

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 538/MP/2020

Coram:

Shri I.S. Jha, Member

Shri Arun Goyal, Member

Shri P.K. Singh, Member

Date of Order: 2nd March, 2023

In the matter of:

Petition invoking Section 79(1)(d) and (f) of the Electricity Act,2003 read with Regulation 5(3) of the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 seeking compensation/relief for increased construction cost due to certain Change in Law as per the applicable provisions of Transmission Service Agreement dated 24.6.2015.

And

In the matter of

Chhattisgarh WR Transmission Limited,
C-105, Anand Niketan,
New Delhi – 110 019.

....Petitioner

Vs

1. Maharashtra State Electricity Distribution Company Limited,
Prakashgad, 4th Floor, Bandra (East),
Mumbai – 400 051.

2. Chhattisgarh State Power Distribution Company Limited,
P.O. Sunder Nagar, Dangania,
Raipur – 492 013, Chhattisgarh.

3. Gujarat Urja Vikas Nigam Limited,
Vidyut Bhawan, Race Course,
Vadodara-390 007.

4. Madhya Pradesh Power Management Company Limited,
Block No. 11, Ground Floor, Shakti Bhawan,
Vidyut Nagar, Rampur,
Jabalpur- 482 008, Madhya Pradesh.

5. Electricity Department,
Government of Goa, Aquem Alto Margaon,
Goa- 403 601.

6. DNH Power Distribution Corporation Limited,
66kV, Amlı Ind. Estate, Silvassa -396 230,
Dadar Nagar Haveli.

7. Electricity Department, Administration of Daman and Diu,
Plot No. 35, OI DC Complex, Near Fire Station, Somnath,
Daman- 396 210.

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

9. Chhattisgarh State Power Transmission Company Limited,
Energy Info Tech Centre.
Daganiya, Raipur-492 013, Chhattisgarh.

10. Central Electricity Authority,
Sewa Bhawan, R.K.Puram, Sector-1,
New Delhi-110 066.

..Respondents

Parties present:

Shri Amit Kapur, Advocate, CWRTL
Ms. Poonam Verma, Advocate, CWRTL
Ms. Aparajita Upadhyay, Advocate, CWRTL
Ms. Sakshi Kapoor, Advocate, CWRTL
Shri Afak Pothiwala, CWRTL
Shri Bhavesh Kundalia, CWRTL
Shri Ravi Sharma, Advocate, MPPMCL
Shri Anindya Khare, MPPMCL
Shri Pallav Mongia, Advocate, PGCIL
Shri Tushar Srivastava, Advocate, PGCIL
Shri Prashant, PGCIL
Shri Chandrashekhar, PGCIL
Shri Arjun Malhotra, PGCIL
Shri Sahil Sood, Advocate, MSEDCL
Shri Rahul Sinha, Advocate, MSEDCL
Ms. Nikita Choukse, Advocate, MSEDCL

ORDER

The present Petition has been filed by Chhattisgarh WR Transmission Limited under Section 79 of the Electricity Act, 2003 (hereinafter referred to as 'the Act') seeking compensatory relief under Article 12 of the Transmission Service Agreement (TSA) dated 24.6.2015 on account of Change in Law events, which have adversely affected the project cost. The Petitioner has made the following prayers:

“(a) *Allow the present Petition.*

(b) Grant relief to the Petitioner, Chhattisgarh WR Transmission Ltd. under Article 12.2.1 of the Transmission Service Agreement dated 24.06.2015 for the Change in Law events specified in the present Petition along with carrying cost/interest.

(c) Hold that the compensation for such Change in Law events shall be effective from the date when such Change in Law events were brought into force by the Indian Governmental Instrumentalities.

(d) Grant interim relief to the Petitioner as prayed at paragraph 107 hereinabove, pending final adjudication of the Petition by this Hon'ble Commission.

(e) Grant liberty to the Petitioner to approach this Hon'ble Commission at the appropriate time, for seeking compensation for Change in Law events which are not claimed in the present Petition.

(f) Grant exemption to the Petitioner from filing duly attested Affidavit supporting the present Petition, in view of the movement restrictions due to the spread of COVID-19.

(g) Pass such other and further order or orders as this Hon'ble Commission deems appropriate under the facts and circumstances of the present case.”

2. The Petitioner is a fully owned subsidiary of Adani Transmission Limited (ATL) which was selected as a successful bidder through the Tariff Based Competitive Bidding process conducted by PFC Consulting Limited (PFCCL) to establish the transmission system, namely, “System Strengthening for IPPs in Chhattisgarh and other Generation Projects in Western Region” (in short, ‘the Project’). The Petitioner is required to provide transmission service to the Long-Term Transmission Customers (LTTCs) (Respondents 1 to 7) of the Project which required establishing 400kV Interconnection at Gwalior 765/ 400 kV S/S, Additional evacuation line from Vindhychal-IV & V STPP (2x500 MW) and Additional System Strengthening Scheme for Chhattisgarh IPPs (Part A).

3. The Petitioner has entered into a TSA with LTTCs on 24.6.2015 and Maharashtra State Electricity Distribution Company Limited (MSEDCL) has been appointed as the lead LTTC to represent all the LTTCs for discharging their rights and obligations as specified in the TSA dated 24.6.2015. The Commission by its order

dated 29.2.2016 in Petition No. 288/TL/2015 granted transmission licence to the Petitioner for inter-State transmission of electricity. The Petitioner achieved commercial operation of the Project on 27.8.2019.

Submissions by the Petitioner

4. The Petitioner has submitted that since certain Change in Law events during the construction period have resulted in increase in cost of the Project, it has filed the present Petition seeking reliefs for the following Change in Law events in terms of Article 12 of the TSA:

- (a) The imposition of Swachcha Bharat Cess
- (b) The imposition of Krish Kalyan Cess.
- (c) The imposition of increased Maharashtra Value Added Tax (VAT).
- (d) Increase in Basic Customs Duty on primary aluminium products.
- (e) The enactment of Goods and Services Tax ("GST") on goods and services including on Right of Way compensation.
- (f) Increase in compensation to be paid to landowners for Right of Way of transmission lines in the States of Maharashtra and Chhattisgarh.
- (g) The change in the configuration of tower to 'D – D' type at both sides of the crossing.

5. The Petitioner has submitted that since the aforementioned Change in Law events came in force after the cut-off date (22.6.2015), they are covered under Article 12 (Change in Law) of the TSA.

6. The Petitioner has submitted the following regarding increase in total cost of the Project under the above heads of Change in Law:

(a) Levy of Swachha Bharat Cess, levy of Krishi Kalyan Cess and increase in Maharashtra Value Added Tax

7. The Petitioner has submitted that the effective service tax rate of 14%, prevailing as on cut-off date, was increased to 14.5% on account of levy of Swachha Bharat Cess at the rate of 0.5% on taxable services w.e.f 15.11.2015 vide Ministry of Finance Notification No. 21/2015-Service Tax dated 6.11.2015 and Notification No. 22/2015 – Service Tax dated 6.11.2015.

8. It has been further submitted that Krishi Kalyan Cess @0.5% on taxable services was also levied by Ministry of Finance, Government of India vide Notification Nos. 27 to 31/2016-Service Tax dated 26.05.2016 with effect from 1.6.2016. Thus, the total Service Tax increased from 14.5% to 15%.

9. Further, Finance Department, Government of Maharashtra, in exercise of power conferred under sub-section (1) of Section 9 of Maharashtra Value Added Tax Act, 2002, amended Section 'C' of the said Act vide Notification No. VAT 1516/CR 31/Taxation-1 dated 30.3.2016 thereby increasing rate of Maharashtra Value Added Tax from 5% to 5.5% w.e.f. 1.4.2016. The Maharashtra VAT was further increased from 5.5% to 6% w.e.f 17.9.2016 vide Notification No VAT 1516/CR 123/Taxation-1 dated 16.9.2016.

(b) Increase in Basic Customs Duty on primary aluminium products

10. The Petitioner has submitted that as on cut-off date, the effective tax rate on import of primary aluminum products was 23.65% which included Basic Customs Duty @5%, Countervailing Duty @12.5%, Additional Duty @4% and Education Cess @3%. However, the effective Customs Duty was increased to 26.693% w.e.f 1.3.2016 on account of increase in the Basic Customs Duty from 5% to 7.5% through the Finance Act, 2016.

(c) Introduction of Goods and Service Tax (GST) including on Right of Way compensation

11. The Petitioner has submitted that with the enactment of Central Goods and Services Tax Act, 2017 (CGST Act) on 12.4.2017, Integrated Goods and Services Tax Act, 2017 (IGST Act) on 12.4.2017, Maharashtra GST Act on 15.5.2017 and Chhattisgarh GST Act on 14.6.2017, several indirect taxes including Excise Duty, Service Tax, VAT, Central Sales Tax, etc. have been replaced by GST which is a consolidated and singular taxation scheme.

12. With the enactment of aforesaid Acts, a tax slab of 5% to 28% has been introduced w.e.f. 1.7.2017 for the goods and services required for execution, construction and operation of electricity transmission projects. The said goods and services were previously either exempted or fell under lower tax slabs [between 0% and 28.25%].

(d) Levy of GST on Right of Way Compensation

13. The Petitioner has submitted that, as on cut-off date, there was no tax levied either by the Central Government or State Governments on the compensation payable by the Petitioner for Right of Way to the landowners. However, with the introduction of GST laws w.e.f. 1.7.2017, any lease, tenancy, easement, licence to occupy land have been categorised as 'supply of services' under Schedule II (read with Section 7) of the CGST Act, Maharashtra GST Act and Chhattisgarh GST Act respectively. Accordingly, CGST @ 9% and SGST @ 9% are levied on compensation paid by the Petitioner for Right of Way to the landowners for using such land for transmission lines/towers.

14. The Petitioner has submitted that the change of tax regime has escalated the capital cost of Project thereby making the tariff quoted at the time of bidding unviable.

(e) Increase in compensation to be paid to landowners for Right of Way of transmission lines in the States of Maharashtra and Chhattisgarh.

Maharashtra

15. The Petitioner has submitted that the prevailing rate of compensation towards Right of Way damages in the State of Maharashtra, as on cut-off date, was in accordance with the Government Notification dated 1.11.2010 i.e. (1) 25% for Non-irrigated Agricultural land (2) 50% for Irrigated Agricultural Land (3) 60% for Fruit Orchard Land and (4) 65% for Non-Agricultural Land. However, on 31.5.2017, the Industry, Energy and Labour Department, GOM vide Resolution Letter No. 2016/P.No.520/Energy/4 (“GOM Notification”) modified its earlier notification for the purpose of aligning the compensation rates towards Right of Way damages for transmission lines, with the “Guidelines for Payment of Compensation towards damages in regard to the Right of Way for transmission lines” issued by Ministry of Power vide Notification No. 3/7/2015-Trans dated 15.10.2015 (“MOP Guidelines”).

16. In terms of the MoP Guidelines, in addition to providing compensation towards normal crop and tree damages, the compensation @85% of land value for tower base area and a maximum of 15% of land value of transmission line right of way corridor was to be determined based on circle rate/guideline value/Stamp Act rates in order to compensate the land owners. However, there was a significant variation in the rates of compensation notified by GoM towards Right of Way than the rates suggested in the MoP Guidelines. The rates notified vide GoM notification dated 31.5.2017 is as under

Compensation for Tower Base Area (between four legs) impacted severely due to installation of tower structure	200% of Ready Reckner Rate
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Compensation towards diminution of land value in width of Right of Way	15% of Ready Reckner value
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Chhattisgarh

17. The Petitioner has submitted that as on the cut-off, the Petitioner was liable to pay 50% of the market value of land for tower base area and 20% of market value for the width of ROW towards diminution of land value in width of Right of Way as compensation to the land owners for acquiring the Right of Way as per the Notification dated 20.2.2015 issued by the Government of Chhattisgarh. However, vide Notification dated 1.6.2016, Government of Chhattisgarh increased the amount of compensation to 85% of the market value of land to align the compensation payable with the MOP Guidelines dated 15.10.2015.

18. As per the Petitioner, the notifications issued by GoM and GoC have significantly increased the compensation paid towards Right of Way in both the States.

(f) Change in the configuration of tower to ‘D – D’ type at both sides of the crossing

19. The Petitioner has submitted that the stipulation as per the RFP and prevalent laws required DHC and DHB tower configuration for power line crossing. However, a new condition had been imposed by PGCIL, Chhattisgarh State Power Transmission Company Limited and CEA for obtaining power line crossing approval required for the Project, i.e. requirement of using only tower with D-D type configuration in case of power line crossing. Consequently, CSPTCL had rejected the Petitioner’s proposal for powerline crossing approval in 2016. On 04.05.2016 i.e. much after the cut-off date, CSPTCL communicated to the Petitioner about mandatory requirement of D-D tower configuration in view of the powerline crossing being higher than 132kV.

20. As per the Petitioner, there was no specific technical requirement of D-D tower configuration at both side of crossing under the TSA or the RFP or the Electricity Act or Electricity Rules or any Regulations of the Commission. Aggrieved by the said stand of CSPTCL and PGCIL, the Petitioner brought the issue to the notice of the Central Electricity Authority (CEA). On 27.7.2016 and 16.9.2016, CEA convened two meetings to discuss the issue of power line crossing using DHD type tower only. During the meeting held on 16.9.2016, after deliberation, CEA decided as under:

(a) Power line crossing for 400 kV and above should be done only with D-D type towers.

(b) Crossing of 200 kV and 132 kV transmission lines could be done with angular type tower as per requirements.

(c) Crossing of 66 kV lines and below could be done with any type of towers.

21. The Petitioner has submitted that it was compelled to modify its tower configuration and incur additional expenditure in the interest of timely completion of the Project and overall transmission system based on the above decision of CEA, an Indian Government Instrumentality functioning under the direct control of the Ministry of Power, and the insistence of PGCIL (a statutory body).

(g) Carrying Cost

22. The Petitioner has submitted that it had to borrow additional funds from the lenders and pay interest on such additional capital infused for construction and timely completion of the Project. Accordingly, it is entitled to carrying cost/interest on all additional amount incurred till date on account of Change in Law.

23. As per the Petitioner, carrying cost is in the nature of compensation for money denied at the appropriate time and denial of carrying cost would defeat the underlying principle of restitution which is the cornerstone of Change in Law relief. In this regard, the Petitioner has placed reliance on the judgments of Appellate Tribunal for Electricity (APTEL) in Appeal No 150 [*SLS Power Ltd vs APERC*] and Appeal No 210 of 2017 [*Adani Power Ltd vs CERC & Ors*] along with judgment of Hon'ble Supreme Court in *Uttar Haryana Bijli Vitran Nigam Ltd. vs. CERC & Anr.* [(2019) 5 SCC 325].

24. The Petitioner has submitted that Change in Law being a restitutive provision ought to be given a wider interpretation. In this regard, reliance has been placed on *R.C. Cooper vs. Union of India*: AIR 1970 SC 564 and *N.B. Jeejeebhoy vs. Assistant Collector, Thana Prant, Thana*: AIR 1965 SC 1096. It has been further submitted that compensation is a comprehensive term and is aimed at restoring a party to the same position as if no injury was caused to it, as held by the Hon'ble Supreme Court in the case of *Yadava Kumar vs. The Divisional Manager, National Insurance Co. Ltd. and Anr.*, (2010) 10 SCC 341.

25. Accordingly, the Petitioner has claimed to have incurred Rs 35.25 crore excluding carrying cost on account of the aforesaid Change in Law event as under:

S. No.	Change in Law Event	W.E.F.	Tax rate as on the Cut-off date i.e. 22.06.2015	Effective rate due Change in Law	Financial Impact (in Rs. crore)
1.	Increase in effective rate of service tax due to levy of Swachha Bharat Cess @ 0.5%	15.11.2015	14% [Effective Service Tax]	14.5% 15%	0.81
	Increase in effective rate of service tax due to levy of Krishi Kalyan Cess @ 0.5%	01.06.2016			
2.	Increase in Maharashtra Value Added Tax	01.04.2016	5%	5.5%	
		17.09.2016	5%	6%	

S. No.	Change in Law Event	W.E.F.	Tax rate as on the Cut-off date i.e. 22.06.2015	Effective rate due Change in Law	Financial Impact (in Rs. crore)
3.	Increase in Effective Custom Duty on primary aluminium products (ingots) due to increase in Basic Custom Duty from 5% to 7.5%	01.03.2016	23.65% [Effective Custom Duty]	26.693%	1.425
4.	Increase in effective tax rate on goods and services due to levy of Central Goods and Services Tax and State Goods and Services Tax /Integrated Goods and Services Tax	01.07.2017	0% to 28.25% [depending on the nature of goods and services]	5%, 18% and 28%	5.457
5.	Increase in compensation for RoW due to levy of CGST @ 9% and Maharashtra/ Chhattisgarh/ Gujarat GST @ 9%	01.07.2017	0%	18%	0.782
6	Increase in Right of Way compensation in Maharashtra	31.05.2017	(a) 25% for Non-Irrigated Agricultural Land (b) 50% for Irrigated Agricultural Land (c) 60% for Fruit Orchard Land (d) 65% for Non-Agricultural land	(a) 200% of ready reckoner rate (b) 15% of ready reckoner value of land.	14.805
7	Increase in Right of Way compensation in Chhattisgarh	01.06.2016	(a) 50% of market value of land for compensation towards Tower Base Area (b) 20% of market value of land for the width of Right of Way.	(a) 85% of Market Value of land for compensation towards Tower Base Area (b) 15% of Market Value of Land for the width of Right of Way.	9.9471 (Rs 1.64 crore will be discharged in future)
8.	Imposition of Requirement of D-D type Tower for obtaining power-line crossing approval	16.09.2019	No requirement	Specific requirement imposed by CEA, PGCIL and CSPTCL	3.657

Hearing held on 6.4.2021 and 6.10.2021

26. The Petition was heard on 15.4.2021. The Respondents MPPMCL, MSEDCL and PGCIL have filed their replies and the Petitioner has filed its rejoinders. During the course of hearing held on 15.04.2021, the learned counsel for the Respondent, MP Power Management Company Limited (MPPMCL) objected to the maintainability of the Petition. The Commission after considering the submissions of the parties, vide order dated 15.04.2021 admitted the Petition and the Respondents were directed to file their reply on limitation and merits. However, consequent upon notification of the Change in Law Rules by the Ministry of Power, Government of India on 22.10.2021, the Commission disposed of the present Petition vide order dated 22.12.2021 with the following direction:

“10. In view of the foregoing discussion, the Petitioners may approach the LTTCs/beneficiaries for settlement of Change in Law claims among themselves in terms of the Change in Law Rules and approach the Commission only in terms of Rule 3(8) of the Change in Law Rules.

11. As prayed by the Petitioners, the filing fees paid in these Petitions shall be adjusted against the Petitions to be filed by the Petitioners in future.

12. Accordingly, the Petition No. 533/MP/2020 and Petition No. 538/MP/2020 are disposed of in terms of the above.”

27. Subsequently, APTEL vide its judgment dated 5.4.2022 in OP No. 1 of 2022, *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. Accordingly, the matter was listed on

17.5.2022 and the Commission permitted the Respondents to file their written submissions/replies.

Reply of the Respondents

Reply of MP Power Management Company Limited (MPPMCL)

28. MPPMCL vide its reply dated 5.5.2021 has made the following submissions

(a) Present Petition is liable to be dismissed as “Time Barred” as Limitation period to approach the CERC to claim compensation for CIL events has been expired long back. Further, Petitioner has suppressed the relevant fact regarding the expiry of limitation period. The Petition filed by the Petitioner is time barred & exceeding the limitation period of 3 years as prescribed under Article 137 of schedule to Limitation Act, 1963 and the Petitioner has further failed to file Section 5 of Limitation Act, 1963 Application for extension of limitation.

(b) The notification relied upon by the Petitioner is general Guidelines issued by the Government of Maharashtra for determining the compensation to be paid to the land owners on the basis of the Guidelines issued by Ministry of Power dated 15.10.2015. The Petitioner is required to follow the process laid down under Section 164 of the Act for securing the Right of Way (in short ‘RoW’) for building foundations and erecting towers. Since the Project is a competitively bid Project, the Petitioner was expected to factor all unforeseen and contingent expenditure on account of settlement of RoW while submitting the bid. It should be assumed that the Petitioner has quoted all inclusive transmission charges. Therefore, the additional expenditure incurred by the Petitioner to settle the issue of RoW with land owners does not constitute Change in Law event. The Commission in its order dated 29.3.2019 in Petition No 195/MP/2017 (*NRSS XXXI(B) Transmission*

Limited v. UPPCL and Ors.) has held that MoP Guidelines dated 15.10.2015 are recommendatory in nature and cannot be considered as Change in Law.

(c) The Commission vide its order dated 17.12.2018 in Petition No.1/SM/2018, had directed TSPs to provide the details of increase or decrease in the tax liability in respect of introduction of GST to LTTCs after considering the differential in the rates of GST on various items and taxes subsumed in GST duly supported by auditor's certificate. However, the Petitioner in the Auditor's certificate has directly provided the total differential amounts on account of Change in Law for different financial years without details of calculations for differential tax liability. It is also not clear whether the impact of taxes subsumed in GST is considered or not while deriving the differential tax liability. Further, there might be certain taxes whose tax rates might have reduced during the construction period from the date of the submission of bid. Accordingly, the Petitioner ought to provide the impact of the same on capital cost of the Project or to certify that there is no reduction in tax rate after cut-off date for any of the taxes considered while evaluating the capital cost of the Project. The Petitioner has also failed to provide information relating to details of total quantity to be executed, the quantity purchased and executed and actual tax deposited with tax authorities along with documentary evidence in pre and post GST era. The Petitioner has not submitted declaration regarding the anti-profiteering clause under section 171 of GST Act 2017.

(d)The requirement of DD Type Tower for obtaining power-line crossing approval doesn't fall under the definition of Change in Law. The change in configuration of towers to D-D type at both sides of crossing of transmission lines of CSPTCL &

PGCIL was actually a requirement of lines which were existing much prior to cut off date as per Article 12 of the TSA.

Reply by Maharashtra State Electricity Distribution Company Limited (MSEDCL)

29. MSEDCL in its reply dated 24.5.2021 has mainly submitted as under:

(a) The Petitioner has merely provided claims details in tabular form regarding CGST, State GST, MVAT, KK Cess and SB Cess without any supporting invoices. Due to non-submission of supporting invoices, it is not clear whether the claimed amount is for the period after enactments or otherwise. Further, it is not clear whether the claimed amounts are derived as per audited figures or otherwise.

(b) The Petitioner has not provided any details of quantum of Aluminum purchased within the country and quantum of Aluminum imported. Further, the Petitioner has not provided any justification towards choosing the option of importing Aluminum ingots and who was the importer. As the decision of importing Aluminum ingots was purely of the Petitioner, it is necessary to confirm whether such decision has resulted in increase in capital expenses or otherwise. Further, the Petitioner has also submitted the Change in Law claim amount details towards enactment of GST for purchase of conductor. Therefore, it is not clear how much quantum of ingots has been utilized by the Petitioner for works associated with this transmission project and how much quantum is utilized somewhere else. The Petitioner has not submitted supporting invoices for the "Ingots" imported and impact of change in custom duty.

(c) As regards increase in compensation to be paid to land owners, the Petitioner should provide the list of beneficiaries in support of the claim along with RoW

claims supposed to be paid as per cutoff date and actual RoW claims paid to each beneficiary.

(d) The Petitioner has submitted that there was no specific technical requirement of D-D tower configuration at both sides of crossing under the TSA or the RFP or the Electricity Act or Electricity Rules or any Regulations. However, no documentary support for this claim has been submitted. It is not clear from computation submitted by the Petitioner, whether one side of D type tower or both sides of D type towers of power line crossings are considered for deriving additional expenditure required.

(e) The Electricity Rules does not specify any type of tower for construction of transmission line and crossings associated. The Electricity Rules only specify the minimum clearances to be maintained from safety point of view. Hence, justification of the Petitioner on the basis of the Electricity Rules is not appropriate.

(f) Further, PGCIL being CTUIL, in its User's Manual circulated in June 1996 for construction of Transmission line has categorically mentioned where the 'D' type of tower is to be utilized. Karnataka Power Transmission Corporation limited in its detailed surveying report published on 03.03.2014 has also recommended the use of 'D' types of towers on both sides for power line crossings.

(g) It is clear from CEA's Minutes of Meeting held on 16.9.2016 that 400 kV and 765 kV lines carries huge quantum of power and in the event of their failure due to collapse, would lead to huge financial loss. Such collapse may also damage the lower voltage line being crossed. Further, CEA has also considered Kalpataru Transmission Limited's opinion that 'D' type of tower may be used if an issue of

safety is involved. Further, CEA also highlighted that Railways is also strictly following the practice of line crossing with only D-D towers.

(h) The practice of using D-D type of towers was there prevailing as on cut-off date of 22.6.2015. However, the Petitioner neither considered this aspect nor thought it necessary to consult with owners (PGCIL and CSTPCL) of transmission lines whose lines were required to be crossed during the execution work. It seems that there is a deliberate ignorance on the part of Petitioner not to consider 'D' type of towers for power line crossings while bidding to take advantage of competitive bidding.

(i) The use of 'D' type of towers on both sides for power line crossings is neither an imposition which was not required earlier, nor an inclusion of any new terms or conditions. It is purely the practice followed and need to be followed for the safety measures for avoiding unpleasant mishaps causing financial or human losses, similar to clearances which are to be adopted by each and every stakeholders operating in electricity Business.

(j) The Petitioner has mentioned that as per meeting coordinated by CEA on 16.9.2016, 'D' type tower at both ends of power line crossing has to be used. However, the Petitioner has not mentioned that it was also agreed that TSPs would take up with their management to see if the differential cost could be absorbed by the TSPs.

(k) There is no provision in the TSA to pay carrying cost on the Change in Law amount. The judgments relied on by the Petitioner are related to PPA with

generating company. These judgments are not relevant and cannot be considered here, as the matter is related to TSA with transmission Licensees.

Reply of Power Grid Corporation of India Limited (PGCIL)

30. PGCIL, vide its reply dated 20.5.2021, has submitted as under:

(a) PGCIL cannot be put at fault for the Petitioner regarding the requirement of D-D type angle towers for power line crossings. The direction to use D-D type towers for powerline crossing wherein the transmission line is of 400 kV or above was pursuant to decision taken in a meeting convened by CEA. The meeting conducted by CEA was a consultative process in which the Petitioner itself, amongst other stakeholders, agreed that D-D type angle towers for power line crossings would be in the interest of grid safety and grid security. Aforementioned requirement was enumerated by CEA, in exercise of its statutory powers, on account of technical consideration. The same is also evident from the fact that the change has been undertaken by the Petitioner post directions issued by the CEA. Therefore, the requirement of D-D type tower for power line crossing (especially high voltage lines) does not entitle the Petitioner to seek any form of indemnification for any cost escalation on account of same from PGCIL. The aforesaid cannot be said to be a unilateral decision by PGCIL.

(b) The Petitioner has claimed that it was purportedly compelled to modify its tower configuration on the insistence of PGCIL which is purportedly an "Indian Government Instrumentality/statutory body". The aforesaid is denied being misplaced and incorrect in as much as in the present context i.e. crossing of power lines, PGCIL's role is not in the capacity of being the CTUIL but only in the capacity

of a transmission licensee which had a pre-existing transmission line proposed to be crossed by the Petitioner's transmission line.

Rejoinder to reply filed by MPPMCL

31. The Petitioner, vide its rejoinder dated 25.6.2021 to reply filed by MPPMCL, has submitted as under:

(a) MPPMCL has erroneously contended that the present Petition is liable to be dismissed as "time barred" as the three-year limitation period had expired on the date of filing of this Petition i.e., 2.6.2020. MPPMCL has stated that the Change in Law events came into force between 2015-2017.

(b) As per Article 12.2.3 of the TSA, in order to claim cumulative Change in Law relief during the construction period, CWRTL is required to submit before this Commission documentary proof of such increase in project cost for establishing the impact of such Change in Law. Therefore, completion of the project is important. In this regard, this Commission in its earlier orders, including Order dated 8.1.2020 in Petition No. 126/MP/2019 [Fatehgarh-Bhadla Transmission Limited vs. Adani Renewable Energy Park Rajasthan Limited & Anr], has held that in order to claim Change in Law the transmission licensee should to approach this Commission after completion of the project.

(c) MPPMCL's contention that the notifications issued by the Government of Maharashtra dated 31.5.2017 and Government of Chhattisgarh dated 1.6.2016 do not constitute Change in Law event since these are general guidelines and not government notifications as claimed by CWRTL is erroneous and fails to take into account the extant law.

(d) Accordingly, the present Petition was filed on 2.6.2020, i.e. after completion of the Project (on 27.8.2019) and closing of all the contracts with the vendors. Therefore, the same is not barred by limitation.

(e) MPPMCL's technical objection that no application for condonation of delay has been filed and thus the Petition be dismissed has no merit. Since, the present petition is not barred by limitation, there was no requirement of filing a condonation of delay application.

(f) The Commission in its order dated 25.1.2021 in Petition No. 265/MP/2020 [*Powergrid Warora Transmission Limited. vs. MSEDCL and Ors.*] and order dated 29.01.2021 in Petition No. 264/MP/2020 [*Powergrid Parli Transmission Limited. vs. MSEDCL and Ors.*] has held that the notifications issued by Government of Maharashtra and Government of Madhya Pradesh notifying increase in Right of Way compensation constitute Change in Law event. The notification dated 31.5.2017 of Government of Maharashtra and notification dated 1.6.2016 of Government of Chhattisgarh were issued after the bid cut-off date i.e. 22.6.2015 and has resulted in the additional expenditure for TSP.

(g) Further, as per Section 164 of the Act, Appropriate Government may impose restrictions and conditions and the Government of India recognizes that since land acquisition is a State subject, the State Government would issue direction in this regard. Thus, there can be no dispute that the State Government has power to issue directions on land acquisition including compensation. The Hon'ble Supreme Court in *Energy Watchdog v. Central Electricity Regulatory Commission and Ors.* [(2017) 14 SCC 80] has recognized the policies and letters issued by Government as having force of law.

(h) MPPMCL's reliance on the Commission's order dated 29.3.2019 in Petition No. 195/MP/2017 (*NRSS XXXI(B) Transmission Limited v. UPPCL and Ors.*) is misplaced as the said order is not applicable in the present matter.

(i) This Commission at para 74 of the Order dated 25.1.2021 in Petition No. 265/MP/2020 [*Powergrid Warora Transmission Limited. vs. MSEDCL and Ors.*] has also provided the mechanism for the payment of compensation for the aforesaid Change in Law event i.e. increase in RoW compensation. In terms of the same, the Petitioner is required to submit the difference in the compensation payable under the old regime and the actual compensation paid as per the notifications of Government of Maharashtra and Government of Chhattisgarh. The said requisite details have been duly annexed by the Petitioner along with the present Petition.

(j) The Petitioner has provided a detailed break-up of implication of GST vis-à-vis the taxes applicable prior to introduction of GST on each component/item of the transmission project implemented by it. As long as the Petitioner can demonstrate one-to-one correlation between the project, supply of goods/services and the invoices raised by the supplier of goods and services, the Petitioner is entitled to get compensation for the same in terms of the TSA. In this regard, reliance is placed on order dated 19.9.2018 in Petition No. 50/MP/2018 [*M/s Prayatna Developers Private Ltd vs. National Thermal Power Corporation Ltd & Ors.*] and order dated 09.10.2018 in Petition No. 188/MP/2017 and Batch [*ACME Bhiwadi Solar Power Private Limited vs. SECI & Ors.*] of this Commission.

(k) The Petitioner has submitted Auditors certificate certifying that (i) all taxes as applicable on the bid deadline i.e., 22.6.2015, which have been subsumed/ abolished with GST, has been considered for working out impact of Change in Law and accordingly, savings due to such abolished/subsumed taxes has been passed on, (ii) The Petitioner`s Change in Law claim is correct as per the effective rate taxes in pre and post GST regime. (iii) The Petitioner`s claim is based on documentary evidence provided to auditors by the Petitioner for pre and post GST era. (iv) The Petitioner has complied with the anti-profiteering clause under Section 171 of GST Act 2017.

(l) The Petitioner has considered the impact of saving due to reduction of taxes as compared to taxes as on bid deadline i.e., 22.6.2015. Such savings have been on rope wire, tower material, etc. and the details regarding the same have been provided in the present Petition. The total quantity purchased, and services availed prior to GST era have also been provided in the present Petition. The Swachh Bharat Cess and, Krishi Kalyan Cess were levied on services prior to enactment of GST Laws.

(m) MPPMCL`s contention that requirement of DD type tower for obtaining powerline crossing approval does not fall under the definition of Change in Law since the said requirement was existing prior to the bid cut-off date is unsubstantiated and without any legal premise. CEA undertook a consultative process (on 27.7.2016 and 16.9.2016) with participants from the electricity transmission sector and then declared that D-D type towers will be required for powerline crossing of 400 kV and above. The said directions of CEA clearly show that this is a new requirement which did not exist at the cut-off date i.e. 22.6.2015.

Rejoinder to reply filed by MSEDCL

32. The Petitioner vide its rejoinder dated 30.6.2021 to reply filed by MSEDCL has submitted as under:

(a) The Petitioner's claims on account of applicability of GST after the cut-off date, are made with a declaration that all taxes which were applicable at the time of bidding have been subsumed/ abolished with GST. This has been considered for working out the impact of Change in Law and accordingly savings due to such abolished/subsumed taxes have been passed on. The same is also certified by the Petitioner in the Auditor's Certificate.

(b) The Petitioner has duly submitted the details of exact quantities of ingots imported and the tax paid thereon. The TSA does not stipulate that goods required for establishing the Project must be sourced from a specific location to avoid the impact of a Change in Law event. Sourcing decisions are taken at the time of the bid, based on several techno-commercial factors such as the price of goods, reliability of the supplier to supply the desired quantity within the stipulated timelines and the quality of material. The flexibility of this commercial exercise is the essence of any competitive bid process.

(c) There was no stipulation in the bidding documents instructing bidders to only use domestic goods. Further, the competitive bidding guidelines for procurement of transmission services mandate that the developer is solely responsible for all activities including arranging finance, project management, obtaining license, right of way, necessary clearances, design, engineering, equipment, material, construction, erection, testing, commissioning, maintenance and operation of transmission lines for the Project.

(d) Article 5.4 of the TSA imposes a duty upon the Petitioner to ensure, *inter-alia*, that the project is built and completed using only materials and equipment that are new and of international - utility grade quality.

(e) APTEL in its judgment dated 13.04.2018 in *Adani Power Ltd. vs. CERC & Ors.*, [2018 SCC Online APTEL 5] has held that a bidder participating in a bidding process has the discretion to formulate the bid. The Petitioner evaluated both domestic as well as international suppliers for procurement of aluminium and selected its supplier after considering several commercial factors. Its decision to source its supplies from a specific supplier cannot be questioned in light of increase in Basic Custom Duty. Commercial considerations involved in the procurement of aluminium ingots by the Petitioner cannot have any bearing on its entitlement for relief on account of occurrence of a Change in Law event.

(f) By order dated 24.8.2020 in Petition No. 47/MP/2019 [*Avaada Clean Energy Private Limited v. Ordnance Factory Board & Ors.*], the Commission has allowed levy of Safeguard Duty on import of goods as a Change in Law event by, *inter-alia*, holding that the decision for project implementation including the mode of procurement of goods and services were taken by Solar Power Developer at the time of bidding, which was prior to the imposition of Safeguard Duty, and it would not be appropriate to question such commercial decision. Both, Safeguard Duty and Basic Custom Duty are imposed on import of goods in India. In this regard, reliance is also placed on the order dated 17.09.2018 in Petition No. 235/MP/2015 [*Adani Power (Mundra) Limited v. Uttar Haryana Bijli Vitran Nigam Limited & Ors.*] vide which the Commission has allowed pass through of increase in price of imported coal due to change in Basic Custom Duty.

(g)The Petitioner is seeking relief for Change in Law with respect to actual payments made to landowners due to increase in compensation rate by the notifications of Government of Maharashtra and Government of Chhattisgarh. The Commission has already allowed increase in compensation for RoW due to notification of Maharashtra Government dated 31.5.2017 as a Change in Law event and allowed relief to the transmission licensees in order dated 29.1.2021 in Petition No. 264/MP/2020 and order dated 25.1.2021 in Petition No. 265/MP/2020. The Petitioner has claimed compensation and submitted requisite details as per the mechanism prescribed in the said orders of the Commission.

(h)The condition to install D-D type tower for power line crossing constitutes imposition of a new requirement for obtaining consent, clearance and permits and falls squarely under bullet 3 and 4 of Article 12.1.1 of the TSA. The directions of CEA clearly evidence that this is a new requirement which did not exist at the cut-off date.

(i) Contrary to MSEDCL's contention, the Electricity Rules, 2005 do not envisage any specific requirements regarding use of D-D type tower. MSEDCL is disputing the Petitioner's claim by wrongly relying on PGCIL's User's Manual of June 1996 which mentions use of D type tower. PGCIL's User's Manual of June 1996 merely describes what a D type tower is and does not specify that only D type towers will be used for powerline crossing.

(j) Further, MSEDCL has wrongly relied on KPTCL's recommendation for use of D type tower. As such the same has no bearing on the Petitioner or the present case as it relates to the intra-State transmission system in Karnataka. Whereas,

in the present case, the Petitioner is an inter-State transmission licensee entrusted with establishment of the Project as per the conditions stipulated in the TSA.

(k) Carrying cost forms part of 'compensation' payable under the TSA. As per Article 12 of the TSA, the amount payable on account of 'Change in Law' is in the nature of 'compensation'. Carrying cost is the compensation for time value of money or the monies denied at the appropriate time and paid after a lapse of time. In this regard, reliance has been placed on *Rathi Menon v. Union of India*, [(2001) 3 SCC 71]4; *Sandvik Asia Ltd. v. CIT*, [(2006) 2 SCC 508]; *Clariant International Ltd. v. Securities & Exchange Board of India*, [(2004) 8 SCC 524] and *Energy Watchdog v. Central Electricity Regulatory Commission & Ors.* [(2017) 14 SCC 80 (para 57)].

Rejoinder to reply filed by PGCIL

33. The Petitioner, vide its rejoinder dated 1.7.2021 to reply filed by PGCIL, has submitted as under.

(a) In terms of Article 10.10(1)(iii), Article 12.2.1 and Article 12.4 of the TSA, the Petitioner's Change in Law claims once allowed by the Commission shall have to be paid by the Parties to the TSA (i.e., the LTTCs) through the mechanism provided in the TSA. PGCIL has filed its reply based on a misconception that the Petitioner is seeking compensation for the Change in Law events from PGCIL (specifically requirement of D-D type tower for powerline crossing approval). It is clarified that the Petitioner has not sought any compensation from PGCIL. The Petitioner is seeking adjustment of tariff on account of the Change in Law events strictly in terms of Article 12 of the TSA.

(b) There was no specific technical requirement of D type tower configuration on both side of crossing as on the cut-off date. On 7.1.2016, the Petitioner (in terms of Article 4.3 of the TSA) sought power line crossing approval from PGCIL for SQC+18 and SQC+25. However, PGCIL rejected the Petitioner's application and directed that for crossing of lines, a mandatory requirement for 'D' type towers on both sides must be complied. This was the first time such a requirement had been imposed for granting power line crossing approval.

(c) Thereafter, this issue of requirement of D-D type tower for power line crossing was discussed in two meetings conducted by Central Electricity Authority on 27.7.2016 and 16.9.2016 wherein the Petitioner sought the mechanism for recovery of differential cost due to change in tower type. However, in compliance of CEA's conclusive directions to use D-D type tower for power line crossing of 400 kV and above, the Petitioner was constrained to change the tower configuration and sought fresh consent from PGCIL vide letter dated 24.9.2016. The Petitioner, in the interest of timely completion of its transmission project and overall transmission system, implemented the condition imposed.

(d) The requirement of change in tower configuration has been imposed by an Indian Government Instrumentality i.e. CEA which is an Authority in terms of Section 70 of the Act. Definition of 'Law' includes the decision of CEA and PGCIL, which is a decision/direction by an Indian Government Instrumentality, in the nature of an 'executive instruction'. It has been held in *Kusum Ingots &*

Alloys Vs. Union of India [(2004) 6 SCC 254] that an executive instruction comes with the purview of Law.

(e) The Commission in the matter of SLDC v. TNERC & Ors. observed that retrofitting WTGs with LVRT feature is a new requirement which did not exist at the time of bidding and may be considered under 'Change in Law'.

Hearing held on 22.8.2022

34. The Petition was heard on 22.8.2022 and learned counsels for the Petitioner and the Respondents, MSEDCL, MPPMCL and PGCIL made detailed submissions in the matter based on their written submissions. During the hearing, the Petitioner submitted that grid safety was maintained prior to the CEA intervention with one type higher tower or with one side D type tower having adequate margin and deviation angle. The Petitioner pointed out that PGCIL followed similar practices in case of Adani Mundra HVDC Line, Vemagiri and Nagapattnam projects. The relevant details submitted by the Petitioner are as under

Existing Transmission Line	Transmission Line Crossing the Existing Line	Type of Tower
Mundra Mohindergarh HVDC Line	765 kV Bhuj Banaskantha Line	Crossing with DHB tower
400 kV D/C Parli-Pune line	765 kV D/C Solapur-Aurangabad Line	Crossing with DHA tower
400 kV Aurangabad-Pune line	765 kV D/C Aurangabad-Padga line	Crossing with DHA tower

35. After hearing the parties, the Commission directed PGCIL to submit on affidavit the complete information regarding abovementioned projects. The Commission further directed the Petitioner and the Respondents to file their written submissions. The Petitioner and the Respondent, MPPMCL have filed their written submissions dated 4.9.2022 and 7.9.2022 respectively. In compliance with the direction of the

Commission, PGCIL vide its affidavit dated 6.9.2022 has submitted the information sought for during the hearing.

36. The Petitioner vide its written submissions dated 4.9.2022 has reiterated its submissions. On the issue of D-D type tower, the Petitioner made the following additional submissions

(a) While formulating its bid, the Petitioner was guided by the specific technical requirements of transmission lines set out in the RfP, CEA (Technical Standards for Construction of Electrical Plants and Electric Lines) Regulations, 2010 and industry practice of using DHB and DHC type tower for powerline crossings.

(b) Regulation 89(1)(d)(ii) of CEA (Technical Standards for Construction of Electrical Plants and Electric Lines) Regulations, 2010 specify that the design/loading criteria for tower design shall be as per relevant IS or IEC Standards. The Regulations do not specify the tower type to be used for power line crossings.

(c) IS 802: '*Use of Structural Steel in Overhead Transmission Line Towers - Code of Practice*' (August 2015) only specifies the different kinds of suspension towers and tension towers. But the same are silent on use of a particular kind of tower configuration for powerline crossing. However, IS 5613 (Part-3) specifies that suspension/tension towers are to be used while crossing other line. There is no requirement of D type tower at both ends.

(d) RFP dated 13.04.2015 issued by PFC Consulting Ltd. for establishment of the Petitioner's Project is also silent on the type of tower to be used for powerline crossings. The RFP refers to the IS 802 and CEA (Technical Standards for

Construction of Electrical Plants and Electric Lines) Regulations, 2010 for tower design.

(e) Clause 11.3.2 of the Manual on Transmission Lines issued by Central Board of Irrigation and Power (in July 2014) stipulates Suspension (A type tower) /Tension (B, C and D type tower) towers with standard extensions shall be used for power line crossing. It does not imply that specific D type tower at both ends shall be used for powerline crossing. Further, it mentions that for crossing of the line where shutdown is difficult, suspension tower (A type tower) in combination with dead end tower (D type tower) shall be used. Further, crossing angle at 90 degrees can be maintained with any type of towers.

(f) PGCIL's User's Manual of Construction -Transmission Lines (June 1996) only describes what a D type tower is and does not specify that only D type towers will be used for powerline crossing. Further, the PGCIL user manual provides for tower extension to be used to maintain minimum ground clearance while crossing power lines.

(g) In view of the foregoing, the findings of the Commission in the Order dated 16.06.2021 in Petition No. 453/MP/2019 [*Sipat Transmission Ltd. vs. MSEDCL & Ors.*] wherein this Commission did not recognize the imposition of new requirement of using 'D'-'D' type towers for obtaining power line crossing as Change in Law shall not apply to the present case with respect to this Change in Law event. This is because, in the said Order, the Petitioner has neither shown nor has this Commission considered the aforesaid documents which clearly show that there was no specific requirement to install D type towers at both ends, for powerline crossings at the time of bid submission.

(h) Sipat Order is *sub silentio* qua the relevant legal framework as on bid cut off date. The concept of *sub silentio* means when a rule or principle on a particular point of law in a decision is passed and applied by the court in silence without any consideration to the applicable law or any argument. According to the Black's Law Dictionary, "*the precedents that pass sub silentio are of little or no authority*". The concept of *sub silentio* is an established exception to the doctrine of precedents [*Delhi Airtech Services (P) Ltd. v. State of U.P.*, (2011) 9 SCC 354].

(i) Under no circumstance can the decision taken by CEA in the meeting dated 16.9.2016 while exercising its statutory function can be said to be '*only a consensus amongst the various stakeholders*'. It may be noted that such stakeholders (either the TSPs or the transmission licensees) have no power to formulate, standardise or enforce such new grid standards, unless the same is approved by CEA. It is for this reason, CEA had decided to convene the meeting which was titled as "*Meeting taken by CE(CEI), CEA on 16.09.2016 to discuss and to standardize the requirement of powerline crossing*".

(j) The RFPs being issued by PFC after the CEA decision (dated 16.09.2016) specifically incorporate the requirement of D-D type tower for powerline crossing. One such example is the RFP dated 06.05.2021 issued by PFC for establishment of "*Transmission Scheme for evacuation of 3GW RE Injection at Khavda P.S. under Phase-I*".

37. MPPMCL vide its written submissions dated 7.9.2022 reiterated its submissions made during the hearing. MPPMCL has mainly submitted that the Commission vide order dated 16.06.2021 in Petition No. 453/MP/2019 has dealt with the issue regarding DD tower and held that requirement for DD tower is not the Change in Law issue.

Since, the Commission has already settled the legal position that requirement of DD tower doesn't fall under the four walls of the Change in Law definitions, the said claim of the Petitioner ought to be rejected.

38. PGCIL, vide its affidavit dated 6.9.2022, has submitted as under

(a) Towers with maximum load withstanding capacity i.e., D type is recommended and best suited to avoid interruption in bulk power transmitted through 400 kV and above transmission lines. Same requirement was discussed, standardized/ agreed during a meeting taken by Chief Engineer (CEI), CEA on 16.9.2016 wherein it was *inter- alia* decided that power line crossing for 400 kV and above should be done only with 'D-D' type of towers. Subsequent to these standardization, all 400 kV & above power line crossings are done only with 'D-D' type of towers.

(b) Prior to CEA direction during the meeting held on 16.9.2016, similar approach in power line crossings was adopted in PGCIL. However, in some exceptional cases, where constraints were faced during detailed survey with regard to necessary diversion angle, it was more convenient to cross existing power lines using D-A-D type towers configuration instead of D-D. Usually, in these cases, an A type tower, depending on site conditions is inserted before the D type towers which was supposed to be installed immediately after it and accordingly swapping their respective locations. This A type tower is installed with necessary extension usually +25 meter to provide the required electric clearances between two lines and followed by D type tower with no extension or minor extension. Thus, the requisite clearance is ensured by A type tower with necessary

extension (also less costly as compared to similar D type tower) and consequently benefit to beneficiaries due to cost optimization.

(c) However, above arrangement is only feasible in case A type tower is available immediately after D type tower to swap their respective places but in all other scenario, power line crossing has been done using D-D configuration with necessary extension. In addition, increasing no of power lines, increasing voltage levels of new power lines to 765 kV necessitated the requirement of power lines crossing with D-D type configuration in most of the cases for stability of both power lines involved.

(d) 765 kV Bhuj- Banaskantha Line crossing Mundra - Mohindergarh HVDC Line: Based on the power line crossing clearance provided by Adani Transmission Ltd. to PGCIL vide letter dated 24.4.2017 and as agreed in CEA meeting dated on 27.7.2016 and subsequent meeting dated 16.9.2016, PGCIL crossed the Mundra - Mohindergarh HVDC Line by its 765 kV POWERGRID Bhuj - Banaskantha line with D-D type configuration. Accordingly, the Petitioner's contentions are wrong and misleading.

(e) 765 kV D/C Solapur-Aurangabad line crossing 400 kV D/C Parli-Pune line and 765 kV D/C Aurangabad-Padga line crossing 400 kV Aurangabad- Pune line: The above mentioned crossings were implemented in 2014 which is much before power line crossings were standardized by CEA in its meeting held on 16.9.2016 and were implemented with D-A-D type tower configuration based on the approach mentioned above.

(f) Subsequent to standardization after CEA meeting dated 16.9.2016 PGCIL has been using D-D type tower configuration while crossing power lines.

39. The Petitioner vide its affidavit dated 26.9.2022 has submitted the following in response to the affidavit dated 6.9.2022 filed by PGCIL.

(a) As regards crossing of Mundra-Mohindergarh HVDC line, PGCIL had requested Adani Power Ltd. to issue powerline crossing approval for crossing the said HDVC line with PGCIL's 765 kV Bhuj-Banskantha line on 19.9.2015 with D type tower on one side and B type tower on other side.

(b) Thereafter, during the meeting convened on 27.7.2016 by CEA, PGCIL had submitted that PGCIL's management has now taken a view that *"any power line crossing has to be done with "D" type tower on both sides to avoid any kind of disruption of power due to mis-happening during stringing over their line and subsequently to minimise the probability of snapping of their line due to tower collapse of the other utility."*

(c) Considering the submissions made by PGCIL during the meeting dated 27.7.2016, Adani Transmission Ltd. requested PGCIL on 28.7.2016 to submit the revised proposal for powerline crossing using only D type tower on both sides.

(d) Based on the decision taken in the meeting convened by CEA on 16.9.2016 and as per Adani Transmission Ltd.'s request dated 28.7.2016, PGCIL submitted its revised proposal on 14.10.2016 for crossing of Mundra-Mahindergarh HDVC Line by its 765 kV Bhuj-Banskantha line with D-D type tower on both sides. It may be noted that until the CEA had standardized the requirement to use DD type towers for powerline crossing approval, PGCIL did not change its

tower configuration. Such change in tower configuration was a direct result of the decision taken by CEA in the meetings dated 27.7.2016 and 16.9.2016. The difference between Petitioners' case vis-à-vis that of PGCIL lies in the fact that PGCIL unlike the Petitioners executes its transmission projects on a cost plus model under Section 62 of the Act.

(c) As regards crossing of existing 400 kV D/C Parli Pune line with PGCIL's 765 kV Solapur-Aurangabad line and crossing of existing 400 kV Aurangabad-Pune line by PGCIL's 765 kV D/C Aurangabad-Padge line, PGCIL has admitted to have used D-A-D type tower before the requirement to use DD type tower for powerline crossing was standardized by CEA in the meeting dated 16.09.2016.

(d) it is also the case of the Petitioners (like PGCIL) that until the requirement to use DD type tower for powerline crossing was standardized by CEA on 16.9.2016, the Petitioners were at liberty use DA and DB type towers with suitable extensions. It is pertinent to note that the Petitioner had designed its transmission system and had accordingly bid for the project in 2015 which was much prior to the standardization of powerline crossing requirement by CEA (on 16.9.2016)

Analysis and Decision

40. We have considered the submissions of the Petitioner, MSEDCL, MPPMCL and PGCIL, and perused the documents placed on record. Based on the above, the following issues arise for our consideration:

Issue No. 1: Whether the Petition is barred by limitation? Whether the Petitioner was required to file application for condonation of delay under Section 5 of the Limitation Act?

Issue No. 2: Whether the Petitioner has not complied with the pre-condition of TSA before approaching the Commission?

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

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

The above issues have been dealt with in succeeding paragraphs.

Issue No. 1: Whether the Petition is barred by limitation? Whether the Petitioner was required to file application for condonation of delay under Section 5 of the Limitation Act?

41. MPPMCL has submitted that it is settled principle of law that any application/Petition filed under any special statute would be governed by the limitation prescribed by Article 137 of the Schedule to the Limitation Act, 1963. Therefore, as per Limitation Act, 1963, the period of limitation for filing any Petition/Application before any authorities but not limited to quasi-judicial authorities, would be three years. MPPMCL has submitted that TSA provides for each event as individual event. Therefore, limitation period will be applicable on each of the Change in law event individually.

42. *Per contra*, the Petitioner has submitted that it has claimed compensation towards Change in Law for additional expenditure incurred by it during construction period in terms of Article 12.2.1 of TSA which provides that in order to compute the impact of Change in Law, the Petitioner was required to complete the project prior to claiming the same. It is submitted that the Project of the Petitioner achieved commercial operation on 27.08.2019.

43. Therefore, in terms of TSA, there was no point in filing the Petition before SCOD as the cumulative actual impact of the Change in Law events would not have been

known. As per Article 12.2.3 of TSA, the Petitioner was required to submit documentary proof of such increase in cost for establishing the impact of such Change in Law. Therefore, completion of the Project and closing of contracts is necessary to assess cumulative impact and to produce documents for the same. It has been submitted that the present Petition falls under exception to law of limitation i.e. Section 22 of the Limitation Act, 1963, a continuing cause of action till achieving commercial operation on 27.08.2019.

44. Before going into the aspect of period of limitation, it is necessary to establish as to when the cause of action arose for the Petitioner to file Change in Law claims. In this regard, Article 12 of the TSA provides 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 Five Crore Twenty Lakh (Rs. 5,20,00,000/=) 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 percent (0.32%) of the Non-Escalable Transmission Charges.”*

.....

12.2.3 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 Article 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.”

45. We note that as per Article 12.2.1 of the TSA, the compensation for impact of cumulative increase/decrease in the cost of the Project is to be paid to the Petitioner by the Respondent LTTCs in terms of increase/decrease of transmission charges. Article 12.2.1 of the TSA provides that for every cumulative increase/decrease of

Rs.5.20 crore in the cost of the Project up to scheduled COD of the Project, the non-escalable transmission charges shall be increased by 0.32%. We also note that the compensation to be paid to the Petitioner is qualified with the words 'cumulative increase/decrease'. Thus, the clear intent of the provision is to consider the impact of all Change in Law events leading to net increase or decrease of the cost of the Project on cumulative basis up to the scheduled COD of the Project. Only after the net cumulative increase/decrease in cost of the Project up to scheduled COD is crystalized, the transmission charges can be increased/decreased by 0.32% of non-escalable transmission charges for every cumulative increase/decrease of Rs.5.20 crore in the cost of the Project as per this provision. Even if each Change in Law event during the construction period is to be dealt with individually, the relief to the Petitioner needs to be considered on cumulative basis which can be crystalize only after COD of the Project.

46. Further, as per Article 12.2.3 of TSA, for claiming the Change in Law relief during the construction period, the Petitioner is required to provide the documentary proof of increase in cost of the Project for establishing the impact of Change in Law beyond the threshold as specified in the Article 12.2.1. Moreover, as per Article 12.2.4, the Commission is also required to decide upon the compensation for Change in Law during the construction period, which as noted above, is to be in terms of increase/decrease in non-escalable transmission charges to a tune of 0.32% for the cumulative increase/decrease of Rs.5.20 crore in the Project cost up to the scheduled COD of the Project. Thus, even for the effective determination of Change in Law relief during the construction period, TSA provides for consideration of the cumulative increase/decrease in the cost of Project up to the scheduled COD of the Project. Also, though with the occurrence of each Change in Law event, the Petitioner`s right to seek

compensation triggers under TSA, Article 12.2.1 of TSA requires that the cumulative increase in the cost of the Project up to scheduled COD has to be considered for claiming Change in Law relief. Therefore, the Petitioner could not have filed a Petition before the Commission with all the details as required in terms of Article 12.2.1 and Article 12.2.3 of TSA until completion of the Project.

47. The Petitioner has contended that the Commission in its earlier orders, including Order dated 8.1.2020 in Petition No. 126/MP/2019 [Fatehgarh-Bhadla Transmission Limited vs. Adani Renewable Energy Park Rajasthan Limited & Anr], has held that in order to claim Change in Law the transmission licensee should approach the Commission after completion of the project. The relevant extract of the said order dated 8.1.2020 is as under:

“7. The Petition was heard on 17.7.2019. During the course of hearing, the Commission observed that since the Scheduled COD of the Project is September, 2019, the Petition at that stage was premature.

27. Since the Petitioner has not implemented the Project, no relief can be granted at this stage. However, the Petitioner is directed to implement the project at the earliest so that associated generating stations are not stranded. The Petitioner is granted liberty to approach the Commission for appropriate relief, if any, in terms of the provisions of the TSA after completion of the project.”

48. In the above-quoted order, the Commission had observed that the Petition No. 126/MP/2019 filed by the Petitioner therein was premature since the Project had not achieved COD at the time of filing of the Petition. Thus, the Commission has been insisting that the transmission licensees should approach the Commission for adjudication of the Change in Law events only after achieving COD of the project.

49. In the present case, the scheduled COD of the Project was 23.3.2019. The Project of the Petitioner has achieved COD on 27.8.2019 and the present Petition was

filed on 2.06.2020. Therefore, the Petition has been filed within the limitation period of three years from the day the cause of action arose.

50. The date when the last Change in Law event occurred was 1.7.2017. Therefore, even if the limitation period is counted from this date as contended by MPPCL, the Petitioner having filed this petition on 2.6.2020, is within the three years' limitation period.

51. MPPMCL has relied upon various judgments of the Hon`ble Supreme Court to substantiate its case including the judgment of the Hon`ble Supreme Court in the case of BK Educational Services Private Limited Vs. Parag Gupta and Associates [(2019) 11 SCC 633]. It is noticed that the cited judgment is pertaining to the question of applicability of Section 137 of the Limitation Act, 1963 to application filed under Insolvency and Bankruptcy Code, 2016. However, this question was specifically with respect to the claims filed prior to the insertion of Section 238A vide Insolvency and Bankruptcy Code (Second Amendment), Act, 2018. Therefore, in the cited judgment, the parent statute i.e. the Code after amendment in 2018 provided for the applicability of the Limitation Act, 1963 to the applications/Petitions filed by the Code. The question before the Hon`ble Supreme Court was whether this amendment shall have a retrospective effect. However, in the present case, neither TSA nor statute i.e. the Act read with Regulations framed thereunder provide that the Limitation Act, 1963 shall be applicable for making a claim for Change in Law before the Commission. Both the statute and TSA are silent on this aspect. Therefore, the facts in the present case are materially different from the cited judgment and it has no applicability to the present case.

52. In light of the above, we do not find merit in the submission of MPPMCL that the Petition is time-barred.

53. MPPMCL has argued that the Petitioner did not file the application under Section 5 of the Limitation Act for condonation of delay. Since we have held that the Petition is not time-barred, there was no need for the Petitioner to file application for condonation of delay under Section 5 of the Limitation Act, 1963. Accordingly, the objection of MPPCL on the count is also not sustainable. we find and hold that the instant Petition is not time barred.

Issue No. 2: Whether the Petitioner has not complied with the provisions of TSA regarding before approaching the Commission?

54. MPPMCL has contended that, as per the TSA, the Petitioner was required to send Change in Law notices to beneficiaries within reasonable time. However, the delay of 1 month, 3 months, 5 months, 8 months and more than a year is not reasonable and, therefore, declaration of Change in Law event by the Petitioner is bad in law and doesn't fall within the ambit of legal principles dealing with Change in Law.

55. *Per contra*, the Petitioner has submitted that neither TSA nor any statute stipulates any specific time within which the Change in Law notice have to be issued by the Petitioner, failing which its substantive rights would stand vitiated. It is submitted that it has issued notices at the earliest reasonable opportunity.

56. We have considered the submissions made by the Petitioner and MPPMCL. The requirement of notice for Change in Law prescribed in Article 12.3.1 of the TSA is as under:

12.3 Notification of Change in Law:

12.3.1 If the TSP is effected by as 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.

12.3.3 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.”

57. As per Article 12.3.1, the Petitioner is required to give Change in Law notice to LTTCs as soon as reasonably practicable. The Petitioner had issued Change in Law notices to the LTTCs on 14.4.2016, 4.7.2016, 14.11.2016, 22.12.2016, 18.1.2017, 11.4.2017, 31.7.2017, 7.11.2017 and 21.2.2017 in terms of Article 12 of the TSA. Further, the Petitioner has submitted the following details with regards to notices for individual Change in Law events:

S. No.	Change in Law Event	Coming into force of the Change in Law event	Date of notice by CWRTL in terms of the TSA
1.	Increase in effective rate of service tax due to levy of Swachha Bharat Cess @ 0.5%	15.11.2015	On 14.04.2016 and reminder on 21.02.2020
	Increase in effective rate of service tax due to levy of Krishi Kalyan Cess @ 0.5%	01.06.2016	On 14.04.2016 and reminder on 21.02.2020
2.	Increase in Maharashtra Value Added Tax	01.04.2016 and 17.09.2016	On 22.12.2016 and reminder on 21.02.2020
3.	Increase in Effective Custom Duty on primary aluminium products (ingots) due to increase in Basic Custom Duty from 5% to 7.5%	01.03.2016	On 14.04.2016 and reminder on 21.02.2020
4.	Increase in effective tax rate on goods and services due to levy of Central Goods and Services Tax and State Goods and Services Tax /Integrated Goods and Services Tax	01.07.2017	On 31.07.2017 and reminder on 21.02.2020
5.	Increase in compensation for RoW due to levy of CGST @ 9% and Maharashtra/ Chhattisgarh/ Gujarat GST @ 9%	01.07.2017	On 31.07.2017 and reminder on 21.02.2020
6	Increase in Right of Way compensation in Maharashtra and Chhattisgarh	31.05.2017 (for Maharashtra) and 01.06.2016 (for Chhattisgarh)	On 07.11.2017(for Maharashtra) and 04.07.2016 (for Chhattisgarh) and reminder on 21.02.2020

S. No.	Change in Law Event	Coming into force of the Change in Law event	Date of notice by CWRTL in terms of the TSA
7.	Imposition of Requirement of D-D type Tower for obtaining power-line crossing approval	16.09.2019	On 14.11.2016 and reminder on 21.02.2020

58. As regards definition of 'reasonable time', MPPMCL has relied on the following judgment of the Hon'ble Supreme Court of India:

(a) Lrs. v. Kamal Rani (Smt.)(Dead) By Lrs. 1993 (1) SCC 519: "that in case of sale of immovable property there is no presumption as to time being the essence of the contract. Even if it is not of the essence of contract, the court may infer that it is to be performed in a reasonable time if the conditions are (i) from the express terms of the contract; (ii) from the nature of the property; and (iii) from the surrounding circumstances, for example, the object of making the contract. For the purposes of granting relief, the reasonable time has to be ascertained from all the facts and circumstances of the case."

(b) K.S. Vidyanadam&Ors. v. Vairavan [1997 (3) SCC 1]: "Even where time is not of the essence of the contract, the plaintiffs must perform his part of the contract within a reasonable time and reasonable time should be determined by looking at all the surrounding circumstances including the express terms of the contract and the nature of the property."

59. The Hon'ble Supreme Court in the above judgments has held that the reasonable time should be determined looking at all the surrounding circumstances including the express terms of the contract.

60. In the instant matter, we have held in earlier part of this order that the cause of action arose only after the Project achieved commercial operation which is in accordance with the express terms of the contract. Further, the Petitioner has issued Change in Law notices and reminders before the commercial operation date of the Project. It is noted that the delivery of Change in Law notices before the COD at any point of time does not have material impact on the LTTCs as the transmission charges could be claimed only after the Project achieved COD.

61. Further, in terms of the Article 12.3.4 of the TSA, Change in Law notice is required to provide, *inter alia*, precise details of the event and its effect on TSP (transmission service provider) i.e. the Petitioner. We have perused the effective date of various Change in Law events and the Change in Law notices issued by the Petitioner for such events. While we may agree that for some of the Change in Law events, the delay between the occurrence of the event and issuance of notice could have been reduced by exercising caution and prudence, we do not find such delays to be inordinate and inexcusable, which would otherwise defeat the Petitioner's Change in Law claims and the consequent relief.

62. In view of the facts and circumstances in the present case, we are of the opinion that the Petitioner has complied with requirement of TSA in terms of notice to LTTCs for Change in Law event within a reasonable time. We observe that a notice, in legal concept, describes a requirement that a party be made aware of legal process affecting their rights, obligations or duties, and it may be a formal legal notice, actual notice, constructive notice and implied notice. We find that the Petitioner has communicated on various dates on different events and thus, the Petitioner was putting the LTTCs on notice of such events.

63. Accordingly, in our view, the Petitioner has complied with the requirement of TSA regarding prior notice to the lead LTTC regarding occurrence of Change in Law before approaching the Commission.

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

64. 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 any 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 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.”*

65. Perusal of the above provisions of Article 12 in the TSA reveal that for an event to be Change in Law, its occurrence has to be after the seven days prior to the bid deadline and should result into any additional recurring/ non-recurring expenditure by TSP or any income to TSP. The events broadly covered under Change in Law are following:

- (a) Any enactment, coming into effect, adoption, promulgation, amendment, modification or repeal, of any law;
- (b) Any change in interpretation of any law by a Competent Court of law, or Indian Governmental Instrumentality having the legal power for such interpretation; or
- (c) Imposition of a requirement for obtaining any consents, clearances and permits which was not required earlier;

- (d) A change in terms and conditions prescribed or inclusion of any new terms and conditions for obtaining consents, clearances and permits or the inclusion of new terms and conditions for obtaining such consents, clearances and permits;
- (e) Any change in the Commission`s Transmission Licence Regulations;
- (f) Any change in the acquisition price;
- (g) Any change in tax or introduction of any tax made applicable for providing transmission service by the TSP as per the terms of the agreement.

66. Indian Government Instrumentality as defined in the TSA is as under:

“Indian Governmental Instrumentality” shall mean Government of India, Government of any State in India or any ministry, department, board, authority, agency, corporation, commission under the direct or indirect control of Government of India or any State Government or both, any political subdivision of any of them including any court or Appropriate Commission or tribunal or judicial or quasi-judicial body in India but excluding TSP and Long Term Transmission Customers”

67. Further, “Law” has been defined in the TSA as under:

“Law” or “Laws” in relation to this Agreement, shall mean all laws including electricity laws in force in India and any statute, ordinance, rule, regulation, notification, order or code, or any interpretation of any of them by an Indian Governmental Instrumentality having force of law and shall include all rules, regulations, decisions and orders of the Appropriate Commission;”

68. Thus, “Law” under TSA includes any statute, ordinance, rule, regulation, notification, order or code or any interpretation of any of them by an Indian Governmental Instrumentality having force of law.

69. As per Article 12 of the TSA, an event constitutes a Change in Law if it occurred after the date which is seven days prior to the bid deadline which was 30.6.2015. Therefore, cut-off date for considering the claims under Change in Law will be 22.6.2015. In the light of the above provisions, the claims of the Petitioner with regard

to Change in Law during the construction period have been examined in the following paragraphs.

(a) Levy of Swachha Bharat Cess, Levy of Krishi Kalyan Cess and increase in Maharashtra Value Added Tax

70. The Petitioner has submitted that the effective service tax rate of 14%, prevailing as on cut-off date, was increased to 14.5% on account of levy of Swachh Bharat Cess @0.5% on taxable services from 15.11.2015 vide Ministry of Finance Notification No. 21/2015-Service Tax dated 6.11.2015 and Notification No. 22/2015-Service Tax dated 6.11.2015. Further, Krishi Kalyan Cess @0.5% on taxable services was also levied by Ministry of Finance vide Notification Nos 27 to 31/2016-Service Tax dated 26.5.2016 with effect from 1.6.2016. Thus, the total Service Tax increased from 14% to 15%. The Petitioner has submitted that Ministry of Finance is an Indian Governmental Instrumentality as defined under the TSA and the introduction of Swachh Bharat Cess and Krishi Kalyan Cess have been affected through an amendment to the Finance Act, 1994, by an Act of the Parliament. Therefore, the same are Change in Law events in terms of Article 12.1 of the TSA.

71. The Petitioner has further submitted that Finance Department, Government of Maharashtra amended Schedule C of the Maharashtra Value Added Tax Act, 2002 on 30.3.2016 to increase the rate of Maharashtra VAT from 5% to 5.5% w.e.f. 1.4.2016. The Schedule C was again amended on 16.9.2016 by Government of Maharashtra to increase VAT from 5.5% to 6% w.e.f. 17.9.2016. The said amendment has been brought by Government of Maharashtra by exercising its powers conferred under Section 9(1) of the Maharashtra Value Added Tax, 2002. Therefore, the same is Change in Law under Article 12 of the TSA.

72. The Petitioner has submitted the total impact on account of levy of Swachh Bharat Cess, Krishi Kalyan Cess and Maharashtra VAT is Rs 0.81 crore. The Petitioner has placed on record the certificate of Chartered Accountant containing item-wise details of such taxes/Cess actually paid during the construction period. The Chartered Accountant has also certified that the Petitioner has not received any Input Tax Credit.

73. **Per contra**, the Respondents have submitted that the Petitioner has provided the details of claims in tabular form regarding Swachh Bharat Cess and Krishi Kaiyan Cess without any supporting documents. The Respondent, MSEDCL has pointed out the need for prudent check in terms of the components and the time from which such components became due for payment of such cess. Vide Record of Proceedings for the hearing held on 6.10.2021, the Commission permitted the Respondent MSEDCL on its request as lead LTTC to call for the requisite details/information from the Petitioner after taking into account the details/information already furnished along with the Petition and directed the Petitioner to provide all such details/information sought by MSEDCL. The Petitioner vide its written submissions dated 15.7.2022 has submitted that MSEDCL vide its letter dated 8.10.2021 had requested the Petitioner to furnish certain information/documents with respect to Change in Law events. It has been further submitted by the Petitioner that the requisite information was furnished to MSEDCL on 29.10.2021. However, MSEDCL had not filed any response regarding reconciliation process.

74. We have considered the submissions of the Petitioner and the Respondents. There was no Swachh Bharat Cess and Krishi Kaiyan Cess applicable as on cut-off date i.e. 22.6.2015. Swachh Bharat Cess was introduced by Ministry of Finance

Notifications dated 6.11.2015 and was implemented with effect from 15.11.2015. Krishi Kalyan Cess was introduced by Ministry of Finance Notification dated 26.5.2016 and was implemented with effect from 1.6.2016. It has been submitted by the Petitioner that the Commission has already allowed Swachh Bharat Cess and Krishi Kalyan Cess as Change in Law events vide order dated 16.6.2021 in Petition No 453/MP/2019, order dated 21.2.2018 in Petition No 121/MP/2017 and order dated 21.2.2018 in Petition No 131/MP/2016, order dated 1.2.2017 in Petition No. 8/MP/2014 and order dated 6.2.2017 in Petition No. 156/MP/2014.

75. It has been placed before us that The Commission has allowed Swachh Bharat Cess and Krishi Kalyan Cess by order dated 16.6.2021 in Petition No 453/MP/2019 to Sipat Transmission Limited. The relevant extract of the order is as under:

“39. We have considered the submissions of the Petitioner and the Respondents. As on cut-off date i.e. 23.6.2015, there was no Swachh Bharat Cess and Krishi Kalyan Cess. Swachh Bharat Cess was introduced by Finance Act, 2015 and was implemented with effect from 15.11.2015. Krishi Kalyan Cess was introduced by Finance Act, 2016 and was implemented with effect from 1.6.2016. It has been submitted by the Petitioner that the Commission has already allowed Swachh Bharat Cess and Krishi Kalyan Cess as Change in Law events vide order dated 1.2.2017 in Petition No. 8/MP/2014, order dated 6.2.2017 in Petition No. 156/MP/2014, order dated 7.4.2017 in Petition No. 112/MP/2015 and order dated 21.8.2020 in Petition No 217/MP/2016. We note that the orders quoted by the Petitioner are in respect of PPAs (Power Purchase Agreements) between contracting parties and not for TSAs. Nonetheless, the provisions of the PPAs referred to by the Petitioner related to Change in Law are similar to the provisions of Change in Law in the TSA in the instant petition.

40. Sections 119(2) and 119(3) of the Finance Act, 2015 provide as under:

“119....

(2). There shall be levied and collected in accordance with the provisions of this “Chapter, a cess to be called the Swachh Bharat Cess, as service tax on all or any of the taxable services at the rate of two percent, on the value of such services for the purposes of financing and promoting Swachh Bharat initiative or for any other purpose relating thereto.

(3). The Swachh Bharat Cess leviable under sub-section (2) shall be in addition to any cess or service tax leviable to such taxable services under Chapter V of the Finance Act, 1994 or under any other law for the time being in force.”

41. Sections 161(2) and 161(3) of the Finance Act, 2016 provide as under:

“161....

(2). There shall be levied and collected in accordance with the provisions of this Chapter, a cess to be called the Krishi Kalyan Cess, as service tax on all or any of the taxable services at the rate of 0.5 percent, on the value of such services for the purposes of financing and promoting initiatives to improve agriculture or for any other purpose relating thereto.

(3) The Krishi Kalyan Cess leviable under sub-section (2) shall be in addition to any cess or service tax leviable to such taxable service under Chapter V of the Finance Act, 1994, or under any other law for the time being in force.”

42. *Therefore, both Swachh Bharat Cess and Krishi Kalyan Cess, having been introduced through an Act of Parliament, are admissible under Change in Law in terms of Article 12 of the TSA.”*

76. We have considered that the TSA in the present matter is identical to that was dealt with in Petition No 453/MP/2019. Thus, both Swachh Bharat Cess and Krishi Kalyan Cess, having been introduced through an Act of Parliament, are admissible under Change in Law in terms of Article 12 of the TSA.

77. Maharashtra VAT was increased by from 5% to 5.5% w.e.f 1.4.2016 and was further increased from 5.5% to 6% w.e.f 17.9.2016 by Government of Maharashtra through amendment of Schedule C of Maharashtra Value Added Tax Act, 2002. It has been submitted by the Petitioner that the Commission has already allowed VAT as Change in Law in the orders dated 16.3.2018 in Petition No 1/MP/2017 and order dated 7.4.2017 in Petition No. 112/MP/2015. It has been further submitted that the

Tribunal has also allowed VAT as Change in Law in judgment dated 19.4.2017 in Appeal No 161 of 2015 and Appeal No. 205 of 2015.

78. It is evident from both the Notifications dated 30.3.2016 and 16.9.2016 of Finance Department, Government of Maharashtra that the Schedule C of the Act was amended to increase the VAT from 5% to 6%. The relevant extract of Notification dated 30.3.2016 is as under

“No. VAT 1516/C.R. 31/Taxation-1- In exercise of the powers conferred by sub-section (1) of section 9 of the Maharashtra Value Added Tax Act, 2002 (Mah. IX of 2005), the Government of Maharashtra hereby, with effect from the 1st April 2016, amends SCHEDULES ‘A’ and ‘C’ appended to said Act, as follows namely:-“

79. In light of the above, Maharashtra VAT having been introduced through an Act of Parliament, is admissible under Change in Law in terms of Article 12 of the TSA.

80. In light of the above, the Petitioner is entitled to recover additional expenditure incurred towards Swachh Bharat Cess, Krishi Kalyan Cess and Maharashtra VAT from LTTCs. It is observed that there may be items on which VAT has reduced. Therefore, the Petitioner shall reconcile the claims with the Respondents in terms of order dated 17.12.2018 in Petition No. 1/SM/2018.

(b) Increase in Basic Customs Duty on primary aluminium products

81. The Petitioner has submitted that, as on cut-off date, the effective tax rate on import of primary aluminum products was 23.65% comprising of Basic Customs Duty @5%, Countervailing Duty @12.5%, Additional Duty @4% and Education Cess @1%. However, the effective tax was increased to 26.69% on account of increase in the Basic Customs Duty from 5% to 7.5% vide the Union Budget, 2016. Ministry of Finance

issued notification no 334/8/2016-TRU dated 29.2.2016 notifying the increase from 5% to 7.5% w.e.f 1.3.2016.

82. **Per contra**, the Respondent MSEDCL has submitted that the Petitioner has not provided the details of quantum of aluminum purchased within the country and quantum of aluminum imported. It has been further submitted that the Petitioner has not provided any justification for importing aluminum ingots instead of purchasing domestically and also as to who was the importer of such ingots. Considering that the decision of importing Aluminium ingots was purely of petitioner, MSEDCL has sought confirmation as to whether such decision has resulted in increase in capital expenses or otherwise. MSEDCL has also contended that it is not clear whether the aluminum ingots imported by the Petitioner have actually been utilized by the Petitioner for the Project only. Invoices towards purchase of conductor also need to be provided by the Petitioner.

83. The Petitioner vide its rejoinder dated 30.6.2021 has submitted that the TSA does not stipulate that goods required for establishing the Project must be sourced from a specific location, i.e. from the domestic market only. It has been contended that sourcing decisions are taken at the time of the bid, based on several techno-commercial factors such as the price of goods, reliability of the supplier to supply the desired quantity within the stipulated timelines and the quality of material. The flexibility of this commercial exercise is the essence of any competitive bid process. The competitive bidding guidelines for procurement of transmission services mandate that the developer is solely responsible for all activities including arranging finance, project management, obtaining license, right of way, necessary clearances, design,

engineering, equipment, material, construction, erection, testing, commissioning, maintenance and operation of transmission lines for the Project.

84. The Petitioner has submitted that Article 5.4 of the TSA imposes a duty upon the licensee to ensure that the Project is designed, built and completed, inter-alia, using only materials and equipment that are new and of international - utility grade quality such that, the useful life of the Project will be till expiry date. The Petitioner has relied on the judgment dated 13.4.2018 in *Adani Power Ltd. vs. CERC & Ors.*, 2018 SCC Online APTEL 5 wherein the Tribunal has observed that a bidder participating in a bidding process has the discretion to formulate the bid.

85. It has been further submitted that the Petitioner evaluated both domestic as well as international suppliers for procurement of aluminium and selected its supplier after considering several commercial factors and its decision to source its supplies from a specific supplier cannot be questioned in light of increase in Basic Custom Duty. The Petitioner has contended that the commercial considerations involved in the procurement of aluminium ingots by the Petitioner cannot have any bearing on its entitlement for relief on account of occurrence of a Change in Law event.

86. We have considered the submissions of the Petitioner and the Respondents. As per the Petitioner, there was no stipulation in the bidding documents instructing bidders to only use domestic goods. Further, the competitive bidding guidelines for procurement of transmission services mandate that the developer is solely responsible for all activities including arranging finance, project management, obtaining license, right of way, necessary clearances, design, engineering, equipment, material, construction, erection, testing, commissioning, maintenance and operation of transmission lines for the Project. The Petitioner has submitted that it evaluated both

domestic as well as international suppliers for procurement of aluminum and selected its supplier after considering several commercial factors. Its decision to source its supplies from a specific supplier cannot be questioned in light of increase in Basic Custom Duty. Commercial considerations involved in the procurement of aluminum ingots by the Petitioner cannot have any bearing on its entitlement for relief on account of occurrence of a Change in Law event. We agree with the submission of the Petitioner that it is the commercial decision of the Petitioner to procure machinery/ equipment or raw material from domestic market or import from international market under competitive bidding regime. For the competitively discovered tariffs, it is neither envisaged nor considered necessary for the Commission to go into the aspects of efficiency of procurement or related cost details. It is assumed that the Petitioner would have done prudence check in terms of assessment of domestic and international market. For any inefficiency on part of the TSP in implementation of the Project, the additional cost is to be borne by the TSP itself. As far as relief under Change in Law is concerned, the Commission is required to consider whether the event is covered under Change in Law in terms of Article 12 of the TSA and whether the Petitioner's claim for relief on account of Change in Law flows from the terms of the TSA.

87. As on cut-off date, the Basic Customs Duty @5% was levied on import of primary aluminum products. The Basic Customs Duty was raised from 5% to 7.5% by the Union Budget, 2016. Ministry of Finance, an Indian Government Instrumentality, increased the Customs Duty on import of primary aluminum products from 5% to 7.5% vide Notification No. 334/8/2016-TRU dated 29th February 2016 w.e.f. 1.3.2016. Accordingly, increase in Customs Duty on aluminum products is admissible under Article 12 of the TSA as Change in Law. The Petitioner has submitted that there has been further increase in effective tax rate after coming into effect of GST regime. GST

has been held to be a Change in Law event by the Commission in several previous orders including in the order dated 17.12.2018 in Petition No. 1/SM/2018 and in the instant order. Any claim as regards Change in Law on account of coming into effect of GST regime is admissible only if import of aluminum ingots has taken place on or after 1.7.2017. The Petitioner has to clearly show that it had imported the aluminum ingots on or after 1.7.2017. In an identical case, for the same TSA, the Commission vide order dated 16.6.2021 in Petition No. 453/MP/2019 has allowed increase in custom duty on primary aluminum products as Change in Law. Relevant of the order dated 16.6.2021 is extracted as under:

“53. As on cut-off date, the Basic Customs Duty @5% was levied on import of primary aluminum products. The Basic Customs Duty was raised from 5% to 7.5% by the Union Budget, 2016. Ministry of Finance, an Indian Government Instrumentality, increased the Customs Duty on import of primary aluminum products from 5% to 7.5% vide Notification No. 334/8/2016-TRU dated 29th February 2016 w.e.f. 1.3.2016. Accordingly, increase in Customs Duty on aluminum products is admissible under Article 12 of the TSA as Change in Law....

54. In view of the above, as increase in Customs Duty on aluminum products is admissible under Article 12 of the TSA as Change in Law, the Petitioner is entitled to increase in transmission charges on account of said increase in Customs Duty on aluminum products in accordance with Article 12.1.1 of the TSA.”

88. The above decision of the Commission may also be appreciated in the context of the present case. Therefore, the claim for increase in customs duty on aluminum products is admissible under Article 12 of the TSA as a Change in Law and is allowed under Article 12.1.1 of the TSA. The Petitioner is directed to submit the proof of sourcing of aluminum conductor from abroad and audited details of invoices & custom duties actually paid at higher rate to the LLTCs, if any, before claiming relief from the LLTCs. The Petitioner shall also ensure that invoices of imported aluminum against

which claim is being made have actually been utilized for the project under consideration in this Petition.

(c) Introduction of Goods and Service Tax (GST) including on Right of Way compensation

89. The Petitioner has submitted as on cut-off date, the indirect tax regime, prevailing in India, comprised of multiplicity of taxes and elaborate compliance obligations. However, a new indirect taxation system i.e. GST was introduced w.e.f. 1.7.2017, representing a paradigm shift in the mode and levy of indirect taxes leading to increase in cost of following goods and services. After the enactment of the CGST Act, IGST Act, Maharashtra GST Act and Chhattisgarh GST Act, w.e.f. 1.7.2017 a tax slab of 5% to 28% has been introduced with respect to goods and services required for execution, construction and operation of electricity transmission projects. The said goods and services were previously either exempted or fell under lower tax slabs [tax rates between 0% and 28.25%]. The new tax slabs have led to an increase in the overall Project cost. It has been submitted that the Commission vide suo-motu order dated 14.3.2018 in Petition No. 13/SM/2017, inter alia, held that introduction of GST and subsuming/abolition of specific taxes, duties, cess etc. in the GST is a Change in Law event.

90. **Per Contra**, the Respondent MPPMCL has submitted that the Petitioner has not exhibited clear and one to one correlation between the Project, supply of goods/ services and invoices raised by the supplier of goods/ services backed by an independent and competent auditor's certificate. Both MPPMCL and MSEDCL have contented that the Petitioner must provide the impact of taxes, whose tax rate might have reduced, on the capital cost of the Project or must certify that there is no reduction

in tax rate after cut-off date for any of the taxes considered while evaluating the capital cost of the Project.

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

“27. From the forgoing, it is observed that due to varied nature of such taxes, duties and cess etc. that have been subsumed/abolished on introduction of GST, it is not possible to quantify the resulting impact in a generic manner for all the TSPs. The abolition of taxes, duties, cess, etc. on the introduction of GST are “Change in Law” events and the savings arising out of such “Change in Law” should be passed to the beneficiaries of the TSPs. Similarly, the introduction of GST has also resulted in imposition of new or increase in existing taxes, duties, cess etc. which constitute “Change in Law” events and accordingly the additional impact due to introduction of GST shall be borne by the beneficiaries. The details of the increase or decrease in the taxes, duties,

cess etc. shall be worked out by the TSPs and the beneficiaries. The TSPs should provide the details of increase or decrease in the taxes, duties, cess etc. supported by Auditor Certificate and relevant documents to the beneficiaries and refund or recover the amount from the TSPs due to the decrease or increase in the taxes, duties, cess etc. as the case may be. Since the GST liveable on the transmission licensees pertain to the construction period, the impact of GST shall be disbursed by the beneficiaries to the transmission licensees in accordance with the provisions in the TSA regarding relief for Change in Law during construction period. In case of any dispute on any of the taxes, duties, cess etc., the beneficiaries may approach the Commission.

Summary

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

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

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

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

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

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

92. In the present case, as on cut-off date i.e. 22.6.2015, 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, (GST Laws) which came into effect from 1.7.2017. Since the additional recurring and non-recurring expenditure which has been incurred by the Petitioner is through an Act of Parliament after the cut-off date, i.e. 23.6.2015, the same is covered under Change in Law.

93. The Petitioner has also submitted that, with the introduction of GST laws w.e.f. 1.7.2017, any lease, tenancy, easement, licence to occupy land have been categorised as 'supply of services' under Schedule II (read with Section 7) of the CGST Act, Maharashtra GST Act and Chhattisgarh GST Act respectively. Accordingly, CGST @ 9% and SGST @ 9% are levied on compensation paid by the Petitioner for Right of Way to the landowners for using such land for transmission lines/towers which were not applicable as on cut-off date.

94. The Petitioner has submitted that the total impact on account of the enactment of GST Laws is Rs. 5.457 crore and for increase in RoW compensation on account of GST is Rs 0.781 crore. In this regard, the Petitioner has placed on record a Chartered Accountant Certificate dated 3.6.2021 containing item-wise details of taxes actually paid during construction period and certifying the calculations of amount claimed due to introduction of GST in comparison with tax based on original estimated Project cost. The Chartered Accountant has certified that the Petitioner has not received any Input Tax Credit and that all taxes applicable at the time of bidding which have been subsumed/ abolished with GST have been considered for working out impact of Change in Law and accordingly savings due to such abolished/ subsumed taxes has been passed on. The Chartered Accountant has also certified that the Company has complied with the anti-profiteering clause under section 171 of GST Act 2017.

95. Since we have already held introduction of GST as Change in Law, the additional compensation paid on account of CGST @ 9% and SGST @ 9% shall be admissible for recovery from the LTTCs by the Petitioner.

96. In light of the above, the Commission directs that the details of the increase or decrease in tax rate on account of implementation of GST shall be worked out by the

TSP and the LTTCs in terms of order dated 17.12.2018 in Petition No. 1/SM/2018 and the TSPs shall provide the details of increase or decrease in the taxes, supported by Auditor Certificate and relevant documents to the beneficiaries and refund or recover the amount from the TSPs due to decrease or increase in such taxes.

(e) Increase in compensation to be paid to landowners for Right of Way of transmission lines in the States of Maharashtra and Chhattisgarh.

97. The Petitioner has submitted that as on the cut-off date i.e. 22.6.2015, the prevailing rate of compensation towards Right of Way damages in the State of Maharashtra was in accordance with the Government Notification dated 1.11.2010 and in the State of Chhattisgarh was in accordance with the Notification dated 20.2.2015 issued by Revenue and Disaster Management Department, Government of Chhattisgarh. However, the Industry, Energy and Labour Department, Government of Maharashtra vide Resolution Letter No. 2016/P.No.520/Energy/4 dated 31.5.2017 and the Revenue and Disaster Management Department, Government of Chhattisgarh vide Notification No. F-7-7/7-1/2014 dated 1.6.2016, increased the RoW compensation modifying their earlier notifications for the purpose of aligning the compensation rates with that of the Guidelines issued on 15.10.2015 by Ministry of Power, Government of India.

98. MSEDCL in its reply has submitted that the Petitioner should provide the list of beneficiaries in support of the claim along with RoW claims supposed to be paid as per cutoff date and actual RoW claims paid to each beneficiary. MPPMCL has contended that the notification relied upon by the Petitioner is general Guidelines issued by the Government of Maharashtra for determining the compensation to be paid to the land owners on the basis of the Guidelines issued by Ministry of Power dated 15.10.2015. It has been argued by MPPMCL that the Petitioner was expected

to factor all unforeseen and contingent expenditure on account of settlement of RoW while submitting the bid and, therefore, the additional expenditure incurred by the Petitioner to settle the issue of RoW with land owners does not constitute Change in Law event.

99. We have considered the submissions made by the Petitioner and MPPMCL. As on cut-off date, Government Order No. Sankirn/0210/P.K.29/Urja-4 dated 1.11.2010 of Energy and Labour Department, GoM was in force in Maharashtra which specified, inter-alia, that compensation to be provided by transmission service provider to the land owners was (1) 25% for Non-irrigated Agricultural land (2) 50% for Irrigated Agricultural Land (3) 60% for Fruit Orchard Land and (4) 65% for Non-Agricultural Land. Similarly, as on cutoff date, Order No F 7-7/SAT-1/2014 dated 20.2.2015 of Department of Revenue and Disaster Management, Government of Chhattisgarh was in force which specified, inter-alia, that compensation to be provided by transmission service provider to the land owners was @ 50% of the prevalent market value of the land utilized for installing the towers for establishment of 132 kV transmission lines or lines having higher power. Ministry of Power, Government of India vide its letter dated 15.10.2015 issued Guidelines for payment of compensation towards damages in regard to Right of Way for transmission lines. In the said Guidelines, Ministry of Power *inter alia* also requested all the States/UTs to take suitable decision regarding adoption of the Guidelines for determining the compensation for land considering that the acquisition of land is a 'State' subject under the Indian Constitution.

100. On the basis of the said MoP Guidelines, the Industry, Energy and Labour Department, GOM issued amended order i.e. Resolution Letter No.

2016/P.No.520/Energy/4 on 31.5.2017 thereby increasing, *inter-alia*, the compensation to be provided by the TSP to the land owners as under:

Notification dated 1.11.2010 (as on cut-off date)			GOM Notification dated 31.5.2017 (after the cut-off date)	
Land Category	Land Type	Land Compensation	Compensation for Tower Base Area (between four legs) impacted severely due to installation of tower structure.	200% of Ready Reckoner Rate.
A)	Non-Irrigated Agricultural Land	25%		
B)	Irrigated Agricultural Land	50%		
C)	Fruit Orchard Land	60%		
D)	Non-Agricultural Land	65%		

101. Similarly, on the basis of the said Guidelines, Department of Revenue and Disaster Management, Government of Chhattisgarh issued amended order No K/F-7-7/Sat-1/2014 on 1.6.2016 thereby increasing, *inter-alia*, the compensation to be provided by the TSP to the land owners to 85% of the prevalent market value of the land utilized for installing the towers for establishment of 132 kV transmission lines or lines having higher power. The comparison of the compensation payable as per old and new notification is as under.

Particulars	Notification dated 20.02.2015 (As on cut-off date)	GOC Notification dated 01.06.2016 (After the cut-off date)
Compensation for Tower Base Area (between four legs) impacted severely due to installation of tower structure	50% of market value of land	85% of Market Value of land
Compensation towards diminution of land value in width of Right of Way	20% of market value of land for the width of ROW directly below two conductors i.e. as per notification it is clearly	15% of Market Value of Land for the width of ROW between the two conductors. The width of ROW (in metres) between two conductors will be considered as under –

Particulars	Notification dated 20.02.2015 (As on cut-off date)	GOC Notification dated 01.06.2016 (After the cut-off date)		
(ROW Corridor)	mentioned that compensation should be provided as per width of conductor to conductor based on tower projections. Accordingly, as per the design, distance between two conductors is as below taking into consideration the minimum clearance specified under IS / Electricity Rule / CBIP manual: 765 KV D/C (Suspension Tower): 25.6m	Sr. No.	Transmission Voltage	Width between Two Conductors
		1	66 kV	18m
		2	110 kV	22 m
		3	132 kV	27 m
		4	220 kV	35 m
		5	400 kV	46 m
		6	500 kV	52 m
		7	765 kV	64 m
		8	800 kV	67 m
		9	1200 kV	89 m
		i.e. as per above table, the distance considered is as entire width of ROW Corridor instead of conductor to conductor separation.		
Compensation applicability	For compensation the damages caused to land on account of ROW for setting up of Transmission Tower and Transmission lines transmitting power at 132 kV or above.	For compensating the damages caused to land on account of ROW for setting up of Transmission lines transmitting power at 66 kV or above.		

102. According to the Petitioner, the order issued by Government of Maharashtra and Government of Chhattisgarh for making the compensation for RoW by the TSPs qualifies as Change in Law under the TSA.

103. It is noted that this Commission had considered the GOM notification dated 31.5.2017 in order dated 29.1.2021 in Petition No 264/MP/2020 and allowed it as Change in Law as under

“56. In the present case, the Petitioner has, apart from guidelines of MoP dated 15.10.2015, also relied upon the Policy issued by the Government of Maharashtra after the cut-off date which provides for rate of land compensation to the land owners for transmission tower base and for RoW corridor under the transmission line. According to

the Petitioner, the Policy issued by the 'Indian Governmental Instrumentality' qualifies as 'Law' under the TSA and that this Policy has been implemented by the revenue authorities of Government of Maharashtra for raising demand for compensation on the Petitioner requiring the Petitioner to make payment as per the same. It would be apt to quote the translated version of above Policy issued by the Government of Maharashtra submitted by the Petitioner:

"Policy to be adopted for payment of compensation for the land laying/coming under the transmission lines and increase in the rate of compensation for the land covered by the towers to be erected/constructed for the installation of the High-Tension transmission lines of 66 kv or more

*State of Maharashtra
Industry, Power & Labour Department
Govt. Order No. :Dhoran-2016/Pra.Kra.520/Urja-4
Ministry, Mumbai – 400 032.
Date : 31 May, 2017*

*Reference: 1) Govt. Order No.: Sankirna 0210/Pra.Kra.29/Urja-4 Dt.01/1/2010
2) Central Govt. Letter No. 3/7/2015-Prareshan, Dt. 15/10/2015.
3) Govt. Letter, Industry, Power & Labour Deptt. Kra. Sankirna-
2015/pra.kra.398/Urja-4 Dt. 25/08/2015.
4) Mahapareshan Co. letter no. mravipakam/sanka/13279 Dt. 16/12/2016*

Preface:

Under section 164 of India Electricity Act 2003 as well as u/s 10(D) of Telegraph Act 1885 and also as per Maharashtra Govt. Order No.06/CR 312/4, dt. 24/08/2006, the High Power Transmission Company has the powers for lying of transmission lines and erection of towers for the same. Moreover, while exercising this powers there are provisions also for payment of compensation to those to whom damages have been caused due to lying of transmission lines an erection of towers.

There are number of government and private transmission companies and license holders who are engaged in the business of lying of transmission lines of 66 kv or more which are entrusted with the job of looking after the transmission and repairs and Renovation etc. While during practical work of installation of transmission lines and renovation of existing lines there is a protest by the farmers and landowners for the compensation from whose lands these transmission lines are passing. At present in accordance with the state order dt. 1/11/2010 and decision therein the compensation for the land covered under the towers is given to the farmers and landowners. However, there is a consistent demand by the farmers and landowners to the state government for increase in the compensation as well as compensation for that land also which is coming under the installation line. Therefore this demand by the farmers and landowners was under consideration by the state government. In this respect after taking into consideration the guidelines issued by the state government as per Ref. no.2 above and also as per the direction given in the meeting of Hon. Chief Minister and the minister (Power) the High Transmission Company had submitted the proposal to the state government as per Ref. no.4 above then after at the meeting held with the Chief Minister on 16/5/2017 and as per the decision taken thereat, for taking a policy decision, a note was produced on 22/5/2017 in the cabinet meeting and as per the decision arrive there at the policy is decided as hereunder as per the decision of the state government while Ref. no. 1 above.

The Decision of the State Government:

Maharashtra State Transmission Company and all other license holders companies are hereby permitted to pay compensation for the land taken for installation of towers for transmission lines (without acquiring the said land).

1. The compensation of the area covered under the High Tension tower should be given in accordance with the State Ready Reckoner prevalent/ in force in the said area as implemented /decided by the state level committee from time to time which should be double the valuation of the Ready Reckoner.

2. The compensation for the land area below the very heavy tension line (wire corridor) will be paid 15% of the Ready Reckoner fixed by the State government which is prevalent in the said area from time to time.

3. The compensation for the damages to the crops, fruits and other trees if any shall be paid in accordance with the policy prevalent at that time.

4. This compensation policy shall be applicable to the Maharashtra Rajya Vidhyut Transmission Company – MARYA, Power Grid Corporation of India Limited, other government and private transmission license holders who are erecting transmission line of 66 kv and of more capacity such as High Tension HVC /DC transmission lines also.

5. This compensation policy shall be applicable to all the area of the Maharashtra state except Bruhan Mumbai Mahanagar Palika and its suburban area. So far as the compensation for the land of the city area upon which High Tension Transmission lines are to be laid is concerned the Central government vide its letter dt. 11/8/2016 has constituted a committee at the central level. After receipt of the necessary guidelines from the said committee the policy for Bruhan Mumbai Mahanagar Palika and its suburban area will be made applicable.

6. In the city area where it is not possible to construct traditional towers thereat if technically possible, monopole tower, narrow base tower, Bahu path tower, special tower should be erected and high ampacity conductor and also new technology for cable utilization should be used.

2. Date of implementation:

This new policy is applicable and implemented from the date of decision taken by the state.

3. Implementation Committee at district level:

3.1 The district collector shall constitute a committee in accordance with the government letter no. sankirna-2015/pr.a.kra.398/Urja-4, dt.25/08/2015 for deciding the compensation of the land which is covered under the high tension tower and the land below the transmission line

<i>Sr. No.</i>	<i>Officer</i>	<i>Designation</i>
<i>1.</i>	<i>Dy. Division Officer (District Officer)</i>	<i>President</i>
<i>2.</i>	<i>Dy. Supdt. land Revenue</i>	<i>Member</i>
<i>3.</i>	<i>Town/Dist. Agriculture officer</i>	<i>Member</i>
<i>4.</i>	<i>The Representative of the concerned transmission license holder company (high transmission, power grid,</i>	<i>Member</i>

	<p><i>Maharashtra Eastern grid power trans. Co. E.) The Representative of the concerned transmission license holder company (high transmission, power grid, Maharashtra Eastern grid power trans. Co. E.)</i></p>	
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3.2 The said committee shall, within its division shall conduct the admeasurement of the land covered by the tower and also of the land coming below the transmission line and decide the valuation thereof and decide the amount of compensation.

3.3 If the compensation decided by the committee is not agreeable to the concerned land owner, he shall be entitled to lodge an appeal to the district collector. If the district collector is satisfied that the appeal is reasonable, he shall ask/order the committee for revaluation. In this matter all the powers shall vest in the collector.

4. Procedure for implementation of Policy.

....

6. Procedure for payment of compensation:

6.1 Procedure for compensation of the land lying below the tower and the transmission lines:

The compensation for the land covered under the tower shall be paid in two instalments. The first instalment shall be paid after lying foundation (plinth) and second will be paid after the erection of tower. The land from which transmission line is laid, the third instalment compensation should be paid of the land below the wires only after physical and actual installation of such line.

6.2 The compensation only for the land below the transmission wires: The land from which only the transmission wire has passed, the compensation for land below such wires will be paid only after physical and actual installation for this purpose the procedure is specified in the annexure herewith.

6.3 Compensation for Crops/Fruits & Trees : Over and above the compensation, the damages caused to the crops/ fruits and trees and other trees whatever during the laying foundation (plinth) of the tower, construction and transmission line installation, shall be paid in two instalments.

7. In case of transfer/ change of ownership of the land the new owner shall not be entitled to any compensation whatsoever.

8. State government, local self government, local authority, municipality, municipal corporation, MMRDA, State sponsored public projects, national highway authority, public park, amusement centre, mithagare, special economic zones, main/small ports, rivers & beaches, sports centre, granted and non-granted institutions, etc. are not entitled to be any compensation for the land covered by the tower and land under the transmission lines. Only under exceptional circumstances the concerned transmission company shall be able to take the decision. In the same way the compensation for the land under the central government or under the railway authority should be paid in accordance with the rules and procedures of the concerned ministry.

9. In case of enhancement in the capacity of the existing transmission lines or renovation thereof, the compensation should be paid only after the land below the tower and for additional land occupied below the transmission line.

10. For settlement and solution of any problems in implementation of this decision or if any clarification arises, a committee under the chairmanship of chief secretary (power) should be constituted for settlement of the same. The rep. of Transmission Company and Power Grid Co. of India should be included in the said committee. The chief engineer, state transmission (project) shall be the chief secretary and member of the committee.

11. This order of the state government is issued after consultation and concurrence of the town planning department, revenue, forest and finance department and in response to the concerned given by the finance department vide its ref. no.122/2017 dt.19/4/2017 and is hereby issued.

This decision of the Maharashtra government's is available on the www.maharashtra.gov.in and its code is 201706011123568510. This order is generated though digital signature.

Under name and order of the Governor of Maharashtra.

....”

57. In the present case, as on cut-off date, the prevalent Policy governing the land compensation for laying of transmission line in the State of Maharashtra was the GR of 2010 dated 1.11.2010 issued by Industry, Power & Labour Department, Govt. of Maharashtra. According to the said GR of 2010, compensation for tower base was categorized into four categories, namely, 25% of market value for dry irrigated lands, 50% of market value for wet irrigated lands, 60% of market value for irrigated and fruit bearing land and 65% of market value for non-agricultural land, but there was no provision for land compensation along the corridor of transmission line. However, as per new Policy dated 31.5.2017 issued by Industry, Power & Labour Department, Government of Maharashtra, compensation for tower base is required to be paid as twice the total amount of ready reckoner rate/market rate irrespective of type of land and in addition, 15% of the total amount of ready reckoner rate/market rate for the transmission line corridor (except for the Brihan Mumbai Municipal corporation and its suburban area).

58. MPPMCL has submitted that the document of the Government of Maharashtra relied upon by the Petitioner is not a 'notification' and that it cannot qualify to be a 'Law' under the TSA and also that it is merely a general Guidelines. Perusal of Policy dated 31.5.2017 issued by the Government of Maharashtra vide Government Order No. Dhoran-2016/Pra.Kra.520/Urja-4 reveals that it is a direction of the State Government which is binding on the State authorities for determination of compensation for RoW of transmission lines. 'Indian Government Instrumentality', as defined in the TSA is as under:

“.....”

59. Further, 'Law' has been defined in the TSA as under:

“.....”

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

61. In contrast with MoP's Guidelines, Policy of the Government of Maharashtra is not merely recommendatory, leaving any scope/discretion with the transmission licensee to act otherwise in the matters regarding compensation. The compensation rates as provided in the Policy are not recommendatory or advisory in nature but are to be applied by the State authority mandatorily as per the direction of the State Government. In other words, the Policy issued by the State Government prescribing the rates of land compensation for laying of transmission lines have clearly force of law.

62. One can argue that even prior to issuance of the Policy by the Government of Maharashtra, the district administration was awarding the land compensation for tower base and line corridor to the land owners and that the Petitioner could or ought to have factored into such scenario while submitting its bid. However, it cannot be disputed that the Change in Law in this case has only taken place upon the issuance of the aforesaid Policy by Government of Maharashtra. Consequently, the Petitioner shall be entitled to get relief to the extent of incremental amount paid as compensation.

63. In light of the above, we are of the view that Policy issued by the Government of Maharashtra regarding land compensation constitutes Change in Law in terms of the TSA and accordingly, the Petitioner is entitled to increase in transmission charges on account of additional expenditure incurred towards payment of land compensation in terms of the above Policy.”

104. It is noted that this Commission had considered the GOC notification dated 1.6.2016 in order dated 16.6.2021 in Petition No 453/MP/2019 and allowed it as Change in Law as under

“69. According to the Petitioner, the order issued by Government of Chhattisgarh for making the compensation for RoW by the TSPs qualifies as Change in Law under the TSA. It would be apt to quote the translated version of the above order dated 1.6.2016 issued by the Government of Chhattisgarh submitted by the Petitioner:

“Chhattisgarh Government
Revenue and Disaster Management Department
Mantralaya
Mahanadi Bhavan, New Raipur
//Amended Order//

New Raipur Dated 01/06/2016

K/F-7-7/Sat-1/2014:- Vide departmental order of even number dated 20/02/2015, provision for paying compensation and the rate at which the compensation shall be paid

has been determined for the land acquired or affected by the establishment of electricity transmission lines of 132 kv or more in the State.

2. Vide Government of India, Ministry of Power's letter no. 3/7/2015-Trans., dated 15 .10.2015 guidelines have been issued for assessment of compensation payable for "Right of Way" acquired over the land required to establish transmission line. Under these guidelines, the compensation has been decided by the Ministry of Power, Government of India for lines of 66kv or greater capacity in place of 132 kv, which is more than the rate fixed in the State.

3. Hence, to keep the State Government's rate of compensation in accordance with those of the Government of India, it hereby omits paragraph-4 of departmental order dated 20.02.2015 and substitutes it with new paragraph-4 as given hereafter in its place:-

4/ The abovementioned situation has been seriously contemplated upon. Accordingly, keeping the public interest in mind, for establishment of 132 kV transmission line or lines having higher power, the following decisions have been taken:

1. In addition to the compensation paid for the damage caused due to entry upon the land, the landowner will be given compensation equivalent to 85 percent of the prevalent market value of the area of land utilised for installing the tower.

2. The compensation will given up to 15 percent of the market value of the land covered by the external ends of the wire connecting towers. For this, the width of both external wires will be determined as given hereunder:

Sr. No.	TRANSMISSION CAPACITY	WIDTH OF BOTH EXTERNAL WIRES (in metres)
1	66 KV	18m
2	110 KV	22m
3	132 KV	27m
4	220 KV	35m
5	400 KV	46m
6	500 KV	52m
7	765 KV	64m
8	800 KV	67m
9	1200 KV	89m

. The amount to be given as above will only be compensatory. The land will remain registered in the ownership of the earlier landowner.

4. Notwithstanding anything to the contrary provided in any other rule, compensation for any agricultural land will be payable based on its prevalent market value and compensation for any non-agricultural land will be payable based on its prevalent market value.

5. This compensation will be payable only for the electricity transmission line. Electricity distribution lines are not included in this.

In the name and as per the order of the Governor of Chhattisgarh

(K.R. Pisda)
Secretary,
Chhattisgarh Government
Revenue and Disaster Management Department
Raipur, Date: 01/06/2016

.....
70. Perusal of the above order issued by the Government of Chhattisgarh reveals that it is a direction of the State Government which is binding on the State authorities for determination of compensation for RoW of transmission lines.

71. Government of Chhattisgarh, being the State Government, is an Indian Governmental Instrumentality in terms of the TSA. Therefore, the order dated 1.6.2016 issued by Department of Revenue and Disaster Management, Government of Chhattisgarh, being after the cut-off date, qualifies as a Change in Law event in terms of Article 12.1.1 of the TSA.

72. Accordingly, the Petitioner is entitled to increase in transmission charges on account of additional expenditure incurred towards payment of land compensation in terms of the above order of the Government of Chhattisgarh.”

105. The present matter is squarely covered under the order dated 29.1.2021 in Petition No 264/MP/2020 and order dated 16.6.2021 in Petition No 453/MP/2019. Thus, the Petitioner is entitled to increase in transmission charges on account of additional expenditure incurred towards payment of land compensation in terms of the above orders of the Government of Maharashtra and Chhattisgarh.

106. However, it is noted that as on cut-off date, compensation payable for land covered under the transmission lines corridor (i.e. land covered by the external ends of the wire connecting towers) in terms of Government of Chhattisgarh's order dated 20.2.2015 was up to 20% of the market value of such land. Subsequently, vide order dated 1.6.2016, the compensation payable for the land covered under the transmission line corridor has been specified as up to 15% of the market value of such land. Accordingly, we direct that while claiming the additional expenditure incurred towards payment of land compensation for the installation of towers, the Petitioner will also factor into the savings, if any, resulted on account of reduction in the rate of compensation payable for the land covered under the transmission line corridor. In

case this reduction has not resulted into any savings to the Petitioner, the Petitioner will furnish an undertaking to the effect to the LTTCs/ beneficiaries.

(f) Change in configuration of type of towers to 'D'-'D' at both sides of the power line crossing

107. As per the Petitioner, Chhattisgarh State Power Transmission Company Limited (CSPTCL) and PGCIL had rejected all power crossing proposals with DHC and DHB type towers and insisted on using 'DHD' type towers though there is no such requirement in either the Electricity Rules or any standards or RFP. CEA held two meetings to discuss the issue of power line crossing. During the second meeting, CEA decided that Power line crossing for 400 kV and above should be done only with 'D-D' type towers. Consequently, the Petitioner had to incur an additional expenditure of Rs 3.657 crore towards installation of towers with 'D-D' configuration. It has been contended by the Petitioner that this amounts to a change in "requirement" for obtaining a "consent/clearance" and the same amounts to "Change in Law" as per Article 12 of the TSA.

108. **Per contra**, the Respondent MPPMCL has submitted that the Commission vide order dated 16.06.2021 in Petition No. 453/MP/2019 has dealt with the issue regarding DD tower and held that requirement for DD Tower is not the Change in Law issue. Since, the Commission has already settled the legal position that requirement of DD tower doesn't fall under the four walls of the Change in Law definitions, the said claim of the Petitioner ought to be rejected. MSEDCL has also rejected the claim of the Petitioner on the ground that the Electricity Rules do not specify any type of tower for construction of transmission line or crossings of transmission lines. It has been further submitted by MSEDCL that PGCIL being CTU, in its User's Manual circulated in June 1996 for construction of Transmission line has categorically mentioned where the 'D'

type of tower is to be utilized. Karnataka Power Transmission Corporation limited in its detailed surveying report published on 03.03.2014 has also recommended the use of 'D' types of towers on both sides for power line crossings. MSEDCL has relied on the minutes of meeting convened by CEA on 16.09.2016 to indicate that it was agreed during the meeting that 'D' type tower at both ends of power line crossing has to be used and the Petitioner agreed that TSPs would take up with their management to see if the differential cost could be absorbed by the TSPs.

109. PGCIL in its reply has submitted that it cannot be put at fault for the Petitioner regarding the requirement of D-D type angle towers for power line crossings. It has been contended that the change has been undertaken by the Petitioner post directions issued by the CEA in exercise of its statutory power during a meeting convened by CEA. The meeting conducted by CEA was a consultative process in which the Petitioner itself, amongst other stakeholders, agreed that D-D type angle towers for power line crossings would be in the interest of grid safety and grid security. Therefore, the requirement of D-D type tower for power line crossing (especially high voltage lines) does not entitle the Petitioner to seek any form of indemnification for any cost escalation on account of same from PGCIL. PGCIL has denied that the Petitioner was purportedly compelled to modify its tower configuration on the insistence of PGCIL which is purportedly an "Indian Government Instrumentality/statutory body" as PGCIL's role is not in the capacity of being the Central Transmission Utility but only in the capacity of a transmission licensee which had a pre-existing transmission line proposed to be crossed by the Petitioner's transmission line.

110. The Petitioner vide its rejoinder dated 1.7.2021 to reply filed by PGCIL has clarified that the Petitioner has not sought any compensation from PGCIL. The

Petitioner is seeking adjustment of tariff on account of the Change in Law events strictly in terms of Article 12 of the TSA.

111. Vide its written submission dated 4.9.2022, the Petitioner has tried to differentiate its case with Petition No 453/MP/2019 by relying on Regulation 89(1)(d)(ii) of CEA (Technical Standards for Construction of Electrical Plants and Electric Lines) Regulations, 2010, IS 802: '*Use of Structural Steel in Overhead Transmission Line Towers - Code of Practice*' (August 2015), IS 5613 (Part-3), RFP dated 13.04.2015 , Clause 11.3.2 of the Manual on Transmission Lines issued by Central Board of Irrigation and Power (in July 2014) and PGCIL's User's Manual of Construction - Transmission Lines (June 1996). The Petitioner has contended that the Petitioner Sipat Transmission Ltd in Petition No 453/MP/2019 had neither shown nor had this Commission considered the aforesaid documents which clearly show that there was no specific requirement to install D type towers at both ends, for powerline crossings at the time of bid submission. It has been further submitted by the Petitioner that Sipat Order is *sub silentio* qua the relevant legal framework as on bid cut off date and under no circumstance can the decision taken by CEA in the meeting dated 16.09.2016 while exercising its statutory function can be said to be '*only a consensus amongst the various stakeholders*'. The stakeholders (either the TSPs or the transmission licensees) have no power to formulate, standardise or enforce such new grid standards, unless the same is approved by CEA.

112. We have considered the submissions made by the Petitioners and Respondents. The issue of D-D type tower was decided by the Commission by order dated 16.6.2021 in Petition No. 453/MP/2019 and had held that as per Article 5.1.1 of the TSA, the Petitioner is responsible for designing, constructing, erecting, completing

and commissioning each element of the Project by the scheduled COD, at its own cost and expense. Further, in accordance with Article 5.1.3 of the TSA, the Petitioner is responsible to obtain all consents, clearances and permits including approval for crossings in order to carry out its obligations under the TSA in general and Article 5.1.1 in particular. It is the responsibility of the Petitioner under the TSA to obtain consents/clearances by fulfilling the desired criteria. Accordingly, we opine that imposition of the requirement of installation of 'D' type towers on both the side of power line crossing for obtaining clearance from PGCIL and CSPTCL is not admissible under Change in Law.

113. The above decision of the Commission is squarely applicable in the present case and, accordingly, the Petitioner is not entitled to increase in transmission charges on account of additional expenditure incurred towards installation of 'D' type tower on both the side of the power line crossing.

114. During the hearing held on 22.8.2022, the Petitioner submitted that grid safety was maintained prior to the CEA intervention with one type higher tower or with one side D type tower having adequate margin and deviation angle. The Petitioner alleged that PGCIL followed similar practices in case of Adani Mundra HVDC Line, Vemagiri and Nagapattnam projects. In terms of the direction of the Commission, PGCIL has submitted clarification regarding above lines vide its affidavit dated 6.9.2022. PGCIL has informed that it crossed the Mundra - Mohindergarh HVDC line by its 765 kV Powergrid Bhuj - Banaskantha line with D-D type configuration. As regards 765 kV D/C Solapur-Aurangabad line crossing 400 kV D/C Parli-Pune transmission line and 765 kV D/C Aurangabad-Padge transmission line crossing 400 kV Aurangabad- Pune transmission line, it has been clarified by PGCIL that these crossings were

implemented in 2014 which is much before power line crossings were standardized by CEA in its meeting held on 16.9.2016 and were implemented based on D-A-D type tower configuration. In response, the Petitioner vide its affidavit dated 22.9.2022 has contended that the submissions made by PGCIL in its affidavit dated 6.9.2022 has made it apparent that until the requirement to use DD type tower for powerline crossing was standardized by CEA on 16.9.2016, the Petitioners were at liberty to use DA and DB type towers with suitable extensions.

115. It is noted that similar contentions were raised by Sipat Transmission Ltd during the remand proceedings of Petition No. 453/MP/2019 when the Appeal No. 238 of 2021 filed by Sipat Transmission Ltd. was remanded to the Commission by Appellate Tribunal for Electricity vide judgment dated 27.9.2022 for fresh view, *inter-alia*, on the issue of change in configuration of towers to 'D'-'D' on both sides of the power line crossing after seeking opinion of Central Electricity Authority (CEA).

116. After considering the submissions made by the Petitioner and the Respondents along with opinion dated 12.12.2022 submitted by CEA during the remand proceedings, the Commission vide order dated 15.2.2023 rejected the similar contentions raised by Sipat Transmission Limited and decided not to interfere with its earlier decision in order dated 16.6.2021 in Petition No 453/MP/2019. The relevant extract of the order dated 15.2.2023 is as under:

24. After pursuing abovesaid quoted CEA opinion, submissions of PGCIL & CSPTCL and standards we conclude as follows:

(a) CEA in its meeting held on 16.9.2016 emphasized the safety and security concerns while erecting a transmission line of 400 kV or 765 kV stating that 400 KV as well as 765 kV lines carries huge quantum of power and in the event of their failure due to collapse of tower would lead to huge financial loss due to failure of power transmission and long outage, and the grid security due to failure

HVAC system is also to be ensured. CEA also noted that Railways are strictly following the practice of line crossing with only “D-D” towers.

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(e) All the standards, be IS or CBIP manual or CEA standards or the Indian Electricity Rules, 1956 keep safety and reliability of transmission lines as the main criterion while designing any transmission line. ‘D’ type tower configuration was in place much prior to CEA meeting on 16.9.2016 and was being actively used for power line crossing as stated by PGCIL in its submissions.

26. In the instant case, it was the Petitioner’s assumption while bidding that ‘B’ and ‘C’ type towers would be allowed by transmission licensees whose line it is going to cross. Such assumption was clearly without it having inquired as to conditions and procedures for obtaining the line-crossing permission with concerned transmission licensees. Admittedly, it is not the case wherein the PGCIL & CSPTCL altered their stand with regard to the requirement of D-D type towers for line crossing pre & post bidding. In our view, PGCIL as well as CSPTCL were well within their rights to ensure that their existing lines are safe and do not become vulnerable due to crossing of a new line of the Petitioner. Whatever PGCIL or CSPTCL asked the Petitioner was in consideration of safety requirement of the transmission lines and very much as per IS standards as well as various standards as quoted in the instant order and was not in departure from these standards. Hence, the requirement of D-D type towers for transmission line crossing by PGCIL & CSPTCL, at best, merely challenges the assumption of the Petitioner at the time of bidding which as we have already noted above was without any basis or inputs from the concerned transmission licensees whose line the Petitioner was required to cross. The meeting in CEA was to facilitate a discussion and did not change any law, since the requirement imposed on the Petitioner was very much existing even before the CEA meeting, which the Petitioner complied in case of PGCIL after discussion in CEA but complied in case of CSPTCL without any discussion in CEA.

27. In light of the above, we do not find any need to interfere with our earlier decision in order dated 16.6.2021 in Petition No 453/MP/2019. Accordingly, the claim of Change in Law on the above ground is devoid of merits.

117. In light of the above, the Petitioner is not entitled to increase in transmission charges on account of additional expenditure incurred towards installation of “D” type tower on both the side of the power line crossing.

(g) Carrying Cost

118. The Petitioner has claimed carrying cost for the costs incurred due to the Change in Law events. It has been submitted that carrying cost is in the nature of

compensation for money denied at the appropriate time. It has been further submitted that compensation is a comprehensive term and is aimed at restoring a party to the same position as if no injury was caused to it. The denial of carrying cost would defeat the underlying principle of restitution which is the cornerstone of Change in Law relief. The Petitioner has submitted that Change in Law being a restitutive provision ought to be given a wider interpretation. In support of its arguments, the Petitioner has relied on various judgments of Hon'ble Supreme Court in *Uttar Haryana Bijli Vitran Nigam Ltd. vs. CERC & Anr.* (2019) 5 SCC 325; *R.C. Cooper vs. Union of India*: AIR 1970 SC 564; *N.B. Jeejeebhoy vs. Assistant Collector, Thana Prant, Thana*: AIR 1965 SC 1096; *Yadava Kumar vs. The Divisional Manager, National Insurance Co. Ltd. and Anr.*, (2010) 10 SCC 341; *Rathi Menon v. Union of India*, (2001) 3 SCC 714; *Sandvik Asia Ltd. v. CIT*, (2006) 2 SCC 508; *Clariant International Ltd. v. Securities & Exchange Board of India*, (2004) 8 SCC 524 and *Energy Watchdog v. Central Electricity Regulatory Commission & Ors.* (2017) 14 SCC 80 (para 57). The Petitioner has also relied on the judgments of Appellate Tribunal for Electricity (APTEL) in Appeal No 150 [*SLS Power Ltd vs APERC*] and Appeal No 210 of 2017 [*Adani Power Ltd vs CERC & Ors*].

119. **Per Contra**, the Respondent MPPMCL has submitted that there is no provision in the TSA to pay carrying cost on the Change in Law amount and the judgments relied on by the Petitioner are related to PPA with generating company. These judgments are not relevant and cannot be considered here, as the matter is related to TSA with transmission Licensees.

120. We have considered the submissions made by the Petitioner and the Respondents. 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').

121. 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:

“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. The Petitioner is thus entitled to receive relief in terms of carrying cost in order to be fully compensated during construction as well as operating period in accordance with Article 12.2.1 read with Article 12.2.2 and Article 12.2.4 of the TSA.

44. The Petitioner has claimed carrying cost at the rate of Late Payment Surcharge. In this regard, the Petitioner has relied on the judgment dated 22.03.2022 in Rattan India Power Limited vs. Maharashtra Electricity Regulatory Commission and Anr., Appeal Nos. 118 of 2021 and 40 of 2022 of the APTEL.

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

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

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

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

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."*

122. In line with above, the Petitioner shall be eligible for carrying cost on the approved Change in Law events from the COD to 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.

123. 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 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 Telangana Northern Power Distribution Company Ltd. & Anr. V. Parampujya Solar Energy Pvt. Ltd. & Ors.

Issue No. 3: What reliefs, if any, should be granted to the Petitioner in the light of the answers to the above issues?

124. 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 Five Crore Twenty Lakh (Rs. 5,20,00,000) 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 percent (0.32%) of the Non-Escalable Transmission Charges.

12.2.3 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.”

125. Accordingly, as per Article 12.2.1 of the TSA, for every cumulative increase/decrease of each rupees Five Crore twenty lakh in the cost of the Project upto the Scheduled COD 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.

126. In light of the above, the Petitioner shall be compensated on account of the Change in Law events allowed in this order during the construction period. For every cumulative increase of each rupees five crore twenty lakh in the cost of the Project up to the Scheduled COD of the Project on account of Change in Law events allowed in this order, the Petitioner's non-escalable transmission charges shall be increased by 0.32%.

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

128. After COD of the transmission system, the Petitioner's asset has been included in the PoC pool and the Petitioner has been recovering its transmission charges through PoC mechanism under 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 by the CTU in accordance with the provisions of Regulation 15(2)(b) (second bill to the DICs) of the Central Electricity Regulatory Commission (Sharing of inter-State transmission Charges and Losses) Regulations, 2020.

Summary of Decisions

129. The summary of our decisions with regard to the claims of the Petitioner is as under:

Sr.No.	Change in Law	Allowed/Disallowed
1	Levy of Swachh Bharat Cess, levy of Krishi Kalyan Cess and increase in Maharashtra Value Added Tax	Allowed
2	Increase in Basic Customs Duty on primary aluminium products	Allowed
3	Introduction of Goods and Service Tax (GST) including on Right of Way compensation	Allowed
4	Increase in compensation to be paid to landowners for Right of Way of transmission lines in the States of Maharashtra and Chhattisgarh.	Allowed
5	Change in the configuration of tower to 'D – D' type at both sides of the crossing	Disallowed
6	Carrying Cost	Allowed subject to orders of the Hon'ble Supreme Court in Civil Appeal No. 8880 of 2022 in Telangana Northern Power Distribution Company Ltd. & Anr. V. Parampujya Solar Energy Pvt. Ltd. & Ors

130. The Petition No. 538/MP/2020 is disposed of in terms of the above.

Sd/-
(P.K. Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I.S. Jha)
Member