

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 619/MP/2020**

**Coram:**

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

**Date of Order: 28<sup>th</sup> June, 2023**

**In the matter of**

Petition under Section 79 of the Electricity Act, 2003 for execution of orders dated 19.12.2017 and 14.3.2018 passed by this Commission in Petition No. 101/MP/2017 and 13/SM/2017 respectively and initiation of proceedings/appropriate action under Section 142 read with Section 149 of the Electricity, Act, 2003 and Regulation 111 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 against the Respondents for non-compliance of the orders dated 19.12.2017 and 14.3.2018 passed by this Commission in Petition No. 101/MP/2017 and 13/SM/2017 respectively.

**And**

**In the Matter of:**

**DB Power Limited,**  
3<sup>rd</sup> Floor, Naman Corporate Link,  
Opp. Dena Bank, C-31, G-Block,  
Bandra- Kurla Complex, Bandra (E),  
Mumbai- 400051

**..... Petitioner**

**VERSUS**

- 1. Rajasthan Urja Vikas Nigam Limited,**  
Vidyut Bhawan, Janpat, Jyothi Nagar,  
Jaipur-302005
  
- 2. The Managing Director,**  
**Rajasthan Urja Vikas Nigam Limited**  
Vidyut Bhawan, Janpat,  
Jyothi Nagar,  
Jaipur – 302005



3. **Jaipur Vidyut Vitran Nigam Limited,**  
Vidyut Bhawan, Jyothi Nagar,  
Near New Vidhan Sabha Bhawan,  
Jaipur – 302005
4. **The Managing Director**  
**Jaipur Vidyut Vitran Nigam Limited,**  
Vidyut Bhawan, Jyothi Nagar,  
Near New Vidhan Sabha Bhawan,  
Jaipur – 302005
5. **Ajmer Vidyut Vitran Nigam Limited,**  
Vidyut Bhawan, Makarwali Road,  
Panchsheel Nagar, Ajmer  
Rajasthan – 305004
6. **The Managing Director**  
**Ajmer Vidyut Vitran Nigam Limited,**  
Vidyut Bhawan,  
Makarwali Road,  
Panchsheel Nagar, Ajmer  
Rajasthan – 305004
7. **Jodhpur Vidyut Vitran Nigam Limited,**  
New Power House,  
Industrial Area,  
Jodhpur- 342003
8. **The Managing Director**  
**Jodhpur Vidyut Vitran Nigam Limited,**  
New Power House,  
Industrial Area,  
Jodhpur- 342003
9. **PTC India Limited,**  
2nd Floor, NBCC Tower,  
15, Bhikaji Cama Place,  
New Delhi-110066.
10. **The Chairman and Managing Director**  
PTC India Limited  
2<sup>nd</sup> Floor, NBCC Tower,  
15, Bhikaji Cama Place, New Delhi 110 066
11. **The Vice President (Commercial)**  
PTC India Limited  
2<sup>nd</sup> Floor, NBCC Tower,



**Parties present:**

Shri Deepak Khurana, Advocate, DBPL  
Shri Ashwini Kumar Tak, Advocate, DBPL  
Shri Amal Nair, Advocate, Rajasthan Discoms  
Ms. Shivani Verma, Advocate, Rajasthan Discoms  
Shri Ravi Kishore, Advocate, PTCIL  
Shri Keshav Singh, Advocate, PTCIL  
Shri Dhruv Tripathi, Advocate, PTCIL

**ORDER**

The Petitioner, DB Power Limited, has filed the present Petition seeking execution of the Commission's orders dated 19.12.2017 and 14.3.2018 in Petition No. 101/MP/2017 (DB Power Ltd. v. PTC Ltd. and Ors.) and Petition No. 13/SM/2017 respectively, and the initiation of proceedings/appropriate actions against the Respondents under Section 142 read with Section 149 of the Electricity Act, 2003 ('the Act') for non-compliance of the aforesaid orders. The Petitioner has made the following prayers:

*“(a) Direct the Respondents to comply with the Orders dated 19.12.2017 and 14.03.2018 passed in Petition No. 101/MP/2017 and 13/SM/2017 respectively as regards the claim of service tax / GST on transportation of coal by road and Auxiliary Consumption as per CERC Tariff Regulations 2019, and to forthwith pay the pending aggregate amounts to the Petitioner i.e. an amount of Rs. 7,62,33,386/- as set out in paragraphs 20, 30 and 31 along with carrying cost/interest;*

*(b) Issue appropriate directions for execution of the Orders dated 19.12.2017 and 14.03.2018 passed in Petition No. 101/MP/2017 and 13/SM/2017 respectively with respect to payment of service tax /GST on transportation of coal through road as well as Auxiliary Consumption parameters;*

*(c) Initiate appropriate action against the Respondents, jointly and severally, under Section 142 of the Electricity Act, 2003 and/or any other appropriate provision/s of the Electricity Act, 2003, for contravention and disobedience of the directions issued by the Commission in Orders dated 19.12.2017 and 14.03.2018 passed in Petition No. 101/MP/2017 and 13/SM/2017 respectively; and*

*(d) Pass an ad-interim Order directing the Respondents to forthwith discharge their liability to paying the aforesaid amount of Rs. 7,62,33,386/- to the Petitioner.”*

## **Background**

2. The Petitioner, DB Power Limited (DBPL) has set up a 1200 MW coal based Thermal Power Plant (2 units x 600 MW each) at village Badadarha, Janjgir Champa, in the State of Chhattisgarh. The Petitioner has entered into an arrangement on a long-term basis for the supply of power to the Respondents, namely (i) Agreement to sell dated 1.11.2013 between PTC India Limited (PTC) and the Petitioner; (ii) Power Purchase Agreement (PPA) dated 1.11.2013 between PTC and Respondent Nos. 3 to 5 ('Rajasthan Discoms') for the supply of power from the Petitioner's Project to Respondent Nos. 3 to 5. The Petitioner had filed the petition No. 101/MP/2017, inter-alia, seeking compensation on account of the occurrence of Change in law events. The said Petition was decided by the Commission vide its order dated 19.12.2017 whereby the Commission had allowed the claims of the Petitioner partly. The Commission has allowed the claim of the Petitioner for the introduction and enhancement of Service Tax on the transportation of coal by rail as well as by road. Further, upon promulgation of the GST Act, the service tax on the transportation of coal was subsumed in GST, and that the Commission vide its order dated 14.3.2018 in Petition No. 13/SM/2017 had held that the subsuming of taxes/levies in GST is a Change in Law event. Accordingly, service tax/GST on the transportation of coal (by rail as well as by road) is a Change in Law event in terms of the Commission's orders dated 19.12.2017 and dated 14.3.2018 in Petition No. 101/MP/2017 and Petition No. 13/SM/2017 and the Respondents are liable to compensate the Petitioner for the same.



### **Submissions of the Petitioner**

3. The Petitioner has mainly submitted as under:

(a) In terms of the above orders, on 8.8.2019 the Petitioner issued the Provisional Supplementary invoices for supply of power to the Respondents towards the Change in Law claims allowed by the Commission including the claim of Service Tax/GST on transportation of coal through rail and road along with requisite certificate/documents. However, Respondent No.1, Rajasthan Urja Vikas Nigam Limited vide its letters dated 2.9.2019, 12.12.2019 and 28.4.2020 denied the claim of the Petitioner towards service tax/GST on transportation of coal by road on the basis that the Commission in its order dated 19.12.2017 has only allowed the Change in Law claim towards Service Tax on transportation of coal through rail and not by road.

(b) Despite the orders dated 19.12.2017 and dated 14.3.2018, the Respondents have failed to pay the compensation against the various invoices raised by the Petitioner towards service tax/GST on transportation of coal through road for supply of power from 30.11.2016 to 31.5.2020. Therefore, the Petitioner has been constrained to approach the Commission for execution of the said orders as regards the claim of service tax / GST on the transportation of coal by road and for the initiation of proceedings/ appropriate action under Section 142 read with Section 149 of the Act.

(c) Further, in its order dated 19.12.2017, the Commission had determined the operational parameters for auxiliary consumption for computation of relief in terms of the Tariff Regulations, 2014, more specifically Regulation 36, which provided for auxiliary @ 5.25%. However, w.e.f. 1.4.2019, the Commission, in exercise of its power conferred under Section 178 read with Section 61 of the Act, notified Tariff Regulations, 2019, whereby at Regulation 49(E), the auxiliary for coal based generating station of 300 MW and above was specified @ 5.75%.



(d) Accordingly, the Petitioner vide its letter dated 30.4.2020 pointed out to the Respondents that the computation of relief towards Change in Law claims shall be considering auxiliary consumption @ 5.75% w.e.f. 1.4.2019 in terms of the Tariff Regulations, 2019. The Petitioner also raised its supplementary invoices for the claim of differential amount towards impact of increase of the auxiliary power consumption for the period from April 2019 to March 2020 in terms of the Tariff Regulations, 2019. However, while the Respondent No. 1 in its letters dated 15.7.2020 and dated 11.8.2020 agreed to clear the invoices based on the auxiliary consumption of 5.75% from 30.4.2020, it refused to accept similar invoices for the period prior to 30.4.2020.

(e) The total dues of the Petitioner, which the Respondents have failed to pay as per the orders dated 19.12.2017 and 14.3.2018 of amount to Rs. 7,62,33,386/- comprising of Rs. 5,65,83,731/- towards service tax/GST on transportation of coal through road and Rs. 1,96,49,655/- towards auxiliary consumption.

(f) The Respondents are not inclined to implement the Commission's orders dated 19.12.2017 and dated 14.3.2018 in so far as the service tax on transportation of coal by road and auxiliary consumption as per CERC Tariff Regulations 2019 are concerned as clear from their conduct of having failed to pay the pending dues.

(g) The Respondents are clearly guilty of disobedience of the Commission's orders dated 19.12.2017 and dated 14.3.2018 and thus are liable to be proceeded against under Section 142 and Section 149 of the Act. The Commission may also pass appropriate directions for execution and enforcement of the said orders.

(h) The Commission vide its order dated 19.12.2017 in Petition No. 101/MP/2017 had disallowed the carrying cost. The Hon'ble Supreme Court in the case of Uttar Haryana Bijili Vitran Nigam Limited & other Vs. Adani Power Limited & others [(2019) 5 SCC 325] has held that carrying cost in similar Change in Law Petitions is payable.



### **Hearing dated 20.4.2021**

4. The Petition was admitted on 20.4.2021 and notices were issued to the parties to complete their respective pleadings. Pursuant to the above direction, replies and rejoinders have been filed by the Respondent Nos. 1 to 8 (i.e. Rajasthan Discoms) and the Petitioner respectively.

### **Reply of Rajasthan Discoms**

5. Rajasthan Discoms, in their joint reply dated 19.5.2021, have submitted that Respondents have already cleared the dues to the Petitioner with respect to auxiliary consumption parameters, and as on date, there are no dues payable regarding Auxiliary Consumption. On the issue of Service Tax and GST on the transportation of coal through road, the Respondents, Rajasthan Discoms have mainly submitted as under:

#### ***Service Tax on transportation of Coal by Road***

(a) The Commission, in its order dated 19.12.20217 in Petition No. 101/MP/2017 has not considered the claim of the Petitioner with regard to an increase in service tax on the transportation of coal through road. On the contrary, the Commission has specifically and expressly allowed the change in service tax on the transportation of coal through railways. Therefore, without there being a clear order of the Commission in this regard, no payment can be demanded from the Respondents on this count.

(b) In relation to the levy of service tax on rail transportation, the Commission in the impugned order has clearly traced the history of the exemption granted and thereafter the levy, which is clearly a subsequent event. The service tax on railway transportation has been made effective from 1.10.2012, vide Notification No. 26/2012-ST dated 20.6.2022. However, in relation to the levy of service tax on road transportation, the same was never exempted. Transportation of goods through

road was included in purview of service tax from 1.1.2005, which were imposed vide Notifications No. 32 and 35/2004 dated 3.4.2004. Unlike the case of railway transportation, there was also no exemption granted for the levy of service tax on road transportation.

(c) The Commission, while deciding the issue, has relied upon its order in Petition No. 8/MP/2014, wherein again the issue was limited to the claim for a change in service tax on the transportation of coal through rail only. Thereafter, the Commission has also expressly held that “*the claim of the Petitioner for relief under Change in Law on account of service tax on transportation of goods by Indian Railways is admissible*”. However, there is no finding in the above order, with regard to the change in service tax on the transportation of coal through road.

(d) It is a settled principle of interpretation based on the maxim *Expressio Unius Est Exclusio Alterius*, which means the express mention of one thing excludes all other things. Out of two claims, if one has been specifically and expressly allowed, the only interpretation to be drawn is that the other claim stands rejected. Otherwise, there was no reason to expressly allow one.

(e) The Petitioner has tried to mislead the Commission by quoting para 83 of the order. The said paragraph only records the submissions of the Petitioner in the matter, and does not record any finding of the Commission.

(f) On the other hand, when the Petitioner had raised the issue and the same was not granted by the Commission, the only remedy open to the Petitioner was to challenge the said decision. That having not been done, the question of raising the very same issue in the present Petition does not arise.

***Order dated 14.3.2018 in Petition No. 13/SM/2017***

(g) In the order of the Commission dated 14.3.2018 in Petition No. 13/SM/2017 there is no mention of any tax on the transportation of coal through road. On the





other hand, there is clearly a benefit available to the Petitioner on account of GST being introduced, on account of the service tax on road transportation, which the Petitioner has failed to pass on the benefit. Moreover, the understanding of the Respondents is further fortified by the fact, that the Commission, under the head “*Taxes, duties and cess levied (wherever applicable)*”, has only indicated “*GST of 5 per cent on transportation of coal by rail*”. This was against the Change in Law benefit earlier granted. Again, GST on the transportation of coal by road has not been mentioned anywhere, as the same was not to be granted as a Change in Law. Therefore, it can certainly not be argued by the Petitioner that there is a clear finding of the Commission on the issue.

(h) In Para 33 of the order dated 14.3.2018 in Petition No. 13/SM/2017, the Commission has in fact held that the generators had not transparently disclosed the taxes and duties that were abolished or subsumed. Accordingly, at para 35, the Commission had directed the details of such taxes introduced/abolished/subsumed to be worked out between the generators and beneficiaries. In case of any disputes in this regard, the Commission had granted liberty to the parties to approach the Commission. The Petitioner has neither filed the present Petition in terms of the said liberty, nor disclosed the benefit obtained on account of the GST.

(i) At no point of time has the claim of the Petitioner with regard to service tax and GST on the transportation of coal through road been considered by the Commission. This being the case, it is unfair on the part of the Petitioner to approach the Commission by way of a Petition under Section 142 read with Section 149 of the Act.

(j) While the Petitioner had raised a “Provisional Supplementary Invoice” on 8.8.2019 with regard to its claim for Change in Law compensation, the Respondents vide letter dated 2.9.2019 had objected to the claim for service tax on transportation of coal through road, as the same has not been specifically allowed by the Commission.

(k) The Petitioner has raised an invoice on 5.12.2019 towards service tax/GST on the transportation of coal by rail as well as road. Moreover, the invoices had been raised without any proof of payment and supporting documents. The Respondents vide letter dated 12.12.2019 communicated to the Petitioner that apart from its claim being without submission of proof of payment and supporting documents, the claim for service tax/GST on the transportation of coal through road was inadmissible. The Respondent in its letter dated 28.4.2020 informed the Petitioner that since there was no clarity on the issue of clarification regarding service tax/GST on transportation of coal through road may be sought from the Commission.

(l) The Respondents are not responsible for the financial position of the Petitioner, which is more so on account of its mis-management. The Petitioner has a 1200 MW power plant, out of which only 311MW is supplied to the Respondents. While more than half of its capacity is being sold to other beneficiaries or is left stranded, it is not correct on the part of the Petitioner to contend that its financial stress is on account of the Respondents.

(m) The present Petition being filed under Section 142 read with Section 149 of the Act, is an abuse of process, and the Commission ought not to allow litigants to loosely file such Petitions.

**Rejoinder of the Petitioner:**

6. The Petitioner, in its rejoinder dated 16.7.2021, has mainly submitted as under:

(a) Subsequent to the filing of the Petition, it has received an amount of Rs. 1,36,65,144.37 (Rs. 75,52,777.43 on 22.10.2020 and Rs 61,12,366.94 on 25.2.2021) from the Respondents out of the total invoiced amount of Rs. 1,88,38,861.00 for the period from April 2019 to May 2020. Therefore, the claim of the Petitioner towards auxiliary consumption has been partly paid, and Rs



50,90,200.63 is still outstanding. However, the Respondents have not cleared the dues of the Petitioner towards auxiliary consumption parameters. The Respondents have not paid the Late Payment Surcharge (LPS) of Rs. 17,84,585.19 as on 30.6.2021, on the aforesaid claim of auxiliary consumption, for which the Petitioner has already raised an invoice.

### ***Service Tax on transportation of Coal by Road***

(b) The Commission, in para 140 (summary) of the Order dated 19.12.2017 in Petition No. 101/MP/2017, has clearly and unambiguously allowed the Change in Law claim, namely, the introduction and enhancement of service tax on transportation of coal by rail and road.

(c) The issue pertaining to the introduction and enhancement of service tax on transportation of coal by rail and road, being a Change in Law event, is no more *res integra* and the same has been allowed by the Commission in various orders pertaining to Change in Law Petitions under similar PPAs.

(d) The Notifications dated 17.3.2012, 19.5.2015, 6.11.2015 and 26.5.2016 issued by the Ministry of Finance, Government of India, by way of which Service Tax on transportation was increased, are not confined to transportation by rail and are applicable to service tax on transportation by road. Thus, the increase in service tax on transportation by road is on account of Notifications issued by the Ministry of Finance, Government of India, and the same qualifies as a Change in Law event within the meaning of Article 10 of the PPAs dated 1.11.2013, as held by the Commission. In this regard, as on the cut-off date (11.9.2012) in the present case, the applicable service tax on transportation by road was 12%. However, it is an admitted position that, vide i Notification No. 14/2015-ST dated 19.5.2015 issued by the Ministry of Finance, Government of India, the rate of tax was enhanced from 12% to 14% due to the promulgation of some of the provisions of the Finance Act, 2015. Further, vide Notification No. 21/2015-ST dated 6.11.2015 issued by the Ministry of Finance, Government of India, the rate

of tax was further enhanced from 14% to 14.5% due to promulgation of provisions related to the Swachh Bharat Cess on taxable services. Further, vide notification No. 31/2016-ST dated 26.6.2016 issued by the Ministry of Finance, Government of India, the rate of service tax increased from 14.5% to 15% due to the promulgation of provisions related to Krishi Kalyan Cess on taxable services. In view of the aforementioned, the applicable service tax on transportation by road has increased from 12% to 15%, on account of the Notifications issued by the Ministry of Finance, Government of India, and therefore, the aforementioned increase in the service tax on transportation by road is a Change in Law event as held by this Commission. In view of the above, the increase in the service tax on transportation by road is a Change in Law event in terms of the PPA between the parties.

(e) Reliance placed by the Respondents on the Order dated 1.2.2017 in Petition No. 8/MP/2014 is erroneous as in the said order, there was neither any claim for service tax on transportation by road, nor was any finding rendered by this Commission on the same.

(f) Reliance placed by the Respondents on the principle/ maxim “*expressio unius est exclusio alterius*”, is erroneous and misplaced. The above principle is not applicable or relevant inasmuch as in the Order dated 19.12.2017, the claim of the Petitioner pertaining to service tax on the transportation of coal by rail as well as by road has been allowed.

***Re: Order dated 14.3.2018 in Petition No. 13/SM/2017***

(g) In the order dated 14.3.2018 in Petition No. 13/SM/2017, ‘*Service Tax*’ forms a part of the list pertaining to taxes and duties subsumed. There is no segregation of service tax on road and service tax on rail, thereby fortifying that increases in service tax on rail as well as **road** are Change in Law events within the meaning of ‘Change in Law’ Clause under the PPA.



(h) As admitted by the Respondents, the list in the Order dated 14.3.2018 is indicative and not exhaustive. Even as per the Respondent's own understanding, the service tax on transportation of coal by road is a Change in Law event and the same was subsumed later into GST. Thus, even as per the own averments/ understanding of the Respondents, the contention that there is no discussion pertaining to service tax on road in the Order dated 14.3.2018, is wholly misconceived.

(i) Pertinently, on the one hand, the Respondents have contended in the reply that the increase on service tax for transportation of coal through road is not a Change in Law event, and thus, the Petitioner is not entitled to any claim towards the same. However, on the other hand, the Respondents have further contended in the reply that the Petitioner is liable to pass on the purported benefits on account of GST (because of the subsuming of service tax on transportation of coal by road). Thus, the reply of the Respondents is self-contradictory.

***Re: Appeal filed on behalf of the Respondents***

(j) The Respondents have challenged the Order dated 19.12.2017 passed by the Commission in Petition No. 101/MP/2017 before the Appellate Tribunal for Electricity (APTEL) in Appeal No. 148 of 2018. In the said Appeal, 'Service Tax on transportation of Coal by Rail **and Road allowed by the Commission**, has also been challenged before the APTEL. Thus, it is impermissible for them to now contend that the Petitioner's claim for enhancement of service tax on transportation of coal by road has been rejected as Change in Law by this Commission.

***Re: Financial Stress of the Petitioner***

(k) LPS is duly payable inasmuch as the principal amount towards the said claim is payable, as brought above. In addition, huge outstanding amounts are



due & payable from the Respondents to the Petitioner. However, the same do not form part of the present Petition before this Commission.

### **Hearing dated 24.4.2023**

7. During the course of the hearing, learned counsels for the parties argued at length. Based on the request, the parties were allowed to file their respective written submissions. Written submissions have been filed by the Rajasthan Discoms and the Petitioner on 16.5.2023 and 17.6.2023 respectively wherein parties have reiterated their submissions already made in their replies and rejoinders and the same is not repeated for the sake of brevity.

### **Analysis and Decision**

8. The Petitioner had filed Petition No. 101/MP/2017 seeking compensation on account of the occurrence of various Change in Law and Force Majeure events, which, *inter-alia*, included the Change in Law claim towards '*Increase in Service Tax on transportation of coal by rail and road*'. The said Petition was decided by the Commission vide order dated 19.12.2017. As regards the Petitioner's Change in Law claim towards '*Increase in Service Tax on transportation of coal by rail and road*', the Commission in the said order dated 19.12.2017 observed as under:

#### ***"(J) Increase in Service Tax transportation of coal by rail and road***

83. The Petitioner has submitted that as on 11.09.2012, the rate of service tax on transportation of coal as per the provisions of the Finance Act, 2010 was 12% and the Education Cess on the said Service Tax was 2% and Higher Education Cess on the said Service Tax was 1%. As such the total applicable service tax was 12.36%. Vide Notification no. 26 of 2012 dated 20.06.2012 issued by the Ministry of Finance, Govt an abatement of 70% on rail and 75% on road has been permitted on freight for the taxable commodities i.e. coal and as such the Service Tax on transportation of coal by rail and road was 3.708% (Abatement at 70% of applicable 12.36% of Service Tax) on the total freight inclusive of all charges on coal as per the provisions of the Finance Act, 2010, which is evident from the rate circular no. 29 of 2012 dated 28.09.2012 issued by the Railway Board, Ministry of Railway,



Gol. By way of notification bearing no. 14/2015-ST, dated 19.05.2015 issued by the Ministry of Finance, Gol the rate of service tax was enhanced from 12% to 14% due to promulgation of some of the provisions of the Finance Act, 2015. By notification bearing no. 21/2015-Service Tax dated 06.11.2015 issued by the Ministry of Finance, Gol, the rate of service tax was further enhanced from 14% to 14.5% due to promulgation of provision relating to Swachh Bharat cess on taxable service. The rate of Service Tax was further increased from 14.5% to 15% by way of notification bearing no. 31/2016-Service Tax dated 26.05.2016 issued by the Ministry of Finance, Gol. The revision of rate of service tax was due to promulgation of provision relating to Krishi Kalyan cess on taxable service. The abatement of 70% permitted on freight for the taxable commodities i.e. coal vide notification no. 26 of 2012 dated 20.06.2012 issued by the Ministry of Finance, Gol is still continuing and resultantly the enhancement of Service Tax on transportation of coal is 4.2%, 4.35% and 4.5% from 3.708%. As such evidently there is an increase in the service tax on the transportation of coal by rail and road due to revision of rate of Service Tax by the Ministry of Finance, Gol leading to increase in cost of supply of power by the Petitioner to the Respondent. The enhancement of the Service Tax on transportation of coal by rail and road from 12% to 14% to 14.5% and then to 15% as stated above is a Change in Law within the meaning of Article 10.1.1 of the PPA. Due to the said increase in the Service Tax on the transportation of coal by rail and road, the cost of supply of power by the Petitioner to the Respondent under the PPA has increased and thus the Petitioner needs to be compensated for it as per Article 10.3 read with Article 10.5 of the PPA. The increase in Service Tax on transportation of coal by rail and road vide notifications dated 19.05.2015, 06.11.2015 and 26.05.2016 are Change in Law events within the meaning of Article 10.1.1 of the PPA. Due to the said increase in the rate of Service Tax on transportation of coal by rail, the cost of supply of power by the Petitioner to the Respondent under the PPA has increased and thus the Petitioner needs to be compensated for it as per Article 10.3 read with Article 10.5 of the PPA. Further, the said increase is not within the direct or indirect reasonable control of the petitioner and such events could not have been avoided by the petitioner, the said event hinders and impairs the performance of obligations under the PPA's in as much as petitioner is incurring additional cost on the purchase of coal for the generation of electricity from the project. Therefore, the above said event is a Force Majeure event within the meaning of Article 9.3 of the PPA's. The claim of the Petitioner on account of levy and increase in Service Tax on transportation of coal by road and rail from 30.11.2016 to 31.03.2017 is Rs.0.32 Cr.

84. The Respondents i.e. Discoms of Rajasthan State vide its affidavit dated 12.09.2017 have stated that the service tax on the transportation of coal should not be covered under change in law. The said tax does not constitute a tax on supply of power and therefore, the reimbursement of such tax is not by virtue of statutory provisions, but under the terms of the contract. The respondents and the beneficiaries cannot be allowed to suffer as a result of a commercial arrangement between the petitioner and railways. Further, the event cited by the petitioner is not a Force Majeure as the intent of Force Majeure clause is not to give any monetary compensation to the petitioner.

85. The Respondent No. 6, Prayas vide its affidavit dated 25.09.2017 has submitted that the increase in service tax is not pursuant to the Ministry of Railway Notifications but Ministry of Finance. The Petitioner has not annexed the appropriate Notifications. The Annexure P25 is a Notification rescinding the Notification dated 24.02.2009; however the Petitioner has not annexed the said Notification dated 24.02.2009. Further the Annexure P-26 refers to an option granted for liability of krishi kalyan cess. In case, such option results in any benefit or reduction of liability of service tax of the Petitioner, the said benefits is to be passed on to the



Procurers and consumers. In the absence of the submissions of the appropriate Notification, there cannot be any relief of Change in Law to the Petitioner.

86. We have considered the submissions of the Petitioner, Rajasthan Discoms and Prayas. The Petitioner has placed on record the concerned notifications. The Commission in the order dated 1.2.2017 in Petition No. 8/MP/2014 has held that service tax on transportation of goods by Indian Railways qualifies as Change in Law. Relevant Para of the said order is extracted as under:

“89. ... By Finance Act of 2006, though service tax on transportation of goods by rail was introduced, an exception was made in case of Government Railways. By Finance Act of 2009, this restriction was removed by providing that service tax is leviable —to any person by another person, in relation to transport of goods by rail in any manner. Therefore, transport of goods by Indian Railways became subject to service tax by Finance Act of 2009. Actual levy of service tax on transportation of goods by railways was exempted by Notification No. 33 of 2009 dated 1.9.2009. By Notification no. 26 of 2012 dated 20.6.2012, Ministry of Finance issued notification by exempting transport of goods by rail over and above 30% of the service tax chargeable with effect from 1.7.2012. By a Notification No. 43 of 2012 dated 2.7.2012, service tax on transportation of goods by Indian Railways was fully exempted till 30.9.2012. With effect from 1.10.2012, service tax on 30% of the transport of goods by rail is chargeable. Therefore, the basis of the service tax on transport of goods by Indian Railways is traceable to the Finance Act of 2009 which was enacted after the cut-off date in case of MSEDCL PPA. The rate Circular No. 27 of 2012 dated 26.9.2012 issued by Railway Board implemented the provisions of the Finance Act, 2009 at the ground level. In our view, since the imposition of service tax on transport of goods by Indian Railways is on the basis of the Finance Act, 2009 which has come into force after the cut-off date, the expenditure incurred by the Petitioner on payment of service tax on transport of goods by the Indian Railways is covered under change in law and the Petitioner is entitled for compensation in terms of the MSEDCL PPA. As on cut-off date in case of DNH PPA (i.e.1.6.2012), the service tax was on transportation of goods by Railways was in existence but was under exemption. Therefore, as on cut-off date in case of DNH PPA, the Petitioner could not have factored service tax on transportation of goods by Indian Railways which was under exemption. With effect from 1.10.2012, service tax on 30% of the transport of goods by rail became chargeable. This date being after the cut-off date in case of DNH PPA, the same shall be admissible under DNH PPA. Subsequent changes in service tax shall be admissible under change in law.”

In the light of the above decision, the claim of the Petitioner for relief under Change in Law on account of service tax on transportation of goods by Indian Railways is admissible. Further, it is noted that w.e.f. 1.10.2012, service tax on 30% of the transport of goods by rail is chargeable which is after the cut-off date i.e. 11.09.2012. Therefore, the Petitioner has not accounted for this levy at the time of submission of Bid. In view of the above, the Petitioner is eligible for the relief as suggested below;

<b>Applicability date</b>	<b>Rate of Service tax</b>	<b>Service tax on transportation of goods @ 30% of Service tax</b>	<b>Admissible rate of service tax under Change in law</b>
11.09.2012 (cut-off date)	12.36%	0.00%	0% (Petitioner has





			<i>accounted 0.00% in its bid)</i>
1.10.2012	12.36%	3.708%	3.708%
01.06.2015	14.00%	4.200%	4.20%
15.11.2015	14.50%	4.350%	4.35%
01.06.2016	15.00%	4.500%	4.50%

*The Petitioner shall be entitled to recover on account of change in service tax on transportation of coal in proportion to the actual coal consumed, corresponding to the scheduled generation for supply of electricity to Rajasthan Discoms. If the actual generation is less than the scheduled generation, the coal consumed for actual generation shall be considered for the purpose of computation of impact of service tax on transportation of coal. The Petitioner is directed to furnish along with its monthly bill, the proof of payment and computations duly certified by the auditor to Rajasthan Discoms. The Petitioner and Rajasthan Discoms are further directed to carry out reconciliation on account of these claims annually.*

.....

**Summary of Decision:**

140. Based on the above analysis and decisions, the summary of our decision under Change in Law during the operating period of the project is as under:

<b>S. No.</b>	<b>Change in Law events</b>	<b>Decision</b>
12	Introduction and Enhancement of Service Tax on transportation of coal by rail and road	Allowed

.....”

9. Thereafter, upon coming into effect the Goods and Service Tax (GST) regime w.e.f. 1.7.2017, the Commission on its own motion, initiated the proceedings in relation to ‘Abolition of Clean Energy Cess’ and the ‘Introduction of Goods and Service Tax’ vide Petition No. 13/SM/2017. In its order dated 14.3.2018, the Commission recognized that the various duties and taxes, which were admissible under the Change in Law provisions of the PPAs, have been replaced by either Central GST or State GST. Moreover, the Commission also observed that the introduction of GST and subsuming/abolition of specific taxes, duties and cess, etc. in the GST is in the nature of Change in Law event and consequently directed that the details thereof should be worked out between the

generators and Discoms/beneficiaries. The relevant extract of the order dated 14.3.2018 is reproduced below:

*“4. The Parliament has enacted the following Acts in order to introduce a unified indirect tax structure in the form of Goods and Services Tax (GST) which has replaced various Central and State level taxes:*

- (a) Central Goods and Services Tax, Act, 2017*
- (b) Integrated Goods and Services Tax Act, 2017*
- (c) Union Territories Goods and Services Act, 2017*
- (d) Goods and Services Tax (Compensation to States) Act, 2017*

*The respective State Legislatures have enacted the States Goods and Services Act, 2017.*

*5. These Acts have come into effect from 1st July 2017. Therefore, the taxes and duties which were admissible under Change in Law provisions of the PPAs have been replaced by either Central GST or State GST. In addition, certain existing taxes have been abolished and certain new taxes have been introduced.*

*6. In terms of the above Acts, the following taxes have been merged either in Central GST or State GST:*

*(A) Central GST*

*...*

*(d) Service Tax*

*...*

*26. The above suo-motu petition was initiated to assess the impact of Abolition of Clean Energy Cess, introduction of goods & services tax in place of host of indirect taxes and Introduction of Goods and Services Tax Compensation Cess effective from 01.07.2017. These events are change in law events as already noted above....*

*27. The Commission in the past, prior to introduction of GST, in cases covered under section 63 and having composite scheme has allowed/disallowed impact of various events of change in law on tariff. These were decided in terms of provisions of PPA and keeping the cut-off date of each individual case/petition in sight. There are certain events of change in laws which are still under consideration of the Commission.*

*...*

*29. Keeping in view the above point and earlier decisions of this Commission allowing/disallowing as change in law, the submissions made by Generator/s and Distribution Company/ies have been analyzed. From the analysis done on the submissions, **the Commission finds that apart from the GST compensation cess, following taxes, duties, cess etc. are change in law events as a result of enactment of various legislations as indicated in paragraph 4, 7 and 8 of this order.** The list is not exhaustive and is only indicative:*

*i. Taxes, duties and cess levied (wherever applicable):*

- a) IGST at the rate of 5 per cent,*
- b) GST of 5 per cent on transportation of coal by rail,*
- c) GST compensation Cess of Rs.400 per tonne*

*ii. Taxes and duties subsumed:*

*a. ....*

***g. Service tax,***



.....

**35...In order to balance the interests of the generators as well as discoms/beneficiary States, the introduction of GST and subsuming/abolition of specific taxes, duties, cess etc.in the GST is in the nature of change in law events. We direct that the details thereof should be worked out between generators and discoms/beneficiary States. The generators should furnish the requisite details backed by auditor certificate and relevant documents to the discoms/ beneficiary States in this regard and refund the amount which is payable to the Discoms/ Beneficiaries as a result of subsuming of various indirect taxes in the Central and State GST. In case of any dispute on any of the taxes, duties and cess, the respondents have liberty to approach this Commission."**

10. In view of the above, the Petitioner has submitted that its claims towards 'Service Tax/GST on transportation of coal through road' have clearly been allowed by the Commission as per the order dated 19.12.2017 in Petition No. 101/MP/2017 (increase in service tax on transportation of coal by road) and the order dated 14.3.2018 in Petition No. 13/SM/2017 (GST on transportation of coal by road in lieu of service tax), and accordingly, it had raised the various invoices towards Change in Law event of 'Service Tax/GST on transportation of coal through road' along with the requisite certificates/ documents on PTC for the period from 30.11.2016 to 31.5.2020. However, the Respondents have not paid the said amounts till date. Accordingly, the Petitioner has filed the present Petition, *inter alia*, for execution of the order dated 19.12.2017 in Petition No. 101/MP/2017 and the order dated 14.3.2018 in Petition No. 13/SM/2017.

11. The Respondents 1 to 8, Rajasthan Discoms have, however, submitted that the Commission, in order dated 19.12.2017, has not considered the claim of the Petitioner with regard to the increase in service tax on transportation of coal through road and has specifically & expressly allowed the change in service tax on transportation of coal through railways only. Thus, without there being a clear order of the Commission, no payment can be demanded from the Respondents on this count. The Respondents have



submitted that the Commission in the said order has clearly traced the history of the exemption granted and thereafter, the levy, which was a subsequent event. However, in relation to the levy of service tax on the transportation of coal through road, the same was never exempted. The transportation of goods through road was in the purview of service tax from 1.1.2005, which was imposed vide Notification No.32 and 35 of 2004 dated 3.12.2004. However, suppressing the above, and despite the Commission having not granted the claims of the service tax on road transportation, the Petitioner had claimed the same, which was correctly rejected. The Respondents have contended that, as per the legal maxim *Expressio Unius Est Exclusio Alterius*, it is a settled principle of interpretation that the express mention of one thing excludes all other things. Thus, out of the two claims, if one has been specifically and expressly allowed, the only interpretation to be drawn is that the other claim stands rejected. With regard to the order dated 14.3.2018 in Petition No. 13/SM/2017, the Respondents have submitted that at paragraph 29 of the said order, there is again no mention of any tax on the transportation of coal through road and under the head "*Taxes, Duties and Cess levied (wherever applicable)*", the Commission has only indicated "*GST of 5 per cent on transportation of coal by rail*" and that GST on transportation of coal by road has not been mentioned anywhere as the same was not to be granted as Change in Law. The Respondents have also relied upon the settled principle that in execution proceedings, the Court cannot go beyond the decree.

12. We have considered the submissions made by the parties and find it appropriate to first deal with the question as to whether the order dated 19.12.2017 in Petition No. 101/MP/2017 allows the Petitioner to raise the claims of service tax on the transportation

of coal through road. Because, if the answer to this is found to be in the positive, then the Petitioner's entitlement to GST on transportation of coal through road under the order dated 14.3.2018 in Petition No.13/SM/2017 might be rendered as a consequential issue, *albeit*, of course, subject to examining the scope of the said order in allowing the GST impact on transportation of coal through a road.

13. Undeniably, the Petitioner, in Petition No. 101/MP/2017, had prayed for the Change in Law relief for an increase in the service tax on the transportation of coal through rail as well as road. The pleadings of the Petitioner to the above effect have also been clearly captured in the order dated 19.12.2017, at paragraph 83, as already reproduced above. Moreover, it is pertinent to note that while considering the above claim of the Petitioner, the order dated 19.12.2017 relied upon and quoted the Commission's earlier order dated 1.2.2017 in Petition No. 8/MP/2014, which pertained only to service tax on transportation of coal by railway mode, and consequently, the order dated 19.12.2017 goes on to expressly deal with and allow the Petitioner's Change in Law claim on account of an increase in service tax on transportation of goods by railway. However, it is equally important to note that the concluding paragraph of the said issue held the Petitioner entitled to recover the compensation on account of the change in service tax on transportation of coal in proportion to the actual coal consumed corresponding to the scheduled generation for supply to the Respondents, without any restriction to the mode of transportation. At the cost of repetition, we may again reproduce the relevant extract of the said order quoted in para 8 above as under:

*"86.....The Petitioner shall be entitled to recover on account of change in service tax on transportation of coal in proportion to the actual coal consumed,*



*corresponding to the scheduled generation of supply of electricity to Rajasthan Discoms.....”*

Besides the above, the summary of decision, at paragraph 140 (as already quoted above) of the order also expressly indicates that the Petitioner’s Change in Law claim towards increase in service tax on transportation of coal by rail as well as road has been ‘allowed’.

14. The above position, therefore, requires us, at this execution stage, to find out the true effect and the proper interpretation of the order dated 19.12.2017. In this regard, we may gainfully refer to the ratio laid down by the Hon’ble Supreme Court in the cases of Bhavan Vaja & Ors. v. Solanki Hanuji Khodaji Mansang & Anr. [(1973) 2 SCC 40], Deep Change v. Mohal Lal [(2000) 6 SCC 259] and Meenakshi Saxena v. ECGC Ltd. [(2018) 7 SCC 479]. The relevant extracts of the said judgements are reproduced hereunder:

***(i) Bhavan Vaja & Ors. v. Solanki Hanuji Khodaji Mansang & Anr., (1973) 2 SCC 40***

*“20. It is true that an executing court cannot go behind the decree under execution. But that does not mean that it has no duty to find out the true effect of that decree. For construing a decree it can and in appropriate cases, it ought to take into consideration the pleadings as well as the proceedings leading up to the decree. In order to find out the meaning of the words employed in a decree the Court, often has to ascertain the circumstances under which those words came to be used. That is the plain duty of the execution Court and if that Court fails to discharge that duty it has plainly failed to exercise the jurisdiction vested in it. Evidently the execution court in this case thought that its jurisdiction began and ended with merely looking at the decree as it was finally drafted. Despite the fact that the pleadings as well as the earlier judgments rendered by the Board as well as by the appellate court had been placed before it, the execution Court does not appear to have considered those documents. If one reads the order of that Court, it is clear that it failed to construe the decree though it purported to have construed the decree. In its order there is no reference to the documents to which we have made reference earlier. It appears to have been unduly influenced by the words of the decree under execution. The appellate court fell into the same error. When the matter was taken up in revision to the High Court, the High Court declined to go*

*into the question of the construction of the decree on the ground that a wrong construction of a decree merely raises a question of law and it involves no question of jurisdiction to bring the case within Section 115, Civil Procedure Code. As seen earlier in this case the executing Court and the appellate court had not construed the decree at all. They had not even referred to the relevant documents. They had merely gone by the words used in the decree under execution. It is clear that they had failed to construe the decree. Their omission to construe the decree is really an omission to exercise the jurisdiction vested in them.”*

In the above judgement, the Hon’ble Supreme Court has held that while it is true that an executing court cannot go behind the decree under execution, that does not mean that it does not have a duty to find out the true effect of the decree and for construing a decree, it can and, in appropriate cases, it ought to take into consideration of the pleadings as well as the proceedings leading up to the decree. Also, in order to find out the meaning of words employed in the decree, the Court often has to ascertain the circumstances under which those words came to be used.

***(ii) Deep Chand & Ors. v. Mohan Lal, [(2000) 6 SCC 259]***

*“5. ...A perusal of the article shows that the period of limitation prescribed by it starts to run from the date when the decree becomes enforceable provided the case does not fall within the scope of the latter part of the provision in the third column. Generally a decree or order becomes enforceable from its date, but in appropriate cases the court passing the decree may prescribe the time wherefrom the decree becomes enforceable on a future date. It must, however, be remembered that the purpose of an execution proceeding is to enable the decree-holder to obtain the fruits of his decree. In case where the language of the decree is capable of two interpretations, one of which assists the decree-holder to obtain the fruits of the decree and the other prevents him from taking the benefits of the decree, the interpretation which assists the decree-holder should be accepted. The execution of the decree should not be made futile on mere technicalities which does not, however, mean that where a decree is incapable of being executed under any provision of law it should, in all cases, be executed notwithstanding such bar or prohibition. A rational approach is necessitated keeping in view the prolonged factum of litigation resulting in the passing of a decree in favour of a litigant. The policy of law is to give a fair and liberal and not a technical construction enabling the decree-holder to reap the fruits of his decree.”*



In the above judgement, the Hon'ble Supreme Court has held that the purpose of an execution proceeding is to enable the decree holder to obtain the fruits of the decree, and in cases where the language of the decree is capable of two interpretations, one which assists the decree holder to obtain the fruits of the decree and the other which prevents him from taking the benefits of the decree, the interpretation which assist the decree-holder should be accepted.

(iii) **Meenakshi Saxena v. ECGC Ltd. [(2018) 7 SCC 479]**

*“The whole purpose of Execution proceedings is to enforce the verdict of the court. Executing court while executing the decree is only concerned with the execution part of it but nothing else. The court has to take the judgment in its face value. It is settled law that executing court cannot go beyond the decree. But the difficulty arises when there is ambiguity in the decree with regard to the material aspects. Then it becomes the bounden duty of the court to interpret the decree in the process of giving a true effect to the decree. At that juncture the executing court has to be very cautious in supplementing its interpretation and conscious of the fact that it cannot draw a new decree. The executing court shall strike a fine balance between the two while exercising this jurisdiction in the process of giving effect to the decree.”*

In the aforesaid judgement, the Hon'ble Supreme Court has held that while it is a settled law that the executing court cannot go beyond the decree, the difficulty arises when there is ambiguity in the decree with regard to the material aspects, and in such cases, it becomes the bounden duty of the court to interpret the decree in the process of giving a true effect to the decree. Hon'ble Supreme Court has also observed that the executing court has to be very cautious in supplementing its interpretation and conscious of the fact that it cannot draw a new decree.

15. Applying the above ratios to the present case leaves no doubt in our mind that the order dated 19.12.2017 has to be construed in a manner that allows the Petitioner to





claim the Change in Law relief in respect of the increase in service tax on the transportation of coal by road as well. As already noted above, the Petitioner had specifically prayed for the Change in Law relief on the above aspect - its pleading having also been captured in the order - and though the prevailing rates of service tax in the context of the transportation of coal through road have not been expressly dealt with in the order, the order goes on to allow the Petitioner to claim the compensation for the increase in service tax for the transportation of coal without restricting the mode of transportation. Summary of decision, as recorded in the order dated 19.12.2017, also records the Petitioner's Change in Law claim towards an increase in service tax on transportation of coal through rail as well as road as '**allowed**'. Once the Commission having already held that the increase in service tax, in terms of notifications issued by the Ministry of Finance, Govt. of India is a Change in Law events, this is the only logical interpretation of the order dated 19.12.2017, which permits the Petitioner to obtain the fruits of the said order, especially the findings as recorded in the concluding paragraph of paragraph 86 and the Summary of decision at paragraph 140 of the order. The above interpretation of the order dated 19.12.2017 does not, in our view, in any way amount to the drawing up of a new decree between the parties and, at the best, could only be considered a proper construction of the order for the removal of the ambiguity therein.

16. It is also pertinent to note that in the Appeal No. 148 of 2018 filed by the Rajasthan Discoms before the APTEL against the order dated 19.12.2017, the Respondents themselves challenged the decision of the Commission on allowing the service tax on the transportation of coal by rail and road. The relevant extract of the said appeal of memo, as brought on record by the Petitioner, reads as under:



8(ii) Question of Law

The following question of law arise in the present appeal:

(a) .....

(f) Whether introduction and enhancement of Service Tax on transportation of coal by rail and road amounts to Change in Law in terms of Article 10 of the PPA?

9(T) SERVICE TAX ON TRANSPORTATION OF COAL BY RAIL AND ROAD

*The Central Commission has failed to appreciate that the service tax on the transportation of coal could have been covered under the Change in Law clause of the PPA. Apart from the fact that the said tax does not constitute a tax on supply of power, the reimbursement of such tax by the generator to the transporter is not by virtue of a statutory provisions, but under the terms of the Contract between the parties.”*

Thus, the Respondents themselves have challenged the order dated 19.12.2017, *inter alia*, on the ground that it erroneously allows the service tax on the transportation of coal by rail and road. This, in our view, is completely contrary to their stand in the present proceedings in contending that the order dated 19.12.2017 disallows the Petitioner’s Change in Law claim towards an increase in service tax on the transportation of coal through road, because if that had been the case, we do not see any reason as to why the Respondents would go on to challenge such a finding.

17. It is pertinent to take note of the stand taken by Rajasthan’s Discoms prior to the filing of the present Petition. When the Petitioner was demanding its dues towards service tax on transportation of coal through road, the Rajasthan Discoms did not dispute the said claim, and in fact, vide its letter dated 28.4.2020, stated *‘In this regard you are requested to get a clarification from the CERC’*. This, as brought out above, is within the ambit of the interpretation of the Order, as done by the Commission. Further, even at the time of hearing of Petition No. 101/MP/2017, the Rajasthan Discoms did not raise any specific objection with regard to the claim of service tax on the transportation of coal through road



and the objection with regard to both rail and road was common, which is so evident from Para 84 of the order quoted in para 8 above.

18. Insofar as the impact of GST on transportation of coal through road is concerned, we observe that, as such, the Respondents do not appear to have contested their liability to compensate the Petitioner for the GST impact on transportation of coal through rail under the order dated 14.3.2018 in Petition No. 13/SM/2017. However, their objection to the impact of GST on the transportation of coal through road appears to be on the ground that there is no mention of any tax on transportation of coal through road, whereas a GST of 5% on the transportation of coal by rail has been specifically noted therein. However, the above objection, in our view, is unfounded for the fact that, in the said order, the Commission has recognized that the introduction of GST and the subsuming/abolition of specific taxes, duties, cess, etc. are in the nature of Change in Law events. Moreover, there does not appear to be any issue between the parties with regard to the passing-on of the net GST impact on the transportation of coal by rail under the said order. The reliance of the Respondents on paragraph 29(i)(b) to contend that the said order specifically observes “*GST of 5% on transportation of coal by rail*” under “*Taxes, duties and cess levied (wherever applicable)*” may also not come to any aid to the Respondents as the said order specifically notes that the list therein is not exhaustive but only indicative. Thus, keeping in view that the Commission has already held that the Petitioner is entitled to the Change in Law relief towards an increase in service tax for transportation of coal by road under order dated 19.12.2017, we do not see any reason as to why the net impact of GST (upon various taxes/levies having been subsumed thereunder) on the



transportation of coal through road ought not to be passed on under the order dated 14.3.2018.

19. In view of the foregoing observations, we hold that the Petitioner is entitled to compensation on account of Change in Law relief towards service tax and GST on the transportation of coal by road under the order dated 19.12.2017 in Petition No. 101/MP/2017 and the order dated 14.3.2018 in Petition No. 13/SM/2017. Keeping in view that the Petitioner has already raised the invoices upon the Respondents for the above impact for the past period, the Respondents shall clear such past arrears within a month from the date of this order.

20. With regard to payment of auxiliary consumption, the Petitioner has submitted that, subsequent to the filing of the Petition, the Respondents have paid Rs 1,16,65,144,37 out of the total invoiced amount of Rs. 1,88,38,861/-. The Respondents have submitted that they have paid Rs. 1,94,012,37/- towards auxiliary consumption and no payment is outstanding against the Respondent on this count. Since the Respondents have already paid the entire amount towards auxiliary consumption, no direction is required to be issued in this regard.

21. With regard to the Petitioner's claim pertaining to Late Payment Surcharge/carrying cost, the Respondents have submitted that when the principal claim is misconceived, the question of LPS/carrying cost does not arise. Moreover, the Commission, in its impugned order, has already disallowed the carrying cost in the instant Petition and the issue has been challenged by the Petitioner before APTEL which is still pending. We have considered the submissions of the parties. The claims of the Petitioner

with regard to interest/LPS have not been examined in the present proceedings, since the scope of the present petition is limited only to the implementation of the orders dated 19.12.2017 and 14.3.2018 in Petition No. 101/MP/2017 and 13/SM/2017 respectively, and not beyond.

22. The Petitioner has prayed for initiation of actions against the Respondents under Section 142 read with Section 149 of the Act for the non-compliance with the Commission's orders dated 19.12.2017 and 14.3.2018. Admittedly, in the present case, the Respondents have made the payment of outstanding amounts towards auxiliary consumption to the Petitioner but the amount with regard to service tax on transportation of coal by road has not been paid, purportedly in the absence of a clarity. Keeping in view the peculiar facts & circumstances of the present case, we do not find any reason to initiate proceedings against the Respondents in terms of Section 142 of the Act.

23. In light of the above discussion, the Petition No. 619/MP/2020 is disposed of.

Sd/-  
**(P.K. Singh)**  
**Member**

sd/-  
**(Arun Goyal)**  
**Member**

sd/-  
**(I.S. Jha)**  
**Member**

sd/-  
**(Jishnu Barua)**  
**Chairperson**

