

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 262/MP/2024

Coram:

**Shri Jishnu Barua, Chairperson
Shri Ramesh Babu V., Member
Shri Harish Dudani, Member
Shri Ravinder Singh Dhillon, Member**

Date of Order: 30th July, 2025

In the matter of

Petition under Sections 63 and 79 of the Electricity Act, 2003 for relief under Force Majeure (Article 11) and Change in Law (Article 12) of Transmission Service Agreement dated 27.4.2017 related to NEW WR-NR 765 kV Inter-Regional Corridor.

AND

IN THE MATTER OF:

POWERGRID Varanasi Transmission System Limited,
(Formerly known as WR-NR Power Transmission Limited)
B-9, Qutub Institutional Area,
Katwaria Sarai, New Delhi – 110016

Address for correspondence:

C/o ED (TBCB),
Power Grid Corporation of India Limited,
Saudamini, Plot no.2, Sector -29
Gurgaon 122001

...Petitioner

Vs.

1. Uttar Pradesh Power Corporation Limited,
Through its Chief Engineer,
(Formerly Uttar Pradesh State Electricity Board)
Shakti Bhawan, 14, Ashok Marg, Lucknow - 226001.
2. Chhattisgarh State Power Distribution Company Limited,
Through its Chief Engineer,
P.O. Sunder Nagar, Dangania, Raipur,
Chhatisgaarh-492013
Also at:
Office of Executive Director (Commercial) CSPDCL, 4th Floor,

Vidyut Sewa Bhawan, Daganiya, Raipur,
CHHATTISGARH - 492013

3. Electricity Department, Government of Goa,
Through its Chief Engineer,
3rd Floor, Vidyut Bhawan, Panaji
Near Mandvi Hotel, Goa - 403 001.
4. Maharashtra State Electricity Distribution Co. Limited,
Through its Chief Engineer,
Plot No. G-9, A K Marg, Prakashgad, 4th Floor,
Andheri (East), Mumbai-400051
5. Electricity Department,
Administration of Daman & Diu,
Through its Secretary,
Daman-396 210
Also at:
Electricity Dept, Administration Plot No-35,
OIDC Complex, Near Fire Station, Somanth, Nani Daman
DAMAN & DIU - 396210
6. Electricity Department, Administration of Dadra Nagar Haveli,
Through its Secretary,
(Now known as DNH Power Distribution Corporation Ltd)
U.T., Silvassa - 396 230.
Also at:
Vidyut Bhavan, 66 KV Road, Near Secretariat,
Amli, Silvassa
DADRA & NAGAR HAVELI – 39623
7. Gujarat Urja Vikas Nigam Limited,
Through its Chief Engineer,
Sardar Patel Vidyut Bhawan, Race Course Road,
Vadodara - 390 007.
8. Madhya Pradesh Power Management Company Limited,
Through its Chief Engineer,
Block No. 11, 1st Floor, Shakti Bhawan,
Rampur Jabalpur-482008.
9. BSES Yamuna Power Limited,
Through its Chief Engineer,
BSES Bhawan, Nehru Place,
New Delhi- 110024
10. BSES Rajdhani Power Limited,
Through its Chief Engineer,
BSES Bhawan, Nehru Place,
New Delhi - 110019

11. Tata Power Delhi Distribution Limited,
Through its Chief Engineer,
Power Trading & Load Dispatch Group,
Cennet Building, Adjacent To 66/11 kV Pitampura-3
Grid Building, Near PP Jewellers Pitampura, New Delhi – 110034.

Also at:

NDPL House, Hudson Lines Kingsway Camp
New Delhi - 110009

12. New Delhi Municipal Council,
Through its Secretary,
Palika Kendra,
Sansad Marg, New Delhi-110002.

13. Power Development Department,
(Now known as Jammu Kashmir Power Corporation Limited)
Through its Chairman
Government of Jammu & Kashmir,
Mini Secretariat, Jammu.

Also at:

220/66/33 KV GLADNI SS SLDC Building Narwa, Jammu
Jammu - 180001

14. Ajmer Vidyut Vitran Nigam Limited,
400 Kv GSS Building (Ground Floor) Ajmer Road
Heerapura , Jaipur
Through its Chief Engineer,
Vidyut Bhawan, Janpath, Jaipur
Rajasthan - 302005

15. Jaipur Vidyut Vitran Nigam Limited,
Through its Chief Engineer,
400 kV GSS Building (Ground Floor), Ajmer Road,
Heerapura, Jaipur.

Also at:

Room No. 223, Vidyut Bhawan, Janpath, Jaipur
Rajasthan - 302005

16. Jodhpur Vidyut Vitran Nigam Limited,
Through its Chief Engineer,
400 kV GSS Building (Ground Floor), Ajmer Road,
Heerapura, Jaipur.

Also at:

Room No. 223, Vidyut Bhawan, Janpath, Jaipur
Rajasthan - 302005

17. Uttarakhand Power Corporation Limited,
Through its Chief Engineer,

Victoria Cross Vijeyta Gabar Singh Urja Bhawan,
Kanwali Road, Balliwala Chowk,
Dehradun-248001.

18. Chandigarh Administration,
Through its Chief Engineer,
Sector -9, Chandigarh.
Punjab - 160009
19. Himachal Pradesh State Electricity Board,
Through its Chief Engineer,
Vidyut Bhawan, Kumar House Complex Building II,
Shimla-171 004.
20. Punjab State Power Corporation Limited,
Through its Chief Engineer,
Thermal Shed Tia, Near 22 Phatak
Patiala-147001.
Also at:
Through its Chief Engineer (PP&R),
PP&R, Shed T-1, Thermal Design,
Patiala – 147 001
21. Haryana Power Purchase Centre,
Through its Chief Engineer,
Shakti Bhawan, Sector-6 Panchkula
(Haryana) - 134 109.
22. Rajasthan Urja Vikas Nigam Limited,
Through its Managing Director,
Shed no.5/4, Vidyut Bhawan,
Janpath, Jyoti Nagar, Jaipur-302 005 (Raj)
23. REC Power Distribution Company Limited,
(Bid Process Coordinator)
Through its Chief Executive Officer
ECE House, 3rd floor, Annexe-11
28 A, KG Marg, New Delhi -110 001
24. Central Electricity Authority,
Through its Chief Engineer (PSPM)
PSPM Division, Sewa Bhawan,
Rama Krishna Puram, New Delhi – 110 066 **...Respondents**

Parties present:

Ms. Poorva Saigal, Advocate, PVTSL
Shri Shubham Arya, Advocate, PVTSL
Ms. Pallavi Saigal, Advocate, PVTSL
G. Vijay, PVTSL



ORDER

The present Petition has been filed by the Petitioner, POWERGRID Varanasi Transmission System Limited (PVTSL), under Section 63 and 79 of the Electricity Act, 2003 ('the Act') *inter alia* seeking relief under Force Majeure (Article 11) and Change in Law (Article 12) of the Transmission Service Agreement dated 27.4.2017 ('TSA'), which have adversely affected the construction of the 'NEW WR-NR 765 kV Inter-Regional Corridor'. The Petitioner has made the following prayers:

- i) Admit and entertain the present petition under Section 63 read with Section 79 of the Electricity Act, 2003 for claim of the Project being affected by Force Majeure events and Change in Law events and for providing relief under Article 11 and Article 12 respectively of Transmission Service Agreement dated 27.04.2017 as set out hereinabove.*
- ii) Hold that the Petitioner is entitled for time extension of 5 days on account of Force Majeure conditions and SCOD of the project would be extended to 01.08.2021.*
- iii) Hold that the Petitioner shall be entitled to get the increase in cost of Project amounting to Rs.1256.57 Lakhs during execution and completion of the transmission project;*
- iv) Hold that the Petitioner shall be entitled to increase in adopted annual non-escalable charges by 1.37% on account of increase in aforementioned cost of project due to Change in Law;*
- v) Hold that the Petitioner shall be entitled to carrying cost from COD till the date of order to be issued by this Hon'ble Commission;*
- vi) Allow recovery of filing fees and legal expenses in regard to the present Petition; and*
- vii) Pass such further order or orders as this Commission may deem just and proper in the circumstances of the case.*

Background

2. The Petitioner is a wholly owned subsidiary of Power Grid Corporation of India Limited ('POWERGRID'), which was selected as a successful bidder through the tariff based competitive bidding under Section 63 of the Act to establish the transmission

system, namely, 'NEW WR-NR 765 kV Inter-Regional Corridor' (Project) on a Build, Own, Operate and Maintain (BOOM) basis comprising the following elements:

Project Elements	Scheduled COD from the Effective Date of 27.03.2018	Actual COD	Delay in number of days
765 kV Vindhyachal Pooling Station-Varanasi D/C line	40 months from effective date (SCOD: 26.7.2021)	1.8.2021	Delay of 5 days owing to force majeure events

3. The Petitioner was incorporated as a Special Purpose Vehicle ('SPV') on 12.1.2017 by the Bid Process Coordinator (in short, 'BPC'), namely, REC Transmission Projects Company Limited (RECPDCL), for the purpose of developing and implementing the Project under the Tariff Based Competitive Bidding route. POWERGRID participated in the competitive bidding process conducted by the BPC and, upon emerging as the successful bidder, a Letter of Intent (LOI) was issued by the BPC to POWERGRID on 1.3.2018. In accordance with the bidding documents, POWERGRID furnished the Contract Performance Guarantee on 27.3.2018 and acquired 100% of the shareholding in the Petitioner Company by executing a Share Purchase Agreement with the BPC on 27.3.2018. Accordingly, the TSA dated 27.4.2018 entered into between the Petitioner and the LTTCs became effective from 27.3.2018. The Commission, in its order dated 27.8.2018 in Petition No. 119/TL/2018, granted a transmission licence to the Petitioner for the inter-State transmission of electricity. Additionally, vide order dated 5.9.2018 in Petition No. 120/AT/2018, the Commission adopted the transmission charges of the Petitioner.

Submissions of the Petitioner

4. The Petitioner has mainly submitted as under:

a. The progress of the Transmission Project was severely affected on account of the COVID-19 outbreak, which is a force majeure event within the provisions of Article 11 of the TSA. The force majeure events were beyond the

control of PVTSL and could not have been anticipated at the time of bidding. There were also certain changes in Law events encountered during the execution of the Project, and these changes occurred after the cut-off date. However, PVTSL took all steps as per Prudent Utility Practices in right earnest to mitigate and minimize the impact of the force majeure/Change in Law events and commissioned the Transmission Project only with a delay of 5 days.

b. Summary of force majeure events encountered by the Petitioner during the implementation of the instant Project are tabulated below;

Sl. No.	Force Majeure event	Time period	Date of occurrence of the force majeure event
1.	First wave of COVID	150 days	25.03.2020
2.	Second wave of COVID	90 days	01.04.2021

c. Pursuant to the communications exchanged between PVTSL and the LTTCs, including the Lead LTTC, the Contract Performance Guarantee ('CPG') issued by PVTSL in favour of the LTTCs has been returned by Respondent Nos. 1,8,9,11,20,21&22. Respondent No.8 (MPPMCL) has returned the CPG vide letter 9.9.2021 and mentioned that the SCOD of the Project was on 26.07.2021, resulting in a delay of 5 days and accordingly, Clause 6.4 of the TSA relating to Liquidated Damages (LD) gets attracted. In this regard, UPPCL, being the lead LTTC, was requested to convey further course of action as per the provisions of the TSA. The CPGs submitted to other LTTCs expired on 26.11.2021, and no claim has been made by any of the LTTCs till date. In terms of Article 18.1.1 read with Schedule 8 of the TSA, the decision of the Lead LTTC is binding on the other LTTCs. As the Lead LTTC (UPPCL) has returned the CPG, no further claims are pending towards the Bank Guarantee and all obligations as per the terms and conditions have been fulfilled by PVTSL.

d. Further, the following Change in Law events occurred during the implementation of the Project, leading to an increase in the cost of the Project:

(Rs. in lakh.)

S. No.	Change in Law event	Basic Amount	IDC	IEDC	Increase in project cost on account of Change in Law
1.	Change in Acquisition Price	110.07	0	0	110.07
2.	Land Compensation (85% of Tower base)	520.00	56.21	20.80	597.01
3.	Procurement and Installation of bird divertors.	409.59	44.28	16.38	470.25
4.	IDC from SCOD to Project COD	0	79.24	0	79.24
5.	IEDC from SCOD to Project COD	0	0	0	0
Total impact of Project Cost					1256.57

e. Prior to the bid submission, BPC vide its email dated 15.06.2017 had intimated to the bidders that the acquisition price payable by the Selected Bidder for acquisition of 100% of equity shareholding of WR-NR Power Transmission Limited (now PVTSL) along with all its related assets and liabilities was Rs.14,02,43,000/-. Subsequent to bidding and after the cut-off date, i.e. 18.09.2017 (7 days prior to bid deadline of 25.09.2017), BPC vide letter dated 19.03.2018 intimated the successful bidder of the final Acquisition Price as Rs. 15,12,49,571/-, resulting in an increase of Rs 110.07 lakh. The aforesaid amount has been paid to the BPC, and thereafter, the SPV was acquired by POWERGRID. This claim under Change in Law has been duly notified by bringing it to the notice of the LTTCs and the Commission, along with documentary proof in Petition No. 120/AT/2018 filed for the adoption of transmission charges.

f. The Government of Uttar Pradesh, vide Government Order Nos. 2023/24-P-3-2018 dated 06.09.2018 and 2643/24-P-3-2019 dated 19.11.2019, have separately notified payment of land compensation for tower base as well as for the corridor of the transmission line, to the land owners. The Notification of payment of land compensation for the tower base as well as corridor of transmission line by the Government of Uttar Pradesh is a Change in Law event, and the expenditure incurred and anticipated to be incurred by PVTSL on this account is Rs. 597.01 lakh.

- g. On 14.9.2020, MoEFCC Regional Office (Central Region) issued a letter to the Principal Secretary, Government of Uttar Pradesh approving the diversion of 210.152 hectares of forest land in favour of PVTSL, subject to certain conditions, including installation of bird deflectors on the upper conductor of the transmission line at suitable intervals to avoid bird hits.
- h. The net increase in cost of the project due to installation of bird divertors after the cut-off date is Rs .470.25 lakh (including IDC of Rs. 44.28 lakh and IEDC of Rs. 16.38 lakh).
- i. Further, the entire increase in the project cost (100%) on account of the capital expenditure incurred by PVTSL by reason of Change in Law as well as the funding and financing cost of such capital expenditure, in full, during the construction period and the incidental expenditure incurred owing to Change in Law events need to be serviced by increase in the transmission charges payable over and above the quoted transmission tariff during the entire period of the Transmission Service Agreement in order to enable the PMJTL be compensated fully for the effect of the Change in Law events. It should not be restricted to only the hard costs of capital expenditure incurred but also include funding and financing costs, as well as overheads.
- j. The issue of entitlement of IDC and IEDC incurred on account of Change in Law and Force Majeure events is no longer res-integra in view of the judgment of the Appellate Tribunal for Electricity (APTEL) dated 20.10.2020 in Appeal No. 208 of 2019 in the case of Bhopal Dhule Transmission Company Limited. v. Central Electricity Regulatory Commission and Ors. ('Bhopal Dhule Judgment') and the judgment dated 3.12.2021 in Appeal No. 129 of 2020 in NRSS XXXI (B) Transmission Limited v. CERC and Ors. and Appeal No. 276 of 2021 in Darbhanga-Motihari Transmission Co. Ltd. v. Central Electricity Regulatory Commission and Ors. ('NRSS Judgment').
- k. The Petitioner is also entitled for carrying cost from COD till the date of order to be issued by the Commission at the actual rate of interest paid by the Petitioner for arranging funds or the rate of interest on working capital as per the applicable Tariff Regulations or the late payment surcharge rate as per the TSA, whichever is the lowest.

I. The Petitioner has sought relief for an increase in project cost of Rs. 1256.57 lakh, resulting in a commensurate increase in annual non-escalable transmission charges of 1.37%.

Proceedings before the Commission

Hearing dated 26.11.2024

5. The Petition was admitted, and notices were issued to the Respondents to file their respective replies. The Petitioner was directed to furnish certain information on an affidavit. The Petitioner filed the compliance affidavit dated 26.12.2024 in this regard. Respondent No. 4, Maharashtra State Electricity Distribution Co. Limited (MSEDCL), has filed its reply on 30.12.2024, and the Petitioner filed its rejoinder to the same on 20.1.2025.

Reply of Respondent No. 4

6. Respondent No. 4, MSEDCL, in its reply dated 30.12.2024, has mainly submitted as under:

a. The Petitioner has relied upon Articles 2.1, 4.3, 4.4, read with Articles 11 & 12 of the TSA, to claim that it was unable to achieve the COD as per the TSA on account of the Covid-19 pandemic and due to Change in Law events which could not have been foreseen by the Petitioner. Sufficient extension was granted to the Petitioner with respect to completion of work as far as the Covid-19 pandemic is concerned; however, despite the extended timeline, the Petitioner was unable to achieve the COD on time.

b. The increase in acquisition price for acquisition of 100% of equity shareholding of WR-NR Power Transmission Limited (PVTSL) along with all its related assets and liabilities is Rs. 14,02,43,000/-. However, the BPC vide letter dated 19.3.2018 intimated the successful bidder of the final Acquisition Price as Rs. 15,12,49,571/- . The increase in acquisition price was due to the introduction of the GST regime. The BPC vide letter dated 23.3.2018 explained that the Tentative Acquisition

included service tax@15% whereas the Final Acquisition Price includes GST@18%. Hence, this led to an increase in price, which is inevitable under the new regime. The Commission in Petition No. 120/AT/2018 has already held that PVTSL is entitled to an increase in acquisition price (Rs. 110 lakh) under Change in Law events; however, it was also clarified that the same falls short of Rs. 2.87 crores and cannot be allowed as per Article 12.2.1 of the TSA.

c. MSEDCL had no role to play in the issuance of Notification dated 06.09.2018 and 19.11.2019 for payment of the land compensation for tower base as well as corridor of transmission line, respectively, by the Government of Uttar Pradesh and does not bear any responsibility for the same. However, without prejudice, the Petitioner had failed to provide any notice to the LTTCs regarding any additional costs incurred by it due to the issuance of the notifications, and as such, is not entitled to compensation by raising such false claims. The claim of Rs. 597.01 lakh is imaginary in nature as no proper calculation has been made for the same, and the same is liable to be rejected as false and frivolous.

d. The Bird Deflectors were installed in compliance with the Circular No. 238/2/2019 dated 22.02.2019 by the MOEFCC. The Petitioner never submitted any notice in terms of Rule 3 of the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 specifying the charges of computing any charges incurred by it. It is only after expiry of almost 2 years, i.e., on 6.01.2021, that a notice was sent by the Petitioner without any details of expenditure. The Petitioner never informed the LTTCs about the proposed impact on the tariff or charges which it had incurred due to the introduction of these guidelines and upon its implementation as per Rule 3(2)&(3) of the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021. The Petitioner had never submitted any notice providing the computation of the impact on tariff or charges to be adjusted and recovered within 30 days of the occurrence of a Change in Law event.

e. The Petitioner is not entitled to an increase in adopted annual non-escalable charges by 1.37% on account of an increase in Project costs as claimed by it. The Petitioner has not provided any detailed analysis of the charges being claimed by it and has blatantly quoted a figure without any proper explanation as to the losses.

The entitlement to an increase in adopted annual non-escalable charges is erroneous and should be arrived at only after a prudence check.

f. As per the TSA dated 27.04.2017, the SCOD of the project was on 26.07.2021. However, the Petitioner has achieved the COD on 1.08.2021, thus resulting in a delay of 5 days, which attracts Clause 6.4 of the TSA relating to liquidated damages in the event of a breach of obligations by the Petitioner.

Rejoinder on behalf of the Petitioner

7. The Petitioner, in its rejoinder dated 20.01.2025, to the reply filed by Respondent No. 4, has submitted as under:

a. The Petitioner, in spite of the ongoing COVID-19 pandemic, was able to complete the Project with a mere delay of 5 days. In this regard, reliance is placed on the Ministry of Power, Government of India circulars dated 27.07.2020 and dated 12.06.2021, wherein the Scheduled Commercial Operation date ('SCOD') for all Inter-State Transmission projects was extended by 05 months and 03 months, respectively, on account of the COVID-19 pandemic. Further, the Commission has already condoned the delay of various TBCB licensees through various orders on this account.

b. Various LTTCs, including the Lead LTTC (UPPCL), have returned the Contract Performance Guarantee ('CPG') issued by PVTSL in their favour. However, Respondent No. 4 has failed to return the CPG, despite the Lead LTTC (UPPCL) having returned it. In this regard, Article 18.1.1, read with Schedule 8 of the Transmission Service Agreement (TSA), provides that the decision of the Lead LTTC is binding on the other LTTCs.

c. PVTSL is entitled to be compensated for the increase in acquisition price of Rs.1,10,06,571/-. In this regard, reliance has been placed on the Order dated 5.9.2018 passed by the Commission in Petition No. 120/AT/2018, wherein it was held that PVTSL is entitled to an increase in acquisition price under Change in Law. This Commission had granted the liberty to claim relief on account of the above Change in Law event, along with other Change in Law events, when the threshold criteria are met.

d. In the present Petition, the threshold criteria of Rs.2.87 crores provided in Article 12 of the TSA have been duly met as PVTSL is claiming Change in Law compensation amounting to about Rs. 1256.57 lakh, which is in excess of the limit of Rs.2.87 crores.

e. The Government of Uttar Pradesh vide Government Order Nos. 2023/24-P-3-2018 dated 06.09.2018, and 2643/24-P-3-2019 dated 19.11.2019, have separately notified the payment of land compensation for tower base as well as for corridor of transmission line, to the landowners. These notifications have been issued after the cut-off date, i.e. 7 (seven) days prior to the bid submission date, which works out to 18.09.2017, and the same qualifies as a Change in Law as per Article 12.1 of TSA. Further, notice of a Change in Law has been issued to the LTTCs, including MSEDCL, vide letter dated 04.12.2021, and MSEDCL's contention that Petitioner had failed to provide any notice to the LTTCs regarding any additional costs being incurred by it due to the issuance of Govt of UP notifications is baseless and denied.

f. The contention of MSEDCL that no proper calculations have been provided by PVTSL is categorically denied. PVTSL, in compliance with the affidavit dated 26.12.2024, to the Record of Proceedings dated 26.11.2024, has provided detailed calculations of the amount of Rs. 5.97 crores being claimed by PVTSL. Out of the total amount being claimed, excluding IDC and IEDC, PVTSL has already paid Rs 3.79 crores and the balance amount of Rs 1.61 crores is estimated to be paid during FY 2024-25 & 2025-26, for which detailed calculations will be submitted based on actual payment to landowners.

g. The installation of bird divertors/deflectors was imposed as a new condition after the cut-off date of 18.09.2017. PVTSL also issued a Change in Law notice dated 06.01.2021 with respect to the introduction of the new requirement by the MoEFCC to provide for Bird diverters/ deflectors to be fixed on the upper conductor of the Transmission Line at suitable intervals to avoid bird hits.

h. Reliance placed by MSEDCL on Rule 3(2) & (3) of the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 ['Change in Law Rules, 2021'] is misplaced as Change in Law Rules were notified only on 22.10.2021 and the CIL events, in the instant case, were occurred prior to notification of said rules

and hence, Change in Law Rules, 2021 cannot be applied retrospectively. [Ref. Judgement dated 05.04.2022 passed by the APTEL in the case of NRSS-XXIX Transmission Limited Vs. Central Electricity Regulatory Commission & Ors. in Original Petition No.1 of 2022.

i. PVTSL is entitled to an increase in non-escalable transmission charges on account of Change in Law events in terms of Article 12.2.1 of the TSA. Further, PVTSL has duly provided the auditor's certificate, as well as a detailed calculation of the revised annual non-escalable transmission charges of PVTSL along with the Petition.

j. PVTSL has also submitted its compliance affidavit dated 26.12.2024 to the Record of Proceedings dated 26.11.2024, providing the bifurcations of the increase in costs. Insofar as extensions of time are concerned, PVTSL is only seeking an extension of 5 days in SCOD, which is on account of the COVID-19 pandemic, and the same qualifies as a Force Majeure event in terms of the TSA, and no Liquidity Damage (LD) is payable by the Petitioner.

k. MSEDCL has sought to raise prayers in its reply seeking payment of liquidated damages, encashment of CPG, non-extension of the SCOD, etc. In this regard, it is submitted that MSEDCL is obligated to return the CPG, considering that the delay was due to a Force Majeure event and no LD is applicable. Moreover, the lead LTTC- UPPCL, has returned the CPG. Further, Respondent No.8 (MPPMCL) has returned the CPG, vide letter 9.9.2021. The CPGs submitted to other LTTCs expired on 26.11.2021, and no claim has been made by any of the LTTCs till date. Even otherwise, no communication has been issued till date regarding imposing Liquidated Damages by the LTTCs. MSEDCL cannot seek specific prayers by way of its Reply in a Petition filed by PVTSL.

Hearing dated 20.2.2025

8. The matter was heard on 20.2.2025 and remained part heard. Further, the Commission also sought certain information from the Petitioner and the Petitioner filed its compliance affidavit in this regard on 17.3.2025.

Hearing dated 30.4.2025 & 7.5.2025

9. The matter was heard on 30.4.2025 & 7.5.2025. The learned counsel for Respondent, MSEDCL, prayed for another opportunity for an oral hearing on the ground of non-availability of the arguing counsel. However, learned counsel for the Petitioner, while opposing such a request, submitted that previously, on 30.4.2025, also, the matter was adjourned at the request of the learned counsel for the Respondent, MSEDCL, and the repeated adjournments sought by the Respondent, MSEDCL, would only result in undue delay in the proceedings. The Commission, after hearing the parties at length, reserved the matter for order, and the parties were permitted to file their written submissions. The Petitioner and Respondent, MSEDCL, have filed their written submissions reiterating the contents of the Petition, which are not repeated here for the sake of brevity.

Analysis and Decision

10. We have considered the submissions of the Petitioner and Respondent No. 4. MSEDCL, and perused the documents available on the record. The following issues arise for our consideration:

Issue No. 1: Issue No.1: What shall be the COD for the instant transmission assets?

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

Issue No. 3: Whether the events so claimed by the Petitioner constitute a Force Majeure event in terms of the TSA?

Issue No.4: Whether the claims of the Petitioner are covered under Change in Law in terms of the TSA?

Issue No. 5: What reliefs, if any, should be granted to the Petitioner in light of the answers to the above issues?

The aforementioned issues are examined in the succeeding paragraphs.

Issue No.1: What shall be the COD for the instant transmission assets?

11. Prior to dealing with the Petitioner's Force Majeure and Change in Law claims, we find it appropriate to examine the Petitioner's declaration of the COD of the Project. The Petitioner has submitted that the SCOD of the instant transmission element is 40 months from the effective date, i.e. SCOD works out as 26.7.2021, whereas the COD has been declared as 1.8.2021 with a delay of 5 days.

12. As per Article 6.2.1 of the TSA, an element of the Project can be declared to have achieved the COD seventy-two hours following the connection of the element with the Interconnection Facilities or seven days after the date on which it is declared by the TSP to be ready for charging but is not able to be charged for reasons not attributable to the TSP. In this case, we have perused the COD certificate dated 2.8.2021 issued by the Petitioner quoted as under:

“

Subject: COD under Section 6.2.1 of Transmission Service Agreement (TSA) w.r.t Transmission System for New WR-NR 765kV Inter-Regional Corridor being implemented by POWERGRID Varanasi Transmission System Limited (PVTSL)

The subject Transmission System is being executed by POWERGRID Varanasi Transmission System Limited and is governed by Transmission service Agreement (TSA) signed between SPV and Long Term Transmission Customers (LTTCS).

In terms of the provisions of the Transmission Service Agreement (TSA) dated 27.04.2017, Vindhyachal Pooling Station – Varanasi 765kV D/c Line under “Transmission System for New WR-NR 765kV Inter-Regional Corridor” has been charged and commissioned by PVTSL as per detail below:

Sl. No.	Name of Transmission Element	Details of Charging and completion of trial operation
1	Vindhyachal Pooling Station – Varanasi 765kV D/c Line – Circuit I	Charged at 18:54 Hrs on 30.07.2021 and trial operation completed at 18:54 Hrs on 31.07.2021
2	Vindhyachal Pooling Station – Varanasi 765kV D/c Line – Circuit II	Charged at 19:19 Hrs on 30.07.2021 and trial operation completed at 19:19 Hrs on 31.07.2021

It is to be mentioned that as per Schedule-3 of TSA and in terms of provision of clause 5 of the regulation 6.3A of Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulation, 2010, the above elements have completed trial operation by 31.07.2021.

Consequent to successful completion of trial operation of the aforesaid element, the same has been put under commercial operation with effect from 00:00 Hrs. of 1st August, 2021 in terms of provision 6.2.1 of the TSA and clause 6.3 A (5) of the CERC (Indian Electricity Grid Code) Regulations, 2010.

The transmission charges of aforementioned elements are payable w.e.f. 1st August, 2021 and shall be entitled for all benefits envisaged in the TSA.

.....”

13. As per the above, both circuits of Vindhyachal Pooling Station- Varanasi 765 kV D/c line were charged only on 30.07.2021 and in terms of Article 6.2.1 of the TSA, the Petitioner was, therefore, entitled to declare its COD 72 hours after such interconnection, i.e. with effect from 03.08.2021. Accordingly, we allow the COD of the Petitioner's Project as 03.08.2021. Therefore, there is an overall delay of 7 days in achieving the COD of the Project from its original SCOD, i.e., 26.07.2021.

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

14. The Petitioner has claimed time and cost overrun reliefs on account of the Force Majeure and Change in Law events as per the provisions of Article 11 (Force Majeure) and Article 12 (Change in Law) of the TSA. Article 11.5.1 of the TSA provides as under:

“11.5 Notification of Force Majeure Event

11.5.1 The Affected Party shall give notice to the other Party of any event of Force Majeure as soon as reasonably practicable, but not later than seven (7) days after the date on which such Party knew or should reasonably have known of the commencement of the event of Force Majeure. If an event of Force Majeure results in a breakdown of communications rendering it unreasonable to give notice within the applicable time limit specified herein, then the Party claiming Force Majeure shall give such notice as soon as reasonably practicable after reinstatement of communications, but not later than one (1) day after such reinstatement...”

15. As per the above provision, an affected party is required to give notice to the other party of any event of force majeure as soon as reasonably practicable, but not later than seven days after the date on which the party knew or should have reasonably known of the commencement of the event of Force Majeure. It further provides that such notice shall be a precondition to the affected party's entitlement to claim relief under the TSA.

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

“12.3 Notification of Change in Law:

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

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

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

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

18. The Petitioner has submitted that the implementation of its Project had been affected by the 1st and 2nd Waves of COVID-19 and consequently, it had issued the notices to LTTCs on 31.3.2020 & 28.4.2021, invoking the Force Majeure conditions

caused due to the COVID-19 1st wave & 2nd wave respectively, which affected the implementation of the Project w.e.f. 31.3.2020 and 19.4.2021. Perusal of the above notices indicates that the Petitioner had complied with the requirement of notice under Article 11.5 of the TSA in respect of its Force Majeure claims, viz. 1st and 2nd Covid-19 Waves.

19. With respect to the Change in Law events, it is noted that the Petitioner has placed on record the various Change in Law notices issued by it intimating the LTTCs about the occurrence of Change in Law event viz. (i) Notification of payment of land compensation for tower base by the Government of Uttar Pradesh dated 4.12.2021, and (ii) Requirement of installation of bird diverters/ deflectors on the transmission lines dated 6.01.2021. However, insofar as the Change in Law event, viz. Increase in acquisition price of BPC is concerned. It is observed that the Petitioner is relying on Petition No. 120/AT/2018 filed for the adoption of transmission charges, wherein this Change in Law event was expressly prayed by the Petitioner. *Per contra*, MSEDCL has submitted that the Petitioner failed to provide a notice providing computation of impact in tariff or charges to be adjusted and recovered as per Rule 3 (2) & (3) of the Change in Law Rules, 2021, and, hence, it has waived its right to claim any compensation. After perusing the notices, we note that the Petitioner has fulfilled the condition of notice as stipulated under the TSA. Insofar as the averment that the Petitioner has failed to issue notice in terms of Rule 3(2) & (3) of the Change in Law Rules, 2021, it may be noted that the Ministry of Power, Govt. of India by its communication dated 21.2.2022 has clarified that the Change in Law Rules, 2021 will apply to the Change in Law events occurred on or after the date of notification of the said Rules in the Gazette i.e. 22.10.2021 and the Change in Law events occurred prior to the notification of the Rules shall be dealt with in accordance with the prevalent

dispensation/position at the time of occurrence of the event. Further, the Appellate Tribunal for Electricity (APTEL) vide its judgment dated 5.4.2022 in OP No.1 of 2022 and Ors. has also, *inter alia*, held that the Change in Law Rules, 2021 apply only prospectively and cannot be given any retrospective operation. Given that the Change in Law claims raised by the Petitioner in the present case predate the notification of the Change in Law Rules, 2021 (i.e. 22.10.2021), the said Rules and the compliance with requirements thereunder do not apply in the present case.

20. This issue is answered accordingly

Issue No.3: Whether the events so claimed by the Petitioner constitute a Force Majeure event in terms of the TSA?

21. The Petitioner has sought a time extension under Article 11 (Force Majeure) of the TSA on account of the occurrence of a Force Majeure event, viz. COVID-19 outbreaks (1st and 2nd Waves) during the construction/implementation of the Project, which led to delays in achieving the commercial operation of the Project. The Petitioner has submitted that on 24.3.2020, the Government of India, in the exercise of its power under Section 10(2)(I) of the Disaster Management Act, 2005, imposed a nationwide lockdown from 25.3.2020 till 14.4.2020 to curb the spread of the COVID-19 pandemic. Thereafter, in accordance with the Orders dated 14 April 2020 and 1 May 2020 of the Ministry of Home Affairs, Government of India, the lockdown remained in force until 17 May 2020. This led to severe disruptions to the transportation, manufacturing, and distribution of goods and services in the Country and impaired the fulfilment of contractual obligations for the supply of goods, services, and consultancy services, which was also recognized by the Ministry of Finance by the Office Memorandum dated 13.5.2020. Furthermore, the Ministry of Power, Government of India, vide Circular dated 27.7.2020, granted a five-month extension in respect of SCOD of all

ISTS Projects that were under construction as of the date of the lockdown proclamation. The Petitioner has submitted that during the period from 1.4.2021 to 31.8.2021, the progress of the Project was affected due to the Second Wave of the COVID-19 pandemic. Furthermore, on 12.6.2021, the Ministry of Power, Government of India, issued another circular granting a three-month extension in respect of the SCOD for all ISTS projects that were under construction with the SCOD due after 1.4.2021. The Petitioner has also indicated that its Project qualified for the extension of SCOD under both the aforementioned Circulars of the Ministry of Power, Government of India, and that the delay of 5 days in achieving commercial operation of the Project be accordingly condoned.

22. *Per contra*, Respondent, MSEDCL, has submitted that extension of SCOD as sought by the Petitioner on account of the Covid-19 pandemic is baseless and ought to be denied. It has also been submitted that sufficient extensions were granted to the Petitioner with respect to completion of work. Despite these extensions, the Petitioner failed to discharge its obligations and achieve the COD on time.

23. We have considered the submissions made by the parties. The Ministry of Power, Govt. of India, vide its order dated 27.7.2020 in the subject matter of “Extension to TSP/Transmission Licensees for completion of under construction inter-State transmission projects”, has decided as under:

“... No. 3/1/2020-Trans
Government of India
Ministry of Power

Shram Shakti Bhawan, Rafi Marg, New Delhi- 110001,

Dated: 27th July, 2020

To

1. Chairperson, Central Electricity Authority, New Delhi.

2. COO, CTU-Plg, POWERGRID, Gurugram

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

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

2. It has been, therefore, decided that;

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

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

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

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

24. In the aforesaid order, the Ministry of Power, taking into the account the construction activities at the various transmission projects sites having been severely affected by the nationwide lockdown measures announced since 25.3.2020 to contain the outbreak of Covid-19 and the request of the transmission utilities for extension of SCOD to mitigate the issues of disruption in supply chains & manpower caused due to outbreak of Covid-19, decided that all inter-State transmission projects which were under construction as on date of lockdown i.e. 25.3.2020 shall get an extension of 5 months in respect of SCOD provided the SCOD of these projects was post 25.3.2020.

25. In the present case, the Project of the Petitioner was under construction as on the date of lockdown i.e. 25.3.2020 and SCOD of the Project was 26.07.2021 i.e. post 25.3.2020 and therefore, the dispensation provided by the MoP vide its order dated 27.7.2020 in the form of the extension of SCOD for the period of 5 months squarely applies in the case of the Petitioner. Accordingly, the Petitioner is entitled to an

extension of the SCOD of the Project in terms thereof. Given that the delay in achieving the commercial operation of the Project is only 7 days, we condone the said delay and extend the SCOD of the Project to actual COD, i.e., 3.8.2021.

Issue No.4: Whether the claims of the Petitioner are covered under Change in Law in terms of the TSA?

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

“12.1 Change in Law

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

- The enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law;*
- A change in the interpretation or application of any Law by Indian Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of Law;*
- The imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier:*
- A change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents Clearances and Permits;*
- Any change in the licensing regulations of the Appropriate Commission, under which the Transmission License for the Project was granted if made applicable by such Appropriate Commission to the TSP:*
- any change in the Acquisition Price; or*
- any change in tax or introduction of any tax made applicable for providing Transmission Service by the TSP as per the terms of this Agreement.”*

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

28. In the present case, the cut-off date for reckoning the Change in Law events, i.e. the date which is seven days prior to the bid deadline, was 18.9.2017. In light of the above provisions of Change in Law, the claims of the Petitioner with regard to Change in Law events, which have occurred after the cut-off date during the construction period, have been examined in the following paragraphs.

(a) Increase in the acquisition price of SPV by BPC

29. The Petitioner has submitted that prior to submission of the bid, BPC *vide* its email dated 15.6.2017 had intimated to the bidders the acquisition price payable by the selected bidder for acquisition of 100% equity shareholding of SPV along with all its related assets and liabilities as Rs. 14,02,43,000/-. Subsequently, the BPC, *vide* its letter dated 19.3.2018, informed the successful bidder of the final acquisition price as Rs. 15,12,49,571. The Petitioner has submitted that an increase of Rs. 1,10,06,571 in the acquisition price of SPV constitutes a Change in Law event in terms of Article 12.1.1 of TSA, and accordingly, the same may be allowed.

30. The Petitioner has further submitted that REC Transmission Projects Company Limited was the Bid Process Coordinator (BPC) for the Project, and the BPC had indicated the reasons for the increased acquisition price to the Petitioner *vide* letter dated 23.3.2018. The increase of Rs. 1,10,06,571/- in acquisition price by BPC was not within the control of the Petitioner. It has been submitted by the Petitioner that the reason for the increase in acquisition price as provided by BPC in its letter dated 23.3.2018 is that the tentative acquisition price in June 2017 was under the Service Tax regime; however, the same now falls under the Goods and Sales Tax regime. Further, the tentative Acquisition Price includes Service Tax @ 15% whereas on the Final Acquisition Price, GST @ 18% was charged by BPC.

31. We have considered the submissions made by the parties. The BPC, *vide* its letter dated 15.6.2017, had informed all the bidders about the acquisition price payable for acquiring 100% equity shareholding of SPV as Rs.14,02,43,000/-. Subsequently, the BPC *vide* its letter dated 19.3.2018, informed the successful bidder of the final acquisition price as Rs. 15,12,49,571/-. The Petitioner wrote to BPC on 21.3.2018 seeking reasons for the increase in the acquisition price. In response, BPC, *vide* its letter dated 23.3.2018, has submitted a response with the details of the increase in the acquisition price as under:

	Particulars	Final Acquisition Price intimated after bidding vide letter dated 19.3.2018	Tentative Acquisition Price intimated before bidding vide email dated 15.6.2017
1.	Professional Fee	107621000	107621000
2.	Indirect Tax on Prof. fee	19371780	16143150
3.	Interest cost	1586776	617000
4.	Total Reimbursement	18788148	13358130
5.	Indirect tax**	3381867	2003720
6.	Share capital	500000	500000
7.	Total	151249571	140243000

** Total Tentative Acquisition Price includes Service tax @15% whereas on Final Acquisition Price GST @ 18% is charged.

32. Perusal of the above details reveals that the increase of Rs. 1,10,06,571/- is due to the change in tax regime whereby the tentative acquisition in 2017 was under the Service Tax regime, which later on came under the purview of Goods and Service Tax regime. As per the sixth bullet under Article 12.1.1 of the TSA, 'any change in the acquisition price' constitutes a Change in Law event. In fact, in the order dated 5.9.2018 passed in Petition No.120/AT/2018, the Commission has already recognized that any change in the acquisition price, which took place after 7 days prior to the bid deadline is covered under Change in Law and the Petitioner is, therefore, entitled to relief for the increased amount of acquisition price under Change in Law. The relevant extract of the aforesaid order reads as under:

“.....As per Article 12.1.1 of the TSA, „Change in Law“ means the occurrence of any of the events after the date which is seven days prior to the Bid Deadline resulting into any additional recurring/non-recurring expenditure by the Transmission Service Provider or any income to the Transmission Service Provider. Any change in the acquisition price which took place after 7 days prior to the bid deadline is covered under Change in Law. Therefore, the Petitioner is entitled for relief for the increased amount of acquisition price under Change in Law.

36. Article 12.2.1 of the TSA provides as under:

*.....
As per the above provision, the relief is admissible @ 0.313% for every cumulative increase of Rs. 2.87 crore in the cost of the project. Though, the Petitioner is eligible to recover the additional acquisition price of Rs. 110 lakh from the LTTCs under Change in Law, the same falls short of Rs. 2.87 crore and cannot be allowed at this stage. As and when the impact of change in law including increase in the acquisition price reaches or exceeds Rs. 2.87 crore, the Petitioner shall be entitled to claim the relief in terms of Article 12.2.1 of the TSA. Accordingly, the Petitioner is at liberty to claim the relief at appropriate point of time in accordance with law....”*

33. However, given the incremental acquisition price of Rs. 110 lakh fell short of threshold of Rs. 2.87 crores for claiming the Change in Law relief during the Construction Period, the Commission did not allow the recovery of such incremental impact at that stage and held that the Petitioner shall be entitled to claim the Change in Law relief as when the impact of Change in Law including the increase in acquisition price reaches or exceeds Rs. 2.87 crores. Now that the Petitioner has also raised its claim for other Change in Law events occurred during the Construction Period, the Petitioner shall be entitled to the Change in Law relief on account of increase in the acquisition price provided the cumulative increase in the Project cost on account of the Change in Law events allowed by the Commission in this order exceeds Rs. 2.87 crores.

(b) Notification of payment of land compensation for tower base as well as corridor of transmission line by the Government of Uttar Pradesh

34. The Petitioner has submitted that the Government of Uttar Pradesh vide Government Order Nos.2023/24-P-3-2018, dated 6.9.2018 and 2643/24-P-3-2019 dated 19.11.2019 have separately notified the payment of Land Compensation for

Tower base as well as for corridor of transmission line to the land owners. The notifications issued by the Government of Uttar Pradesh are enactments coming into effect after the cut-off date of 18.9.2017 and, as such, fulfil the requirement of TSA to be dealt with under Change in Law. As per the provisions under Article 12.1.1, the imposition of a requirement for obtaining any Consents, Clearances and Permits that were not required earlier is considered a Change in Law. The said notifications required compensation to be made to the landowners so as to obtain their consent and clearance for the execution of the Project, and therefore, to fulfil the requirement to qualify as a Change in Law event under the TSA. The Petitioner has also submitted that as on 17.3.2025, the total ROW compensation paid by the Petitioner was Rs 3.98 crores and the balance of Rs 1.22 crores is still to be disbursed, which is estimated to be paid during FY 2025-26.

35. *Per contra*, Respondent No. 4, MSEDCL, submitted that the issuance of Notifications dated 6.9.2018 and 19.11.2019 for payment of land compensation by the Government of Uttar Pradesh does not cast any responsibility on MSEDCL. Further, no proper calculations have been provided for the claim amount of Rs. 597.01 lakh.

36. We have considered the submissions made by the parties and examined the documents made available on record in support of the aforesaid claim. Before proceeding further, it is relevant to refer to the Orders dated 6.9.2018 and 19.11.2019 issued by the Chief Secretary, Government of Uttar Pradesh.

Order dated 6.9.2018

*“From,
Alok Kumar,
Chief Secretary,
Govt of Uttar Pradesh.*

To,

Managing Director,
U.P. Power Corporation Ltd.,
Shakti Bhavan, Lucknow.

Managing Director,
U.P. Power Transmission Corporation Ltd, Shakti Bhawan, Lucknow.

Energy Section- 3 Lucknow, Dated: 06 September 2018

Subject: Regarding adoption of the guidelines of the Ministry of Power of Government of India for the compensation to be given to various farmers/landowners for their land acquired for 765/400/220/132 kV transmission lines being constructed by U.P. Power Transmission Corporation Ltd.

Sir,

Above subject, I am directed to state that 765/400/220/132 KV transmission lines to be constructed under the U.P. Power Transmission Corporation, it has been decided that the compensation to be provided to various farmers/landowners for their land is according to the guidelines of Ministry of Power, Government of India. In addition to the land compensation which is 85 percent of the cost of land area under the tower base to be given in addition to the permissible compensation for the present compensation given under the construction of various lines of U.P.P.T.C.L. The calculation of the cost of compensation in the item of land compensation shall be done by the District Collector of the particular area. According to the fix circle rate. This order will come into effect immediately. 3- Therefore, it is requested that action should be ensure under this order.”

Order dated 19.11.2019

“From,
Arvind Kumar,
Chief Secretary,
Government of Uttar Pradesh.

To,
All District Magistrates, Uttar Pradesh.
Energy Section-3

Lucknow: 19 November 2019

Subject: Regarding adoption of the guidelines of Ministry of Power, Government of India for land compensation to be given to various farmers/landowners for work related to 765/400/220/132 kV transmission lines to be constructed under Power Grid Corporation of India Limited.

Sir,

In relation to the above mentioned subject, it is to be informed that by the Government Order No. 2023/24-P-3-2018, dated 06 September, 2018 of Energy Section-3, provision has been made to allow additional compensation in the form of cost of 85 percent area of land under the tower base under the head of Land Compensation in addition to the existing compensation in the lines of various potentials to be constructed under U.P. Power Transmission Corporation Ltd., in accordance with the guidelines of the Ministry of Power, Government of India, for land compensation to be given to various farmers /

landowners for work related to 765/400/220/132 kV transmission lines to be constructed under Uttar Pradesh Power Transmission Corporation Limited.

2. In this regard, while sending a copy of above Government order dated 06.09.2018 and Executive Director, Power Grid Corporation of India Ltd.'s letter No. POWERGRID/NR- 3/PESA/17684 dated 20.06.2019, I am directed to say that further necessary action should be taken on the request of Power Grid Corporation of India Ltd. to implement the above arrangement of the Energy Department on the transmission lines to be established by Power Grid Corporation of India Ltd. in Uttar Pradesh.

3. The above orders are being issued with the consent of the Revenue Department.”

37. Perusal of the above reveals that by Order dated 6.9.2018, the Govt. of Uttar Pradesh directed for providing the additional land compensation to the land owners/farmers for the transmission tower base @ 85% as per the circle rates determined by the concerned District Officer in respect of the 765/400/220/132 kV transmission lines to be constructed by UPPTCL. Subsequently, by Order dated 19.11.2019, the Govt of Uttar Pradesh also instructed all the District Magistrates to implement the directives under the Order dated 6.9.2018 in respect of the transmission lines to be implemented by POWERGRID. Accordingly, the Petitioner herein has been required to pay the additional compensation to land owners/farmers towards the tower bases in terms of the Order dated 6.9.2018. The Petitioner has also placed on record the documents in support of the actual payment of land compensation. As per the provisions of Article 12.1.1 of the TSA, 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, is a Change in Law event. Whereas, the term “Law” under the TSA includes any statute, ordinance, rule, regulation, notification, order or code or any interpretation of any of them by an Indian Government Instrumentality having force of law. Undoubtedly, the aforesaid Orders issued by the Govt. of Uttar Pradesh - an Indian Government Instrumentality-

qualify as “Law” under the TSA. Further, such Orders were issued only after the cut-off date and required the Petitioner to pay additional compensation towards the tower base; and hence, qualified as a Change in Law under TSA. Previously also, the Commission has recognized the notification/order issued by the State Govt. providing for the land compensation for the transmission tower base and/or RoW corridor in accordance with the Ministry of Power Guidelines, 2015 as Change in Law events in its various orders including in the order dated 29.1.2021 passed in Petition No.264/MP/2020 in the matter of Powergrid Parli Transmission Ltd. v. MSEDCL & Ors. and order dated 25.1.2021 passed in Petition No. 265/MP/2020 in the matter of Powergrid Warora Transmission Limited v. MPPMCL & Ors. Accordingly, the Petitioner shall be entitled to the Change in Law relief for the incremental additional expenditure incurred towards the payment of land compensation in terms of the Government of Uttar Pradesh’s orders dated 6.9.2018 and 19.11.2019.

38. The Petitioner has also pointed out that so far it has disbursed the additional land compensation to the tune of Rs. 3.98 crores, and the balance Rs. 1.22 crores is yet to be disbursed and is estimated to be paid during FY 2025-26. Needless to add, the entitlement of the Petitioner to the Change in Law relief on this count shall be corresponding to the actual amount of the compensation already paid/ disbursed by the Petitioner and for the balance amount, which is yet to be paid/ disbursed, the Petitioner shall be entitled to claim the Change in Law relief only upon its payment/ disbursement and furnishing proof thereof.

(c) Requirement of installation of bird diverters/deflectors on the transmission lines

39. The primary submission of the Petitioner on this count is that on 14.9.2020, MoEFCC Regional Office (Central Region) issued a letter to the Principal Secretary,

Government of Uttar Pradesh approving the diversion of 210.152 hectares of forest land in favour of PVTSL subject to certain conditions including installation of bird deflectors by the user agency, in the present case being the Petitioner, on the upper conductor of the transmission line at suitable intervals to avoid bird hits. Such a condition of installation of bird deflectors was imposed as a new condition after the cut-off date 18.9.2017. The said condition of bird divertors/deflectors was introduced as general guidelines in Part C of the Handbook of Forest Conservation Act, 1980 and Forest Conservation Rules 2003 (Guidelines and Clarifications) published by MoEFCC on 28.03.2019, which was after the cut-off date.

40. As opposed to the above, the Respondent, MSEDCL, submitted that the Bird Deflectors were installed in compliance with Circular no. 238/2/2019 dated 22.2.2019 by the MOEFCC. Further, the Petitioner never informed the LTTC's about the proposed impact in the tariff or charges which it had incurred due to introduction of these guidelines and it was only after a delay of almost 2 years, the Petitioner issued a notice on 6.1.2021 and that too without the details of computation of charges incurred by the Petitioner.

41. We have considered the submissions made by the Petitioner and Respondent. The gravamen of the present issue revolves around the installation of bird deflectors and the cost incurred by the Petitioner while installing them. The Respondent, MSEDCL, has contended that the installation of bird deflectors was carried out in compliance with the directions issued by MoEFCC Circular No. 238/2/2019 dated 22.2.2019. However, the Respondent has failed to bring such a document on record. On the other hand, the Petitioner has placed reliance on the letter dated 14.9.2020 issued by the MoEFCC Regional Office (Central Region) to the Principal Secretary,

Government of Uttar Pradesh approving the diversion of 210.152 hectares of forest land in favour of the Petitioner while mandating that installation of bird deflectors should be done by the user agency, i.e. the Petitioner, on the upper conductor of the transmission line at suitable intervals to avoid bird hits. Pertinently, a similar claim has been examined by the Commission in its recent order dated 28.3.2025 in Petition No. 372/MP/2023 in the matter of Powergrid Medinipur-Jeerat Transmission Limited v. West Bengal State Electricity Distribution Co. Ltd. & Ors., wherein the Commission observed as under:

“.....As per the Petitioner, the requirement of installation of bird diverters/deflectors on the upper conductor of the transmission lines came to be introduced as general Guidelines in Part C of the Handbook of Forest Conservation Act, 1980 and Forest Conservation Rules, 2003 (Guidelines & Clarifications). The Handbook of Guidelines was issued by the MoEFCC on 28.3.2019, superseding all Guidelines issued in the past for the effective and transparent implementation of the provisions of the Forest (Conservation) Act, 1980, and the provisions enshrined in the said Guidelines were made applicable from 8.3.2019. As the foreword of said Handbook suggests, with a view to aligning the procedures and provisions of the Forest (Conservation) Act, 1980 with various rulings of the Hon’ble Supreme Court, Policy decisions, etc., MoEFCC had issued more than 250 guidelines under the FC Act with some of these guidelines being contextual to specific cases and times and to have better clarity and transparency, MoEFCC has consolidated all the information, scattered in these guidelines, in the form a handbook and has come-up with set of comprehensive, exhaustive, transparent, and easy to understand Guidelines in one single document in supersession of all the Guidelines issued in the past. Part C of the said handbook provided conditions to be stipulated by the MoEFCC according to the prior approval (Stage I or Stage II) for non-forest use of Forest Land under the FC Act. The Format for the Stage I and Stage II approval for the transmission line inter alia stipulated the following:

“PART C

The following are general and standard conditions pertaining to different categories of project. These conditions may be incorporated in all cases along with different specific conditions recommended by the RO/REC/FAC/State Government (for general approval projects)

I. Transmission Line Project

In-principle/ Stage-I approval

.....

10. The user agency at its cost shall provide bird deflectors, which are to be fixed on upper conductor of transmission line at suitable intervals to avoid bird hits.

.....

Formal/ Stage-II approval

.....

5. The user agency at its cost shall provide bird deflectors, which are to be fixed on upper conductor of transmission line at suitable intervals to avoid bird hits.

.....”

63. Undisputedly, the stipulation for the user agency to provide the bird deflectors on the transmission lines at its own cost as part of Stage I and/or Stage II approval was in existence even before the MoEFCC issued the above Handbook on 8.3.2019. However, it is equally relevant to note that such a requirement was imposed by the concerned authority - State/ Central having regard to the contextual requirement, e.g., in the GIB arc area, etc. The initial discussion/recommendation to this effect can be tracked back, amongst others, to the 49th Meeting of the Standing Committee of the National Board for Wildlife held on 13.6.2018 and the recommendations made by the Forest Advisory Committee in the meeting held on 22.3.2018, etc. However, all such developments are after the Cut-Off date of the Project in the instant case, i.e., 6.7.2016. Also, none of the Respondents has contested the Petitioner's Change in Law claim under this head while pointing out that such a requirement was already prevalent as on the Cut-Off date for the Project. Hence, in view of the above observations, we are inclined to accept the Change in Law claim of the Petitioner arising out of the requirement for the installation of the Bird Diverters on the 400 KV Medinipur Substation to LIL0 point of Chanditala -Kharagpur transmission line in terms of MoEFCC's Stage II approval dated 6.3.2020.”

42. The above observations squarely apply to the present case, wherein the cut-off date was 18.9.2017 i.e. much prior to the initial discussion/recommendation regarding the requirement of installation of bird divertors / reflectors can be traced back to in terms of 49th Meeting of the Standing Committee of the National Board for Wildlife held on 13.6.2018 and the recommendations made by the Forest Advisory Committee in the meeting held on 22.3.2018, etc. Further, in this case also, none of the Respondents have been able to point out that such a requirement was already in existence as on the cut-off date. The Respondent, MSEDCL's reliance on the MoEFCC's Circular No. 238/2/2019 dated 22.2.2019 is also of little relevance as the said Circular is of post cut-off date. In view of the above, we are inclined to accept the Change in Law claim of the Petitioner arising out of the requirement for the installation of the Bird Diverters on the 765 kV Vindhyachal Pooling Station – Varanasi D/c transmission line in terms of MoEFCC's approval dated 14.9.2020.

43. The issue is answered accordingly.

Issue No. 5: What reliefs, if any, should be granted to the Petitioner in light of the answers to the above issues?

Extension of SCOD

44. As already noted in the earlier part of the order, the delay of 7 days in achieving the commercial operation of the Project is squarely covered by the extension of SCOD provided by the Ministry of Power, Govt. of India to all the ISTS transmission projects, which were under construction as on the date of Covid-19 led lockdown i.e. 25.3.2020 and whose, SCOD was after the 25.3.2020. Accordingly, the SCOD of the Petitioner's Project stands extended to COD of the Project, i.e. 3.8.2021 and consequently, the Petitioner shall not be liable to any liquidated damages for the delay in achieving the COD of the Project.

Change in Law

45. Regarding the Change in Law relief during the construction period, it will be apt to refer to the provisions of the TSA with regard to Change in Law. Relevant provisions of the TSA are extracted as under:

"12.2 Relief for Change in Law

12.2.1 During Construction Period:

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

- For every cumulative increase/decrease of each Rupees Two Crore Eighty Seven Lakh Only (Rs. 2.87 Crore) 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 0.313 percent (0.313 %) of the Non-Escalable Transmission Charges."

46. In the foregoing paragraphs, the Petitioner's claims for the additional expenditure incurred due to (i) Change in Acquisition Price, (ii) Orders of Payment of Land Compensation for Tower Base by Government of Uttar Pradesh, and (iii)

Requirement of installation of Bird Diverters/ Deflectors on the Transmission Lines, are allowed as Change in Law events and consequently, the Petitioner shall be entitled to Change in Law relief in terms of Article 12.2.1 of the TSA. The Petitioner shall provide all supporting documents, including the auditor certificate, to the LTTCs when raising supplementary invoices for the revised transmission charges.

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

IDC & IEDC

48. Relying on the judgments of APTEL in Appeal No. 208 of 2019 in Bhopal Dhule Transmission Company Limited vs. CERC and Ors. dated 20.10.2020; Appeal No. 129 of 2020 in NRSS XXXI (B) Transmission Company Limited vs. CERC and Ors. and Appeal No. 276 of 2021 in Darbhanga-Motihari Transmission Company Limited vs. CERC and Ors., the Petitioner has claimed the IDC (Rs. 100.49 lakh). and IEDC (Rs. 37.18 lakh) on the additional expenditure incurred due to the Change in Law events and has also claimed the IDC (Rs. 79.24 lakh) for the actual period of delay, i.e., from SCOD of the Project to COD of the Project on account of the Change in Law and Force Majeure events that affected the timely completion of the Project.

49. We have considered the submissions made by the Petitioner. The relevant extract of the APTEL's Bhopal Dhule Judgment and NRSS Judgment dealing with the

aspect of entitlement to IDC and IEDC incurred on account of Change in Law and Force Majeure events is reproduced hereunder:

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

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

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

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

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

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

“16.10 The Central Commission failed to understand that the IDC and IEDC is not a financial benefit to the Appellant but due to the financial liability to be borne by the Appellant. This Tribunal vide Judgment dated 20.10.2020 in Appeal No.

208 of 2019in –Bhopal Dhule Transmission Company Limited v Central Electricity Regulatory Commission &Ors.

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

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

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

Earlier in the Bhopal Dhule Judgment, the APTEL had observed that the denial of IDC on the admitted Change in Law by the Commission was in contravention of the provisions of Article 12.1.1 of the TSA, and consequently, held that the licensee is entitled to IDC on the admitted Change in Law events. Whereas, in the NRSS Judgment, the APTEL observed that the Commission erred in not allowing the IDC and IEDC, having previously held the unforeseen requirement of forest clearance constituted a Change in Law and having also granted an extension of time for delay in obtaining such clearance as Force Majeure. Consequently, the APTEL therein held that the licensee was entitled to be fully compensated for the IDC and IEDC incurred on account of the Change in Law and Force Majeure events.

50. In the present case, the delay of 7 days in achieving the commercial operation of the Project has been condoned in terms of the Ministry of Power's Circular dated 27.7.2020, which has not been agitated as a Change in Law event in the present case. Similarly, the Petitioner has not attributed any delay, either directly or consequently, to the various Change in Law events raised and allowed by the Commission in the

present case. Accordingly, the Petitioner shall not be entitled to IDC (Rs. 79.24 lakh) claimed for the period from SCOD to COD of the Project. However, in line with the Bhopal Dhule Judgment, the Petitioner shall be entitled to the claims of IDC on account of Change in Law events as allowed by the Commission in this Order. The IDC shall be on the additional expenditure incurred by the Petitioner due to Change in Law events allowed under this Order from the date of its incurring of such expenditure till the COD of the Project at the actual rate of interest, which shall be duly supported by the auditor certificate.

Carrying Cost:

51. As regards the claim of the Petitioner towards carrying cost, the Petitioner has prayed for the carrying cost from the COD till the date of order to be issued by the Commission at the actual rate of interest paid by the Petitioner for arranging the funds or the rate of interest on working capital as per the applicable Tariff Regulations or the late payment surcharge as per the TSA, whichever is the lowest.

52. We have considered the submissions made by the parties. As noted above, the Change in Law claims raised in the present case are not under the Change in Law Rules, 2021 but the TSA and the aspect of the entitlement to the carrying cost under the TSA has been examined by the Commission in its order 15.2.2023 in Petition No. 453/MP/2019 (Sipat Transmission Limited v. MSEDCL and Ors.), wherein the transmission licensee has been held entitled to the carrying cost on Change in Law relief allowed by the Commission subject to the outcome of the decision of Hon'ble Supreme Court in Civil Appeal No. 8880 of 2022 in the case of Telangana Northern Power Distribution Co. Ltd. & Anr. v. Parampujya Solar Energy Pvt. Ltd. and Ors. The relevant extract of the order dated 15.5.2023 reads as under:

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

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

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

37. Further, Article 12.2.1 prescribes compensation towards increase in project 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.

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:

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:

.....

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

43 & 44.....

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

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

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 unds (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."

53. In line with the above, the Petitioner has to be held eligible for the carrying costs for the post-COD period at the actual rate of interest paid by the Petitioner for arranging funds (supported by Auditor's Certificate) or the rate of interest on the working capital as per the applicable CERC Tariff Regulations or the late payment surcharge rate as per the TSA, whichever is the lowest. Although the Petitioner has prayed for the carrying cost from the COD till the date of order, we find that there is considerable lag in the Petitioner's Project having achieved the COD (i.e., on 3.8.2021) and the date of filing of Petition, i.e., 20.6.2024 and this delay is completely attributable to the Petitioner itself, we are not inclined to consider the plea of the Petitioner to the carrying cost from the COD of the Project itself. Having regard to the findings of the APTEL in the judgment dated 30.5.2014 in Appeal Nos. 147, 148, and 150 of 2013 and the

judgment dated 28.11.2023 in Appeal Nos. 190 of 2011 and 162 & 163 of 2012 and the findings rendered by the Commission on basis thereof in its order dated 23.6.2023 in Petition No. 513/MP/2020 in the matter of APMuL v. UHBVNL and Ors., we hold that the Petitioner will be entitled to the carrying cost on the incremental transmission charges on account of Change in Law compensation for the period only from the date of filing of the Petition till the date of the present order.

54. Moreover, as noted above, the Hon'ble Supreme Court, vide order dated 12.12.2022 in Civil Appeal No. 8880 of 2022 and batch, in the matter of Telangana Northern Power Distribution Co. 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 as have been issued in the light of the principles decided by the APTEL in the judgment dated 15.9.2022 in Appeal No.256 of 2019 (Parampujya Solar Energy Pvt. Ltd v. CERC) & batch appeals, shall not be enforced and will be subject to further orders of the Hon'ble Supreme Court in Civil Appeal No. 8880 of 2022 in the case of Telangana Northern Power Distribution Company Ltd. & Anr. V. Parampujya Solar Energy Pvt. Ltd. & Ors.

55. The Petitioner has also prayed for recovering filing fees and legal expenses regarding the present Petition. However, unlike the cost-plus Projects governed by the provisions of Section 62 of the Act read with the Commission's Tariff Regulations, the Project involved in this case has been set up under tariff based competitive bidding process in terms of the Guidelines issued by the Ministry of Power, Govt. of India under

Section 63 of the Act and is governed by the provisions the TSA. The filing fees are being reimbursed in respect of tariff petitions that are filed for (a) determination of tariff, (b) revisions of tariff due to additional capital expenditure, and (c) truing up of expenditure under Sections 62 and 64 of the Act read with the Tariff Regulations. We note that the present Petition is a Miscellaneous Petition and not a tariff petition; therefore, the reimbursement of the filing fee is not allowed.

56. Accordingly, Petition No. 262/MP/2024 is disposed of in terms of the above discussions and findings.

Sd/-
(Ravinder Singh Dhillon)
Member

sd/-
(Harish Dudani)
Member

sd/-
(Ramesh Babu V.)
Member

sd/-
(Jishnu Barua)
Chairperson