45 crore on the same date and accordingly, the TSA dated 2.2.2012 entered into between the Petitioner and the LTTC became effective from 29.3.2012. The Commission in its order dated 20.6.2013 in Petition No.121/TL/2012 granted transmission licence to the Petitioner for inter-State transmission of electricity and vide order dated 9.5.2013 in Petition No.122/ADP/2012 adopted the transmission charges of the Petitioner.

4. During pendency of the Petitions for grant of licence and adoption of transmission charges, PGCIL filed Petition No. 143/MP/2012 raising apprehension regarding execution of the generation project of ITPCL and seeking issue of appropriate direction with regard to whether or not to implement transmission system associated with IPP projects in Nagapattinam/Cuddalore Area. Subsequently, the Petitioner filed IA No. 5/2013 in Petition No.121/TL/2012 seeking a direction for execution of the project with time and cost over- run and for extension of period of 36

months from the date of grant of transmission licence. The Commission while disposing of the IA No.5/2013 directed the Petitioner to first try to resolve the issues in consultation with ITPCL in terms of TSA and in case of non-resolution of issues to approach the Commission in accordance with law. The Commission while granting the licence vide order dated 14.4.2014 in Petition No. 121/TL/2014, directed the Petitioner to go ahead with execution of the project. As regards the extension of time for execution of the project, the Commission observed that the Petitioner is required to execute the project within 36 months from the effective date and is required to obtain the transmission licence within 6 months from the effective date in terms of Article 3.1.3 of the TSA. In other words, the Petitioner is required to implement the project within 30 months from the date of grant of transmission licence.

5. Element 1 was completed in all respect and was also put to use on 23.10.2016, with a delay of 308 days with reference to the revised Scheduled CoD. Element 2 was completed on 26.1.2019 with a delay of 1133 days from the revised SCoD. The entire transmission system within the scope of work had been put to use by 26.1.2021.

6. The Petitioner had sought for the actual CoD for Element 1 to be allowed as on 23.10.2016. The Commission vide order dated 26.3.2018 in Petition No. 62/MP/2017 had not approved the same, *inter-alia*, holding that since there is no provision in the RfQ/RfP and TSA regarding apportionment of transmission charges between different elements of the transmission system being executed through TBCB route, and no certificate of CEA is available to the effect that commissioning of Nagapattinam-Salem transmission line is in the interest of the power system and safety & security of the grid. Moreover, the orders of the Commission dated 26.11.2015 and dated 28.1.2016 in Petition No. 122/MP/2015 and Petition No.

284/ADP/2015 respectively are not applicable to the instant Petition. Subsequently, the Petitioner had filed Review Petition No. 19/RP/2018 seeking review of the said order dated 26.3.2018 which was rejected by the Commission in order dated 8.1.2020. Aggrieved by the said decision dated 26.3.2018, the Petitioner, on 18.2.2020, has filed an Appeal being No. 166 in APTEL, which is pending for adjudication.

7. As per the TSA, the Project was to be completed and commissioned by 36 months from the effective date of the TSA. However, as per the Petitioner, implementation of the Project was affected due to various Force Majeure and Change in Law events encountered during the construction of the Project and its elements that led to delay in achieving the Commercial Operation date.

Submissions by the Petitioner

8. The Petitioner has submitted that Force Majeure events and Change in Law events which have affected the implementation of the Transmission Project/Lines are as under:

A. Force Majeure Events:

The details of completion of Project and delays are as follows:

Sl. No	Name of Transmission element.	Schedule of CoD in months from effective date.	Revised SCoD as per CERC order dated 16.4.2014	Actual CoD	Delay w.r.t. Revised SCoD
1	Nagapattinam Pooling station-Salem 765 kV D/C line.	36 months.	20.12.2015	23.10.2016	308
2.	Salem-Madhugiri 765 kV S/C line.	36 months	20.12.2015	26.1.2019	1133

a. The transmission line-wise summary of delay due to Force Majeure events is as under:

i) 765kV D/C Nagapattinam Pooling Station – Salem Line:

Sr. No	Force Majeure events	Time period		No. of days
		From	To	
1	Court Case for location No. 50/3, 51/1 and 51/2 of D/C Line	28.03.15	20.06.16	451
2	Court Case for location No. 13/1 and 14/0 of D/C Line	26.08.15	08.03.16	196
3	Court Case for location No. 61/0,61/1,61/3,61/4 and 61/5 of D/C Line	10.09.15	14.06.16	279
4	Court Case for location No. 58/4, 59/0,59/1, 59/2, 59/3, 59/4, 62/0 and 63/0 of D/C Line	19.10.15	03.03.16	137
5	Unprecedented heavy rain in the State of Tamil Nadu & Karnataka	09.11.15	15.01.16	68
6	Court Case for location No. 01/01 of D/C Line	10.07.16	23.09.16	76
7	Public Agitation on sharing of Cauvery Water	06.09.16	08.10.16	33
	Net concurrent delay for DC Line			561

ii) 765kV S/C Salem – Madhugiri transmission line:-

Sl. No.	Force Majeure events	Time period		No. of days
		From	To	
1	Notification of Tali Reserve Forest as Wild Life Sanctuary	04.03.15	02.09.18	1279
2	Court Case for location No. 30/0 of S/C Line	03.06.15	02.12.16	549
3	Court Case for Location No. 16/3 and 17/3 of S/C Line	27.08.15	26.06.16	305
4	Unprecedented heavy rain in the State of Tamil Nadu and Karnataka	09.11.15	15.01.16	68
5	Court Case for location No. 13/0 of S/C Line	16.11.15	06.08.16	265
6	Court Case for location No.102A/6 & 102A/7 of S/C Line	30.12.15	04.05.17	492
7	Court Case for location No.49/4 of S/C Line	27.01.16	22.10.16	270
8	Court Case for location No.33/3 & 33/4 of S/C Line	28.04.16	20.01.17	268
9	Public Agitation on sharing Cauvery Water	06.09.16	08.10.16	33
10	Court case for location no.118/0 & 119/0 of S/C Line	11.11.16	10.08.18	638
11	Delay in demarcation of land towards land compensation	27.02.17	24.01.19	697
12	Severe ROW problems faced in the State of Karnataka	01.05.17	28.12.18	607

13	Enactment of GST	01.07.17	28.09.17	90
	Net Con-current Delay for SC Line			1423

B. Cost Over Run:

B1. Cost overrun due to delay in grant of transmission licence/ adoption of the tariff and clearance to commence the project:

9. The Petitioner has submitted that PGCIL as the successful bidder fulfilled and/or caused to be fulfilled all the conditions of the RfP documents within the stipulated time. However, there was unprecedented delay in granting transmission licence for reasons beyond the control of the Petitioner due to issue of environmental clearance to the generating company. The Empowered Committee on Transmission in its meeting held on 15.6.2012 recognized that compensation owing to the environmental clearance issue of the generator needs to be addressed. The Commission in its order dated 16.4.2014 had also observed that the Petitioner cannot be made to suffer on account of the reasons beyond its control. Accordingly, the following claim under Force Majeure and Change in Law during the intervening period from the date of submission of bid i.e. February, 2012 upto 16.4.2014 has been furnished as under:

Cost Components	Base (% of Total Project Cost)	Changes due to Indices- April'14	\$ Impact- April'14	Safeguard Duty	Excise Duty	Service Tax	Total- April.'14	(% of Total Project Cost)- April.'14	% Difference (April'14 Vs. Feb.'12)
Tower Parts	24.84	7.53%			1.81%		9.48%	27.20	2.35
Conductor	20.94	5.05%			1.81%		6.95%	22.39	1.46
Earth wire	0.37	6.57%			1.81%		8.50%	0.40	0.03
Insulators	3.73	0.00%	23.29%	30.00%			60.28%	5.98	2.25
Hardware fittings	2.72	5.46%			1.81%		7.37%	2.92	0.20
Con & earth access.	0.98	5.93%			1.81%		7.85%	1.06	0.08
Tower erection	2.43	20.39%				1.87%	22.64%	2.98	0.55
Civil works	9.74	18.06%				1.87%	20.27%	11.71	1.97
Stringing	1.24	20.39%				1.87%	22.64%	1.52	0.28
F&I etc.	3.45	37.12%					37.12%	4.72	1.28
Sub Total- Hard cost	70.43							80.88	10.45
Crop compensation	3.00							3.00	0.00

Additional	0.00							0.00	0.00
IEDC	3.52							3.52	0.00
Contingencies	2.11							2.11	0.00
Price variation	12.68							12.68	0.00
Market correction factor	0.00							0.00	0.00
IDC	8.26							8.26	0.00
Interest rate impact	0.00							0.00	0.00
Additional equity	0.00							0.00	0.00
Intertest on acquisition price	0.00							0.00	0.00
Sub Total- Other Heads	29.57							29.57	0.00
TOTAL PROJECT COST (Subtotal-A+B)	100.00							110.45	10.45

10. The Petitioner has submitted that cost escalation of 10.45% in hard cost for the period from February 2012 to April 2014 over the base Project cost has been claimed towards delay in the commencement of the Project due to the reasons mentioned above and accordingly, the corresponding increase in quoted tariff by 10.45% for the above variation has been claimed.

B2. Cost over-run due to Change in Law and Force Majeure Events during execution of the project:

11. The Petitioner has submitted that cost of the Project was further escalated by Rs. 455.49 crore after the Commission's order dated 16.4.2014 due to the following Change in Law events during execution of the Project:

- (a) Increase in Excise Duty;
- (b) Enactment of GST Laws, 2017;
- (c) Unprecedented increase in cost of compensatory afforestation of lines and NPV due to Notification of Tali reserve forest as Wild Life Sanctuary;
- (d) Notifications dated 14.1.2015 and dated 2.2.2017 issued towards enhancement of tree compensation as per orders passed by Deputy Commissioner/ District Collector;

- (e) Notification dated 18.8.2017 by the Government of Karnataka for payment of land compensation in the State of Karnataka
- (f) Land compensation in Tamil Nadu as per the judgment of Hon'ble High Court of Madras dated 12.4.2019 in WP No. 16460 of 2018.
- (g) Increase in the deposit amount paid to various Railway Divisions as per the deposit notes for crossing of Railway crossing of lines.
- (h) Increase in the cost of IDC and IEDC due to delay in completion of the lines due to various Force Majeure and Change in Law events as detailed above.

12. The break-up of the claim of Rs. 455.49 crore towards Change in Law events furnished by the Petitioner is as under:

Sl. No.	Description	Amount (Rs. Crore)
1	Notifications towards increase in tree compensation	196.45
2	Notification for land compensation for tower footing and under line corridor in Karnataka	120.5
3	Increase in cost of CA of line and NPV in regard to Forest Areas /Wild Life Sanctuary	8.33
4	Increase in the deposit amount paid to various Railway Divisions as per the deposit notes for crossing of Railway crossing of lines.	1.33
5	Land compensation in Tamil Nadu (Provision as per Judgment of Hon'ble High Court of Madras dated 12.04.2019 against WP No. 16460 of 2018).	34.5
6	Excise duty and GST impact	0.97
7	IDC due to above Change in Law and Force Majeure	52.85
8	IEDC due to above Change in Law and Force Majeure	40.56
Total claim on cost for increase in Tariff		455.49

13. Accordingly, the Petitioner has submitted the details of increase in tariff sought (vide submission dated 20.10.2021) as follows:

S. No.	Description	Increase in levellized tariff due to change in Law (Rs. in crore)	Final levellized Tariff (Rs. in crore)
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1	Quoted and adopted levelized transmission charges		98.702
2	Increase in levelized tariff by 10.45% on account of increase of Indices, increase in Service Tax, increase in Excise Duty and exchange rate, etc. for the period from February 2012 to April 2014 towards delay in grant of licence and clearance to go ahead for implementation of the project vide Order dated 16.4.2014 i.e. (10.45% of 98.702)- Rs. 10.314 crore.	10.314	109.016
3	Cost Overrun of Rs. 455.49 crore due to Change in Law and Force Majeure Events during Project Execution. Increase in tariff allowed over and above levelized tariff as per Change in Law provisions of TSA (i.e. 0.32% increase for every cumulative increase of cost by Rs. 3.3 crore) i.e. (0.32%) * (Rs. 455.49 crore)*109.016/3.3 crore - Rs. 48.151 crore	48.151	157.167
4	Interest expenses and incidental expenses during intervening period from the date of charging of "Nagapattinam Pooling Station-Salem 765 kV D/C Line" (23.10.2016) to COD of Project (26.1.2019) (0.32%) * (Rs. 145.57 crore * 109.016)/ 3.3 crore – Rs. 15.39 crore	15.389	172.556
5	Final levelized tariff		172.556

14. The Petition was listed for hearing on 26.5.2020 and notices were issued to the Respondents to file their reply. Pursuant to the above, the Respondents, Tamil Nadu Generation and Distribution Corporation Limited ('TANGEDCO') and IL&FS Tamil Nadu Power Company Limited ('IL&FS') have filed their replies and the Petitioner has also filed its rejoinder to the same.

15. Further, vide Record of Proceedings for the hearing dated 26.5.2020, the Petitioner was also directed to furnish the certain details, which were filed by the Petitioner vide its affidavit dated 25.6.2020.

Reply of Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO)

16. TANGEDCO, in its replies dated 15.6.2020 and dated 21.7.2020, has

submitted as under.

(a) The Petitioner, a subsidiary of PGCIL, has executed the transmission project exclusively designed for evacuation of power from the Independent Power Producers (IPPs), namely, NSL Power Pvt. Limited, PEL Power Limited and IL&FS Tamil Nadu Power Company Limited based on the Bulk Power Transmission Agreement ('BPTA') executed between the Petitioner and IPPs. The proposal for the said system was arranged by CTUIL exclusively for the purpose of evacuation of power from the IPPs based on the target region provided by them and approved in the 31st and 32nd meetings of Standing Committee on Power System Planning held on 16.11.2010 and 8.6.2011.

(b) The Commission vide order dated 31.5.2010 accorded approval for the aforesaid transmission system exclusively for evacuation of power as agreed between IPPs and the Petitioner. The entire cost invested by PGCIL was at the behest of the generators and if the generator does not commission its plant, the transmission system was required to be revisited and modified to suit the revised generation capacity. As for the generation which did not come up "as contracted and approved by the Commission" in Petition No. 233 of 2009, PGCIL should file a Petition seeking damages as contained in the contract between them. PGCIL cannot go ahead with the approved transmission project when even after knowing the status of generation projects and claim the same to be included in PoC.

(c) Based on the LTA granted to IPPs by CTUIL, BPTA was executed between PGCIL, IL&FS Tamil Nadu Power Company Limited and PEPL on 24.10.2010. Subsequently, PELPL relinquished 987 MW of LTA vide notice dated 26.7.2013 and IL&FS relinquished 540 MW of LTA w.e.f. 3.5.2017. However, as per the provisions of the BPTA, the generators are liable to pay the transmission charges for the untied LTA quantum or relinquishment charges. However, despite publication of the relinquishment charges by such generators by CTUIL in terms of the direction of the Commission vide order dated 8.3.2019 in Petition No. 92/MP/2015, none of the generators have paid the relinquishment charges. Yearly Transmission Charges of the assets associated with IPPs have been included in PoC and shared by all the DICs, which is gross abuse of process of law by the Petitioner.

(d) The Petitioner had also prayed to merge the transmission system as part of the TSA approved under the Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) Regulations, 2010 ('Sharing Regulations, 2010') in Petition No. 122 of 2012 despite the fact that the liability of payment of transmission charges for the instant transmission lines with IPPs who have entered into BPTA. The Commission vide order dated 9.5.2013 had granted approval for merger of transmission scheme under the new TSA. However, it was clarified that till the generator identifies the long-term beneficiaries of the project who will utilize the transmission line for evacuation of power, the generator shall have the liability to pay the transmission charges. It is evident from the above that the Petitioner is aware that once the transmission assets are merged with new TSA, then all the DICs in Southern Region who are sharing the transmission charges should have been impleaded in the Petition subsequent to the said order. The Petition is devoid of non-joinder of necessary parties i.e. all the DICs of SR including PELPL and therefore, the present Petition is not maintainable.

(e) The Petitioner has not complied with the provisions of Regulation 10 (2) of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions of grant of transmission licence and other related matters) Regulations, 2009, which requires the licensee to build the project in a time bound, efficient, coordinated and economic manner.

(f) As per Article 3.3.4 of the TSA, the Petitioner should have terminated the TSA due to delay exceeding 180 days. However, the Petitioner failed to terminate the agreement despite inordinate delay in commencement of the Project.

(g) The inordinate delay in execution of the Project and associated cost implications were neither brought to the knowledge of the Commission nor any of the DICs in Southern Region.

(h) The Petitioner has not acted diligently and the provisions of the Regulations, TSA and the direction of the Commission have been violated by the Petitioner. Also, the Respondent is in no way connected to or responsible for either the BPTA /TSA or the approval of the transmission system or the commissioning of the generators. In such circumstances, it is not justifiable to put the burden of all

the lapses of PGCIL/ CTUIL on the distribution licensee. Reliance has been placed on the judgment of APTEL dated 19.5.2020 in Appeal No. 266 of 2016.

(i) As observed by the Commission vide order dated 20.6.2013 in Petition No. 121 of 2012, the Petitioner did not make effort to pursue the matter for early grant of transmission licence before the Commission. Therefore, the Petitioner is not entitled for any relief for delay in obtaining the transmission licence.

(j) As per Article 11.5 of the TSA, the Petitioner is bound to give notice for any force majeure condition and to seek extension of time. The extension of time is allowable on 'day to day' basis as per Article 4.4 of the TSA up to a maximum of 180 days only. Since the Petitioner has not obtained any consent from LTTCs, the Petitioner is not entitled to any relief under the provisions of TSA.

(k) The events claimed by the Petitioner as Force Majeure viz. Court Cases, unprecedented rains, public agitation are not covered under Article 11 of the TSA. The Petitioner is liable to foresee such eventualities and act accordingly rather than passing the burden of such eventualities on the beneficiaries. The total cost increased due to Change in Law and Force Majeure conditions is around Rs. 455.49 crore is exorbitant and defeats the very purpose of the competitive biddings.

Rejoinder to reply of TANGEDCO

17. The Petitioner, vide its rejoinders dated 10.7.2020 and dated 28.7.2020, has mainly submitted as under:

(a) At the outset, TANGEDCO has confused the status of the Petitioner and that of PGCIL/CTUIL and the respective agreements signed by them and roles assigned to them. The present Petition has been filed by the Petitioner, as a transmission licensee who has implemented the Project under TBCB route in its own right and in relation to the TSA executed by it. The role of PGCIL and CTUIL vis-à-vis other LTA customers under the agreements entered into by them is not relevant for the present Petition or otherwise related to the Petitioner herein.

(b) TANGEDCO is seeking to raise irrelevant issues which have no relation to

the issues at hand and expand the scope of the Petition which is not permissible. TANGEDCO is deliberately seeking to confuse the issue by raising issues which have nothing to do with the maintainability of the Petition.

(c) It is denied that the Petitioner has executed the transmission project exclusively for the three IPPs or based on the BPTA. The Petitioner has executed the TSA with only IL&FS and has no agreement or relation with other IPPs. The transmission project has been implemented based on the TSA signed with IL&FS and in pursuance to a competitive bid and not based on BPTA signed by any of the generators or any of the Respondents with PGCIL for other lines. Further, the transmission service agreement with IL&FS was executed while the Petitioner was still a subsidiary of and under control of the bid process coordinator. The bidders had no role to play in this regard either with respect to scope of the transmission system finalized/ agreed for the generators or signing of agreements.

(d) It is not open for TANGEDCO to raise issues of establishment of transmission system at this belated stage when the transmission system has already been established after grant of approvals and licence. TANGEDCO had never raised an issue at the relevant time when the bid was being conducted and when the approval under Section 63 of the Act was granted or even when the transmission licence was granted. It is also relevant to note that TANGEDCO has been utilizing the services of transmission system since October 2016.

(e) The Petitioner is not concerned with the BPTA or the intended IPPs who had signed the BPTA or even otherwise the IPPs who were intended beneficiaries of the transmission system as per the Power System Planning. The Petitioner has not signed the BPTA and has not signed any agreement with NSL Power Pvt. Ltd. or PEL Power Ltd. TANGEDCO is mixing up the BPTA with TSA. It is denied that the Petitioner has executed the transmission project exclusively for the three IPPs or based on BPTA. The Petitioner has no privity of contract with NSL Power Pvt. Ltd or PEL Power Limited and cannot make any claim against them. It is, therefore, not open to TANGEDCO to claim that there is any non-joinder or misjoinder of parties.

(f) TANGEDCO has to address the issues of BPTA with PGCIL/CTUIL or

otherwise based on power system planning or order dated 31.5.2010 of the Commission. The Petitioner is not PGCIL. The Petitioner is seeking relief under the provisions of the TSA dated 2.2.2012 in which the beneficiary is only IL&FS. The entitlement or otherwise of damages under other contracts and against other generators is not relevant to the present case. Further, matter regarding relinquishment of LTA by the parties and payment of relinquishment charges thereon as per the order dated 8.3.2019 in Petition No. 92/MP/2015 is not under the purview of the Petitioner.

(g) TANGEDCO cannot now raise the issue on the transmission Project, namely, when it is implemented and successfully commissioned. The RfP recognized that the beneficiaries could be added or deleted. The TSA was executed prior to the issuance of Letter of Intent (LoI) and had been signed only with IL&FS and based on the above, the tariff was adopted, transmission licence was granted, transmission system was constructed and commissioned. There was no due diligence or otherwise any discretion with the Petitioner with regard to the other IPPs.

(h) The Petitioner's TSA remains with IL&FS. The payment of transmission charges by the beneficiaries is in terms of the Regulations but this does not mean that all the beneficiaries are to be impleaded as the Respondents. The principle beneficiary under TSA is IL&FS. The fact that liability to pay transmission charges related to the capacity by beneficiaries of IL&FS is because of their contract with IL&FS.

(i) Even as per TANGEDCO, the Commission in paragraph 15 of its order dated 9.5.2013 had directed the Petitioner to resolve issues with IL&FS. Thus, even at the time when the TSA merging was discussed, the Commission had recognized the only relevant party to be IL&FS. Therefore, it is not clear on what basis the other DICs should be impleaded. If the contention of the TANGEDCO based on PoC is accepted, then all transmission related Petitions should implead every DIC in the entire country which is neither feasible nor practicable.

(j) The issue of relinquishment charges is extraneous to the present issue and is not relevant to the Petitioner. The determination of relinquishment charges and its recovery cannot affect the claims of transmission charges and of increase in transmission charges in light of Force Majeure and Change in Law events.

(k) Whether the Petitioner can call upon the PGCIL to seek damages under the BPTA (even assuming but not admitting that the same can be claimed) is not an issue to be decided in the present Petition and does not involve the Petitioner. The issue of relinquishment of LTA and compensation for the same as well as inclusion in the PoC are decided as per the relevant regulations and orders and are not the subject matter of the present Petition. The contention that the transmission charges related to relinquished capacity should not be part of PoC is contrary to the Regulations and the scheme framed by the Commission.

(l) With regard to relinquishment by IL&FS, the Petitioner was required to implement the transmission system based on competitive bid and the transmission service agreement and the Petitioner had no role to play to decide on the scope of transmission capacity and whether it should be created or not. As far as the Petitioner is concerned, it has implemented the Project and providing service to the beneficiaries as per the provisions of the TSA. Hence, the Petitioner is entitled to be paid the transmission charges for the system implemented and duly compensated for adverse impact on the capital cost on account of changes, unforeseen and uncontrollable events not attributable to the Petitioner, encountered during execution of the Project. There was no intentional wrong or contumacious act or otherwise any wrong by the Petitioner.

(m) The sharing of transmission charges and the consequences of relinquishment are provided by the Commission by notified Regulations which are binding and TANGEDCO cannot claim otherwise. The compensation, if any, payable by IL&FS is also provided as per the Regulations read with orders of the Commission.

(n) In any event, the contention of TANGEDCO with regard to issues of relinquishment charges and PoC charges cannot be raised in the present Petition seeking compensation towards Force Majeure and Change in Law and the consequent time overrun and cost overrun. The claims of the Petitioner are to be considered irrespective of the relinquishment of any capacity. The Petitioner has implemented the transmission system and cannot be denied costs including increase in tariff due to events beyond its control. The fact that IL&FS relinquished capacity subsequently does not alter the fact that the transmission system was implemented. The consequences of relinquishment are provided in

the Regulations and the same does not change the right of the Petitioner to recover the yearly transmission charges including increase in tariff or their inclusion in PoC.

(o) The regime of PoC was introduced under Sharing Regulations, 2010 and the inclusion of transmission charges in PoC cannot also be questioned in the present Petition. TANGEDCO has not challenged any of the orders including order dated 9.5.2013 for inclusion in the PoC.

(p) TANGEDCO has raised the issues on implementation of the transmission project which cannot be raised in the present Petition which is for consequences of Change in Law and Force Majeure events nor can the implementation of the Project be questioned at this stage. The Project has already been implemented and transmission charges are already included in the PoC regime based on the orders and Regulations of the Commission. It is not open to TANGEDCO to now raise any issues in this regard. It is clear that the intention of TANGEDCO is to prolong the litigation, which is an abuse of process of law and should be outrightly rejected.

(q) The contention of TANGEDCO that the Petitioner should have abandoned the Project cannot be raised in the present Petition besides being completely frivolous and mischievous. The Petitioner had no authority to abandon the Project and there was no obligation on the Petitioner to unilaterally terminate the agreement. This is particularly when the issue was pending before the Commission and the Petitioner had sought specific directions from the Commission in regard to the Project. In any case, it had been clarified that the IL&FS project was going ahead.

(r) There is no obligation on the Petitioner to terminate an agreement particularly when it has already made investment and has incurred expenditure. The transmission projects get delayed due to various reasons including right of way issues but this does not mean that every project that gets delayed should be abandoned causing loss to the transmission licensee and also to the nation.

(s) Reference to decision of Appellate Tribunal for Electricity (APTEL) in Appeal No. 266 of 2016 dated 19.5.2020 in the case of PEL Power Limited is misconceived. The said judgment is related to planning of transmission system

by CTUIL and relates to BPTA. The Petitioner is an independent entity and is a special purpose vehicle for implementing transmission system in relation to IL&FS. There was no cancellation or abandonment of the generating project of IL&FS. When there was uncertainty regarding IL&FS, it was brought to the notice of the Commission and the process was suspended until there was clarity. Only on receiving go ahead from the Commission, the Petitioner proceeded with the Project. In fact, the said judgment supports the Petitioner's claim that when there is uncertainty, the work on transmission system could not be commenced.

(t) TANGEDCO has not properly gone through the various issues raised by the Petitioner and has causally commented only on the issues of court cases, unprecedented rains and public agitation. It is denied that the above would not be covered under Force Majeure and Change in Law clauses of the TSA. TANGEDCO has not denied the events but has only claimed that it does not fall within Force Majeure/Change in Law.

(u) The Petitioner had issued notices to LTTCs at appropriate times. The Respondent No. 2 is confusing the issue with claiming a requirement of consent from LTTCs. Firstly, the only relevant party is IL&FS and secondly, there is no requirement of consent. It cannot be that the beneficiary refuses to accept Force Majeure event and the Transmission Service Provider has no other avenue. This would be self-serving as no beneficiary would give consent and the Transmission Service Provider cannot suffer for the same. While the beneficiary can consent to the extension but even if they don't, the dispute may be raised with the Commission as per the provisions of the TSA. The Commission is entitled to adjudicate all disputes and grant extension of time even if the beneficiary does not consent.

(v) The time period of 180 days is only that after such time, either the TSP or beneficiary can terminate the TSA. Since the TSA has not been terminated and the transmission system has been implemented, the said time limit has no meaning. The interpretation of 180 days limit is for the purpose of invoking termination provisions of TSA (Article 13.5), if any, and not a limiting provision for providing time extension in case of Force Majeure events. As per Article 11.7 of TSA, no party shall be in breach of its obligation when the performance of its obligation was prevented, hindered or delayed due to Force Majeure event. The

issue is not foreseeability of the eventualities but the provisions of the TSA. If the event is a Force Majeure event (Article 11) and Change in Law (Article 12), the same is to be allowed. There is no requirement of whether the same was foreseeable. In any case, the Petitioner could not have foreseen the delay as had occurred.

Reply of IL&FS Tamil Nadu Power Company Limited (IL&FS)

18. The Respondent No.1, IL&FS Tamil Nadu Power Company Limited ('IL&FS'), in its reply dated 16.7.2020 has mainly submitted as under:

(a) The argument of the Petitioner that there is a delay of 25 months in commissioning of the transmission system built by the Petitioner on account of uncertainty in grant of NGT clearance for the generation project does not hold any merit since any uncertainty pertaining to the establishment of generation project cannot be linked with the commissioning of the transmission system built by the Petitioner.

(b) The Commission vide its order dated 9.5.2013 in Petition No. 121/TL/2012 with IA No. 5/2013 had directed the Petitioner to go ahead with the implementation of the transmission project. Further, vide order dated 20.6.2013, the Commission also held that the execution of the transmission project by the Petitioner cannot at all be affected on account of any apprehension generated regarding viability of the generation project. Hence, today the Petitioner cannot seek its Project got delayed because it awaited the outcome of the NGT proceedings, before the competing the Project.

(c) The Commission vide order dated 16.4.2014 in Petition No. 121/TL/2012 again took cognizance of the fact and specifically observed that the Petitioner itself contributed to the delay in execution of transmission project. As a result, the present Petition has become infructuous as the issue of delay has been settled vide the aforesaid order whereby it has been held that the Petitioner itself contributed to delay in implementing the transmission project.

(d) Delay in commissioning of the transmission system by the Petitioner is not at all attributable to the Respondent as the Respondent achieved the commercial operation of two units of the generating station on 29.9.2015 and 30.4.2016

which is way before the commissioning of the entire transmission system by the Petitioner.

(e) Further, there has been a delay on the part of the Petitioner itself in obtaining the transmission licence. The reason behind the same was that the Petitioner for a considerable length of time assumed itself to be a deemed transmission licensee in accordance with Section 14 of the Act and it was on account of such false assumption, the Petitioner did not go ahead for filing of the application seeking formal grant of licence. The said position of the Petitioner was clear by the Commission vide order dated 9.5.2013 in Petition No. 121/TL/2012. It is clear that from the date of issuance of Lol to the Petitioner on 6.3.2012 till the passing of the aforementioned order, the Petitioner was working on a false premise of it being a deemed transmission licensee, which cannot result in burdening the beneficiaries of the Petitioner.

(f) Delay on the part of the Petitioner in obtaining a licence is also evident from the order dated 20.6.2013 by the Commission in Petition No. 121/TL/2012, where the Commission has already taken cognizance of the fact that the Petitioner itself never pursued for early grant of licence. Therefore, any such delay on this account is solely attributable to the Petitioner. Even after the willful defaults on its own part, the Petitioner has approached the Commission seeking claims for cost and time overrun, which are clearly illegal and unjustified.

(g) Without prejudice to the above, any increase in tariff/charges of the transmission system of the Petitioner are to be payable in accordance with the PoC /Sharing Mechanism as envisaged under the Sharing Regulations, 2010. PGCIL in the capacity of CTUIL and the parent company of the Petitioner had filed Petition No. 154/MP/2011 before the Commission for grant of regulatory approval for execution of the transmission system required to be built for various upcoming generation projects in different areas of the country including the area where the Respondent's generating project is located. The Commission vide order dated 13.12.2011 held that the transmission charges for the transmission system developed by CTUIL for the upcoming generation project, including such transmission charges payable by the Respondent, shall be as per the PoC/Sharing Mechanism as envisaged in the Sharing Regulations, 2010. Also, the TSA, while recognizing the aforesaid order, categorically recorded that

whenever the transmission system scheme becomes implementable, the transmission charges for the said transmission scheme/system shall be pooled and allocated to all system users in accordance with the Sharing Regulations of the Commission.

(h) Since the complete transmission system of the Petitioner was commissioned on 26.01.2019, and the compensation for relinquishment in respect of relinquishment of 540 MW LTA by the Respondent was computed by PGCIL/CTUIL on 20.5.2019 i.e., four months after the commissioning of the transmission system of the Petitioner, any claim which may be decided by this Commission cannot at all lead to any arbitrary increase in the alleged relinquishment compensation of the Respondent.

(i) The relinquishment compensation was computed on 20.5.2019 as per the order dated 8.3.2019 in Petition No.92/MP/2015. Once, the said computation is done, the relinquishment compensation cannot be revised thereafter, on account of any subsequent increase in the ARR of CTUIL. Regulation 18 of the Connectivity Regulations categorically provide that relinquishment compensation is to be computed based upon the transmission charges existing on the date of such relinquishment. There is no provision under Regulation 18 of the Connectivity Regulations, 2009, to raise any supplementary invoice for claiming additional relinquishment compensation. Hence, it is not open to CTUIL to revise the relinquishment compensation, in the event any additional costs are awarded to the Petitioner.

(j) Force Majeure clause under the TSA nowhere contemplates that any delay in completion of a generation project (such as that of the Respondent), could be a reason of Force Majeure for the Transmission Service Provider (TSA), being the Petitioner in this case.

(k) It is a settled principle of law that parties to the contract are bound by the terms of the contract. Therefore, if the Force Majeure Clause of the contract does not provide for any relief to the Transmission Service Provider, on account of any delay in implementation of the generation project, then the same cannot be used as a ground for claiming Force Majeure. Also, vide orders dated 9.5.2013 and dated 20.6.2013, the Commission categorically held that any delay

in the Respondent in getting any clearance cannot be a reason for delay in implementation of the transmission Project.

Rejoinder to reply of IL & FS

19. The Petitioner, in its rejoinder dated 24.8.2021 to the reply filed by IL&FS, has mainly submitted as under:

(a) 24 months delay with respect to implementation of the Project is due to uncertainty arising out of suspension of NGT clearance of IL&FS generating station and subsequent decision of the Empowered Committee to put on hold the implementation of the transmission system, delay in obtaining transmission licence and delay in obtaining clearance under Section 164 of the Act.

(b) It is erroneous on part of IL&FS to claim that uncertainty regarding its generation project should have no impact on the transmission system, when the transmission system was being built for the sole LTTC being IL&FS and for its generation project at Nagapattinam, Tamil Nadu. IL &FS has duly signed the TSA dated 2.2.2012 even before the award of the project to the successful bidder and taking over the project by the successful bidder.

(c) The matter regarding pendency of the appeal before the National Green Tribunal with regard to Environmental Clearance to IL&FS was fully in the knowledge of the IL&FS at the signing of the TSA. Notwithstanding the pendency of the appeal and outstanding nature of the judgment in above matter, IL&FS Tamil Nadu Power Company Limited signed the TSA and *inter alia* made the Representation & Warranties as per Clause 17.1.1(e) of the TSA which is untrue and inaccurate.

(d) IL&FS has not considered the decision of Empowered Committee, which is the designated agency, itself had as early as on 15.6.2012 asked for transmission scheme to be put on hold in view of the uncertainty of the generation project. Thus, when the Empowered Committee itself has recommended for keeping the implementation of the transmission system on hold until there is clarity, the Petitioner could not have precipitated the matter or gone ahead with the Project contrary to the view of the Empowered Committee. Further, the Empowered Committee also noted that the issues related to

compensation to bidder shall be addressed during the hearing on the petition filed. However, this issue was not addressed until 16.4.2014. The decision of NGT and the Empowered Committee is also a Change in Law.

(e) In a case involving Vemagiri Transmission System, in case of similar uncertainties of generation project, it was ultimately decided (after a year) that the transmission system was not needed. Even in this case, Empowered Committee in the same meeting had sought to get information with regard to the implementation of gas-based projects prior to taking decision.

(f) IL&FS has selectively highlighted the order dated 9.5.2013 to claim that the Petitioner was to go ahead with the execution of the Project. However, the said view was expressed after noting the statement of the counsel for the Respondent wherein it was clarified that there is no uncertainty regarding execution of the project. However, the transmission licence was still to be granted which was granted only on 20.6.2013 and received only on 18.7.2013.

(g) IL&FS is misinterpreting the order dated 20.6.2013. The same did not mean that the non-grant of NGT clearance is not linked with the execution of the transmission Project. If the environment clearance was not granted to IL&FS and its generation project had not come, there would have been no need for the transmission system. This is also clear from the order dated 9.5.2013 passed by the Commission, wherein the submission of IL&FS on its environment issue was noted and proceeded with. It was only after clarification by IL&FS that there was no uncertainty regarding execution of generation project in view of the settlement of environment issue that the transmission project could go ahead and even the Commission had so directed only after the clarification by IL&FS. Therefore, it is incorrect on part of IL&FS to allege that the Petitioner had been directed to complete the Project without waiting for outcome of NGT proceedings. It was the responsibility of IL&FS to keep the Commission and Empowered Committee informed of the status of its Project.

(h) Eventually, the Commission took cognizance of the time overrun and cost overrun issues and vide order dated 16.4.2014 passed in Petition No. 121/TL/2012 recognized the fact and stated that the Transmission Service Provider cannot be made to suffer on account of reasons which are beyond its

control and further assured that the issue of extension of time for execution and associated cost implications would be considered by the Commission on merits on completion of the project in accordance with the provisions of the TSA. Effectively, the go ahead of this Commission can be considered to be 16.4.2014 that is where this Commission was pleased to adjudicate the issues arising out of incompleteness in licence as issues with respect to timeline and treatment of cost and delay in granting clearance under Section 164 of the Act that too after a period of more than 2 years, after bidding. IL&FS is also misinterpreting the order dated 16.4.2014 and it is denied that the Petitioner had delayed the implementation of the transmission Project. The delays were beyond the control of the Petitioner.

(i) It is denied that the issue of “deemed transmission licensee” had led to any delay or that the Petitioner did not file the application. IL&FS has failed to acknowledge the specific facts despite the fact that it was a party to the Petition No. 121/TL/2012 and despite the fact that it has been stated specifically in the present Petition. In the said Petition No. 121/TL/2012, the Petitioner had sought prayer as to not only declare any government company implementing transmission system as deemed licensee or in alternative the grant of transmission licence. In the same order dated 9.5.2013 wherein the consideration of deemed licensee was rejected, the Commission had also proceeded to consider the issue of grant of licence and directed issue of notice under Section 15(5) of the Act. Therefore, both issues were considered together and there is no delay. The Commission after due consideration of the Application of the Petitioner has granted licence to the Petitioner.

(j) The Commission in the above order had not noted any default or non-compliance with any condition under Section 15 of the Act or the relevant Regulations in the said order. In fact, the order dated 9.5.2013 notes in various paras, compliance of the Petitioner with the Regulations including fees, public notices and service, etc. which was all done in 2012 itself. Therefore, the prayer for recognition of deemed licensee did not result in any delay.

(k) The Petitioner has *inter alia* sought increase in tariff/transmission charges and the same would be recovered in the same way as transmission charges. In the

instant case, TSA and bidding documents specifically provides that transmission charges are to be recovered in accordance with Sharing Regulations as notified by this Commission upon commissioning of the project.

(l) As regards the contention that there cannot be any increase in amount of alleged relinquishment compensation, as determined by PGCIL/CTUIL qua the relinquishment of LTA by the Respondent, the scope of the Petition is limited to Force Majeure and Change of Law events encountered by the Petitioner during implementation of the project and its consequent relief with respect to extension of SCOD and increase in tariff.

(m) The Petitioner has not raised any issue of relinquishment in the Petition. The relinquishment charges are calculated by CTUIL. The Petitioner is not CTUIL/PGCIL and any claim of CTUIL/PGCIL vis-à-vis relinquishment charges, including increase in the same, if any, is not subject matter of the present Petition and there can be no consideration or finding on this issue in the present Petition. The claim, if any, by CTUIL/PGCIL has to be raised and considered separately. The Petitioner is claiming increase in transmission charges in terms of the TSA and the issues in BPTA have no relevance to the present Petition. The submission is extraneous and cannot be dealt with in the instant Petition.

20. The matter was heard on 23.7.2021 through video conferencing. During the course of hearing, learned senior counsel while recapitulating the issues involved in the matter, sought liberty to place on record additional submission and the written submissions in the matter. Further, the Petitioner was also directed to place on the record the copy of the Appeal filed before the Appellate Tribunal for Electricity against the order of this Commission dated 26.3.2018 in Petition No. 62/MP/2017 read with order dated 4.4.2019 in Petition No. 19/RP/2018.

21. Pursuant to the liberty granted by the Commission, the Petitioner filed its additional submission dated 4.8.2021 wherein the Petitioner, in addition to reiterating its submissions on the various Force Majeure and Change in Law events, also

submitted as under:

(a) On completion of the first line i.e. Nagapattinam Pooling Station-Salem 765 kV D/C line and after it being put to use (which has been certified by CEA), the Petitioner had filed Petition No. 62/MP/2017 before the Commission, *inter alia*, praying to approve the methodology for apportionment of transmission charges between the two lines and payment of transmission charges for 765 kV D/C Nagapattinam-Salem transmission line with effect from 23.10.2016 (date of CoD and the date on which the line was put to use).

(b) However, the Commission vide order dated 26.3.2018 did not allow the reliefs as sought by the Petitioner in the aforesaid Petition. The Petitioner had also filed Review Petition bearing No. 18/RP/2018 against the order dated 26.3.2018 in Petition No. 62/MP/2017, which was again not allowed by the Commission vide order dated 8.1.2020. Accordingly, the Petitioner has thereafter filed Appeal No. 166 of 2021 before the APTEL, which is presently pending.

(c) The appeal before the APTEL pertains only to the apportionment of transmission charges already adopted under Section 63 of the Act. The apportionment of the adopted transmission charges is sought between Nagapattinam-Salem transmission line and Salem-Madhugiri transmission line so as to enable the payment of such apportioned transmission charges towards commissioning of Nagapattinam- Salem transmission line limited to the period from 23.10.2016 to 26.1.2019.

(d) While the aforementioned appeal deals with the apportionment of transmission charges, the instant Petition be treated as per the decision dated 26.3.2018 and dated 8.1.2020 passed by the Commission of CoD of the entire Project being 26.1.2019. The Petitioner is seeking enhancement of the transmission charges adopted under Section 63 of the Act and condoning the delay in commissioning of the elements on account of Force Majeure and Change in Law provisions for the entire period till 26.1.2019 i.e. COD of the entire Project. In the instant Petition, apart from the basic increase in hard cost owing to Change in Law, the computation of the claim also includes carrying cost (IDC) and overheads (IEDC) which have been computed upto 23.10.2016 for Nagapattinam-Salem line and upto 26.01.2019 for Salem-Madhugiri

transmission line. The carrying cost (IDC) and overheads (IEDC) may also be allowed for the period from 26.3.2016 to 26.1.2019 in regard to Nagapattinam - Salem line.

(e) The implication of decision of APTEL in Appeal No. 166 of 2021 will be limited to the apportionment of the admissible cost finally determined between the two sections, namely, Nagapattinam-Salem and Salem Madhugiri, if the appeal is allowed based on the respective CoD. In all respects, the decision of this Commission in the present Petition will be necessary irrespective of whether the CoD of the two sections are to be considered separately or as one date i.e. 26.1.2019.

(f) The Petitioner has been put to extreme hardships for the delayed commissioning of the entire transmission project and the delay was at no point of time for any reason attributable to the Petitioner. The present Petition regarding compensation on account of Change in Law which has resulted in additional burden on the Petitioner was filed in September, 2019 and the Petitioner has been servicing debt including the additional cost on account of Change in Law events during the entire period till 26.1.2019 and including post CoD on tree/crop compensation and land compensation, etc. Thus, any further deferment in finalizing the impact of Change in Law will severely prejudice the Petitioner's ability to service the debt.

22. The matter was listed for hearing on 12.10.2021 through video conferencing. Learned senior counsel for the Petitioner circulated note of arguments and made detailed submissions in the matter. Learned counsel for the Respondent IL&FS also made his submissions in the matter. Vide Record of Proceedings for the hearing dated 12.10.2021, the Petitioner was permitted to file the calculation of its claims towards IDC and IEDC within a week and accordingly, the matter was reserved for order. The Petitioner on 20.10.2021 has placed on record the Auditor Certificate dated 19.10.2021 certifying that the Petitioner has incurred Rs. 145.57 crore on account of Interest during Construction (IDC) Expenses and Incidental Expenditure

during Construction (IEDC) during the period from the date of charging of "Nagapattinam Pooling Station - Salem 765kV D/C Line" (23.10.2016) to the date of Commercial Operation Date of Project i.e., 26.01.2019. Further, the Petitioner stated that the IDC and IEDC claim corresponding to Element-1 upto 22.10.2016 and Element- 2 upto Project COD has already been submitted.

23. However, consequent upon issuance of Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 ('Change in Law Rules') dated 22.10.2021 by the Ministry of Power, Government of India requiring a change in procedure dealing with the Change in Law cases, the matter had been re-listed on 11.1.2022.

24. The parties were heard on the applicability of Change in Law Rules on the present Petition. Learned counsel for the Respondent, TANGEDCO further submitted that in the present case, there are no Change in Law events and for the same set of events, reliefs have been prayed under Force Majeure as well as Change in Law. Learned counsel for TANGEDCO also submitted that the Petition involves question as to who will bear such additional impact as the Project therein was constructed exclusively for evacuating the power from certain IPPs, some of which did not come up and in such case, the burden cannot be shifted onto the Respondents/ beneficiaries and ultimately to the end consumers. After hearing the learned senior counsel for the Petitioner and the learned counsel for Respondent TANGEDCO, the matter was once again reserved for order. The Petitioner was also directed to file legible copies of proof of all court cases claimed as Force Majeure event vide its affidavit dated 25.6.2020, which the Petitioner furnished vide its affidavit dated 1.2.2022.

25. The present Petition was heard on 11.1.2022, and the Commission, after

hearing the learned counsels for the parties, reserved order in the matter. However, as the Petition could not be disposed of, prior to the earlier Chairperson demitting office, the Petition was re-heard on 15.7.2022. During the course of hearing, learned counsel for the parties submitted that the parties have already made their respective submissions in the matter, which may be considered and accordingly, the Commission reserved order in the matter thereafter.

Analysis and Decision

26. As regards the applicability of the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 ('Change in Law Rules'), the Appellate Tribunal for Electricity (APTEL) vide its judgment dated 5.4.2022 has, *inter alia*, held that the Change in Law Rules apply only prospectively and cannot be retrospectively applied to the proceedings pending for adjudication before the Commission particularly where the cause of action had already arisen before the rules were brought into existence and accordingly, the Commission has been directed to consider each such case on merit and adjudicate the matter in exercise of its jurisdiction under Section 79 of the Act. In view of the aforesaid judgment of the APTEL, since the present Petition had already been filed prior to the notification of the Change in Law Rules and was pending for adjudication under Section 79 of the Act read with Article 12 of the TSA, the Commission proceeds to consider the claims of the Petitioner on the merits under exercise of jurisdiction under Section 79 of the Act.

27. We have considered the submissions of the Petitioner, TANGEDCO and IL & FS and also perused the documents on record. However, prior to the considering the matter on merits and examining the entitlement of the Petitioner to the various reliefs as sought for, it is pertinent to deal with certain preliminary objections as raised by the Respondents.

28. At the outset, we note that the Respondent, TANGEDCO has raised the certain objections/submissions towards the IPPs for which the Project was envisaged either did not come up or relinquished the LTAs, PGCIL ought to have sought damages from such IPPs under the BPTAs, none of the IPPs having paid the relinquishment charges as per the Commission`s order dated 8.3.2019 in Petition No. 92/MP/2015, etc. However, as rightly pointed out by the Petitioner in its rejoinder, such issues are not germane to the scope of the present Petition, which has been filed by the Petitioner seeking reliefs of the time over run and cost overrun in respect of its obligations of the implementation of the Project under the TSA. The issues relating to the lapse on the part of CTUIL in transmission planning, seeking damages from the IPPs and relinquishment charges, etc. do not concern the Petitioner and therefore, such issues cannot be covered under the scope of the present Petition.

29. TANGEDCO has further objected to the maintainability of the Petition on the ground of non-joinder of the necessary parties i.e. all the DICs of the Southern Region including PEL Power Ltd. TANGEDCO has submitted that the Commission vide its order dated 9.5.2013 in Petition No. 122/ADP/2012 had, on the request of the Petitioner, granted approval for merger of transmission scheme under the new Transmission Service Agreement and further clarified that till the generator identifies the long-term beneficiaries of the project who will utilize the transmission line for the evacuation of power, the generator shall have the liability to pay the transmission charges. Thus, it was evident that the Petitioner was aware that once the transmission assets are merged with new TSA then all the DICs in Southern Region will be sharing the charges and therefore, they should have been impleaded as party

to the Petition.

30. *Per contra*, the Petitioner has submitted that its TSA remains with the IL & FS and the payment of the transmission charges by the beneficiaries is in terms of the Regulations but this does not mean that all the beneficiaries are to be impleaded as the Respondents. The liability to pay transmission charges related to the capacity by beneficiaries of IL & FS is because of their contract with IL & FS. The Petitioner has submitted that apart from IL & FS, the Petitioner does not have any privity of contract with the other IPPs. Even as per TANGEDCO, the Commission in paragraph 15 of the order dated 9.5.2013 had directed the Petitioner to resolve the issues with IL & FS and further, even at the time when the TSA merging was discussed, the Commission had recognized the only relevant party to be IL & FS. Thus, it is not clear on what basis the other DICs ought to be implemented. If the contention of TANGEDCO based on PoC is to be accepted, then all the transmission related Petitions should implead every DICs in the entire country which is neither feasible nor practicable.

31. We have considered the submissions made by the Petitioner and TANGEDCO. As noted above, the scope of the present Petition relates to the time over run and cost overrun reliefs to the Petitioner in respect of implementation of the Project in terms of the provisions of the TSA. Indisputably, basis for such reliefs as sought for by the Petitioner on the grounds of Force Majeure and Change in Law events are the provisions of the TSA to which the only IL & FS is signatory . Merely on account of recovery of transmission charges for the Project to be in terms of the Sharing Regulations of the Commission as notified from time to time, cannot mean that while examining each and every Force Majeure and Change in Law claims of the licensee under the TSA and having monetary impact, all the concerned DICs are

to be joined as party and to be heard. The rights and obligations of the parties to the TSA, to the extent not altered by any Regulations of the Commission, continue to remain *inter-se*. The Commission has been consistently deciding the matters relating to the Force Majeure and Change in Law arising out of the provisions of the TSA by taking into the account the parties/LTTCs to the TSA and not all the DICs of the concerned regions. Therefore, in our view, it is not necessary to implead all the DICs of a particular region while dealing with the Force Majeure and Change in Law claims of licensee under and in terms of the provisions of the TSA. Similarly, the contention of impleadment of IPPs such as PEL Power Ltd. is also misplaced as there is no agreement between the Petitioner and PEP Power Ltd. and thus, in absence of any privity of the contract between the parties, impleadment of such IPPs is not necessary to decide upon the issues relating to TSA.

32. In view of the above, we now proceed to examine the following issues which arise for our consideration:

Issue No. 1: Whether the Petitioner is entitled to cost overrun due to delay in grant of transmission licence/adoption of tariff and clearance to commence the Project? If so, to what extent?

Issue No. 2 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. 3: Whether the various claims of the Petitioner are covered under Force Majeure and 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 is entitled to cost overrun due to delay in grant of transmission licence/adoption of tariff and clearance to commence the Project? If so, to what extent?

33. The Petitioner has submitted that immediately upon transfer and vesting of

the entire equity shareholding in the Petitioner Company by BPC with PGCIL, the Petitioner and PGCIL proceeded with the necessary steps for implementing the Project. On 4.4.2012, the Petitioner had filed Petition No. 121/TL/2012 and Petition No. 122/ADP/ 2012 for grant of transmission licence and for adoption of transmission tariff respectively. The Petitioner had also proceeded to initiate the bid process for different packages viz. tower fabrication and erection, supply of conductor & insulator and supply of rolled black angle sections, etc. to be awarded in regard to construction and implementation of the Project. However, while the Petitioner was proceeding to implement the Project, it came to the knowledge of PGCIL and the Petitioner that an environmental clearance case was suspended by National Green Tribunal ('NGT') in respect of the generation project being implemented by IL&FS for whom power evacuation the subject transmission system was to be built. Further, by order passed by the NGT on 23.5.2012, IL&FS was to carry out Cumulative Impact Assessment study taking into account the assimilating and supportive capacity of the region and the Ministry of Environment and Forests was directed to review the environment clearance granted to the generating project of IL & FS based on the Cumulative Impact Assessment study and to stipulate any additional environmental conditions, if required. The issue of suspension of environmental clearance was thereafter deliberated in the 29th meeting of the Empowered Committee on Transmission held on 15.6.2012 and the Committee, *inter alia*, recommended for keeping the implementation of the scheme on hold and further observed that the issues relating to compensation to bidder shall be addressed during the hearing on the Petitioner which PGCIL had filed in the matter. In view of the changed scenario as a result of the suspension of the environmental clearance, vide affidavits dated 24.8.2012 and dated 6.9.2012, it was submitted to the Commission as well as to IL &

FS that the procurement and financing activities for the Project have been put on hold until all issues arising out of the above are settled and there is a clear mandate required to proceed with the implementation of the transmission lines. Further, the procurement and financing activities of the transmission project by the Petitioner had to be postponed repeatedly awaiting clear mandate on the requirement of the Project since the licence was not granted to the Petitioner and tariff was not adopted as per the application filed before the Commission. In view of the above, the Petitioner could not proceed with implementation of the Project on account of delay not attributable to the Petitioner. The delay was mainly due to the action taken by NGT against IL & FS and the consequent time taken by the Empowered Committee and the Commission in deciding on the matters of grant of transmission licence to the Petitioner and adoption of the quoted tariff as per the above mentioned Petition, i.e. Petition No. 121/TL/2012 and 122/ADP/2012 filed for the above purpose. Pertinently, as per Section 15(6) of the Act, the transmission licence is required to be granted/rejected within 90 days from the date of the application.

34. The Petitioner has submitted that the Commission adopted the transmission tariff in respect of the Project vide order dated 9.5.2013 in Petition No. 122/ADP/2012 and thereafter, by order dated 20.6.2013 in Petition No. 121/TL/2012 decided to grant the transmission licence to the Petitioner. However, the issues as to the time overrun and cost overrun were not addressed by the Commission in the said orders and the Petitioner was asked to furnish certain additional details.

35. According to the Petitioner, in terms of Article 3.1.3 of the TSA, one of the condition subsequent to be achieved by the Petitioner is to obtain a transmission licence for the Project from the Commission within a period of 6 months from the effective date except on account of any Force Majeure reasons. In case, the

transmission licence for the Project is not granted by the Commission, the Petitioner cannot proceed with the implementation of the Project and the same constitutes a Force Majeure event as it is not a failure on the part of the Petitioner to comply with the fulfillment of conditions subsequent under Article 3.1.3 read with Article 3.3.1 of the TSA.

36. The Petitioner has submitted that tariff quoted by the Petitioner was based on the premise that the Project is to be executed within a time period of 36 months from the effective date and that the Project is to be executed in a specific duration i.e., 29th March 2012 to 28th March 2015. The time period stipulated for execution of the transmission project as per the RfP is 36 months and notwithstanding any change in the start date, the total 36 months' time was required to execute the Project. The Petitioner had filed Petition for grant of transmission licence on 4.4.2012. However, the transmission licence was granted only on 20.6.2013 and the copy of the transmission licence was received on 18.7.2013 i.e. after a delay of more than 15 months for a Project which had a schedule of 36 months. Thus, the Petitioner had lost the time of 15 months at the initial stage itself before commencement of the Project for implementation of transmission system. Moreover, the licence that was granted to the Petitioner did not address the loss of 15 months from the 36 months implementation schedule and also the impact of rising costs during the intervening period.

37. The Petitioner has contended that it is only after the grant of transmission licence by the Commission, the Ministry of Power, Government of India decided to grant the authorization to the Petitioner under Section 164 of the Act on 20.11.2013. The authorization under Section 164 of the Act was thereafter published in the Gazette of India on 5.12.2013. Pertinently, as per order of APTEL dated 2.12.2013,

wherein it has been mentioned that power of Telegraph Authority under Section 164 of the Act is essential for laying transmission line both from prior consent of land owner as well as from telephonic or telegraph message point of views and delay in conferring power of the Telegraph Authority is to be construed to be a Force Majeure. Thus, the delay of about 20 months in grant of Section 164 of the Act is also Force Majeure event within the scope of the TSA.

38. The Petitioner vide affidavits dated 5.6.2013, dated 5.8.2013, dated 28.10.2013 and dated 16.1.2014 had raised the issues of time overrun and cost overrun which were beyond the control of the Petitioner in undertaking the Project. The Petitioner had also claimed that the Petitioner should be allowed compensation in regard to various aspects of time overrun and cost overrun including delay in grant of authorization under Section 164 of the Act by the Government of India.

39. The Petitioner has contended that the Commission took cognizance of the unaddressed time overrun and cost overrun and vide order dated 16.4.2014 in Petition No. 121 of 2012 recognized the fact that the Transmission Service Provider cannot be made to suffer on account of reasons which are beyond its control and further assured that the issue of extension of time for execution and associated cost implications would be considered by the Commission on merits on completion of the project in accordance with the provisions of the TSA. Effectively, transmission licence was granted partially, though by addressing the timeline and treatment of cost increase only on 16.4.2014 i.e., after a period of more than 2 years of bidding. Effectively the go ahead for implementation of the Project to the Petitioner starts from only 16.4.2014. Moreover, in the order dated 16.4.2014, the time line for execution of the Project was provided as 30 months with effect from 20.6.2013 (the grant of the licence) and accordingly, revised Scheduled Commissioning Date

worked out to be 20.12.2015.

40. The Petitioner has submitted that it had to hold up all the activities and could proceed with the implementation of the Project only after order dated 16.4.2014 wherein the Commission had directed the Petitioner to go ahead with the execution of the Project along with the assurance on treatment of time and cost overrun. The delay in grant of transmission licence by more than 2 years leading to the above implication in time and cost overrun has also been recognized in order dated 16.4.2014, which categorically states that the Petitioner should not be made to suffer on account of the reasons which are beyond its control and that the Commission may be approached for the same and further directed the Petitioner to go ahead with the execution of the Project. However, the order of the Commission dated 16.4.2014 providing timeline from retrospective effect i.e., 20.6.2013 has in itself consumed 10 months out of the 30 months period and despite the mounting RoW issues and cost variation on account of change in indices, increase in excise duty/service tax, increase in safeguard duty and increase in dollar conversion rate, etc., the Petitioner in the right earnest proceeded to implement and invest in the Project based on the direction and assurance in the order of the Commission that it would consider timeline and cost overrun.

41. Accordingly, the cost overrun claims of the Petitioner for the intervening period from the date of bid submission of February, 2012 upto 16.4.2014 are as under:

COST COMPONENTS	BASE (% of Total Project Cost)	Changes due to Indices-April'14	\$ IMPACT-April'14	SAFEGUARD DUTY	EXCISE DUTY	SERVICE TAX	TOTAL-April.'14	(% of Total Project Cost)-April.'14	% DIFFERENCE (April'14 Vs. Feb.'12)
Tower Parts	24.84	7.53%			1.81%		9.48%	27.20	2.35
Conductor	20.94	5.05%			1.81%		6.95%	22.39	1.46

COST COMPONENTS	BASE (% of Total Project Cost)	Changes due to Indices-April'14	\$ IMPACT-April'14	SAFEGUARD DUTY	EXCISE DUTY	SERVICE TAX	TOTAL-April.'14	(% of Total Project Cost)-April.'14	% DIFFERENCE (April'14 Vs. Feb.'12)
Earth wire	0.37	6.57%			1.81%		8.50%	0.40	0.03
Insulators	3.73	0.00%	23.29%	30.00%			60.28%	5.98	2.25
Hardware fittings	2.72	5.46%			1.81%		7.37%	2.92	0.20
Con & Earth Access.	0.98	5.93%			1.81%		7.85%	1.06	0.08
Tower Erection	2.43	20.39%				1.87%	22.64%	2.98	0.55
Civil works	9.74	18.06%				1.87%	20.27%	11.71	1.97
Stringing	1.24	20.39%				1.87%	22.64%	1.52	0.28
F&I etc.	3.45	37.12%					37.12%	4.72	1.28
Sub Total- Hard cost	70.43							80.88	10.45
Crop compensation	3.00							3.00	0.00
Additional Row	0.00							0.00	0.00
IEDC	3.52							3.52	0.00
Contingencies	2.11							2.11	0.00
Price variation	12.68							12.68	0.00
Market Correction factor	0.00							0.00	0.00
IDC	8.26							8.26	0.00
Interest rate impact	0.00							0.00	0.00
Additional equity	0.00							0.00	0.00
Interest on acquisition price	0.00							0.00	0.00
Sub Total- Other Heads	29.57							29.57	0.00
TOTAL PROJECT COST (Subtotal-A+B)	100.00							110.45	10.45

42. The Respondents, TANGEDCO and IL & FS have submitted that the Commission vide its order dated 9.5.2013 in Petition No. 121/TL/2012 along with IA No. 5 of 2013 had directed the Petitioner to go ahead with the implementation of the Project and further, vide order dated 16.4.2014 also took cognizance of the fact and specifically observed that the Petitioner itself contributed to delay in the execution of the Project. IL & FS has submitted that any delay in grant of transmission licence is solely attributable to the Petitioner and not at all attributable to the Respondent IL & FS. The Respondent has further submitted that in the order dated 20.6.2013, the

Commission also held that the execution of the Project by the Petitioner cannot be affected on account of apprehension generated regarding viability of the generation project and that it was the Petitioner who never pursued for the early grant of licence. The Respondent has contended that delay on the part of the Petitioner was on basis that it was working on a false premise of it being deemed transmission licensee. In the above circumstances, no cost escalation can be allowed to the Petitioner.

43. *Per contra*, the Petitioner while refuting the contentions of the Respondents has submitted that 24 months delay with respect to implementation of the Project is due to uncertainty arising out of the suspension of EC of the IL & FS generating station by NGT, subsequent decision of the Empowered Committee to put on hold the implementation of the Project, delay in obtaining the transmission licence and delay in obtaining the clearance under Section 164 of the Act. The Respondents have failed to consider that such decision of the NGT and Empowered Committee would also constitute Change in Law events. Moreover, IL & FS has selectively highlighted the order dated 9.5.2013 to submit that the Petitioner was to go ahead with the execution of the Project as such view was expressed after noting the submissions of IL & FS regarding issues relating to EC having been resolved. Similarly, the Respondent is misinterpreting the order dated 20.6.2013 as the same did not mean that non-grant of clearance to the generating station of IL & FS is not linked to execution of the transmission Project. In fact, the direction to the Petitioner to go ahead with the Project was issued only after clarification by IL & FS that there was no uncertainty regarding execution of its generation project. In a case involving Vemagiri Transmission System, in case of similar uncertainties of generation project, it was ultimately decided (after a year) that the transmission system was not needed

and the Commission eventually directed to withdraw the implementation of the Project. Pertinently, the Commission took the cognizance of the time and cost overrun issues only vide its order dated 16.4.2014 and also recognized that the Petitioner cannot be made to suffer on account of the reasons beyond its control and directed the Petitioner to approach the Commission by separate Petition after execution of the Project. It is also incorrect that prayer of the Petitioner to recognize it as deemed licensee as made in alternative led to any delay.

44. We have considered the submissions made by the Petitioner and the Respondents. The issues relating to time overrun and cost overrun due to delay in the grant of transmission licence to the Petitioner had been noted and deliberated in the orders of the Commission passed in the Petition No. 121/TL/2012 and Petition No. 122/ADP/2012 filed by the Petitioner in matter of grant of the transmission licence and for adoption of transmission tariff respectively. The relevant extract of the order dated 16.4.2015 passed in Petition No. 121/TL/2012 is as under:

“10. We have considered the submissions of the petitioner and respondent. Based on the regulatory approval accorded by this Commission for execution of High Capacity Power Transmission Corridor XI (Transmission System associated with IPP projects in Nagapattinam/Cuddalore Area), the present transmission project is being executed for evacuation of power from the generation project of the respondent. In line with the decision of the Empowered Committee on Transmission, the trunk transmission corridors were to be executed through competitive bidding and sub-stations/pooling stations were to be executed by PCGIL on cost plus basis. PFC Consulting as the Bid Process Coordinator carried out the competitive bidding and based on its lowest bid, PGCIL was selected as the successful bidder and acquired the Nagapattinam-Madhugiri Transmission Company Limited. Consequently, PGCIL through its wholly owned subsidiary Nagapattinam-Madhugiri Transmission Company Limited filed the application for transmission licence. During the pendency of the petition, National Green Tribunal in its judgment dated 23.5.2012 suspended the environment clearance to the generation project of the respondent and directed the Ministry of Environment & Forest to initiate a carrying capacity study taking into account the assimilative and supportive capacity of the region to be completed within a maximum period of three months. The National Green Tribunal also directed the Ministry of Environment & Forest to review the environment clearance based on the cumulative impact assessment study and stipulate any additional environmental conditions if required. PGCIL asked the respondent about the status of the generation project to which the respondent vide its letter dated 29.5.2012 had informed that the Cumulative Impact Assessment Study and Impact thereof would be completed within next two to three months. In the said background, PGCIL filed petition No.143/MP/2012 seeking

appropriate directions whether or not to implement the project. Learned counsel for the petitioner in his written note of argument during the hearing has submitted that in the light of the judgement of the National Green Tribunal, PGCIL approached the Empowered Committee on Transmission which in the minutes of its 29th meeting held on 15.6.2012 directed PGCIL to put the project on hold and since there was no directions of the Empowered Committee, PGCIL could not proceed with the project. It is noticed that the respondent in its affidavit dated 24.8.2013 has placed on record the Corrigendum dated 14.8.2013 issued by Ministry of Environment & Forest to its earlier environment clearance dated 31.5.2010 and has submitted that after issue of the Corrigendum, there is no uncertainty regarding materialization of the generation project. PGCIL does not appear to have placed the same before the Empowered Committee and sought its views regarding the implementation of the project. However, the petitioner in its IA No. 5/2013 filed on 22 February 2013 sought time extension and cost escalation for implementation of the project. The Commission has thereafter taken up the petition and in the order dated 9.5.2013 proposed to grant transmission licence and issued public notice under section 15(5) of the Act and in the order dated 20.6.2013 issued transmission licence to the petitioner. In the order dated 20.6.2013, the Commission has taken note of the delay in the issue of the transmission licence and has assured the petitioner to mitigate the hardship after the project is executed. The Commission has made it clear that the petitioner should execute the project within the shortest possible time frame by drawing upon its vast experience and the issue of extension of time and associated cost escalation would be considered on merit by the Commission in accordance with the provisions of the TSA after considering the details of the cost of the project assumed at the time of the bidding and indexation etc. Subsequent to the grant of the licence, the petitioner has applied and obtained the approval on 9.12.2013 under section 164 of the Act for execution of the project. The petitioner in its IA 1/2014 has sought cost escalation of 32.09% from February 2012 to December 2013 over the base project cost without disclosing the cost of the project assumed at the time of bidding as directed in our order dated 20.6.2013.

11. Despite our clear directions in our order dated 20.6.2013 to mitigate the hardship of the petitioner on account of the delay in grant of transmission licence, the petitioner has submitted that placement of LOI to the contractor and financial closure activities are linked to the settlement of cost and time increase issues before proceeding further. In our view, in a competitively bid project, upfront revision of tariff based on the cost escalation indices as claimed by the petitioner cannot be permitted as it will violate the sanctity of the competitive bidding. However, the Transmission Service Provider cannot be made to suffer on account of reasons which are beyond its control. After execution of the project, the petitioner may approach the Commission with a petition which will be dealt in line with the bidding guidelines and the TSA. It is also pertinent to mention that the petitioner has contributed to the delay in execution of the project by not taking the expeditious action even though the transmission licence was granted to the petitioner vide order dated 20.6.2013.

12. The petitioner is directed to go ahead with execution of the project. As regards the extension of time for execution of the project, the petitioner is required to execute the project within 36 months from the effective date and is required to obtain the transmission licence within 6 months from the effective date in terms of Article 3.1.3 of the TSA. In other words, the petitioner is required to implement the project within 30 months from the date of grant of transmission licence. In this case the petitioner was granted transmission licence on 20.6.2013 and accordingly, the petitioner should execute the project within a period of maximum 30 months with effect from 20.6.2013.”

Thus, in the aforesaid order, the Commission, after noting the sequence of events that transpired during the pendency of the Petition and the submissions of the Petitioner on the issues of the time and cost overrun on account of the events which were beyond the control of the Petitioner, had observed that since the Petitioner was required to implement the Project within 30 months from the date of grant of the transmission licence and the licence was granted to the Petitioner on 20.6.2013, the Petitioner should execute the Project within a period of maximum 30 months with effect from 20.6.2013. The Commission also observed that any delay in execution of the Project beyond 30 months from 20.6.2013 i.e. 20.12.2015 shall be dealt with as per the provisions of the TSA.

45. However, as regards the cost escalation claims of the Petitioner, the Commission noted that in a competitive bid project, upfront revision of tariff based on the cost escalation indices claimed by the Petitioner cannot be permitted as it will violate the sanctity of the competitive bidding. The Commission also noted the Transmission Service Provider (Petitioner herein) cannot be made to suffer on account of reasons beyond its control and accordingly, the liberty was granted to the Petitioner to approach the Commission with a Petition after execution of the Project, which will be dealt in line with the bidding guidelines and the TSA.

46. Accordingly, the Petitioner has now approached the Commission through the present Petition seeking compensation on account of cost overrun due to delay in grant of transmission licence and clearance to commence the Project for the period from February, 2012 (bid submission date) upto 16.4.2014 (date of which Petition No.121 of 2012 was disposed of). For the aforesaid period, the Petitioner has indicated the cost escalation of 10.45% in hard cost over the base cost and

consequently, has sought increase in the quoted tariff by 10.45% for the above variation.

47. Thus, the issue that arises for our consideration is as to whether the Petitioner is entitled to cost overrun due to delay in grant of the transmission licence and clearance to commence the Project and if so, to what extent. The circumstances which came across during the application of the grant of transmission licence and led to the delay in grant of transmission licence have already been captured in the orders dated 9.5.2013, dated 20.6.2013 and dated 16.4.2021 and also in the foregoing paragraphs. Undeniably, the generating station being developed by the sole LTTC of the Project i.e. IL&FS Tamil Nadu Power Company Limited faced the issue with regard to the environmental clearance as it came to be suspended by the National Green Tribunal (NGT) by order dated 23.5.2012 and by the said order, NGT also issued direction to IL&FS to carry out Cumulative Impact Assessment study and the Ministry of Environment and Forest to review the environment clearance granted to the generating project of IL&FS based on such study and to stipulate any additional conditions, if any. It is also undisputed that the issue of the suspension of the EC granted to the generating station of LTTC as came to fore during the pendency of the grant of transmission licence application was deliberated in the 29th meeting of the Empowered Committee on Transmission held on 15.6.2012, whereby the Committee recommended the keeping the implementation of the Project on hold. The relevant extract of the minutes of the meeting 29th meeting of the ECT as held on 15.6.2012 is as under:

“3.2.3 Chairman, Empowered Committee observed that as the IL&FS Tamil Nadu Project, for which this scheme is primarily implemented, has become uncertain, therefore, implementation of the transmission scheme should be reviewed. He further said that the Committee should recommend for keeping the implementation of the

transmission scheme on hold. He also observed that the issues relating to compensation to bidder shall be addressed during hearing on the petition which POWERGRID has filed in the matter.”

48. The recommendation of the Empowered Committee on Transmission constituted by the Ministry of Power under the provisions of the Guidelines and whose functions, *inter alia*, include identification of the projects to be developed under the bidding route and also to facilitate the development of such projects, would certainly amount to Change in Law and Force Majeure event under the TSA inasmuch as the Petitioner could not have otherwise proceeded with the implementation of the Project and thus, was in effect prevented or delayed in performing its obligation under the TSA. In our view, in the above circumstances, the Petitioner cannot be faulted with not proceeding with the implementation of the Project till the resolution of the above issue. However, the aforesaid issue came to be addressed by the Commission vide its order dated 9.5.2013 in Petition No. 122/ADP/2012, whereby the Commission adopted the transmission charges in respect of the Project and order dated 20.6.2013 in Petition No. 121/TL/2012, whereby the Commission granted the transmission licence to the Petitioner. The relevant extract of the aforesaid orders is as under:

Order dated 9.5.2013 in Petition No. 122/ADP/2012

“31. The petitioner vide its affidavit dated 6.9.2012 has submitted that CTU in its letter dated 25.6.2011 addressed to the NMTCL had informed that the issue of implementation of the transmission system associated with IPPs of Nagapattinam/Cuddalore Area: Package-A was discussed in the 29th meeting on the Empowered Committee on Transmission held on 15.6.2012 and Committee had recommended to hold the implementation of the subject transmission scheme till clarity on the materialization of the generation project. The applicant has prayed as under:

- (a) To provide a clear mandate for commencement of implementation of the transmission lines;*
- (b) TSA to be modified to reflect the PoC framework during the pre-commissioning stage and post-commissioning stage;*
- (c) To designate CTU as the representative of the DICs for the purpose of holding the CPG and direct IL&FS TPCL to forward CPG to CTU;*
- (d) To provide assurance for payment of transmission charges by the LTTC or DICs irrespective of generation project coming up or not;*

- (e) To extend the time line of 36 month of completion of the project based on the date of clear mandate by the CERC for implementation of the project;
- (f) To allow extension of the time up to 6 months for completion of activities lay down under Article 3.1.3 of the TSA, based on the date of clear mandate by the Commission for implementation of project; and
- (g) Grant relief towards time and cost changes including the cost incurred towards acquisition and other activities.

32. The applicant has also filed IA No.8/2013 with following prayers to:

- (a) Direct that the transmission project awarded to Power Grid under the Tariff Based Competitive Bidding be implemented with extension of time and with cost increase and cost over-run;
- (b) Extend the time for implementation of the project to 36 months from the date of grant of transmission licence, adoption of the tariff and allowing the cost increase and cost over-run;
- (c) Direct that the transmission charges shall be payable under the PoC regime by respondent and in the event of failure on the part of respondent, to pay such transmission charges, decide the course of recovery of all such transmission charges as the system is being planned as a coordinated scheme;
- (d) Direct that the transmission charges shall be payable even in the absence of the power project of respondent being commissioned by the time of the commissioning of the transmission system by the extended period and even in the circumstances where the Respondent is unable to evacuate the power for any reason whatsoever.

33. During the hearing of IA on 9.4.2013, learned counsel for the petitioner submitted that clarity is required regarding the implementation of the generation project in view of the order of the National Green Tribunal. Learned counsel for the respondent submitted that with the issue of Ministry of Environment and Forests corrigendum dated 14.8.2012, in compliance with the direction of the National Green Tribunal, the environmental issue has been settled and there is no uncertainty regarding execution of the project. Noting the statement of learned counsel of the respondent, we are of the view that the petitioner should go ahead with the execution of the transmission project.

34. In view of the above, we adopt the transmission charges of the transmission system which shall be charged by the petitioner as per the details given in the Schedule 9 of the TSA.”

Order dated 20.6.2013 in Petition No.122/TL/2012

“6. In our order dated 9.5.2013, we had proposed to grant transmission licence to the applicant company and directed for issue of public notice. In response to the public notice, no suggestions/objections have been received. The CTU in its letter dated 22.5.2012 has recommended under Section 15 (4) for grant of Transmission Licence to the applicant. We are satisfied that the applicant company meets the requirements of the Act and the transmission licence regulations for grant of transmission licence for the subject transmission system mentioned at para 1 of this order. Accordingly, we direct that a transmission licence be granted to POWERGRID NM TRANSMISSION LIMITED to establish transmission system for "Transmission system associated with IPPs of Nagapattinam/Cuddalore Area-Package-A" on Build, Own, Operate and Maintain basis as per the details given in para 1 above.

7. The grant of transmission licence to the applicant is subject to the fulfillment of the following conditions throughout the period of licence:

....

8. Next we deal with the concern of the applicant regarding cost and time overrun. The applicant had filed IA No.5/2013 seeking a direction for execution of the project with time and cost overrun and for extension of the project to 36 months from the date of grant of transmission licence. The Commission in order dated 9.5.2013 had directed the applicant to first try to resolve the issues in consultation with the respondent in terms of the TSA and in case of non-resolution of the issues, to approach the Commission in accordance with law.

9. The petitioner in its affidavit dated 5.6.2013 has submitted that in pursuance of the directions of the Commission, the applicant issued a notice dated 11.5.2013 to the respondent in terms of Article 3.3.4 of the TSA in order to arrive at a mutually agreeable solution for various issues such as time extension, cost increase, and other aspects of the project. However, the respondent in their letter dated 17.5.2013 refuted the claim of the applicant. The applicant has submitted that the parties met on 20.5.2013 to find out a mutually agreeable solution and since the parties were unable to agree on a solution, the applicant sent a termination notice on 5.6.2013. The applicant has submitted that under the circumstances, it is not possible for the applicant to accept the licence proposed to be granted by the Commission for the reasons of non-fulfillment of conditions subsequent for reasons not attributable to the applicant in terms of Article 3.3.4 of the TSA.

10. During the course of the hearing, learned counsel for the applicant submitted that in terms of Article 3.1.3 of the TSA, the applicant as the Transmission Service Provider (TSP) was required to obtain the transmission licence and adoption of transmission charges within six months from the effective date (29.3.2012) i.e. by 29.9.2012. The applicant made the application to the Commission on 4.4.2012. As per Article 3.3.4 of the TSA, if the TSP is unable to fulfill any of the conditions of Article 3.1.3 due to any force majeure event, then the period can be extended by three months and after that, the TSP or the LTTC may terminate the agreement by mutually agreeable basis. Since the tariff was adopted on 9.5.2013 and the transmission licence was proposed to be granted by order dated 9.5.2013, the applicant could not achieve its financial closure and could not proceed with awarding the various contracts for execution of the project. The learned counsel submitted that in pursuance of the directions of the Commission, the applicant approached the respondent to find out a mutually agreeable solution to the issues of time overrun and cost overrun but the respondent refused to accept the liability for time and cost overrun. Learned counsel submitted that though the applicant is prepared to execute the project, its concern regarding cost and time overrun arising out of force majeure event due to delay in issue of transmission licence needs to be addressed.

11. Learned counsel for the respondent submitted that the applicant cannot claim to exercise rights under Article 3.3.4 of the TSA as no force majeure event has occurred. Learned counsel further submitted that in terms of Article 11.5 of the TSA, the affected party is required to give notice to the other party about any event of force majeure within 7 days. However, the applicant has not issued any notice to the respondent under the provisions of the TSA and the applicant is not entitled to claim any relief for force majeure. Learned counsel submitted that the generation project is expected to be commissioned in October 2014 and requested the Commission to direct the applicant to execute the project.

12. We had directed the representative of the CTU as to why the petition No.143/2012 was filed seeking directions regarding the viability of the project in view of the order of the National Green Tribunal regarding the generation project of the respondent. The representative of CTU explained that as soon as CTU came to know about the NGT's

order dated 23.5.2012, it filed the said petition seeking clarity in the matter. Learned counsel for the respondent submitted that it kept the applicant informed as soon as the Ministry of Forest & Environment issued the necessary corrigendum dated 14.8.2012 in compliance with the directions of the National Green Tribunal. We observe that the applicant has never pursued the matter with the Commission for early grant of transmission licence.

13. The transmission project has been awarded to the applicant on the basis of the competitive bidding after the applicant was found to be the lowest bidder among the 18 bidders who participated in the bidding. The evacuation of power from the generation project is linked to the execution of the transmission project and any move by the applicant to abandon the project on the plea of delay in grant of transmission licence would adversely affect the execution and commissioning of the generation project. Moreover, Petitioner was selected as the successful bidder and the applicant company is its 100 per cent acquired company. Even though the grant of transmission licence was delayed, it is not the case that the applicant would not be granted the transmission licence. In that event, Petitioner and the applicant should have taken action to execute the project.

14. However, we are not averse to consider the claim of the applicant for cost and time overrun within the framework of the TSA. To consider whether the delay in issue of the transmission licence has resulted in cost overrun, we direct the applicant to submit the following by 10.7.2013 with an advance copy to the respondent:

- (a) What was the bid validity period and whether the applicant has extended bid validity period or not?
- (b) Whether tender/bid has been cancelled?
- (c) Pert chart showing the milestones for different activities for execution of the project.

15. We also direct the CTU to submit the contingency plan of action envisaged to evacuate the power in case of delay in execution of the project on or before 10.7.2013, with an advance copy to the respondent.

16. We are of the view that execution of the transmission project should not be affected on account of the apprehension generated by the applicant regarding viability of the generation project involving the environmental issue associated with the generation project or the apprehension of the applicant regarding cost and time overrun of the project. The applicant is directed to go ahead with the execution of the subject transmission project and try to draw upon its vast experience in order to execute the project in the shortest possible time frame. The issue of extension of time for execution of project and associated cost implication would be considered on merit by the Commission in accordance with the provisions of the TSA after considering all details of the cost of the project assumed at the time of bidding and indexation etc.

17. The petition shall be listed for hearing on 6.8.2013”

49. Thus, vide order dated 20.6.2013, the Petitioner had been granted transmission licence to implement the Project and was categorically directed to go ahead with the execution of the subject transmission project and try to draw upon its vast experience in order to execute the project in the shortest possible time frame.

Further, it was also observed therein that the issue of time extension and associated cost implication would be considered on merits by the Commission in accordance with the provisions of the TSA after considering the details of the cost of the Project assumed at the time of bidding and indexation, etc.

50. It cannot be disputed that under the tariff based competitive bid projects, the tariff quoted by the bidder are keeping in view the timeline of the projects to be executed and any unavoidable delay in grant of the transmission licence beyond the control of the said party has an effect of dislodging the quoted tariff on account of the time and cost overruns and therefore, to the extent that such events qualify to be Change in Law as well as Force Majeure event (having simultaneous effect of cost and time overrun), an appropriate relief ought to be granted to the licensee. However, at the same time, it does not give the licensee a free hand to delay the implementation/construction works once the effect of the such events have been abated and the Commission has proceeded to issue licence with categorical direction to proceed with implementation of the Project. In the present case, as per the TSA, the transmission licence was to be obtained by the Petitioner within six months from the effective date of the TSA. The effective date of the TSA being 29.3.2012, the Petitioner was required to factor into the timeline till 29.9.2012 for grant of transmission licence and for such period, the Petitioner cannot raise any ground of delay in grant of licence. However, in the present case, due to various circumstances and the events as already discussed above, the licence came to be granted to the Petitioner on 20.6.2013 (with delay of approximately 9 months). Therefore, the claim of the Petitioner for the cost overrun has to be restricted for the period of (9) nine months only. It is observed that the Petitioner has claimed the cost overrun from February, 2012 (being the month in which the cut-off date fell).

However, in our view, cost overrun from February, 2012 cannot be permitted since as per the provisions of TSA itself, the Petitioner was required to factor into a period of 6 months for obtaining transmission licence i.e. upto 29.9.2012 and therefore, any cost assumed or factored into by the Petitioner as on the bid date has to be considered taking into the account the above timeline for obtaining the transmission licence. Therefore, the cost overrun claims of the Petitioner can only be entertained for the period post 29.9.2012 (timeline which the Petitioner was required to factor into as per TSA) upto 20.6.2013 (i.e. day on which the Commission granted licence to the Petitioner and was categorically directed to go ahead with the implementation of the Project).

51. The Petitioner has, however, submitted that the Commission took the cognizance of the unaddressed time overrun and cost overrun only vide order dated 16.4.2014 and therefore, the effective go ahead for the Project for the Petitioner can only be considered from 16.4.2014. The Petitioner has submitted that the Petitioner had to hold up all the activities and it could proceed with the implementation of the Project only after order dated 16.4.2014, wherein the Commission had directed the Petitioner to go ahead with the execution of the Project along with assurance on treatment of time and cost overrun.

52. We have considered the submissions of the Petitioner. However, in our view, the claim of the Petitioner for cost overrun up to 16.4.2014 is entirely inappropriate. As noted above, taking into the account the resolution of the issues relating the EC of the generating station of IL&FS, the Commission vide its order dated 20.6.2013 had already proceeded with grant of the transmission licence with direction to the Petitioner to go ahead with the execution of the Project. Thus, despite the aforesaid

categorical directions of the Commission, the decision of the Petitioner to await the decision/relief on time and cost overrun and not proceeding with the award of the contracts for the implementation of the Project and letting the cost escalate further cannot be condoned. The escalation of the cost between the period from 20.6.2013 (grant of transmission licence) to 16.4.2014 (licence application disposed of addressing the time and cost overrun issues) is entirely on the Petitioner. In fact, in the order dated 16.4.2014, the Commission has observed that the Petitioner has also contributed to the delay in execution of the Project by not taking the expeditious action even though the transmission licence was granted to the Petitioner vide order dated 20.6.2013. Since the licence came to be granted to the Petitioner on 20.6.2013 as against the timeline of six months envisaged in the TSA (i.e. by i.e. 29.9.2012), the claim of the Petitioner for the cost overrun has to be restricted for the above period of approximately 9 months for the delayed period in grant of transmission licence to the Petitioner.

53. Now coming to the quantification of the cost overrun and the details furnished, it is observed that the Petitioner has computed the cost overrun by considering the various cost components (as % base cost) and has applied thereon the indices, changes in the safeguard duty, excise duty, service tax & customs duty and accordingly, derived the increase in the base cost component (in %), which is projected as 10.45% and has consequently sought increase in the quoted tariff @ 10.45%. It is noted that the Petitioner had sought cost overrun vide IA No. 1 of 2014 in Petition No. 122/TL/2012 in exact similar ways and the Commission in its order dated 16.4.2014 had observed that the Petitioner had sought increase in the base cost without disclosing cost of the Project assumed at the time of bidding as directed vide order dated 20.6.2013. The relevant extract of the said order is as under:

“10..... The petitioner in its IA 1/2014 has sought cost escalation of 32.09% from February 2012 to December 2013 over the base project cost without disclosing the cost of the project assumed at the time of bidding as directed in our order dated 20.6.2013...”

In the present Petition also, the Petitioner has not disclosed the details as to the base Project cost assumed (for the various cost components) at the time of bidding and the actual cost of such components in terms of the various contracts awarded by the Petitioner. In absence of such details, it would not be appropriate to quantify the cost overrun relief for the aforesaid period merely on the basis of the change in the indices and the various levies, without having reasonably ascertained the actual impact of the cost overrun. Accordingly, the Petitioner is hereby granted liberty to approach the Commission for quantification of its cost overrun reliefs for the aforesaid period of 9 months along with the details. Accordingly, the extent of the cost overrun and the entitlement of the Petitioner for increase in the transmission charges shall be determined in the Petition to be filed by the Petitioner in terms of the above liberty along with the requisite details.

54. The issue is answered accordingly.

Issue No. 2: Whether the Petitioner has complied with the provision of the TSA before approaching the Commission for claiming relief under Force Majeure and Change in Law?

55. The Petitioner has claimed time and cost overrun reliefs on account of the Force Majeure and Change in Law events as per the provisions Article 11 (Force Majeure) and Article 12 (Change in Law) 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.”

56. 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.

57. 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.”

58. 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 other things, precise details of Change in Law and its effect on the TSP.

59. The Petitioner has claimed many of the events under both the Change in Law as well as the Force Majeure events leading to delay in implementation of the Project as well as increase in the expenditure to the Petitioner during the implementation. The Petitioner has placed on record the various notices issued to the LTTCs intimating the occurrence as well as the cessation of the Force Majeure events and Change in Law events. For the Court cases involving the various tower locations of the Project, Force Majeure notices were issued on 3.4.2015, 21.10.2015, 5.9.2016, 9.6.2016, 18.11.2016 and cessation notices were issued on 7.9.2016 and 17.8.2018. For unprecedented Heavy Rainfall in Tamil Nadu, the Force Majeure notice was issued on 20.11.2015 and cessation notice was issued on 18.2.2016. For the Public Agitation on sharing of Cauvery water, Force Majeure notice was issued on 12.9.2016 and cessation notice was issued on 8.10.2016. For delay in demarcation of land towards land compensation, Force Majeure notice was issued on 27.2.2017 and cessation notice was issued on 31.1.2019. For severe RoW issues faced in Karnataka, Force Majeure notice was issued on 6.6.2017 and cessation notice was issued on 28.1.2019, for enactment of GST, Force Majeure notice was issued on 14.7.2017 and cessation notice was issued on 13.10.2017. For notification of Tali Reserve Forest as Wildlife Sanctuary, the Change in Law notice was issued by the Petitioner on 20.4.2015, which was followed by the Force Majeure notices on 27.2.2017 and 10.9.2018 for delays in

receiving the permission for diversion of forest land. Similarly, for increase in the excise duty, Change in Law notice was issued on 6.3.2015. For introduction of Goods and Services Act, 2017, Change in Law notice was issued on 7.7.2017. For increase in the land compensation in terms of the decision of Government of Karnataka and the consequent orders passed by District Commissioner, Change in Law notice was issued on 13.9.2017. For the increase/enhancement of tree compensation as per the orders of the Deputy Commissioner/District Collector, Change in Law notice was issued on 27.9.2017. Similarly, for increase in the deposit amount for Railway Crossing lines, Change in Law notice was issued on 4.10.2015. In addition, the Petitioner has also claimed that payment of land compensation in the State of Tamil Nadu as per judgment of Hon'ble High Court of Madras dated 12.4.2019 in W.P No. 16460 as Change in Law event. However, notice issued for the aforesaid event to the LTTC has not been placed on record. Accordingly, in view of the above, the Petitioner has complied with the requirements of prior notice under the TSA for the Force Majeure and Change in Law events to the extent noted above.

60. The issue is answered accordingly.

Issue No.3. Whether the various claims of the Petitioner are covered under Force Majeure and Change in Law in terms of the TSA?

61. The Petitioner has sought time extension under Article 11.7 (Force Majeure) of the TSA on account of occurrence of Force Majeure events during the construction/ implementation of the Project, which have led to delays in achieving the commercial operation of the Project.

62. 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.

63. Whereas, 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.”*

64. 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.

65. Firstly, dealing with aspect of time overrun post the grant of transmission licence, the Petitioner has submitted that the implementation of Element 1 – 765 kV D/C Nagapattinam Pooling Station – Salem was affected by the Force Majeure events viz. (i) Court Case for location No. 50/3, 51/1 & 51/2 (451 days), (ii) Court Case for location No. 13/1 and 14/0 (196 days), (iii) Court Case for location No. 61/0, 61/1, 61/3, 61/4 and 61/5 (279 days), (iv) Court Case for location No. 58/4, 59/0, 59/1, 59/2, 59/3, 59/4, 62/0 and 63/0 (137 days), (v) Unprecedented heavy Rain in Tamil Nadu & Karnataka (68 days), (vi) Court Case for location No. 01/01 (76 days) and (vii) Public Agitation on sharing of Cauvery Water (33 days). Whereas, it is submitted that the implementation of Element 2 - 765 kV S/C Salem –Madhugiri line was affected by the Force Majeure events, viz. (i) Notification of Tali Reserve Forest as Wild Life Sanctuary (1279 days), (ii) Court Case for location No. 30/0 (549 days), (iii) Court Case for location No. 16/3 and 17/3 (305 days), (iv) Unprecedented heavy Rain in Tamil Nadu and Karnataka (68 days), (v) Court Case for location No. 13/0 (265 days), (vi) Court Case for location Nos. 102A/6 & 102A/7 (492 days), (vii) Court Case for location No. 49/4 (270 days), (viii) Court Case for location Nos. 33/3 & 33/4 (268 days), (ix) Public Agitation on sharing of Cauvery water (33 days), (x) Court

Case for location Nos. 118/0 & 119/0 (638 days), (xi) Delay in demarcation of land towards land compensation (697 days), (x) Severe RoW Problems faced in Karnataka (607 days) and (xi) Enactment of GST (90 days).

66. Since the considerable delay is owing to the event – Notification of Tali Reserve Forest as Wildlife Sanctuary, we are firstly examining the said event as the delays on account of other events are overlapping with the delay on account of the former event.

67. The Petitioner has submitted that since 765 kV S/C Salem – Madhugiri transmission line was passing through the forest areas, the Petitioner made application on 16.8.2012 to obtain the clearance for diversion of 9.1904 Ha of forest land in Tali Reserve Forest. However, despite all-out efforts, the forest clearance was not received till March, 2015 and thereafter, vide letter dated 4.3.2015 from Additional, Principal Chief Conservator of Forest ('PCCF'), Ministry of Environment and Forest, it was informed that the proposed forest area for diversion is a part of Cauvery North Wildlife Sanctuary as declared vide GO dated 24.3.2014 and hence, permission of National Board for Wildlife ('NBWL') and the Hon'ble Supreme Court has to be obtained to receive clearance for diversion of 9.1904 Ha of forest land in Tali Reserve Forest for laying of the said line. Accordingly, on 26.3.2015, the Petitioner had applied for grant of clearance under Wild Life Protection Act, 1972 and after a lot of persuasions and follow ups with the authorities at the State and Central level, the clearance for diversion of 9.1904 Ha of forest land in Tali Reserve Forest was received only on 23.8.2018. It is submitted that the abnormal delay of 1279 days in obtaining the clearance for diversion of 9.1904 Ha of forest land in Tali Reserve forest due to notification of Tali Reserve forest as Wildlife Sanctuary was beyond the control of the Petitioner and accordingly, deserves to be condoned. The

Petitioner, in support of its claim, has placed on record the various correspondences exchanged with the various authorities at the State and Central level. Noticeably, the Petitioner has also claimed the notification of the Tali Reserve Forest as Change in Law event and has made Change in Law claims owing to the aforesaid notification, which has been noted and dealt with in the subsequent part of this order.

68. We have considered the submissions made by the Petitioner. The route of 765 kV S/C Salem – Madhugiri transmission line of the Petitioner involved the passing through the Papparappatti Reserved forest in Dharmapuri Division (6.42 Ha) and Tali Reserved Forest in Hosur Division (9.1904 Ha.) and accordingly, the Petitioner vide its letter dated 25.4.2012 wrote to the Principal Chief Conservator of Forest to advice concerned forest officials for survey to be conducted in the forest patches. Pursuant to conducting the survey works, on 16.8.2012 the Petitioner applied to Division Forest Officer, Hosur Division for grant of forest clearance under the Forest Conservation Act, 1980. Thereafter, on 22.8.2012, the Petitioner had also written to PCCF in regard to the grant of the forest clearance. It is observed that the aforesaid application of the Petitioner had been forwarded by the DFO, Hosur Forest Division to Conservator of Forest, Dharmapuri vide its letters dated 28.2.2013 and dated 20.8.2013 (along with certificate from Collector to the effect that no suitable alternate land is available in Taluks adjoining Tali Reserved Forest) and on 22.10.2013 (along with species-wise details of 196 spontaneously grown trees to be felled in forest areas). Thereafter, the application of the Petitioner was forwarded to Deputy Conservator of Forests, Ministry of Environment & Forest on 20.12.2013 for obtaining concurrence of MoEF, GoI for grant of forest clearance to the Petitioner.

69. However, it is observed that the Additional PCCF, MoEF vide its letter dated 4.3.2015 conveyed that the proposed forest area for the diversion is a part of

Cauvery North Wildlife Sanctuary as declared vide GO (Ms) No. 30, Environment and Forest (FR V) Department dated 24.3.2014 and as per the Ministry's Guidelines F.No.11-9/98-FC dated 4.5.2001, permission of the National Board of Wildlife (NBWL) and the Hon'ble Supreme Court of India has to be obtained for consideration of the proposal. The relevant extract of the aforesaid letter read as under:

"Subject; Diversion of 9.1904 ha of forest land in Tally Reserve Forest of Jawalagiri Range Hosur Division for laying of 765 KV S/C transmission line between Dharmapuri (Salem) Madhugiri in favour of Chief Manager, Nagapattinam- Madhugiri Transmission Company Ltd., subsidiary of Power Grid Corporation of India Ltd., Bangalore

Reference: Government of TamilNadu, Environment & Forest (FR.10) Department, letter No. 25060/FR.10/2013-1 dated 20.12.2013.

With reference to the above subject, your kind attention is drawn to the fact that the proposed forest area for diversion is part of Cauvery North Wildlife Sanctuary declared vide GO (Ms) No. 30. Environment and Forest (FR V) Department dated 24.03.2014. As per the Ministry's guidelines F.No.11-9/98-FC dated 04.05.2001, permission of the National Board for Wildlife (NBWL) and the Hon'ble Supreme Court of India has to be obtained for consideration of the proposal.

After receipt of requisite permission form National Board for Wildlife (NBWL) and the Hon'ble Supreme Court of India, the same may be furnished to this office for further necessary action."

70. Noticeably, the aforesaid letter and the requirement of obtaining the Wildlife clearance arose in view of the Environment and Forest Department, Government of Tamil Nadu G.O (Ms.) No. 30 dated 24.2.2014, whereby the State of Tamil Nadu, in exercise of power under Section 26A (1)(b) of the Wildlife (Protection) Act, 1972 notified the 50433.48 Ha of forest areas in Hosur and Dharmapuri as Cauvery North Wildlife Sanctuary. Thus, the concerned 9.1904 Ha of forest land in Tali Reserve in respect of which the Petitioner had applied for forest clearance, subsequently also came to be notified as the Wildlife Sanctuary area after making the application for obtaining the forest clearance. As on the cut-off date, the Tali Reserve Forest was only a forest area, for which the Petitioner was required to obtain the forest

clearance. However, after the cut-off date and prior to submission of its application for grant of forest clearance could be approved, by virtue of the notification by the State of Tamil Nadu dated 24.2.2014 and the letter of MoEF dated 4.3.2015, the said forest area was also notified to be wildlife sanctuary and consequently, among others, the Petitioner was required to obtain the wildlife clearance from National Board for Wildlife as a pre-condition for grant of forest clearance for such land. Both the above events, namely, Notification of Tali Reserve Forest as Wildlife Sanctuary by the Government of Tamil Nadu dated 24.2.2014 and the MoEF letter dated 4.3.2015 requiring the Petitioner to obtain the wildlife clearance from National Board for Wildlife, having occurred after the cut-off date, in our view, also qualify as Change in Law events under Article 12 of the TSA, particularly, under "imposition of a requirement for obtaining any Consent, Clearances and Permits which was not required earlier".

71. It is noted that in terms of the letter of MoEF dated 4.3.2015, the Petitioner vide its letter dated 26.3.2015 applied to the District Forest Office, Hosur for grant of wildlife clearance from the State and National Wildlife Board. Pursuant to the aforesaid, it is noted that the Petitioner had consistently followed up its aforesaid application for grant of wildlife clearance for enabling the Petitioner to timely complete the Project. The Petitioner vide its letters dated 30.10.201, dated 4.12.2015, dated 14.1.2016, dated 31.8.2016 had written to the PCCF Wildlife and Chief Wildlife Warden, Tamil Nadu Forest Department for issuance of the recommendation of the State Board of Wildlife and for onward approval of the National Board of Wildlife. The Petitioner had also taken up the matter in regard to issuance of the wildlife clearance with Additional Chief Secretary, Government of Tamil Nadu, the Principal Secretary, Environment and Forest Department,

Government of Tamil Nadu and the Chief Secretary, Government of Tamil Nadu vide its letters dated 8.2.2016, dated 29.7.2016 and dated 15.11.2016. Despite consistent efforts by the Petitioner, its application for the wildlife clearance by the State Board of Wildlife was put up to the National Board for Wildlife only vide letter dated 28.3.2017. Thereafter, the said proposal was deliberated in the 43th Meeting of the Standing Committee for the National Board for Wildlife held on 27.6.2017 and vide the Minutes dated 21.7.2017, the Standing Committee decided to recommend the proposal of the Petitioner along with the mitigation measures laid down by the Chief Wildlife Warden, Tamil Nadu, NCTA and Prof. R. Sukumar. Upon receipt of the wildlife clearance, the Regional Empowered Committee of Ministry of Environment and Forest, Government of India in a meeting held on 22.8.2017 recommended the proposal of the Petitioner for in-principle (Stage I) clearance. Pursuant to the grant of Stage-I clearance, the Petitioner took up the matter with DFO, Hosur for issuance of demand notes for CA, NPV in compliance of the Stage I forest clearance on 13.9.2017, 18.12.2017, 12.1.2018, 12.2.2018, 16.3.2018 and thereafter, pursuant to the compliance of the conditions as laid under the Stage I clearance, the Stage II clearance was accorded to the Petitioner in terms of the letter of Conservator of Forest and Climate Change, Regional MoEF (South Easter Zone) vide its letter dated 25.7.2018 and on the basis of the above, the Petitioner was finally issued permission for diversion of the 9.1904 Ha of forest land in the Tali Reserve, which also formed part of the Cauvery North Wildlife Sanctuary by the State of Tamil Nadu vide its GO. (MS) No. 112 dated 10.8.2018, which was communicated to the Petitioner by the letter of PCCF, Chennai vide letter dated 23.8.2018.

72. Thus, as on the cut-off date as well as on the date of making application for grant of forest clearance for the Tali Reserve Forest over which the transmission line

had to be passed, there was no requirement for obtaining the wildlife clearance in course of obtaining the forest clearance. However, after the cut-off date and during the pendency of the application for grant of forest clearance, the Tali Reserve Forest had been notified as the Cauvery North Wildlife Sanctuary by the Government of Tamil Nadu vide notification dated 24.2.2014 and thereafter, the MoEF vide its letter dated 4.3.2015 asked the Petitioner to obtain the wildlife clearance for processing its application for the forest clearance. In absence of such requirement as on the cut-off date, the Petitioner cannot be held liable for the time required in obtaining the wildlife clearance and consequent delays in receiving the permission for diversion of Tali forest land from the Government of Tamil Nadu. Moreover, the above sequence of events exhibits that nowhere the Petitioner has taken unreasonable time for performance of its obligation in the process of obtaining the wildlife clearance and consequently, permission for diverting the forest land in Tali Reserve forest. In fact, the series of correspondences furnished by the Petitioner indicate that the Petitioner had consistently followed up on its applications and had taken up the matter of timely issuance of wildlife clearance and forest clearance with the concerned authorities. Therefore, the time spent by the Petitioner in obtaining wildlife clearance and the consequent delay till the receipt of the permission for diversion of 9.1904 Ha of forest land in Tali Reserve Forest which also came to be notified as the Cauvery North Wildlife Sanctuary i.e. from 4.3.2015 to 23.8.2018 (1268 days) deserves to be condoned under the Force Majeure. In our view, the Petitioner was indeed prevented from discharging its obligation under the TSA on account of the new requirement of obtaining the wildlife clearance and consequent, delay in grant of the diversion of the Tali Reserve forest land, which was not there as on the cut-off date. Since the Petitioner has achieved COD of the Project on 26.1.2019 i.e. with delay of 1133

days, the SCOD of the Project is, accordingly, extended till 26.1.2019.

73. It may be noted that the Commission vide its order dated 26.3.2018 in Petition No. 62/MP/2017 read with order dated 18.2.2020 in Review Petition No. 19/RP/2018 has declined the prayers of the Petitioner for apportionment of transmission charges between the two elements and payment of transmission charges for 765 kV D/C Nagapattinam – Salem transmission line w.e.f. 23.10.2016 and as a consequence has considered the Project of the Petitioner as a whole. Therefore, as the Commission has already condoned the delay of 1133 days in respect of the Element 2 thereby has extending the SCOD of the Project as 26.1.2019 in the foregoing paragraphs, we do not find need to go into the rest of the Force Majeure claims of the Petitioner.

74. Now, we proceed to deal with the cost overrun claims of the Petitioner on the basis of various Change in Law events. The cut-off date for Change in Law events i.e. the date which is seven days prior to the bid deadline in the present case was 3.2.2012. Accordingly, in the light of the above provisions of Change in Law, the claims of the Petitioner which have occurred after cut-off date during the construction period have been examined as under:

(a) Increase in Excise Duty from 12.36% to 12.50%

75. The Petitioner has submitted that there is an increase in Excise Duty from 12.36% to 12.50% w.e.f. 1.3.2015 vide Notification dated 1.3.2015 issued by Central Board Indirect Taxes and Customs. The Petitioner has claimed cost overrun due to the aforesaid Change in Law as Rs. 0.65 crore.

76. We have considered the submissions of the Petitioner. The cut-off date for considering claim under Change in Law is 3.2.2012. Since the revision of Excise

Duty is in terms of Notification No.12/2015-Central Excise issued by Department of Finance, Ministry of Finance, Government of India and the said Notification having been issued after cut-off date, the Petitioner is entitled to be compensated for expenditure incurred due to the increase in the rate of Excise Duty under Change in Law.

77. The issue is answered accordingly.

(b) Enactment of the GST Laws, 2017 w.e.f. 1.7.2017

78. The Petitioner has submitted that the Goods and Service Tax Act, 2017 has been notified by the Ministry of Finance, Government of India with effect from 1.7.2017, which is after the cut-off date, i.e. 3.2.2012 and, therefore, constitutes a Change in Law event. The Petitioner has further submitted that the Commission in its order dated 17.12.2018 in Petition No. 1/SM/2018 has held that the introduction of GST w.e.f. 1.7.2017 constitutes a Change in Law and that the differential between the taxes subsumed in GST and the rates of GST on various items shall be admissible under Change in Law and also that the TSPs shall work out and provide the details of increase/ decrease in the tax liability in respect of introduction of GST to the LTTCs duly supported by Auditor's certificate. The Petitioner has claimed additional expenditure incurred by it on account of introduction of GST Laws as Rs.0.32 crore. The Petitioner has submitted Auditor Certificate in this regard. The Petitioner has further submitted that there is no reduction in the rate of other taxes/duties which contributed in reduction of capital cost during construction period.

79. We have considered the submissions made by the Petitioner. 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 shall constitute a Change in Law event. 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 maybe. 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."

80. In the present case, as on cut-off date i.e. 3.2.2012, 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 has replaced various Central and State level taxes, through various enactments collectively referred to as the 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 on account of an Act of Parliament/ State Legislative Assemblies after the cut-off date, i.e. 3.2.2012, the same is covered under Change in Law provisions of the TSA under Article 12.1.1. The relief for any additional expenditure incurred by the Petitioner due to introduction of GST shall be admissible for the Project within the original scope of work. The Petitioner vide Auditor Certificate has placed on record the detailed break-up of implication of GST vis-à-vis taxes applicable prior to introduction of GST related to the various packages covered in the transmission Project implemented by the Petitioner. The Petitioner shall submit relevant documents to establish one to one correlation between the items and GST levied thereon, duly supported by invoices and Auditor's certificate.

81. The issue is answered accordingly.

(c) Unprecedented increase in cost of Compensatory Afforestation of lines and NPV due to Notification dated 2.3.2015 issued by Government of Tamil Nadu of 'Tali' Reserve Forest as Wild Life sanctuary

82. The Petitioner has submitted that as on cut-off date, there was no wildlife sanctuary notified in the area and accordingly, as per the prevalent laws on the said date, the Petitioner was required to only obtain forest clearance for diversion of forest area. Accordingly, the Petitioner had applied for forest clearance on 16.8.2012 for diversion of forest land for Tali Reserve forest. However, prior to grant of forest clearance, on 24.2.2014, Cauvery North Wild Life in Tali Forest was notified by the Central Government and thereafter, the Ministry of Environment and Forest on 4.3.2015 informed that the permission of the National Board of Wildlife and Hon'ble

Supreme Court was also required to be obtained for consideration of the proposal for diversion of forest land. The Petitioner had thereafter immediately applied for grant of clearance under Wildlife (Protection) Act, 1972 on 26.3.2015 and also constantly followed-up with various authorities for processing of its proposal for wildlife clearance. On 27.6.2017, the Meeting of Standing Committee of National Board of Wildlife was held and the proposal of the Petitioner for diversion of forest land through Cauvery North Wildlife Sanctuary was discussed and the proposal was recommended along with mitigation measures. Accordingly, in-principle Stage I clearance was granted to the Petitioner in a meeting held on 22.8.2017 subject to the conditions, including deposit of compensatory afforestation amount and the NPV which was communicated on 23.8.2017. The Stage-II approval was granted by MoEF, Government of India on 25.7.2018. Thereafter, Government of Tamil Nadu issued Government Order dated 10.8.2018 granting permission to issue orders for diversion of forest land in Tali Reserve forest, which was communicated by the Principal Chief Conservator of Forests to the Petitioner on 23.8.2018.

83. In the above context, the Petitioner has submitted that in the 2nd Meeting of the Regional Empowered Committee of Regional office (South Eastern Zone), Ministry of Environment and Forests held on 13.2.2015, the issues of diversion of forest land was discussed and considered. In the said meeting, it was noted to revise the compensatory afforestation to Rs. 5 lakh per hectare as against earlier proposed of Rs. 30,000 per hectare. The same principle was applied to other forest areas for entire forest areas for the Petitioner. The Petitioner was, therefore, required to pay the compensatory afforestation to Rs. 5 lakh per hectare as against earlier proposed of Rs. 30,000 per hectare in terms of the directions of the statutory authorities which constitute a Change in Law events. The Petitioner has furnished the copies of

demand notes dated 9.3.2015, 17.3.2015, 18.3.2015, 26.5.2015, 14.7.2015, 27.6.2016, 1.6.2018, 6.6.2018, 20.6.2018, 1.8/9.2018 for submission of charges in respect of diversion of forest areas.

84. The Petitioner has further submitted that Tamil Nadu Forest Department, vide its letter dated 20.6.2018, issued the demand letter for various amounts including Rs. 4,79,27,936/- for Net Present Value (NPV) for diverting the forest land in Tali Reserve Forest. This is against the initial estimated requirements to incur Rs. 9.39 lakh per Ha which translate to Rs. 0.86 crore for 9.19 ha. It has been submitted that the initial estimate was computed on the basis of Hon'ble Supreme Court order dated 9.5.2008 and NPV extraction in Forest Clearance (FC) compendium.

85. In view of the above, the Petitioner has claimed the increase in cost of NPV and increase in cost of compensatory afforestation as under:

a. Increase in Cost of NPV due to wild life Notification (Applicable to Tali RF only)					
Sl.	Details of Project	Extent of RF	Initially envisaged @ Rs.9.39L/Ha. (in crore)	Actual in crore	Cost increase in crore
1	765kV S/C Line	9.19 Ha	0.86	4.79	3.93
b. Increase in cost due to unprecedented hike of CA Cost.					
Sl.	Details of Project	Extent of RF in	Initially envisaged @ 30000 per Ha. (considering double the area as per Rules/Guidelines)	Actual in crore	Cost increase in crore
1	765kV D/C Line	30.1Ha	0.18	2.96	2.78
2	765kV S/C Line	15.61Ha	0.09	1.71	1.62
	Total		0.27	4.67	4.4
C. Total Cost Overrun for Forest diversion (a+b)					8.33

86. We have considered the submissions made by the Petitioner. As on cut-off date i.e. 3.2.2012, the Petitioner was only required to obtain forest clearance for diversion of forest area and accordingly, it had applied for grant of forest clearance on 16.8.2012 for diversion of forest land in Tali Reserve Forest. However, after the cut-off date and prior to the approval of its application for forest clearance, Cauvery

North Wildlife in Tali Forest was notified as Wildlife Sanctuary by the Government of Tamil Nadu vide G.O (Ms) No. 30 dated 24.2.2014 pursuant to which, the Petitioner was required to obtain wildlife clearance under the Wild Life (Protection) Act, 1972 in terms of letter of Ministry of Environment and Forest dated 4.3.2015. Accordingly, the Petitioner applied for grant of wildlife clearance on 26.3.2015 and its proposal for diversion of forest land through Cauvery North Wildlife Sanctuary was recommended by the Standing Committee of National Board of Wildlife on 27.6.2017 on which basis the Petitioner was, thereafter, granted Stage I and Stage II clearances. As the requirement of obtaining wildlife clearance in terms of notification of Cauvery North Wildlife in Tali Reserve forest by the Government of India occurred after the cut-off date, such requirement constitute a Change in Law event in terms of Article 12 of the TSA and the consequently, the Petitioner is entitled to compensation on account of the expenditure incurred in obtaining such clearance.

87. However, it is noticed that in the present case, the claims of the Petitioner relate to unprecedented increase in the compensatory afforestation and NPV in the Reserve Forest Area/Wildlife sanctuary. The Petitioner has submitted that in the 2nd Meeting of Regional Empowered Committee of Regional Office (South Eastern Zone), Ministry of Environment and Forest held on 13.2.2015, the issue of diversion of forest land was considered and it was noted to revise the compensatory afforestation rates to Rs. 5 lakh per hectare against earlier Rs. 30,000 per hectare and accordingly, the Petitioner was required to pay compensatory afforestation @ Rs. 5 lakh per hectare as against the Rs. 30,000 per hectare in terms of direction of the statutory authority. We have noted the submissions made by the Petitioner. The Regional Empowered Committee of Regional Office (Sought Eastern Zone), Ministry of Environment, Forests & Climate Change, in its minutes of meeting held on

13.2.2015 *inter-alia*, observed as under:

“...Agenda No.5 Diversion of 11.00 ha. of forest land in Pallipatty Reserved Forest Harur Forest Division in Dharmapuri District for laying of 765 kV S/C Transmission line between Nagapattinam-Dharmapuri in favour of Chief Manager, Nagapattinam – Madhugiri Transmission Company Ltd., subsidiary of Power Grid Corporation of India Ltd., Bangalore.

The Committee noted the following in the proposal:-

- 1. Legal status of the forest area proposed for diversion is Reserve Forest.*
- 2. Density of the vegetation is less than 0.4*
- 3. The area proposed for diversion does not form part of National Park, Wildlife Sanctuary, Biosphere Reserve, Tiger Reserve, Elephant Corridor etc.*
- 4. No protected archaeological / heritage site / defence establishment or any other important monument is located in the area.*
- 5. For raising Compensatory Afforestation, 22.00 ha of degraded forest land have been identified in Pattukonampatti RF, Pappireddipatti Taluk, Dharmapuri District. CA scheme includes 10 years of maintenance has been furnished.*
- 6. Certificates related to ensuring compliance of the Schedule Tribe & Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 have been furnished.*
- 7. Alternatives examined on map of each alignment have been furnished.*
- 8. Permission from Hon'ble Supreme Court has been obtained for felling of 175 trees of spontaneous origin.*
- 9. The subject proposal has been recommended at all levels.*

For compensatory afforestation of the degraded forest, it is proposed to spend Rs.30,000/-per ha. The Committee is of the opinion that the amount proposed to be spent on CA is grossly inadequate and feels that the investment has to be substantially increased to make pits of larger size, filling the pits with suitable borrowed soil, to plant bigger)at (seedlings, etc. The Committee feels that a minimum of Rs.5 lakh per ha will be required to do any meaningful rehabilitation of degraded forest.

The proposal is part of Nagapattinam- Salem (Dharmapuri) 765 KV D/C line. The line falls in Attur, Harur and Dharmapuri Forest Divisions. The project authority has stated that the line has to necessarily pass through the forest area in the Attur and Dharmapuri Divisions also. The Committee after deliberations has decided to grant permission for the proposals in Attur and Dharmapuri Forest Division also.

The project is expected to carry bulk power and help utilize surplus power in deficit regions. The felling of trees is proposed only in the area where the towers are proposed to be constructed. The height of the line is proposed to be raised by additional 6 meters compared to normal level. Due to this, no felling of trees is proposed in the remaining area proposed for diversion. The Committee approves the proposal for diversion with the following conditions in addition to the usual conditions for transmission line projects:-

(i) Forest Block map indicating the degraded area selected for Compensatory Afforestation shall be furnished with DGPS readings.

(ii) Cost of raising compensatory afforestation over degraded forest and its Maintenance for 10 years shall be paid @ Rs.5 lakh per ha. Revised detailed CA scheme duly signed by the DFO along with soil suitability certificate and approved by the Conservator of Forests shall be furnished.

88. While the perusal of the aforesaid minutes of the meeting reveals that the Regional Empowered Committee of Regional Office (Sought Eastern Zone) had in fact increased the amount to be spent on compensatory afforestation of the degraded forest to 5 lakh per ha instead of earlier proposed Rs. 30,000 per ha, it, however, does not indicate that the amount of Rs. 30,000 per ha as earlier proposed was in line with the rates fixed by the concerned State authorities in this regard. The Petitioner has also not placed on record any supporting documents indicating the applicable rate for compensatory afforestation as on the cut-off date. Undeniably, the compensatory afforestation schemes are site specific and per hectare rate will vary accordingly to the species, type of forest and site. In absence of any documents indicating that the earlier proposed rate of Rs. 30,000 per ha was prudent and as per the prevailing norms as on the cut-off date, we are unable to decide upon any change/increase therein as ordered by the Regional Empowered Committee cannot be considered as Change in Law. Further, it is observed that while applying for grant of the forest clearance, the Petitioner had also undertaken that it shall bear the cost of raising and maintenance of the compensatory afforestation and/or penal afforestation as well as the cost of protection and regeneration of safety zone, etc. as per the scheme prepared by the State Government in lieu of the forest land diverted for the construction of transmission line. In fact, in one of the letters of the DFO, Hosur to the Conservator of Forest, Dharmapuri dated 28.2.2013 forwarding the application of the Petitioner for diversion of 9.1904 Ha of forest land, had indicated the compensatory afforestation as Rs. 30 lakh as per the Circular No. 41 of 2000. The relevant extract of the said letter reads as under:

"...The power grid corporation Ltd. Bangalore-22, Karnataka has submitted that proposal under sec 2 of F(C) Act 1980 for laying of 765 KV DC Dharmapuri (Salem)

Madhugiri transmission line in Thally RF and requested for diversion of 9.1904 ha of forest land in Jawalagiri Range of this Division.

.....

As per the provision of Forest Conservation Act 19080 an area of 20 ha degraded forest in Jawalagiri Range has been identified for compensatory afforestation purpose. The area was inspected by me along with Forest Range Officer Jawalagiri Range and Power Grid officials and found suitable for afforestation and management point of view.

As per Principal Chief Conservator of Forests Circular No.41/2000 an amount of Rs 30 lakhs (Rupees Thirty Lakhs only) may be collected from user agency for raising compensatory afforestation work in the identified area and maintenance for 5 years. It includes irrigation and fencing the plantation....."

As per the above, it appears that initially the rates towards compensatory afforestation for 20 ha degraded forest was fixed in terms of the PCCF Circular No. 41/2000 at Rs. 30 lakh, which works out to Rs. 1.5 lakh per ha. Thus, it is not forthcoming as to how the earlier proposed rate of Rs. 30,000 per ha came to be fixed. In the absence of the necessary details, the Petitioner is granted liberty to raise its claim by way of separate Petition along with all the necessary/supporting details in this regard.

89. The Petitioner has further submitted that Tamil Nadu Forest Department vide letter dated 20.6.2018 also raised the demand for an amount of Rs. 4,79,27,936 for Net Present Value for diverting the forest land in Tali Reserve Forest. It is submitted that this is against the initial estimated requirements to incur Rs. 9.39 lakh per Ha (Rs.0.86 crore for 9.19 Ha), which was computed on the basis of the Hon'ble Supreme Court order dated 9.5.2008 and NPV extraction in Forest Clearance compendium.

90. We have considered the submissions made by the Petitioner. It is beyond the dispute that for obtaining the permission for diverting the forest land for non-forest purposes, the user agency was also required to pay the Net Present Value (NPV) of the forest land so diverted in terms of the orders of the Hon'ble Supreme

Court dated 29.10.2002 in Writ Petition (Civil) No. 202/1995. It is also beyond the dispute that as on cut-off date, such requirement was already there and that the Petitioner was required to factor into such value/amount while submitting its bid. The Hon'ble Supreme Court in its orders dated 28.3.2008, dated 28.4.2008 and dated 9.5.2008 also decided the rates of NPV per ha. of the forest area diverted w.e.f. 28.3.2008 from the user agency. However, in the present case, the increase in the cost of NPV is attributed to the forest area having also been notified as 'Cauvery North Wildlife Sanctuary' by the Environment and Forest Department, Government of Tamil Nadu vide order dated 24.2.2014 under Section 26A (1)(b) of the Wildlife (Protection) Act, 1972. By virtue of the aforesaid notification, 9.19 Ha area of the forest area over which the Petitioner was to lay the transmission line also fell under the sanctuary area and as a result, as per the decision of the Hon'ble Supreme Court, the NPV payable for use of forest land falling within the wildlife sanctuary area become five times of the NPV as would have been paid for the diversion of the forest area. The relevant extract of the said decision reads as under:

“(ii) the use of forest land falling National parks/ Wildlife Sanctuaries will be permissible only in totally unavoidable circumstances for public interest projects and after obtaining permission from the Hon'ble Court. Such permissions may be considered on payment of an amount equal to ten times in the case of national Parks and five times in the case of Sanctuaries respectively of the NPV payable for such areas. The use of non-forest land falling within the National Parks and Wildlife Sanctuaries may be permitted on payment of an amount equal to the NPV payable for the adjoining forest area. In respect of non-forest land falling within marine National Parks/Wildlife Sanctuaries, the amount may be fixed at five times the NPV payable for the adjoining forest area;”

91. Since the concerned forest area has been notified as wildlife sanctuary area after the cut-off date, the Petitioner shall be entitled to increase in the amount payable towards NPV due to the notification of the forest area as wildlife sanctuary under Change in Law.

92. The issue is answered accordingly.

(d) Enhancement of tree compensation as per order passed by the Deputy Commissioner/District Collector

93. The Petitioner has submitted that it has been required to pay the enhanced tree compensation in terms of the notifications dated 14.1.2015 and dated 2.2.2016 issued towards enhancement of tree compensation as per order passed by the Deputy Commissioner/District Collector. It has been contended that by order dated 20.6.2016, the District Collector, Dharmapuri had issued the compensation for coconut and areca trees and by order dated 27.2.2016, District Collector, Salem had issued the compensation for removal of coconut trees. By Office Memorandum dated 14.1.2015, the Office of Deputy Commissioner in Tumkur District had extended the jurisdiction of order dated 8.7.2014 in regard to other lines of the Petitioner. Further, by Office Memorandum dated 2.2.2016, the Office of Deputy Commissioner, District Ramanagara provided for compensation for trees. The Petitioner has submitted that the total cost overrun due to aforesaid Change in Law is Rs. 196.45 crore and has also furnished an auditor certificate in this regard.

94. We have considered the submissions made by the Petitioner and the documents placed on record by the Petitioner in support of its aforesaid Change in Law claim. It is noted that vide order dated 20.6.2016, the District Collector, Dharampuri, pursuant to the review of the compensation amount based on the seasonal and technical activities by the Agricultural Department, Horticultural Department, Agricultural Science Centre, farmers and PGCIL Officials, has fixed the amount of compensation for the coconut and areca trees for the affected farmers en-route the transmission line. Similarly, vide order dated 27.2.2016, the District Collector, Salem has fixed the compensation for various trees including coconut

trees to be removed in Salem District during construction of transmission line by the Petitioner. Further, with regard to Tumkur District, the office of the Deputy Collector vide Office Memorandum dated 14.1.2015 extended the jurisdiction of its earlier order dated 8.7.2014 for 765 kV S/C Madhugiri-Dharpuri transmission line by the Petitioner. Pertinently, vide its order dated 8.7.2014, the Deputy Commissioner, Tumkur had, *inter-alia*, fixed the compensation for the trees which were falling under the transmission lines in line with the Government notifications/circulars. Similarly, the Office of the Deputy Commissioner, Ramanagara vide Office Memorandum dated 2.2.2017 revised the compensation payable to the land owners in respect of the trees being affected by the laying of the transmission line. Pertinently, the compensation was originally fixed vide the Office Memorandum dated 10.12.2015 by which the Petitioner was ordered to pay the compensation amount for trees coming in the areas passing through the transmission line as prescribed by the Forest Department and the Horticulture Department.

95. Indisputably, the transmission licensees have been required to pay the damages towards crop and trees affected by the laying of the transmission lines under the provisions of the Section 67 and Section 68 of the Act read with Section 10 and Section 16 of the Indian Telegraphs Act, 1885. Even as per the Petitioner's own submission, it was required to pay the compensation towards crop and tree damages under the aforesaid provisions. The Petitioner has also not submitted any of the orders of District Collector/Deputy Collector 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. 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.

96. The claim of Change in Law would be maintainable only upon the demonstrating that such rate of compensation has been modified by the concerned authorities after the cut-off date, thereby resulting into change in terms and conditions prescribed for obtaining any consent, clearance and permits. While the auditor certificate furnished by Petitioner indicates that out of the total expenditure of Rs. 217.50 crore, the Petitioner has restricted its claim to the extent of 196.45 crore. However, no details have been placed on record indicating/demonstrating the rate of tree compensation prevailing as on the cut-off date. While some of the orders of the concerned authorities as relied upon by the Petitioner indicate the enhancement/re-fixation in the compensation rates (for instance orders/office memorandums pertaining to the Districts – Ramanagara and Salem), the others only indicate the fixation of the compensation rates as per the government notifications/ circulars (for instance office memorandum dated 14.1.2015 of Office of Deputy Commissioner in Tumkur read with its earlier order dated 8.7.2014). In none of the cases, the Petitioner has furnished the relevant documents demonstrating the prevailing rate of compensation payable on account of removal of trees for laying of transmission lines. In the above circumstances, we decide that the entitlement of the Petitioner for the tree compensation in terms of above notifications/ circulars/orders under the Change in Law shall be limited only to additional expenditure over and above what was incorporated in the bid as on the cut-off date. Accordingly, the Petitioner while claiming the additional land compensation on account of the aforesaid notifications/ circulars/orders of the District Collector/Deputy Commissioners (after the bid

submission) shall furnish an undertaking to LTTCs on an affidavit disclosing the applicable tree compensation rates being considered by the concerned authorities as on cut-off date and/or the tree 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 tree compensation claims based on the notification/ circulars and orders existing at the time of bid submissions. It is also observed that as per the auditor certificate, amount of Rs. 6.06 crore is considered as balance anticipated expenditure to be incurred. Accordingly, it is clarified that the any entitlement of the Petitioner due to impact under Change in Law shall be upon providing documentary evidence of anticipated cost as on cutoff date and proof having incurred such expenditures on actual basis.

97. The issue is answered accordingly.

(e) Notification dated 18.8.2017 by Government of Karnataka for payment of land Compensation in the State of Karnataka as per order passed by the District Commissioner/Deputy Collector

98. The Petitioner has submitted that on 15.10.2015, the Government of India issued guidelines for payment of compensation towards damages in Right of Way for transmission lines. Based on the above Guidelines, the Government of Karnataka in meeting held on 19.7.2017 decided to the payment of compensation as per Ministry of Power Guidelines paying 15% of the land value (i.e. Market Value/Stamp Act rate or 4 times the guidance value whichever is lower). Pursuant to the above, the Office of Deputy Commissioner, District Ramanagara had issued the orders for compensation wherein it has been noted that the Government of Karnataka in the meeting held on 19.7.2017 decided to enforce the payment of 15% of the four times of the present market guideline value or 15% of the market rate whichever is less and informed the concerned Deputy Commissioner to pass the order. Prior to the

above, the transmission licensees were only required to pay compensation towards normal crop and tree damages in terms of Section 67 and Section 68 of the Act read with Section 10 and Section 16 of the Indian Telegraph Act, 1885. However, in pursuance to the decision taken by Government of Karnataka, the payment of substantial costs in the form of compensation was to be done which was not existing before. The Petitioner has submitted that the total cost overrun due to the aforesaid Change in Law is Rs. 120.5 crore.

99. We have considered the submissions of the Petitioner. At the outset, it is pertinent to note that the Commission, in its various decisions, has already held that the Guidelines dated 15.10.2015 issued by the Ministry of Power, Government of India for payment of compensation towards damages in regard to the RoW for transmission lines as such do not constitute as Change in Law event. It has been noted by the Commission that the said Guidelines were merely recommendatory in nature and the acquisition of the land being State subject, the States/UTs were requested to take suitable decision regarding adoption of the said Guidelines. However, the adoption of the recommendations as provided in the Ministry of Power Guidelines by the concerned State by way of order or notification in respect of State, after the cut-off date and resulting into the additional compensation payable in terms of thereof, has been considered as Change in Law and the licensees have been allowed to claim such expenditure after deducting the compensation payable as on the cut-off date, if any, under the Change in Law.

100. In the present case, it is observed that owing to the severe Right of Way (ROW) issues being faced in laying of certain transmission lines, the Government of Karnataka, in a meeting held on 19.7.2017, decided the payment of land compensation as per the Guidelines of Ministry of Power by paying 15% of land

value (i.e. Market value. Stamp Act rate or four times the guidance value, whichever is lower). The relevant extract of the minutes of the said meeting is as under:

“Proceedings of the Meeting in the Chamber of Hon’ble Minister of Energy Room No. 336, Vidhan Soudha on 19-07-2017.

...

Meeting regarding Right of Way issues in the following lines:

- 1. 400 kV Yelahanka LILO Line.*
- 2. 765 kV Tumkur-Dharmapuri S/C Line-I*
- 3. 400 kV Somnanahalli- Dharmapuri D/C Line*
- 4. 765 kV Tumkur – Dharmapuri S/C Line-II*
- 5. 400 KV Tumkur – Yelahanka D/C line.*

Minister of Energy welcomed CMD, POWERGRID and informed that due to compensation issues, various Transmission Lines of POWERGRID are held up and there is an urgency to complete them at the earliest. Minister of Energy informed that due to upcoming elections, Law & Order situation vis-à-vis Farmers across the Country, it would not be prudent to take up the balance construction works under police protection and would ultimately delay all the projects.

....

DC, Bangalore (Urban) informed that most of the Landholders are demanding market value for 100% of the Tower footing area and 55% of the market value of the Corridor since they will not be able to take up any construction under the Corridor. DC, Ramanagara informed that the compensation needs to be paid beyond the conductor width as they will not be able to take up any useful activity under the line.

...

It was pointed out by the Minister that the Farmers across the lines have been raising the issues of insufficient compensation due too low guideline values as no permanent structures can be built under the line corridor. It was stressed upon that since compensation as per the MOP guidelines with the guidelines value is not mitigating the demands of the farmers, proposal for fixing of the compensation by the DCs commensurate with the Stamp act rate of the land was deliberated. In regard to market value of land, abnormal variation between guidelines value & Stamp Act rate was noted. Hence, it was deliberated as guidance value needs to be enhanced, commensurate with the market/ stamp act rate, however, it should not exceeds four times the present guideline value.

After detailed deliberations on various issues, following was concluded:

- 2. 765 kV Tumkur-Dharmapuri S/C Line-I, 400 kV Somanahalli-Dharmapuri DC line, 765 kV Tumkur-Dharmapuri S/C Line-II & 400 KV Tumkur-Yelahanka D/C line.*

Minister directed all the DCs of Ramanagara, Bangalore (Urban) & Bangalore (Rural) to complete the balance works in various lines expeditiously assessing the compensation for the farmers under the corridor as per MOP guidelines paying 15% of land value (i.e. Market value/Stamp Act rate or 4 times the guidance value whichever is lower). Further, Minister advised POWERGRID to ensure that the compensation is paid expeditiously so that the work can be completed at the earliest.

All the DCs agreed to issue suitable orders to ensure that the balance works are completed expeditiously.”

Pursuant to the decision taken in the above meeting, the Deputy Commissioner, Ramanagara District issued an Official Memorandum dated 18.8.2017 re-fixing the compensation amount in terms of the decision taken in the meeting dated 19.7.2017. The relevant extract of the said Official Memorandum reads as under:

“ Government of Karnataka
Office of the Deputy Commissioner, Kandaya Bhavana, Ramanagara
District, Ramanagara

No. RDO/LAQ/CR/40/2015-16

Date: 18.08.2017

Official Memorandum

Subject : Compensation to the farmers of land utilizing for installation of 765 kV transmission line in Ramanagara District by Power Grid N. M. Transmission Limited-reg.

- Reference :*
- 1. This office memorandum dated 10.12.2015*
 - 2. Proceedings of the Meeting dated: 19.07.2017 conducted under the chairmanship of Hon'ble Power Minister.*
 - 3. As per the resolution of the meeting of this office held on 04.08.2017.*

The project of installation of 765 KV transmission line from Dharmapuri (Salem) Tamil Nadu to Madhugiri, Tumkur District, Karnataka is at final stage, in ref (1) ordered to fixed the compensation amount to the farmers of the land in which the transmission line is passing through some villages of Ramanagara Taluk, Magadi Taluk, Kanakapura Taluk, Ramanagara District and to pay the compensation amount accordingly.

In between M/s Power Grid N.M. Transmission Limited have informed that some farmers have destructed work of construction of various towers in Kanakpura and Ramanagara Taluks. In this circumstances, in the meeting held on 19.07.2017 under the chairmanship of the Hon'be Power Minister, Government of Karnataka decided to pay 15% of the four times of the present market guideline value or 15% of the market rate of the land whichever is less and informed the concerned Deputy Commissioner to pass order in this regard.

Accordingly, it is ordered to pay the compensation amount of present market guidelines value to the farmers instead of amount fixed in official memorandum vide ref(1) and to complete the project.

M/s Power Grid N.M. Transmission Limited, Bangalore should fix the boundaries of the 64 meters corridor of power line transmission (32 meters on both sides from the middle) and pay the compensation amount in accordance with the above rates for

the actual measurement coming in the said boundary. While payment of the compensation amount should verify the revenue records and after confirming the genuineness of the records, should pay the compensation amount to the original owners only.

(Translated version)”

101. Accordingly, in terms of the decision taken by the Government of Karnataka in the meeting held on 19.7.2017 and the order/office memorandum issued by the concerned District Authorities implementing the decision taken in the said meeting, the Petitioner has been required to make payment of land compensation at the rates, which have been enhanced after the cut-off date. The said decision taken by the Government of Karnataka and its implementation by the concerned District authorities, in our view, qualify as Change in Law under the TSA and consequently, the Petitioner is entitled to the compensation for the additional expenditure incurred towards the payment of land compensation in terms of the decision of the Government of Karnataka and its implementation by the Deputy Commissioner vide office memorandum dated 18.8.2017.

102. However, it is pertinent to note that the Petitioner has also not submitted any of the order/notification of the State Government and/or concerned State Authorities 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. 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. Accordingly, while claiming the compensation for the expenditure incurred in terms of the order of the Deputy Commissioner, Ramanagara dated 18.8.2017,

the Petitioner shall furnish an undertaking to LTTCs on an affidavit disclosing the applicable tree compensation rates being considered by the concerned authorities as on cut-off date and/or the tree 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 tree compensation claims based on the notification/ circulars and orders existing at the time of bid submissions. Moreover, the auditor certificate furnished by the Petitioner indicates that out of the total claim of compensation of Rs. 120.50 crore for Element 2, under this head, an amount of Rs. 27.08 crore is considered as balance anticipated expenditure to be incurred, which will be paid upon the outcome of the court cases/disputes in ownership/title deed. In this regard, it is clarified that the Petitioner will be entitled to Change in Law relief on account of such expenditure only upon providing documentary evidence of having incurred such expenditures on actual basis.

103. The issue is answered accordingly.

(f) Payment of land compensation in the State of Tamil Nadu as per Judgment of Hon'ble High Court of Madras dated 12.04.2019 against WP: 16460 of 2018

104. The Petitioner has submitted that payment of land compensation in the State of Tamil Nadu as per judgment of Hon'ble High Court of Madras dated 12.4.2019 against WP: 16460 of 2018. Based on the above, a provisioning of Rs. 34.50 crore was made for such persons who may seek compensation. As on date, no payment has been made. However, the Petitioner is seeking an in-principle approval to include the impact thereof as and when the Petitioner is required to incur the expenditure on this account.

105. We have considered the submissions of the Petitioner. At the outset, as noted in the earlier part of this order, the Petitioner has not complied with the

requirement of the issuance of Change in Law notice in respect of its present claim prior to approaching the Commission. Nevertheless, we may proceed to consider the claim of the Petitioner on merits. The Petitioner has sought to claim the payment of land compensation in the State of Tamil Nadu as per the judgment of Hon'ble High Court of Madras dated 12.4.2019 in Writ Petition No. 16460 of 2018 as Change in Law. The Petitioner has further submitted that as on date, it has not made any payments and is seeking in-principle approval to include the impact of Rs. 34.50 crore in terms of the said judgment as and when the Petitioner is required to incur the said expenditure. It is noted that the WP No. 16460 of 2018 was filed by one Mr. K. Natarajan, *inter alia*, challenging the order passed by the District Collector, Dharmapuri dated 5.12.2017 in and by which, the request to apply G.O.Ms No. 63, Energy (A) Department dated 22.11.2017 was refused. The relevant extract of the said judgment of the Hon'ble High Court of Madras is as under:

"The petitioner, claiming to be the owner of the land bearing S.F.No.8/3B, admeasuring 0.20.0 hectare (50 cents) in Pappireddipatti Village, Dharmapuri District, has filed this writ petition challenging the impugned order passed by the first respondent/ the District Collector, Dharmapuri, dated 05.12.2017, in and by which, the request of the petitioner to apply G.O.Ms.No.63, Energy (A) Department, dated 22.11.2017, was refused.

...

3. While so, the second respondent / the General Manager, Power Grid NM Transmission Limited, Yeshwantpur, Bengalur, issued a notice dated 18.03.2015 informing the petitioner that they were entrusted with the construction of Nagapattinam-New Salem (Dharmapuri), by the Transmission Line of India, vide its letter No.11/2/2011-PG (PFC), dated 22.09.2011; that the said Transmission Line will pass through his property bearing Survey No.8/3B in Pappireddipatti Village; and that the petitioner would be given a reasonable compensation for the damages. But, the petitioner, vide his representation dated 10.08.2015, objected to the same and requested the first respondent for change of transmission line and tower to some other suitable place. However, even after his repeated request, the same was overruled and the construction put up by the petitioner spending a sum of Rs.15,00,000/- was demolished, for which also, they have paid a mere compensation of Rs.7,17,907/-, however, with regard to right of way and tower base, the compensation was not paid to the petitioner.

4. Aggrieved against the same, when the petitioner has filed a writ petition No.7685 of 2016, this Court, vide order dated 29.03.2016, by referring to the Guidelines notified by the Government of India dated 15.10.2015, which deals with the payment of compensation towards damages with regard to Right of Way for Transmission Lines, directed the petitioner to submit his claim statement before the District Collector,

Dharmapuri, in accordance Guidelines framed by the Government of India dated 15.10.2015 along with a copy of the order setting out as to what is the basis of his claim.

5. Learned counsel for the petitioner further submitted that in paragraph Nos.6 to 8 of the order, the crux of the issue has been dealt with stating that the second respondent therein / Powergrid NM Transmission Limited, Bengalur, having taken a stand with regard to the fact of Guidelines issued by the Government of India dated 15.10.2015 that they would pay the compensation in terms of the Guidelines on determination of the same by the District Magistrate/District Collector, cannot restrict their claim and by holding so, a direction was issued to consider the claim of the petitioner for payment of compensation towards Right of Way for transmission line and Tower Base. Therefore, it is contended, in view of such stand taken by the second respondent in the earlier writ petition, they cannot now go back and equally they cannot now refuse to pay the compensation, for, even before the District Collector, Dharmapuri, the second respondent has accepted the case of the petitioner that the Guidelines issued on 15.10.2015 would be applicable to the case of the petitioner for determining the compensation for Right of Way and Tower Base.

6. It is, at this juncture, Mr.R.Thiagarajan, learned Senior counsel for the second respondent submitted that G.O.(Ms.).No.63, Energy (A1) Department, dated 22.11.2017, issued by the State Government specifically says that the said G.O. will be applicable only to the new projects with prospective effect, therefore, the compensation at 85% of land value, as determined by the District Magistrate or any other authority based on Circle rate/Guidelines value/Stamp Act for Tower Base area, cannot be extended to the petitioner. I do not agree with this submission for the following reasons.

7. Given the context of the case, it is relevant to see what was argued by the second respondent herein/Powergrid NM Transaction Limited, Yeshwantpur, Bengaluru, before this court in the earlier writ petition No.7685 of 2016. Paragraph Nos.6 to 9 of the order dated 29.03.2016 passed in the above said writ petition are extracted below:

“6. Thus, in terms of the above guidelines, compensation at 85% of land value, has to be determined by the District Collector or District Magistrate, based on Circle rate/Guideline Value/Stamp Act rates for tower base area (between four legs) impacted severely due to installation of tower/pylone structure. Further, the compensation towards diminution of land value in the width of right of way (ROW) corridor due to laying of transmission lines and imposing certain restriction, would be decided by the States, as per categorization/type of land in different places of States, subject to a maximum of 15% of land value, as determined based on circle rate/guidelines value/stamp Act rates.

7. Therefore, the submission of the learned counsel appearing for the petitioner is that, compensation ought to have been determined in terms of the aforesaid guidelines notified by the Government of India, dated 15.10.2015.

8. The second respondent has filed a counter affidavit, justifying their action, which need not be gone into at this stage, since already the work towards the erection of transmission tower is in progress. **All that has to be seen is as to the stand taken by the second respondent is with regard to the effect of the guidelines issued by the Government of India, dated 15.10.2015. To find this aspect, it would be suffice to refer to para Nos.14 and 15 of the counter affidavit, wherein, the second respondent has accepted that they would pay the compensation in terms of the guidelines on determination of the same by the District**

Magistrate/District Collector, however, they seek to restrict only to para 2 (i) of the said guidelines. While the second respondent accepts that they are bound by the abovesaid guidelines, they cannot restrict it by stating that the claim should be made by the petitioner only in terms of para 2 (i) of the guidelines. The petitioner, being the land owner, it is well open to him to invoke all provisions, which according to him, are applicable to the land in question and make a claim for compensation before the District Collector/first respondent.

9.....Accordingly, while upholding the order passed by the District Collector to the aforesaid extent, **there will be a direction to the petitioner to submit his claim statement before the first respondent/District Collector, in accordance with the guidelines framed by the Government of India, dated 15.10.2015, along with a copy of this order, clearly setting out as to what is the basis of his claim, and the petitioner is entitled to invoke all the clauses under the guidelines.** On receipt of such claim statement, the first respondent shall issue notice to the second respondent, and after affording an opportunity to file their reply/counter, and thereafter, shall issue notice to the petitioner and the second respondent, fixing a date for hearing the parties in person, direct the second respondent to produce all documents, including the building valuation report, and after perusing all the documents, hear the parties in full, and pass a reasoned order, by strictly adhering to the guidelines prescribed by the Government of India.

A perusal of paragraph No.8 of the order clearly says that the second respondent/Powergrid NM Transmission Limited, Yeshwantpur, Bengalur, has already accepted that they would pay the compensation to the petitioner for the Right of Way and Tower Base in terms of the Guidelines notified by the Government of India dated 15.10.2015. At this stage, learned Senior Counsel for the second respondent requested this Court to restrict the benefit only to the petitioner and not to be treated as a precedent for all other cases.

8. Learned counsel for the petitioner submitted that along with the petitioner, his son's representation is also pending with the first respondent, therefore, a direction may be given to the first respondent to consider the same as well in terms of the Guidelines notified by the Government of India dated 15.10.2015.

9. In view of the aforesaid facts and circumstances of the case, this Court, without going into the applicability of G.O.(Ms.).No.63, Energy (A1) Department, dated 22.11.2017, directs first respondent to consider the claim of the petitioner on the basis of the Guidelines notified by the Government of India dated 15.10.2015 and pay the compensation with regard to Right of Way for Transmission Lines and Tower Base area, within a period of eight weeks from the date of receipt of a copy of this order.

106. Perusal of the aforesaid judgment of the Hon'ble High Court of the Madras clearly reveals that the direction of the Hon'ble High Court to the District Collector, Dharmapuri to consider the claim of the landholder for compensation is on the basis of the Guidelines notified by the Ministry of Power, Government of India dated 15.10.2015 and the acceptance by the Petitioner, in another WP bearing No. 7685 of 2016 filed by the same landholder, to the effect that they would pay the

compensation to the said landowner for the Right of Way. However, the Petitioner has neither incurred such expenditure and nor has produced any documents in this regard. The elements of Transmission System have already achieved COD on 23.10.2016 and 26.1.2019. Even after lapse of around five years, the Petitioner is yet to incur the expenditure on land compensation under this head. However, in this regard, the Petitioner is seeking in-principle approval to include the impact thereof as and when the Petitioner is required to incur the expenditure on this account. Therefore, we are unable to take any decision on the count. The Petitioner is granted liberty to approach the Commission once such expenditure is incurred along with complete information/ justification and the Commission will take an appropriate view thereafter in accordance with the law.

107. The issue is answered accordingly.

(g) Increase in the deposit amount paid to various Railway Divisions as per the deposit notes for crossing of Railway crossing of lines

108. The Petitioner has submitted that there is an increase in the deposit amount paid to various Railway Divisions as per the deposit notes for crossing of Railway crossing of lines. It has been submitted that there was an increase in the deposit amount paid to the tune of Rs. 1.33 crore paid for Railway crossing of the lines. The Petitioner has submitted that it had computed the initial estimate on the basis of 18.11.2010 demand issued to successful bidder, Power Grid Corporation of India Limited by Railway authorities. Based on such demand note, the cost for one railway crossing is Rs. 8,24,161/- which translates to Rs. 0.58 crore for seven crossings. As against the above, the total cost incurred by the Petitioner is Rs. 2.19 crore. The computation of the impact due to the demand notes for Railway crossing is provided below:

(Rs. in crore)

Total Railway crossing expenditure as per Audit Certificate	Amount initially estimated based on previous demand notes	Difference	Claim restricted to
(i)	(ii)	(iii) = (i) - (ii)	(iv)
₹ 2.19	₹ 0.58	₹ 1.61	₹ 1.33

109. We have considered the submissions of the Petitioner. The Petitioner has sought to claim the increase in the amount claimed by the Railways under the demand notes for the railway crossing of the transmissions line as Change in Law. However, the Petitioner has failed to place on record any document issued by the Railways after the cut-off date indicating the increase in the charges to be levied on the crossing of the railway lines. It is observed that the claim of the Petitioner for increase in the deposit amount for railway crossing of the lines is on the basis that the charges levied in its case has been higher than that levied in previous case of PGCIL vide demand notes dated 18.11.2010 - which were the basis of its initial estimates. Indisputably, such charges which comprises way leave charges, supervision and inspection charges and material charges, if any, etc. would vary in each case. In such circumstances, increase in such charges from the charges levied in previous cases, cannot be claimed under Change in Law while contending the latter being basis of assumption at the time of placing the bid. The Petitioner is, however, granted liberty to approach the Commission in respect of the aforesaid claim with all the supporting documents if the increase has been caused pursuant to the issuance of any order/ notification/ circular by Railways after the cut-off date.

110. The issue is answered accordingly.

(h) Increase in the cost of IDC and IEDC due to delay in completion of the lines due to various Change in Law events and Force Majeure events.

111. The Petitioner has submitted that there is an increase in the cost of IDC and

IEDC due to delay in completion of the transmission lines due to various Force Majeure events and Change in Law events as detailed above. Cost overrun due to Change in Law events and Force Majeure events i.e. increase in Interest during Construction (IDC) Expenses and Incidental Expenditure during Construction (IEDC)- Rs. 93.41 crore (IDC-Rs. 52.85 crore & IEDC- Rs. 40.56 crore).

112. Further, the Petitioner has placed on record the Auditor Certificate dated 19.10.2021 certifying that the Petitioner has incurred IDC and IEDC of Rs. 145.57 crore from the date of charging of "Nagapattinam Pooling Station - Salem 765kV D/C Line" (23.10.2016) to the date of Commercial Operation Date of Project i.e., 26.1.2019.

113. The Petitioner has further submitted that the issue relating to IDC and carrying cost on account of Change in Law events have been considered by the Appellate Tribunal for Electricity in its judgment dated 20.10.2020 in Appeal No. 208 of 2019 in the matter of Bhopal Dhule Transmission Company Limited v. Central Electricity Regulatory Commission and Ors.

114. We have considered the submissions made by the parties. The issue of entitlement of IDC and IEDC incurred on account of Change in Law and Force Majeure events is no longer res-integra in view of the judgment of APTEL dated 20.10.2020 in Appeal No. 208 of 2019 in Bhopal Dhule Transmission Company Limited. v. CERC and Ors. ('Bhopal Dhule Judgment') and the judgment dated 3.12.2021 in Appeal No. 129 of 2020 in NRSS XXXI (B) Transmission Limited v. CERC and Ors. and Appeal No. 276 of 2021 in Darbhanga-Motihari Transmission Co. Ltd. v. CERC and Ors. ('NRSS Judgment'). The relevant extracts of the said judgments are as under:

Appeal No.208 of 2019 Dated: 20th October, 2020 Bhopal Dhule Transmission Co. Ltd. v. CERC and Ors.

“8.8 Since the spirit of Article 12 of the TSA is to ensure monetary restitution of a party to the extent of the consequences of Change in Law events, such exceptions cannot be read into Article 12 of the TSA. The Appellant has submitted that a crucial factor for the Appellant whilst bidding for the Project was that uncontrollable Change in Law events would be duly accounted for in accordance with Article 12 of the TSA. By the Impugned Order, the Central Commission has wrongly altered the meaning of the Change in Law clause of the TSA long after award of the bid and commissioning of the Project.

8.11. Such a denial of the IDC by the Central Commission is in contravention of the provisions of Article 12.1.1 of the TSA in the facts and circumstances of the present case. By adopting such an erroneous approach, the Central Commission has rendered the Change in Law clause in the TSA completely nugatory and redundant. Such an interpretation by the Central Commission is causing the Appellant grave financial prejudice as it has no other means of recovering the IDC which it was constrained to incur for no fault of its own.

8.14 Further, the Hon’ble Supreme Court in the Energy Watchdog Judgement dated 11.04.2017 held that while determining the consequences of change in law, parties shall have due regard to the principle that the purpose of compensating the party affected by, such change in law is to restore, through the monthly tariff payments, the affected party to the economic position if such change in law has not occurred.

8.15 We are of the view that the Central Commission erred in denying Change in Law relief to the Appellant for IDC and corresponding Carrying Costs on account of admitted Change in Law events after having arrived at unequivocal findings of fact and law that Change in Law events adversely affected the Appellant’s Project in accordance with the TSA. Therefore, the impugned order passed by the Central Commission is liable to be set aside as the same is in contravention of settled law laid down by the Hon’ble Supreme Court (Supra) and also the previous orders passed by the Central Commission in Petition Nos. 73/MP/2014 read with 310/MP/2015 and 174/MP/2016 wherein the same issue has been dealt by the Commission differently. In view of these facts, the Appellant is entitled for the change in law relief as prayed for in the instant Appeal. The issue is thus, decided in favour of the Appellant....”

Appeal No. 129 of 2020 and Appeal No. 276 of 2021 Dated: 3rd December, 2021 NRSS XXXI (B) Transmission Limited v. CERC

“16.10 The Central Commission failed to understand that the IDC and IEDC is not a financial benefit to the Appellant but due to the financial liability to be borne by the Appellant. This Tribunal vide Judgment dated 20.10.2020 in Appeal No. 208 of 2019in –Bhopal Dhule Transmission Company Limited v Central Electricity Regulatory Commission &Ors.

....

16.11 Therefore, we are of the opinion that the Appellant is entitled to be fully compensated for the IDC and IEDC incurred on account of Change in Law & Force Majeure Events.”

IA Nos. 2098/2021 & 2099/2021 (For Clarification)

The Appellants have moved these applications seeking clarification. Having heard the learned counsel for the parties, we are clear in our minds that the Judgment dated 03.12.2021 leaves no scope for doubt that the Appellants have been held entitled to be fully compensated for IDC and IEDC incurred on account of Change in Law and Force Majeure Events and also to receive compensation on account of change in Gantry Coordinates and increase in number of power lines crossing. It is inherent in the findings returned and the directions given that while passing a consequential order in terms of the remit, the Commission will be obliged to grant the reliefs in above nature and also to consider the consequential carrying cost.”

115. Earlier in the Bhopal Dhule Judgment, the APTEL observed that the denial of IDC on the admitted Change in Law by this Commission was in contravention of the provisions of the Article 12.1.1 of the TSA and consequently, held the licensee is entitled for IDC on the admitted Change in Law events. Whereas, in NRSS Judgment, the APTEL observed that this Commission erred in not allowing IDC and IEDC once having held the unforeseen requirement of forest clearance as Change in Law and having also granted extension of time for delays in obtaining such clearance as Force Majeure. Consequently, APTEL therein held the licensee entitled to be fully compensated for IDC and IEDC incurred on account of the Change in Law and Force Majeure events. We notice that in the present case also, the Commission has recognized the declaration of Tali Reserve forest as Wildlife Sanctuary and the consequent delays in grant of permission for diversion of forest land as Change in Law and Force Majeure events respectively. Hence, as per the ratio laid down by the APTEL in NRSS Judgment, we are of the view that the Petitioner is entitled for IDC and IEDC for the Change in Law and Force Majeure events as claimed in the Petition. The Petitioner has further indicated that the amount claimed under this head in the Petition includes IDC & IEDC for Element No.1-i.e. Nagapptinam Pooling Station- Salem 765 kV D/C upto 22.10.2016 (up to the date of charging of the element) and for the period between 23.10.2016 to 26.1.2019 (COD of the Project), the Petitioner placed its claims of IDC & IEDC of Rs.145.57 crore along with auditor

certificate vide submission dated 20.10.2021. Keeping in view that the Commission has considered the Project as whole including the aspect of extension of SCOD, we allow the aforesaid IDC & IEDC claim in respect of the Element 1 from 23.10.2016 to 26.1.2019 since they arose in respect of the Change in Law and Force Majeure events affecting the Project.

116. The issue is answered accordingly.

Carrying cost

117. The Petitioner has prayed to allow carrying cost in regard to increased tariff applicable for the past period up to the date of the order.

118. 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').

119. 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 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.

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:

Period	Actual interest rate paid by the Petitioner	Working capital interest rate as per CERC Regulations	LPS Rate as per the PPA
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."

120. In line with above, the Petitioner shall be eligible for carrying cost from COD till the date of this order 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.

121. 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 judgment 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?

122. 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 Three Crores Thirty Lakhs (3,30,00,000) 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 per cent (0.32%) of the Non-Escalable Transmission Charges.

12.2.4 For any claims made under Articles 12.2.1 and 12.2.2 above, the TSP shall provide to the Long Term Transmission Customers and the Appropriate Commission documentary proof of such increase/decrease in cost of the project/revenue for establishing the impact of such Change in Law.

12.2.4 The decision of the Appropriate Commission with regards to the determination of the compensation mentioned above in Articles 12.2.1 and 12.2.2 and the date from which such compensation shall become effective, shall be final and binding on both the parties subject to rights of appeal provided under applicable Law...."

123. In the foregoing paragraphs, the Commission has granted extension of SCOD by 1133 days on account of Force Majeure and Change in Law events. The revised SCOD of the Project is 26.1.2019 (same as CoD of the Project) and consequently, the Petitioner is entitled to claims the relief for arising out of the above

during the construction period.

124. 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 three crore thirty lakh in the cost of the Project up to the revised SCOD of the Project on account of Change in Law during the construction period, the Petitioner shall be entitled to be compensated with increase/ decrease in non-escalable transmission charges by 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 audited and supported by CA certificate, and accordingly, shall be entitled to corresponding increase in Non-Escalable Transmission Charges as provided under Article 12.2.1 of the TSA.

125. The Petitioner shall provide documentary proof of such increase/ decrease in cost of the Project/ revenue to LTTCs.

126. 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, 2010. With effect from 1.11.2020, the Central Electricity Regulatory Commission (Sharing of inter-State transmission Charges and Losses) Regulations, 2020 has come into force. 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.

127. The Respondent, IL&FS has submitted that since the Project was commissioned on 26.1.2019 and the compensation for relinquishment in respect of relinquishment of 540 MW LTA by IL &FS was computed by CTUIL on 20.5.2019, any claim which may be decided by the Commission cannot lead to increase in the relinquishment compensation payable by IL &FS. It has been further submitted that the relinquishment charges were computed on 20.5.2019 as per the order dated 8.3.2019 in Petition No. 92/MP/2015 and once the said computation is done, the relinquishment compensation cannot be revised thereafter, on account of the any subsequent increase. Regulation 18 of the Connectivity Regulations categorically provides that the relinquishment compensation is to be computed based on the transmission charges existing as on the date of such relinquishment and there are no provisions thereunder to raise any supplementary invoice for claiming additional relinquishment compensation. Accordingly, it is not open to CTUIL to revise the relinquishment compensation in the event any additional costs are awarded to the Petitioner.

128. *Per contra*, the Petitioner has submitted that it has not raised any issue of relinquishment charges in the Petition. The relinquishment charges are being calculated by CTUIL. The Petitioner is not CTUIL and any claim of CTUIL vis-à-vis relinquishment charges including increase in the same, is not the subject matter of the present Petition and therefore, there cannot be any consideration or finding on this issue.

129. We have considered the submissions made by the parties. In our view, the Petitioner has rightly contended that the scope of the present Petition is limited to consideration of the time and cost overrun claims of the Petitioner on account of the

Force Majeure and Change in Law events as per the provisions of the TSA. Any increase in the relinquishment charges to be paid by IL&FS on account of the Change in Law relief being made available to the Petitioner and consequent increase in the transmission charges cannot be the subject matter of this Petition. This aspect has to be considered by CTUIL in light of the Commission's Connectivity Regulations and the order dated 20.5.2019 in Petition No. 92/MP/2015 and in case of the grievance, the affected party may approach the Commission by way of a separate Petition in accordance with the law.

Summary of Decision:

130. The summary of our decision in terms of foregoing paragraphs of this order is as under:

Sr.	Particulars	Decision
A	Cost overrun due to delay in grant of transmission licence/adoption of tariff and clearance to commence the Project	Partly allowed and liberty is granted to approach with all requisite details.
B	Extension of SCOD of the Project till 26.1.2019	Allowed
C	Change in Law	
(i)	Increase in Excise Duty from 12.36% 12.50%	Allowed
(ii)	Enactment of GST Laws w.e.f 1.7.2017	Allowed
(iii)	Increase in (i) cost of Compensatory Afforestation of lines and (ii) NPV due to Notification dated 2.3.2015 issued by Govt. of Tamil Nadu declaring Tali Reserve as Wildlife Sanctuary	(i) Liberty is granted to approach along with all the necessary/ supporting details (ii) Allowed
(iv)	Enhancement of tree compensation	Allowed subject to the observations in paragraph 96
(v)	Notification dated 18.8.2017 by Government of Karnataka for payment of land compensation in the State of Karnataka as per Order orders passed by District Commissioner/ Deputy Collector	Allowed subject to observations in paragraphs 101 & 102
(vi)	Payment of land compensation in the State of Tamil Nadu as per Judgment of Hon'ble High Court of Madras dated 12.4.2019 in W. P No. 16460 of 2018	Liberty is granted to approach with complete justification/necessary details once such expenditure is incurred
(vii)	Increase in deposit amount paid to Railway Divisions as per deposit notes for crossing of Railways lines	Disallowed

D	Increase in cost of IDC and IEDC due to delay in completion of line due to Change in Law & Force Majeure events	Allowed subject to observation in paragraph 115
E	Carrying Cost	Allowed Subject to observation in paragraph 121

131. The Petition No. 333/MP/2019 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