

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 11/MP/2023

Coram:

Shri Jishnu Barua, Chairperson

Shri I. S. Jha, Member

Shri A. K. Goyal, Member

Shri P.K. Singh, Member

Date of Order: 20th January, 2024

In the matter of:

Petition under Section 79 (1)(b) of the Electricity Act 2003 seeking approval of this Hon'ble Commission for entering into an Agreement with the Indian Railways for Gati Multi-modal Cargo Terminal under Gati Shakti Multi-Modal Cargo Terminal (GCT) Policy 2021.

And in the matter of:

Maithon Power Limited (MPL)

Through its Chief Executive Officer

Corporate Center, 34 Sant Tukaram Road,

Carnac Bunder, Mumbai, Maharashtra- 400009

----- Petitioner

Vs

1. Tata Power Delhi Distribution Limited (TPDDL)

Through its Authorized Representative

Hudson Lines, Kingsway Camp, Delhi-110009.

2. Damodar Valley Corporation (DVC)

Through its Authorized Representative



Having its Head Quarters at DVC Towers,
VIP Road, Kolkata-700054.

3. West Bengal State Electricity Distribution Company Ltd. (WBSEDCL)
Through its Authorized Representative
Vidyut Bhawan, Bidhan Hagar,
Block DJ, Sector-II, Salt Lake City,
Kolkata-700091.
4. Kerala State Electricity Board Limited (KSEBL)
Through its Authorized Representative
Vydyuthi Bhavanam, Pattom,
Thiruvananthapuram, Kerala- 695004.
5. Tata Power Trading Company Limited (TPTCL)
Through its Authorized Representative
Shatabdi Bhawan, B-12 & 13,
Sector 4, Noida, UP-201301.

----- Respondents

ORDER

The Petitioner, Maithon Power Limited, has filed the instant petition under Section 79(1)(b) of the Electricity Act 2003 seeking approval of the Commission for entering into an Agreement with the Indian Railways for Gati Multi-modal Cargo Terminal under Gati Shakti Multi-Modal Cargo Terminal (GCT) Policy 2021.

2. The Petitioner has made the following prayers in the instant petition:

“

(a) Allow the present Petition.

(b) Grant approval to the Petitioner for executing the standard Agreement with Indian Railways under the GCT Policy, 2021 and transfer the railway assets created on the Railway Land; and



(c) Grant approval to the Petitioner to transfer the railway assets created on non-Railway land, if required subsequently under the GCT Policy, 2021.

(d) Pass such further Order(s) as this Hon'ble Commission may deem fit in the facts and circumstances of the case.”

Background:

3. The petitioner, Maithon Power Limited, is a Joint Venture between Tata Power Company Limited (Tata Power) with an equity participation of 74% and Damodar Valley Corporation (DVC) with an equity participation of 26% of the generating station. The Petitioner is a 'generating company' as defined under Section 2(28) of the Electricity Act, 2003 (hereinafter referred to as 'the Act, 2003') and has set up Maithon Right Bank Thermal Power Project, having installed capacity of 1050 MW (2 x 525 MW) at Dhanbad, Jharkhand. The COD of unit I and unit II of the said Station are 1.9.2011 and 24.7.2012, respectively.

4. The Petitioner had contracted the entire Installed Capacity of the Project by entering into Power Purchase Agreements (PPA) with Respondents No. 1 to 4 i.e. Tata Power Delhi Distribution Limited (TPDDL), DVC, West Bengal State Electricity Distribution Company Ltd (WBSEDCL) and Kerala State Electricity Board Limited (KSEBL) and Power Sale Agreements (PSA) with Respondent No. 5 i.e. Tata Power Trading Company Limited (TPTCL). The details in brief are as follows:

Sl. No.	Generators/Distribution & Trading Licensee	Contracted Capacity (MW)
1.	DVC	150
2.	KSEBL	300
3.	TPTCL (back to back with TPDDL)	300
4.	TPTCL (back to back with WBSEDCL)	300

5. In the present case, the Railway Infrastructure Project of the Petitioner was planned to be commissioned by 31.03.2021 as per the submission of the Petitioner in Petition No. 408/GT/2020 filed on 31.01.2020. However, as claimed by the Petitioner,



the Project got delayed on account of various uncontrollable factors which were beyond the control of the Petitioner.

6. On 15.12.2021, the Ministry of Railways, Government of India, issued GCT Policy 2021 to boost investment from industry in the development of additional terminals for handling rail cargo. As per this Policy, all new as well as under-construction / under-approval Cargo Terminals shall be covered by GCT Policy 2021.

7. Subsequently, Indian Railways issued certain amendments to the GCT, 2021 including the issuance of model agreements for GCT private land and entirely/partially on railway land. On 07.07.2022, the Railway Board and the Ministry of Railways issued model Agreements under GCT Policy 2021 for GCT on Private Land and for GCT entirely/partially on Railway Land. In the present case, GCT is partially on the Railway land and partially on private/government land. Following are the relevant clauses of the model Agreement for GCT (fully/partially) on Railway land:

- a. *For the linear connectivity portion of GCT passing through the Railway land, GCTO shall provide only the minimum essential infrastructure of track, OHE and signalling equipment at the cost of GCTO and other assets not related to track, signalling, or OHE, if required, shall be constructed by Railways at its own cost.*
- b. *Ownership of infrastructure including the track, signalling equipment and OHE created on Railway land under Clause 5.1.1 of GCT Policy 2021 shall belong to Railways & even though the capital cost for these shall be borne by the GCTO.*
- c. *Operation and Maintenance (O&M) of assets created under Clause 5.2 of GCT Policy 2021 (common-user traffic facilities) at the serving station including staff costs, shall be the responsibility of the Railways.*
- d. *Responsibility of security of railway assets over Railway land shall be of Railways. However, the responsibility of security of railway assets outside Railway land or on land licensed to GCTO shall be of GCTO.*
- e. *Maintenance of assets on Railway land (excluding the Railway land licensed to GCTO), including Track and Signalling Equipment installed on*



Railway land under para 5.1.1 of the policy, shall be done by Railways at its own cost.

8. The Petitioner submitted that for the transfer of assets under GCT Policy 2021, the Petitioner is required to enter into an Agreement with Indian Railways, the format for which has been specified by the Ministry of Railways. The Petitioner shall come back with the actual completed cost of the Project at the time of true-up for approval of minor cost variation, if any, due to said force majeure reasons. The said variation is expected to be more than fully compensated by a lower tariff for the delayed period, and the variation is not due to any impact of GCT Policy 2021.

9. The ownership of infrastructure, including the track, signalling equipment and OHE created on Railway land, by the Petitioner needs to be transferred to Indian Railways. Hence, the present Petition has been filed for seeking approval of the Commission to enter into an Agreement with the Railways.

10. The Petitioner has filed the instant petition seeking its approval for executing an Agreement with Indian Railways under the GCT Policy, 2021 and transfer of ownership of assets (track, OHE and signalling equipment) created on Railway/non-railway land to the Railways free of cost.

11. In line with the GCT 2021, the Petitioner has completed all the prerequisite formalities with Indian Railways, including an undertaking that it will abide by all provisions of the GCT 2021. Accordingly, the Indian Railways issued commercial notification of provisional opening of railway siding and allowed its operation from 09.03.2022 i.e. India's first private siding under GCT policy, 2021.

Submission of the Petitioner

12. In 2008, the Petitioner planned a Railway Infrastructure Package ("Railway Project") to facilitate coal transportation to and ash disposal from the Generating Station. This project was planned to be executed in three phases, wherein Phase I was for the existing 2 x 525 MW capacity and Phases II and III were for capacity expansion, i.e. 2 x 660 MW. However, as the capacity expansion was dropped,



Phases II and III were also dropped. Phase I consisted of two stages, stage 1 and stage 2, details of the same are as follows:

Stage-1: Connection to Mugma line on down side forming "Y" Junction crossing NH Bridge and going to Merry Go Round ("MGR") system. This Stage was required to provide minimum connectivity to MPL from the Mugma side.

Stage-2: Take off from Thaparnagar Station, flying over the Dedicated Freight Corridor Corporation of India ("DFCCIL") alignment and connecting to "Y" Junction. This was required to provide the additional convenience of bringing rakes from both the Mugma & Thaparnagar sides.

13. The Petitioner in Petition No. 408/GT/2020 submitted that there had been a delay in the commissioning of the Railway Infrastructure Project due to various uncontrollable factors such as land acquisition, wrong claimants etc, and the issues were expected to be resolved by June 2020 and accordingly, the said Railway Project was envisaged to be completed by 31.03.2021. However, due to various uncontrollable factors such as COVID – 19, the cumbersome approval process delayed the process. In the meantime, the Petitioner was transporting coal through trucks / hyvas either from mines or the nearest Railway Siding, i.e. Damagoria, 25 km away from the Generating Station.

14. The Wagon Tippler, which was initially planned for unloading coal considering the Generating Station expansion plan, i.e., for 2 x 525 MW and 2 x 660 MW generation capacity at the then envisaged cost of Rs. 78 Crores, was not required as with the scrapping of the 2 x 660 MW expansion of the Generating Station, the wharf was sufficient for transporting coal and the Petitioner also had experience of unloading coal through wharf. Accordingly, the Petitioner requested approval from Railways in 2018 for a wharf rather than a Wagon Tippler for coal unloading under Phase I of the Railway Project, which was granted by the Railways.

15. Similarly, the initially envisaged fuel movement from the side of the Eastern Coalfield Limited ("ECL") mines was no longer required as the Fuel Supply



Agreement (“FSA”) was signed with Central Coalfields Limited (“CCL”) and Bharat Coking Coal Limited (“BCCL”), under which fuel movement was from the side of Thaparnagar station. This meant that the small loop-line work at Mugma station under Phase-I was also not required. Accordingly, the Petitioner completed all other works for Phase-I and requested Railways to allow these two deviations from DPR in the final approval. The cost estimate submitted to the Commission in Petition No. 408/GT/2020 also excluded these two items, and to this extent, the present tariff approved does not include the burden of these two assets.

16. On 24.11.2021, a meeting was held between the officers of Eastern Railway and the Petitioner regarding the operationalisation of the Petitioner’s private siding, pending completion of works at Mugma station and Wagon Tippler at Generating Station (part of Phase I of the Railway Project). In the meeting, Petitioner stated that the earlier maximum amount of coal linkage was scheduled from BCCL sources (from the Thaparnagar side) and only a small volume from ECL sources (from the Mugma side), however, contrary to the earlier plan, all of the coal rakes intended for the Generating Station are currently sourced from BCCL. Therefore, there was no need for the proposed loop at the Up-side of Mugma Station. In this regard, it was apprised by GM, Eastern Railway, that in the present Policy of the Railway Board, there is no provision to issue provisional notification for the opening of the siding pending some works. While Phase -II and III works are not coming in the near future, the siding may be opened once the completion certificate for Phase- I works is issued by the Division.

a) For the approval of deviation in DPR by Railway Board, GM, Eastern Railways advised the Petitioner to write to the Divisional Railway Manager (“**DRM**”), Eastern Railway, Asansol, giving reasons for delay in completion of Phase-I work and for deviation from DPR with proper justification. DRM, after examination of the issue, would forward it to the Railway Head Quarter for getting dispensation from the Railway Board, and once dispensation is issued from the Railway Board, the issue of pending works can be proceeded accordingly. The relevant extract of the MoM dated 26.11.2021 issued for the meeting dated 24.11.2021 has been reproduced below:



*“8. General Manager was kind enough to address the meeting. He mentioned that **there is no provision in the Policy framed by RB to issue provisional notification for opening the siding pending some works.** In the instant case since Ph-II, Ph-III works are not coming in recent times, the siding may be opened once completion certificate for Ph-I works is issued by Division.....*

***He advised MPL authorities to write to DRM giving reasons of delay in completion of Ph-I work and deviation from project report with proper justification.** Division after examining the issue, would forward it to HQ for getting dispensation from Railway Board. Once dispensation is issued from Railway Board, the issue will be suitably appreciated.”*

b) Accordingly, on 26.11.2021, the Petitioner vide its letter to DRM, Eastern Railway, Asansol, informed that the entire stretch of the Railway line as per Phase-I is ready for operation (out of 13 works, 11 essential works had been completed) and, hence, a formal request for notification of siding had already been submitted. The Petitioner, through the letter, sought dispensation from two works that were no more required, viz. (i) Wagon Tippler and (ii) additional loop line at Mugma Station, which were part of the original DPR on the following grounds:

- i. **Wagon Tippler:** Adequate provision for unloading of coal through Track Hopper and Wharf in lieu of Tippler has already been made by the Petitioner and, therefore, the installation of Wagon Tippler was not required now.
- ii. **Mugma Loop Line:** The Mugma Up loop line was proposed in the DPR with the assumption that coal rakes would come from ECL, i.e. Mugma side. However, after the FSA signed with BCCL and CCL, which is valid until the years 2030 and 2032, respectively, the Petitioner would only receive rakes from Thaparnagar end. Therefore, the entire rake movement shall be on the downside of Pradhankhunta to Sitarampur Section. Therefore, the requirement of the Mugma Up loop line becomes redundant and, hence, not required.



Accordingly, the Petitioner sought the above deviations/dispensations from the original DPR on the grounds of redundancy of the Wagon Tippler and Mugma Loop Line and requested for the issuance of a Siding Notification to start the receipt of Rakes to meet the coal requirement of the Generating Station.

c) On 03.12.2021, DRM, Eastern Railway, Asansol, *vide* its letter to the Principal Chief Operations Manager, Eastern Railway, while appropriately dealing with modification in the original DPR, recommended the proposal of the Petitioner for the issuance of siding Notification.

17. Meanwhile, on 15.12.2021, the Ministry of Railways, Government of India issued GCT Policy 2021 and the Petitioner's siding being under construction/under-approval Cargo Terminal was squarely covered under GCT Policy 2021. The bottleneck of DPR approval was removed in the GCT Policy 2021. However, there was a requirement to transfer ownership of all assets on Railway land created at the cost of Gati Shakti Multi-Modal Cargo Terminal Operator ("GCTO") (Petitioner in this case) to the Railways, and for this purpose, an Agreement is required to be signed. The Present Petition relates to the approval of the Commission for signing this Agreement.

18. Subsequently, certain amendments to the GCT, 2021, including the issuance of model agreements for GCT private land and entirely/partially on railway land, were issued by the Indian Railways as mentioned in Para [6] & [7].

19. Under Clause 5.1.3 of GCT Policy 2021, the Petitioner is required to transfer the ownership of assets (track, OHE and signalling equipment) created on Railway land to Railways free of cost. The Petitioner seeks approval of the Commission before transferring ownership of the assets and entering into an Agreement with the Indian Railways under GCT Policy 2021. Notification of GCT policy 2021 is covered under relevant changes in law/compliance with the existing law provisions of Tariff Regulations 2019, and there is no additional cost or tariff implication of such a transfer. In this regard, the submissions made by the petitioner in brief are as follows:



- (a) The Petitioner had envisaged the Railway Project in 2008 to facilitate the transportation of coal to the Generating Station and the disposal/dispatch of ash from it.
- (b) The original cut-off date for the Railway Project was 31.03.2015, however, the Railway Project was delayed on account of uncontrollable reasons beyond the control of the Petitioner. Considering the difficulties faced by the Petitioner, the Commission, in its Order dated 08.01.2022 in Petition No.408/GT/2020, extended the Cut-off date to 31.03.2021 and allowed the projected Additional Capitalization of Rs. 685 Crore for the Railway Project for FY 2020-21.
- (c) In spite of completing the siding works by March 2021, the operationalisation of the Railway Infrastructure Project of the Petitioner got further delayed beyond 31.03.2021 on account of the following uncontrollable factors and the Project was finally put to use on 10.03.2022:

i. Land acquisition issues:

The Petitioner suffered severe RoW issues while acquiring the land for the Project; the major challenge was to complete project activities on plots referred to the Land Acquisition Court in Pandra village, particularly the 2.3 km long stretch from Bridge 5 to Bridge 12. Even after identifying the rightful owners by the District Administration on 132 plots, various claimants of other disputed plots continued to resist works in various plots on multiple pretexts. On several occasions, the Petitioner, vide its letters dated 22.09.2020, 30.11.2020 and 18.12.2020, requested local administration support to execute work on plots referred to in LA Court acquired in the railway corridor.

ii. COVID-19 Pandemic (1st wave):

The Government of India imposed a Lockdown due to the COVID-19 pandemic with effect from 23.03.2020 and subsequently extended it till 17.05.2020. Entire rail infrastructure Project work was also interrupted. The restrictions were gradually lifted, and as a result, the Project's work



also progressed gradually along with getting peaceful possession of land parcels in a piecemeal manner. The COVID-19 Pandemic has been recognised as a Force Majeure event affecting various procurement and project activities by the Central Government. The Railway Project also deserves to be granted condonation for delay on account of COVID-19 under Force Majeure event as it is beyond the control of the Petitioner. The Ministry of New and Renewable Energy (MNRE), vide its O.M. dated 13.08.2020, 09.02.2021 and 30.03.2021 granted a blanket extension of five months (six months on a case-to-case basis) to the Renewable Energy implementing agencies considering the devastating impact of Covid -19.

iii. Land subsidence:

On 08.06.2020, land subsidence was noticed wherein a significant collapse of land below the ground level between the chainage + 550 to + 600 was observed. This resulted in damage of 1000 sqm area in the vicinity and the railway line. Railways also acknowledged land subsidence, which was just 25 m away from down the grand chord line of the eastern railway near Thapar Nagar and sought to take necessary action. Indian School of Mines (ISM) conducted Electrical Resistivity Tomography (ERT) for mapping of possible void/ illegal mining zones and their horizontal extension geometry and depth extension along railway line Thapar Nagar. This unforeseen geological surprise caused work to get delayed in the affected patch of land by about 3-4 months, and cumulatively, the First Wave of Covid 19 caused work to get resumed gradually only at the end of September 2020.

iv. COVID 19 Pandemic (2nd wave):

After the gradual removal of restrictions and with the support of local administration, the Petitioner completed the siding works and applied for approval from the Commissioner of Railway Safety on 18.11.2020. Subsequently, on 02.03.2021, the Petitioner requested Senior Divisional Commercial Manager, Eastern Railway, to allot ALPHA and



NUMERICAL Code to the Petitioner Railway Siding so that connectivity work may be taken up immediately after CRS approval. However, the Second Wave of the COVID-19 Pandemic hit the country in March 2021, which was much more widespread and devastating. State Governments, under Guidelines from the Government of India, imposed restrictions again with effect from 23.03.2021 that were subsequently extended in phases till 31.07.2021. The restrictions were again removed in phases, and accordingly, the approval of various components of the Project from Railways could also be obtained gradually. MNRE issued O.M. dated 12.05.2021, 29.06.2021, and 15.09.2021 after considering the impact of the second wave of COVID-19, allowing the period from 01.04.2021 to 15.06.2021 or 2.5 months for blanket extension of time in the SCOD of the RE Projects.

v. Long and Protracted procedure of approval by the Railways:

After completion of siding and electric traction work, the Petitioner had to get the approval of various Railway authorities. The approval process took much longer than expected due to Covid 19 restrictions and also the cumbersome, time-consuming process of sequential approvals followed by Railways, wherein Railways used to nominate its representative and schedule a visit to the site, which itself was time-consuming. The clearance was further delayed if certain observations for modification were made during the visit, and the entire process had to be repeated after addressing the observations. The brief of various approvals from Railways, along with its completion dates, are as follows:

Sl. No.	Approval Required from the Railways	Date of Completion
1.	CRS sanction: Commissioner of Railway Safety, Eastern Circle <i>vide</i> its letter to DRM, Eastern Railway, Asansol division in response to the Application no: SH- I/Pt.XX/Drg./TNW dated 18.11.2020 of the Petitioner accorded Sanction subject to some stipulations for Rail infrastructure of the Petitioner at Thapar Nagar Asansol division.	10.05.2021
2.	Track Fitness Certificate:	04.06.2021



	Track fitness certificate of private railway siding under Asansol division to serve the Generating Station was provided by Sr. Section Engineer, Eastern Railways.	
3.	Overhead Equipment (OHE) Checking: After completion of construction work for connectivity of newly erected 25 kV OHE line and joint inspection on 12.06.2021 and 22.07.2021, on 27.07.2021, the Petitioner requested for Sanction of EIG for opening of newly erected 25 KV OHE line taking off with Y connection from Mugma and Thaparnagar station. Eastern Railway intimated granting sanction for the same.	18.08.2021
4.	EIG Clearance: EIG sanction was accorded for energization and commissioning of new switching post at Mugma (SS) AT 25 KV AC 50 Hz single phase. On the same date, EIG sanction for 25kV AC 1 Phase charging of newly erected traction OHE of the lines for the Generating Station was granted to the Petitioner.	31.08.2021
5.	Engine Trial Run/25 kV OHE Charging: Joint note in connection with electric engine trial run from Thapar Nagar to MPL/OHE fitness was prepared, giving observations/shortcomings if any in presence of MPL/L&T and Railway representatives.	03.09.2021
6.	OHE Fitness Joint Note: With reference to the joint note issued on 03.09.2021, compliance to the observation made attained and complied for OHE were reported.	18.09.2021
7.	Eastern Railway asked to rectify the Deficiencies noted in 03.09.2021 loco trial: With reference to the joint note issued for LOCO trial TNW-MPL siding line conducted on 03.09.2021, Eastern Railway on 06.10.2021 asked the Petitioner for its rectification and compliances.	06.10.2021
8.	The Petitioner requested for approval after removal of deficiencies in letter dated 06.10.2021 including OHE fitness joint note: In response to letter dated 06.10.2021, the Petitioner submitted its observation status on 11.10.2021 and requested Railways for review and according acceptance.	11.10.2021
9.	Joint Note: TI/GC, CLI Side: With reference to Joint note dated 03.09.2021 in connection with electric engine trial run on track for the Petitioner's railway siding, compliance report was issued from TR/GC and CLI side.	23.11.2021
10.	Provisional opening of Siding Notification: Provisional opening of GCT of the Petitioner served by Thapar Nagar station was allowed.	08.03.2022
11.	Placement of Rake: With the receipt of first coal Rake, Rake operation commenced at the Private Siding of the Petitioner.	10.03.2022



- (d) In view of the above, in spite of the completion of Railway Package siding works till March 2021, the approvals/clearances could only be obtained on 23.11.2021, and the Petitioner was awaiting final notification of siding by Railways. This was about 7.5 months beyond the approved date of 31.03.2021 granted by the Commission vide its Order dated 08.01.2022. Further, 7.5-8.5 months is also the period waived by MNRE for RE projects under blanket extension for Covid 19 pandemic (first and second wave).
- (e) Subsequently, Railways apprised the Petitioner on 25.01.2022 that its Project would now fall under the GCT Policy 2021 notified on 15.12.2021. Accordingly, the above uncontrollable delays would be classified as force majeure, and the project to be covered under GCT Policy 2021 would be classified as compliance with existing law/change in the law.
- (f) After completing the works for Phase I, the Petitioner vide its letter dated 26.11.2021, on the advice of GM, Eastern Railway in the meeting on 24.11.2021, had requested DRM, Asansol Division for the issuance of Notification for Private siding and further prayed to consider the dispensation of Wagon Tippler & Mugma Loop Line, which were part of original DPR but were no longer necessary for the Generating Station. However, the approval was delayed due to revision in DPR, which was not permitted in earlier policy and could only be done by the Railway Board. The Petitioner, despite putting in its best effort, could not get the railway siding commissioned and was forced to procure coal through road transport.
- (g) While the proposal for dispensing with the requirement of Wagon Tippler & Mugma Loop Line was pending consideration, on 15.12.2021, GoI issued GCT Policy 2021 to promote the proliferation of new cargo terminals and improve existing cargo terminals to accelerate the growth of railway cargo traffic under Gati Shakti Master Plan. Under this Policy, revision of DPR and its approval was not required, and the railway siding of the Petitioner's Project was made operational expeditiously in March 2022, and the Petitioner is now able to procure coal through Railways.



- (h) The Petitioner was mandated to comply with the GCT Policy, 2021 as its siding/terminal is a new/under construction/under approval terminal and benefits under the GCT Policy, 2021. Under the standard Agreement, the Petitioner is required to transfer the ownership of its infrastructure, including track, OHE and signalling equipment created on Railway Land to the Railways. The Railways will assume the maintenance of assets so transferred at its own cost. Further, the maintenance and operation of assets at the serving station, including staff costs, shall be the responsibility of the Railways.
- (i) As a result of falling under the GCT Policy, 2021, the Petitioner, in addition to expediting the operationalisation of the railway siding, was able to avoid expenditure on the account of the creation of redundant infrastructure, which was originally planned. The same was on the account that Railways approval under the previous policy was based on the then-expected expansion in DPR submitted by the Petitioner.
- (j) Further, the overarching reason for speedy compliance with the GCT Policy 2021 was the expedient completion of the railway project, which is crucial as transporting coal from trucks raises environmental concerns and fuel security is necessary in order to guarantee supply to beneficiaries.
- (k) Further, under clause 7.3 of GCT policy 2021, the maintenance of assets on non-railway land can also be undertaken by Railways if assets on that land are also transferred to it with original owners retaining the land title. The Petitioner does not have expertise or experience in the maintenance of railway assets. Since most of the critical assets are to be maintained by Railways under GCT Policy 2021 and Railways are the expert body for the maintenance of all assets of railway projects, the Petitioner is evaluating the feasibility of transfer of assets on non-railway land also to Railways purely on the reliability of fuel supply and conflict of responsibility (as given in Schedule 3 of GCT Policy 2021) considerations. Accordingly, the Petitioner also seeks prior approval of the Hon'ble Commission for signing an Agreement for the



transfer of such assets on non-railway land to Railways. Even if the Petitioner later decides to hand over maintenance of those assets to the Railways, there will be no additional tariff implications.

- (l) The Commission, under Section 79(1)(b) of the Act, has wide power to regulate the tariff of a Generating company like the Petitioner and fashion appropriate relief which is otherwise not envisaged under the Regulations in vogue. Moreover, it has been held in cases such as “Energy Watchdog v. CERC, [(2017) 14 SCC 80]”, “U.P. Co-operative Cane Unions Federation v. West U.P. Sugar Mills Association, [(2004) 5 SCC 430]” and “V.S Rice and Oil Mills & Ors. v. State of Andhra Pradesh, [AIR 1964 SC 1781]” that the Commission has the power to regulate the tariff of a generating company and grant appropriate relief which is not envisaged under the Regulations in vogue.

Hearing dated 20.04.2023

20. The Commission heard the petition on 20.04.2023 and vide RoP in hearing dated 20.04.2023 admitted the Petition and directed the Petitioner to submit the following information:

- i. The detailed original scope of works and pictorial representation associated with ‘Railway Siding’ and the details of 13 components thereof, along with the approved estimated costs and apportionments thereof for Phase I, II & III capacity additions.
- ii. The scope of works finalized for ‘Railway Siding’ along with approved estimated costs, after dropping capacity expansion and the present status of each component of ‘Railway Siding’ along with actual cost incurred (Capital cost, IDC and Interest) thereof.
- iii. The details of the land, assets developed, cost incurred, etc, for transportation of coal from ECL, i.e., Mugma station.



- iv. The benefit/rebate envisaged to Petitioner, Beneficiaries and Indian Railways on entering such agreement along with the impact on the cost of coal received at the station and tariff thereof.
- v. The impact of transferring subject assets to Indian Railways on the Capital Cost of the project, including depreciation and decapitalization of these assets.
- vi. The actual annual additional capital expenditure and O&M viz a viz envisaged additional capital expenditure and O&M of the subject assets after the transfer and the impact thereof on capital cost and tariff.

Summary of arguments submitted by the Petitioner vide affidavit dated 19.4.2023

21. The Petitioner submitted the summary of arguments vide affidavit dated 19.4.2023 wherein the Petitioner stated that the Petitioner has already signed a Memorandum of Agreement (MoA) with the Railways on 16.2.2022 for the private siding laid by the Railways. Further, the Petitioner has also executed an undertaking that it will abide by the provisions of the GCT Policy 2021.

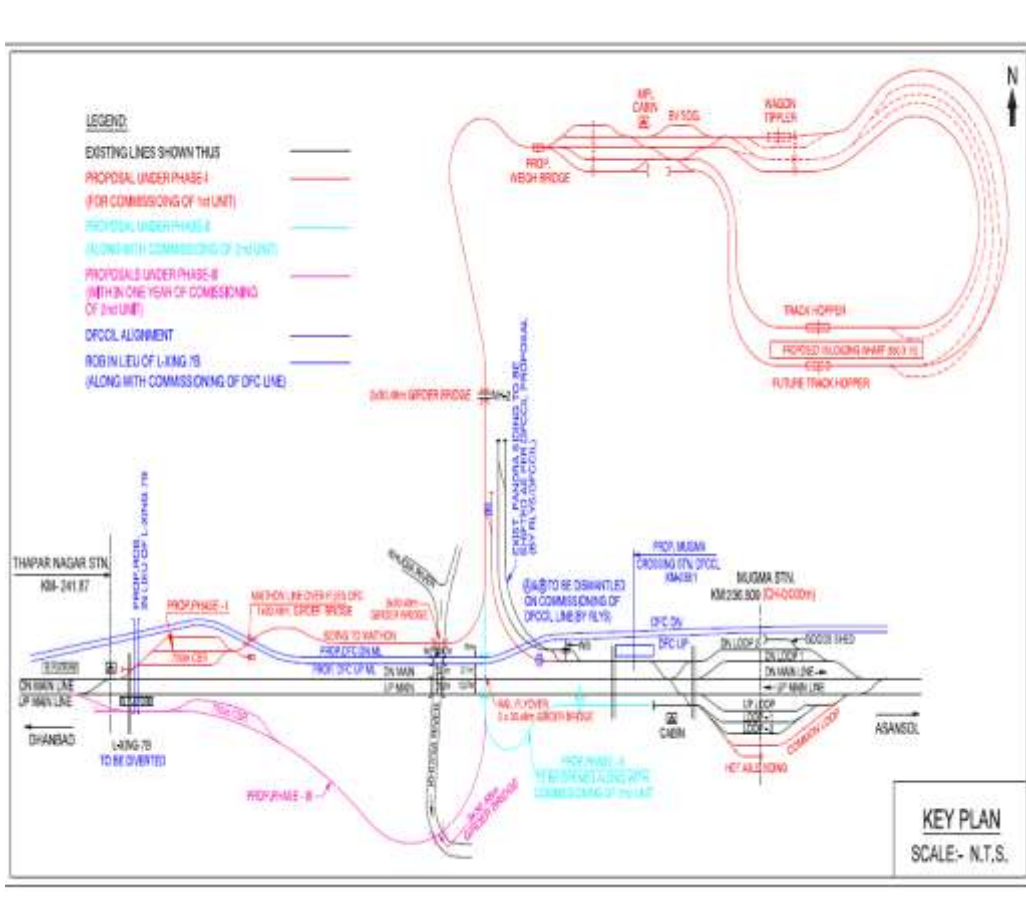
Additional Submission of the Petitioner vide affidavit dated 16.5.2023

22. In response to the RoP of hearing dated 20.4.2023, the Petitioner vide affidavit dated 16.05.2023 submitted that the Policy mandated the Petitioner to enter into an agreement and its tariff would remain unaffected. Further, it reiterated the submissions made in the original petition and, in addition, made some additional submissions. A brief of additional submissions made by the Petitioner is as follows:

- (a) The detailed original scope of works was initially approved by the Railways vide its approval letter dated 29.03.2010, wherein after approving the proposed DPR, Railways sought certain revisions in the DPR. The final approved Plan giving pictorial representation was submitted to the Railways.



(b) The final approved Plan giving pictorial representation was submitted to the Railways. The same is also reproduced below:



(c) The Scope of Work for Phase I, II and III of the Railway Project is as follows:

Sl.	Scope of Work	Portion in Diagram	Remarks
I	Phase I		
1	Y Connection at Thaparnagar	Thaparnagar to Y Junction	Stage 2 - Red colour
2	Two (2) Loop lines at Thaparnagar	At Thaparnagar	
3	New Electronic Interlocking (EI) cabin at Thaparnagar	At Thaparnagar	
4	Y Junction cabin on Pvt Land	At Y Junction	Stage 1 - Red colour
5	Five (5) R&D lines in In-Plant Yard	Between Weigh Bridge and Loop/Bulb at Plant	



6	Bulb arrangement In-Plant Yard	At Plant	
7	1 Track Hopper	At Plant	
8	1 Undloading Wharf for unloading BOXN wagon	At Plant	
9	1 Wagon Tippler	At Plant	
10	Y connection from Mugma end	Mugma to Y Junction	
11	One Loop line at Mugma end	Common loop and Hot Axle siding at Mugma	
II	Phase II		
12	Return line with flyover crossing over up and down main line and DFCCIL main line connecting to down side direction common loop at Mugma Station	Return to Mugma	Ocean Green colour
III	Phase III		
13	Return line in up direction to Thaparnagar	Return to Thaparnagar	Purple colour

(d) Since Phase II and III were dropped long back, only Phase I construction was undertaken, and out of 11 works, 9 were executed (incorrectly mentioned in the main Petition as, out of 13 works, 11 essential works had been completed in Phase I). Accordingly, the Board of the Petitioner, vide its meeting dated 16.10.2019, had approved a total cost of Rs. 574.66 Crore for these 9 works for Phase I only.

(e) As Phase II and Phase III were dropped, its revised cost estimation was not done at that time. The above cost of Rs. 574.66 Crore relates only to Phase I (9 works) of the Railway Project that was required for minimum connectivity with the Plant and, accordingly, works for only Phase-I have actually been carried out. The commission, vide its Order dated 08.01.2022 in Petition No. 408/GT/2020, has approved the Capital Cost based on the above-proposed Cost of Rs. 574.66 Crore plus IDC with a capitalisation of Rs. 24.13 Crore



(and IDC of Rs. 4.49 Crore) to be considered later at the time of true up of approved projected capitalisation of Rs. 685.06 Crore in March 2021.

- (f) The above approved cost of Rs. 574.66 Crore was only after dispensation from two works that were no longer required, viz. (i) Wagon Tippler and (ii) additional loop line at Mugma Station, which were part of the original DPR. The Petitioner vide its letter dated 26.11.2021, has intimated the status of Phase I to Railways. Further, the MoM dated 26.11.2021 issued for the meeting between the Petitioner and Eastern Railway on 24.11.2021 also recorded that 9 out of 11 works in Phase I had been completed and 2 works viz. Wagon Tippler and Mugma loop line were pending.
- (g) The present status of Railway siding works is that 9 out of 11 Phase I works with an actual cost of Rs. 569.10 Crore in books (excluding IDC booked) have been completed as on 31.03.2023 and the break-up of the actual cost incurred till 31.03.2023 is as follows:

Sl. No.	Railway System	Rs. In Crore
1.	P-Way	449.47
2.	Overhead Equipment	37.99
3.	Signal & Telecom	48.32
4.	Traction Sub Station	25.25
5.	Trak Hopper	8.08
6.	Railway cost excluding IDC	569.10

- (h) Although, at present, the actual cost of Rs. 569.10 Crores is well within and very close to the approved cost of Rs. 574.66 Crores, there may be slight/minimal cost over-run primarily due to the Covid-19 pandemic and other delays as mentioned in the main Petition. Further, the consequent insignificant impact of this variation shall be due to unforeseen and uncontrollable delays, which is not due to the transfer of assets to Railways under GCT 2021 and even under the previous Policy when assets were not to be transferred, it was allowed as pass through. Hence, there will not be an adverse effect on the tariff (AFC) already approved as a result of entering into the proposed agreement. Further, the above Capital Cost neither includes



IDC as recognised in the books nor the Normative IDC on equity in excess of 30%, which is allowed to be added to Capital Cost but is not reflected in books of account. The Capital Cost with all such details will be furnished at the time of true-up for 2019-24.

- (i) Since the Mugma loop line and Phase II of the Railway Project, which was envisaged for high-volume coal transportation from the ECL/Mugma side, have not been executed, no land or assets were developed, and no cost has been incurred for the same.
- (j) The benefit/rebate envisaged for the Petitioner, beneficiaries and the Railways consequent to the signing of the subject Agreement under GCT Policy 2021 is submitted as below:
 - i **For the Petitioner:** The overall project Capital Cost shall remain unchanged after entering into the agreement for transfer of ownership of assets. Accordingly, there will not be any change in the Annual Fixed Charges and Capacity Charge payable to the Petitioner. Further, any saving in fuel/transportation costs being pass through, there shall not be any impact due to Energy Charges on the Petitioner.
 - ii **For the Beneficiaries:** With the commencement of receipt of coal through Railway Rakes w.e.f. 10.03.2022, the transportation cost of fuel has come down drastically, and there have been savings to the tune of about Rs. 129 Crore in FY 2022-23 in the Energy Charges paid by the Beneficiaries. Further, the estimated Capital Expenditure of about Rs.260 Crore, as required under the previous Policy, has not been incurred due to the operationalisation of the Railway Project under the GCT Policy, which has direct benefits to beneficiaries. This includes the infrastructure arrangement proposed for implementation in Phase II and Phase III and the wagon tippler and Mugma loop line of Phase I.
 - iii **For the Railways:** Through GCT Policy 2021, Railways seeks to promote the proliferation of new cargo terminals to accelerate the growth in cargo traffic under the Gati Shakti Master Plan. Freight traffic has increased from 73 MT in 1951 to 1210 MT in 2021, however, the number of freight terminals has remained almost static, resulting in



congested freight terminals and an increased wagon turnaround of 120 hours. Hence, the Policy was formulated to overcome the bottlenecks by building freight terminals, which was essential for realising the ambitious plan of the Railways for achieving decongestion by 50 per cent and handling 1600 million MT freight by FY 2024-2025.

(k) After transferring the ownership of subject assets to Indian Railways, the Capital Cost in the books of accounts of the Petitioner shall remain unchanged due to the following reasons:

- i Since the cost of these assets (Property, Plant and Equipment/PPE) has been borne by the Petitioner and future economic benefits shall continue to flow to the Petitioner, the same can be recognised in the books as PPE as per para 7 of IndAS 16 – PPE.
- ii Para 24 of the IndAS 16-PPE clearly allows recognition of non-monetary assets in return for monetary assets given up. Further, it also stipulates that such non-monetary assets have to be valued at the cost of assets transferred/given up, and they need not be derecognised/decapitalised.
- iii In this case, in return for transferring ownership of assets, i.e. monetary assets, to Railways at zero cost (both on Railway land – mandatory and non- Railway land – optional), the Petitioner is getting unhindered right to use the assets for accessing the Railway network/services, i.e. non-monetary asset, for the useful life of the generating station. Hence, the Petitioner can retain the value of assets in its books at the carrying amount i.e. original cost of acquisition less depreciation without any decapitalisation.
- iv Since only the ownership of assets is being transferred, that too at zero cost with corresponding rights on those assets, it is neither sale nor disposal of assets and, hence, the assets need not be derecognised/decapitalised in terms of para 67 of IndAS 16-PPE.
- v This transfer of assets is similar to the transfer of land purchased by a transmission licensee for compensatory afforestation to the Forest Department for the construction of a transmission line in Forest land,



which also forms part of the Capital Cost considered by the Commission for determination of tariff.

(l) In regard to the actual annual additional capital expenditure and O & M viz a viz envisaged additional capital expenditure and O & M of the subject assets after the transfer and the impact thereof on capital cost and tariff, the submission of the Petitioner is as follows:

- i At present, no annual additional capital expenditure is envisaged by the Petitioner except for unforeseen damage to assets/equipment or their replacement due to force majeure or change in law or after the useful life of individual assets, which are to be carried out by the Petitioner both in the earlier Policy as well as GCT Policy 2021 and cannot be predicted in advance. Hence, there is no impact on additional capital expenditure and its consequent implication on tariffs after entering into the proposed agreement.
- ii With regard to O&M, the GCT Policy 2021 mandates that when ownership of assets on Railway and non-railway land (outside the Plant boundary) is transferred to Railways, the O&M of those assets shall be done by Railways at its own cost. O&M of assets within the Plant boundary shall remain the responsibility of the Petitioner and, hence, there shall be no impact on the Petitioner for O&M cost of assets within the Plant boundary and also on Annual Fixed Charges.

23. Subsequently, the case was heard again on 14.07.2023, wherein the petitioner submitted that the instant Petition has been filed for approval for entering into an agreement with the Railways for Gati Multi-modal Cargo Terminal under GCT Policy, 2021 and is covered under a change in law/compliance with existing law in terms of Regulation 3(10)(d) read with Regulation 25(1)(b) of the 2019 Tariff Regulations. Further, the Petitioner clarified that the proposed agreement, which is a mandatory requirement, will have no impact on the tariff. In the above hearing, none appeared on behalf of the Respondents, despite notice. The Commission, after hearing the Petitioner, reserved its order in the matter.

Analysis and Decision



24. We have considered the submissions of the Petitioner and have perused the record. None of the Respondents has submitted their reply. After considering the submissions of the Petitioner, the following issues arise for our consideration:

Issue No. 1: Whether the Petitioner may be allowed to sign the agreement with the Indian Railways under the GCT Policy 2021 and transfer the ownership of railway assets (track, OHE and signalling equipment) created on the railway land to the Indian Railways?

Issue No. 2: Whether the Petitioner may be allowed to grant approval for transfer of the railway assets created on non-railway land, if required subsequently under the GCT Policy, 2021?

The above issues are dealt with in the subsequent paragraphs.

Issue No.1: Whether the Petitioner may be allowed to sign the agreement with the Indian Railways under the GCT Policy 2021 and transfer the ownership of railway assets (track, OHE and signalling equipment) created on the railway land to the Indian Railways?

25. In 2008, the Petitioner envisaged a Railway Project to facilitate the transportation of Coal to the Generating Station and the disposal/dispatch of ash from the Generating Station. This project was planned to be executed in three phases, wherein Phase I was for the existing 2 x 525 MW capacity and Phase II and III were for capacity expansion, i.e. 2 x 660 MW. However, as the capacity expansion was dropped, phases II and III were also dropped.

26. The revised DPR in connection with the Petitioner's proposed siding was approved by the Indian Railways, vide letter dated 29.03.2010, wherein it was inter alia mentioned that the final DPR incorporating the observations made in the said letter may be submitted.



27. The Petitioner submitted that the Wagon Tippler, which was initially planned for unloading coal considering the Generating Station expansion plan, was not required as with the scrapping of the 2 x 660 MW expansion of the Generating Station, the wharf was sufficient for transporting coal. Accordingly, the Petitioner requested approval from Railways in 2018 for a wharf rather than a Wagon Tippler for coal unloading under Phase I of the Railway Project, which was granted by the Railways.

28. The Petitioner also submitted that initially envisaged fuel movement from the side of the Eastern Coalfield Limited mines was no longer required as the Fuel Supply Agreement was signed with Central Coalfields Limited and Bharat Coking Coal Limited, under which fuel movement was from the side of Thaparnagar station. Hence, the small loop-line work at Mugma station under Phase-I was also not required.

29. The Petitioner contended that the railway siding could not be operationalized within the prescribed timeline, i.e. by 31.3.2021 as allowed by the Commission, vide order dated 8.1.2022 in Petition No. 408/GT/2020, due to the various reasons as cited by the Petitioner. The Petitioner submitted that it shall come back with the actual completed cost of the Project at the time of true-up for approval of minor cost variation, if any, due to the force majeure reasons cited under this petition.

30. We observe that the Petitioner, vide its letter dated 23.1.2018, requested the Indian Railways to grant permission for the construction of a temporary unloading wharf in the plant yard till the construction of the wagon tippler. The same was granted by the Railways, vide its letter dated 5.2.2018. We also observe that as submitted by the Petitioner, Phase II and III were dropped long back, only Phase I construction was undertaken, and out of 11 works, 9 works (excluding Wagon Tippler and Mugma Loop Line) were executed. Accordingly, the Board of the Petitioner, vide its meeting dated 16.10.2019, had approved a total cost of Rs. 574.66 Crore for these 9 works for Phase I only. The cost estimate submitted to the Commission in Petition No. 408/GT/2020 also excluded these two items, and to this extent, the present tariff approved does not include the burden of these two assets.



31. We have not gone into the merits of the delay in execution of the railway project cited by the Petitioner at this stage, and the Petitioner is suggested to approach the Commission in this regard at the time of true-up with all facts and figures. We observe that the Petitioner has completed the works for Phase I except the two works as mentioned in the preceding paragraph. The Petitioner has also obtained all approvals required from the Indian Railways by 23.11.2021 except the notification of the railway sidings. Subsequently, the Petitioner approached Indian Railways, vide letter dated 26.11.2021, for the issuance of Private siding notification and further prayed to consider the dispensation of Wagon Tippler and Mugma Loop Line.

32. The Eastern Railway vide its letter dated 3.12.2021, keeping in view the two-pending works (Wagon Tippler and Mugma Loop Line) and hence, deviation in the original DPR as approved by the railways, the request for dispensation/deviation from the original DPR, forwarded the same to the Railway Board. However, during the approval process, the GCT Policy 2021 was issued on 15.12.2021, and the siding notification was not issued.

33. In order to boost investment from industry in the development of additional terminals for handling rail cargo, the Ministry of Railways, GoI issued the GCT Policy 2021 on 15.12.2021. As per this Policy, all new as well as under-construction / under-approval Cargo Terminals shall be covered by GCT Policy 2021. The Petitioner's siding being under construction/under-approval Cargo Terminal is covered under the GCT Policy 2021. The bottleneck of DPR approval was removed in the GCT Policy 2021. However, there was a requirement to transfer ownership of all assets on Railway land created at the cost of Gati Shakti Multi-Modal Cargo Terminal Operator ("GCTO") (Petitioner in this case) to the Railways, and for this purpose, an Agreement is required to be signed.

34. Subsequently, Indian Railways issued certain amendments to the GCT, 2021, including the issuance of model agreements for GCT private land and entirely / partially on railway land. On 07.07.2022, the Railway Board and the Ministry of Railways issued model Agreements under GCT Policy 2021 for GCT on Private Land



and for GCT entirely/partially on Railway Land. In the present case, GCT is partially on the Railway land and partially on private/government land.

35. The Petitioner submitted all the prerequisite formalities with Indian Railways, including an undertaking that it will abide by all provisions of GCT, 2021. Petitioner has already signed a Memorandum of Agreement (MoA) with the Railways on 16.2.2022 for the private siding laid by the Railways. Accordingly, the Indian Railways issued commercial notification of provisional opening of railway siding and allowed its operation from 09.03.2022.

36. The Petitioner also submitted the benefit/rebate envisaged for the Petitioner, beneficiaries and the Railways consequent to the signing of the subject Agreement under GCT Policy 2021, which is as below:

- i **For the Petitioner:** The overall project Capital Cost shall remain unchanged after entering into the agreement for transfer of ownership of assets. Accordingly, there will not be any change in the Annual Fixed Charges and Capacity Charge payable to the Petitioner. Further, any saving in fuel/transportation costs being pass through, there shall not be any impact due to Energy Charges on the Petitioner.
- ii **For the Beneficiaries:** With the commencement of receipt of coal through Railway Rakes w.e.f. 10.03.2022, the transportation cost of fuel has come down drastically, and there have been savings to the tune of about Rs. 129 Crore in FY 2022-23 in the Energy Charges paid by the Beneficiaries. Further, the estimated Capital Expenditure of about Rs.260 Crore, as required under the previous Policy, has not been incurred due to the operationalisation of the Railway Project under the GCT Policy, which has direct benefits to beneficiaries. This includes the infrastructure arrangement proposed for implementation in Phase II and Phase III and the wagon tippler and Mugma loop line of Phase I.
- iii **For the Railways:** Through GCT Policy 2021, Railways seeks to promote the proliferation of new cargo terminals to accelerate the growth in cargo traffic under the Gati Shakti Master Plan. Freight traffic



has increased from 73 MT in 1951 to 1210 MT in 2021, however, the number of freight terminals has remained almost static, resulting in congested freight terminals and an increased wagon turnaround of 120 hours. Hence, the Policy was formulated to overcome the bottlenecks by building freight terminals, which was essential for realising the ambitious plan of the Railways for achieving decongestion by 50 per cent and handling 1600 million MT freight by FY 2024-2025.

37. The Petitioner seeks approval of the Commission before transferring the ownership of the assets and entering into an Agreement with the Indian Railways under GCT Policy 2021. The Petitioner contended that notification of GCT policy 2021 is covered under a relevant change in law/compliance of existing law provisions of Tariff Regulations 2019, and there is no additional cost or tariff implication of such transfer.

38. Before discussing the provisions of GCT Policy 2021 and its applicability to the Petitioner railway project, let us explore the modes of coal transport for the instant Generating Station. Based on the submissions of the Petitioner, it is evident that there are two options available with the Petitioner for transporting coal, viz.

- (i) Transporting coal through trucks / hyvas either from mines or the nearest Railway Siding, i.e. Damagoria, 25 km away from the Generating Station.
- (ii) Transporting coal through the railway siding project.

39. We note that prior to the provisional opening of the railway siding project, the Petitioner was transporting coal from trucks. We also take note of the Petitioner's submission that such a mode of transportation raises environmental concerns and fuel security, which is necessary in order to guarantee supply to beneficiaries. On the other hand, the Petitioner has stated the benefit/rebate envisaged for the Petitioner, beneficiaries and the Railways consequent to the signing of the subject Agreement for the railway siding project. From the submissions of the Petitioner, it is evident that transporting coal through the railway siding project is beneficial for all the concerned entities, viz, the petitioner, the beneficiaries as well as the Railways. The Indian Railways has already issued commercial notification of provisional opening of railway



siding w.e.f. 9.3.2022. Further, we observe that relying on the transportation of coal through trucks may lead to underutilization/wastage of already commissioned railway project, which is considered to be an economical, relatively environmentally friendly and reliable mode of transportation compared to road transport. We are of the opinion that under these circumstances, it is prudent to opt for the transportation of coal through the railway siding project for the generating station. Having opted for rail transport of coal, the Petitioner is bound to comply with the prevailing Private Siding Policy of the Railways.

40. We have perused the Master circular on Gati Shakti Multi-modal Cargo Terminal (GCT) issued by the Ministry of Railways, GoI vide No. 2021/TC(FM)/18/23 dated 15.12.2021 and subsequent amendments, including the model agreements for GCT. The GCT Policy 2021 mandates that all new as well as under-construction / under-approval Cargo Terminals (approved/proposed under 'Private Siding' or Private Freight Terminal Policies) shall be covered by the said GCT Policy. The Policy is in supersession of existing Private Siding Policy 2016 (FMC 11 of 2016) and Master Circular on Private Freight Terminal/2020. Accordingly, the Petitioner's siding being under construction/under-approval Cargo Terminal is also covered under the GCT Policy 2021. The relevant extracts of the said Policy are as follows:

"5.1.1 For the linear connectivity portion of GCT passing through the Railway land,, only the minimum essential infrastructure of track, OHE and signalling equipment shall be provided at the cost of GCTO (other assets not related to track, signalling, or OHE, if required, shall be constructed by Railway at its own cost).

5.1.2 The ownership of infrastructure including the track, signalling equipment and OHE created on Railway land under para 5.1.1 above shall belong to Railway, even though the capital cost for these shall be borne by the GCTO.

5.2 The capital cost for all common-user traffic facilities (to be marked on the ESP) at the serving station, including Signalling & Telecommunication works, modification and up-gradation to existing interlocking/ OHE, or electrification in future within the station limit up to take-off point, shall be borne by the Railway.



5.3 Maintenance and Operation of assets created under para 5.2 above (common-user traffic facilities) at the serving station including staff costs, shall be the responsibility of the Railway.

6.1 The responsibility of security of railway assets over Railway land shall be of Railways. However, the responsibility of security of railway assets outside Railway land or on land licensed to GCTO shall be of GCTO.

7.1 Maintenance of assets on Railway land (excluding the Railway land licensed to GCTO), including Track and Signalling Equipment installed on Railway land under para 5.1.1 of the policy, shall be done by Railway at its own cost.

.....

18.1 An Agreement for GCT shall be signed before the issue of commercial notification and operation of the GCT by Railway. Sr.DCM of the concerned Division shall be the signatory of the Agreement.

.....”

41. We note that in accordance with the provisions of GCT Policy 2021, as mentioned in the preceding paragraph, the ownership of infrastructure, including the track, signalling equipment, and OHE created on Railway land, shall belong to Railway, even though the capital cost for these shall be borne by the GCTO (Petitioner in this case). Further, we also note that maintenance of assets on Railway land, including Track and Signalling Equipment installed on Railway land under para 5.1.1 of the policy, shall be done by the Railway at its own cost. Further, an Agreement for GCT shall be signed before the issue of commercial notification and operation of the GCT by Railway. It is evident that these provisions are to be complied with by the Petitioner in terms of the GCT Policy 2021. Further, we observe that the Petitioner has already signed a Memorandum of Agreement (MoA) with the Railways on 16.2.2022, for the private siding laid by the Railways. Further, the Petitioner has also executed an undertaking that it will abide by the provisions of the



GCT Policy 2021. The Petitioner has also submitted that there is no additional cost or tariff implication in the implementation of GCT Policy 2021.

42. We are of the view that the Petitioner is mandated to comply with the provisions of the prevailing GCT Policy 2021. Accordingly, we allow the Petitioner to sign an agreement with the Indian Railways and transfer ownership rights of its infrastructure, including the track, signalling equipment and OHE created on Railway land to Indian Railways. However, we are of the opinion that any additional financial burden resulting from the implementation of the GCT Policy 2021 shall be borne by the Petitioner. The Petitioner is directed not to transfer any such financial liability onto its beneficiaries.

The issue is answered accordingly.

Issue No. 2: Whether the Petitioner may be allowed to grant approval for the transfer of the railway assets created on non-railway land, if required subsequently under the GCT Policy, 2021?

43. The Petitioner submitted that under clause 7.3 of GCT Policy 2021, the maintenance of assets on non-railway land could also be undertaken by Railways if assets on that land are also transferred to it with the original owners retaining the land title. The Petitioner does not have expertise or experience in the maintenance of railway assets. Since most critical assets are to be maintained by Railways under GCT Policy 2021 and Railways are an expert body for the maintenance of all assets of railway projects, the Petitioner is evaluating the feasibility of transferring assets on non-railway land to Railways purely on the reliability of fuel supply and conflict of responsibility (as given in Schedule 3 of GCT Policy 2021) considerations. Accordingly, the Petitioner also seeks prior approval from the Commission for signing an Agreement for the transfer of such assets on non-Railway land to Railways. Even if the Petitioner later decides to hand over maintenance of those assets to the Railways, there will be no additional tariff implications.



44. Further, the GCT Policy 2021 in terms of assets on non-railway/private land stipulates as under:

“6. Security of Assets

6.1 *The responsibility of security of railway assets over Railway land shall be of Railways. However, the responsibility of security of railway assets outside Railway Land or on land licensed to GCTO shall be of GCTO.*

6.1.1 *In case of theft of any railway asset on non-Railway land or railway land licensed to GCTO, the maintenance of which is with Railway, the restoration shall be done by Railway but the cost of such restoration shall be borne by the GCTO.*

6.1.2 *In case of theft of OHE including OHE on non-Railway land or railway land licensed to GCTO, restoration shall be done by Railway but the cost of such restoration shall be borne by the GCTO.*

7. Maintenance of Assets

.....

7.3 *In addition to above, the maintenance of assets (track, bridges, signalling equipment, etc) on non-Railway land including the land licensed to GCTO, **outside the Terminal**, may also be done by Railway at its own cost if the GCTO transfers the ownership of these assets to Railway (the ownership of land on which such assets are created shall however continue to be with GCTO).*

Provided further, this provision shall be applicable only to those GCTs where freight tariff is charged on 'through distance basis.'

7.3.1 *In case maintenance of assets, including Track and Signalling Equipment, is being handed over to Railways on migration to this policy by GCTO, the GCTO will ensure that the standards of track and signalling infrastructure being transferred to Railway is in accordance with the prescribed standards for GCTs, as decided by Railways (Annexure 'D'). If any up-gradation/ replacement/ renewal of any infrastructure is required, the GCTO shall bear the cost for the same.*

7.3.2 *In case of damages to the assets due to accident, etc, the replacement shall be done by Railway. However, if the responsibility of accident, after Enquiry (joint enquiry by representatives of Railway as well as GCTO), is fixed on the GCTO - the GCTO shall have to bear the cost of all the replacements. The decision of the Nodal Officer, i.e. DRM, in this regard shall be final.*



7.3.3 *In case the damage to assets is due to an external cause (floods, breaches, terrorist activity, etc), the cost of restoration shall be borne by the GCTO.*

7.3.4 *If the GCTO does not agree to transfer the ownership of assets (track, bridges, signalling equipment, OHE, etc) to Railway or freight tariff is not chargeable 'on through distance basis'; the maintenance of these assets - except OHE - shall continue to be the responsibility of GCTO.*

7.3.4.2 GCTO may also get the maintenance done through Railway for such Terminals, in which case Maintenance Charges shall also be levied as per the prescribed norms.

7.3.5 *The maintenance of GCT yard, including loading/ unloading lines, shall be the sole responsibility of GCTO. Distribution of the responsibility of track has been explained in Schedule '3'.*

7.4 The cost of all subsequent up-gradations (on account of change of technology, standards, etc) shall be borne by the GCTO."

45. As evident from paragraphs 7.3.1 and 7.3.4 of the GCT Policy 2021, the transfer of the railway assets created on non-railway land is only optional, and is not mandatory in nature. It is solely at the discretion of the GCTO (Petitioner in this case) who decides to migrate to the GCT Policy and transfer the ownership of assets on their land to the Railway. We observe that while signing such an agreement, the Petitioner has to forego its ownership right to its railway assets created on its own land. Furthermore, even with the transition to the GCT Policy, the Petitioner remains obligated to ensure the security of its assets situated on its land. The financial burden extends to covering the costs associated with the restoration, upgrading, replacement, or renewal of infrastructure on non-railway land. Additionally, the freight tariff structure involves charges on a through-distance basis, encompassing the distance covered within the petitioner's land. The ongoing evaluation by the Petitioner regarding the potential transfer of assets to Railways, particularly driven by considerations of fuel supply reliability and conflicts of responsibility outlined in Schedule 3 of the GCT Policy 2021, is duly acknowledged. Despite the Petitioner's contention about lacking expertise in railway asset maintenance, we observe that, given the project's conceptualization, the Petitioner cannot evade its responsibility for maintaining railway assets on non-railway land, coupled with the added freight tariff burden on beneficiaries.



46. In view of the above discussions, the Petitioner is granted liberty to transfer of the railway assets created on non-railway land based on its own cost-benefit analysis, in terms of GCT Policy 2021. However, we are of the opinion that any additional financial burden, including additional freight charges, resulting due to the implementation of the GCT Policy 2021 shall be borne by the Petitioner. The Petitioner is directed not to transfer any such financial liability onto its beneficiaries.

The issue is answered accordingly.

47. The Petition No. 11/MP/2023 is disposed of in terms of the above discussions and findings.

Sd/-
(P. K. Singh)
Member

Sd/-
(Arun Goyal)
Member

Sd/-
(I. S. Jha)
Member

Sd/-
(Jishnu Barua)
Chairperson

