

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 372/MP/2023

Coram:

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

Date of Order: 28th March, 2025

In the matter of:

Petition under Sections 63 and 79 of the Electricity Act, 2003 read with Regulation 86 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 for relief under Force Majeure, (Article 11) and Change in Law, (Article 12) of Transmission Service Agreement dated 17.11.2016, related to 765 kV Strengthening in Eastern Region (ERSS-XVIII).

And

In the matter of:

**POWERGRID Medinipur-Jeerat Transmission Limited,
B-9, Institutional Area, Katwaria Sarai,
New Delhi-110016.**

... Petitioner

Versus

- 1. West Bengal State Electricity Distribution Company Limited,**
Through its Managing Director,
Vidyut Bhawan, Block-DJ,
Sector-II, Bidhannagar, Kolkata-700091
- 2. South Bihar Power Distribution Company Limited,**
Through its Managing Director
Vidyut Bhawan, 2nd Floor, Bailey Road,
Patna-800001
- 3. North Bihar Power Distribution Company Limited,**
Through its Managing Director,
Vidyut Bhawan, 3rd Floor, Bailey Road,
Patna-800001
- 4. GRIDCO Limited,**
Through its Managing Director,
Janpath, Bhubaneswar-751022,
Orissa
- 5. Jharkhand Bijli Vitran Nigam Limited,**



Through its Managing Director,
Engineer's Building, H.E.C., Dhurwa,
Ranchi-834004, Jharkhand

6. **Damodar Valley Corporation,**
Through its Managing Director,
DVC Towers, VIP Road,
Kolkata-700054, West Bengal
7. **Energy and Power Department,**
Government of Sikkim,
Through its Secretary
8. **PFC Consulting Limited,**
(Bid Process Coordinator)
Through its Chief Executive Officer
9. **Chief Engineer (PSPM),**
Central Electricity Authority,
PSPM Division, Sewa Bhawan,
Rama Krishna Puram,
New Delhi-110066
10. **Tata Steel Limited,**
2nd Floor, Commercial Complex,
Bistupur, Jamshedpur- 831001,
Jharkhand
11. **Sasaram HVDC, POWERGRID,**
5th & 6th Floors Alanka Place,
Boring Road, ER-I HQ, Power Grid Corporation of India,
Patna- 800001, Bihar
12. **NTPC Vidyut Vyapar Nigam Limited,**
CORE-5, 3rd Floor, Scope Complex,
Institutional Area, Lodhi Road,
New Delhi – 110003
13. **Dans Energy Private Limited,**
25/1 SKIP House, Museum Road,
Museum Road, Bangalore- 560025,
Karnataka
14. **Southern Eastern Railway,**
Kolkata-700043, West Bengal.
15. **HVDC Alipurduar, POWERGRID,**
800 kV HVDC Alipurduar Converter Station,
Falakata Road, Topsikhata,
Distt-Alipurduar-736121,
West Bengal

16. Shiga Energy Private Limited,
5th Floor, Tower C, Building No 8,
DLF Cybercity Phase II,
Gurgaon- 122002, Haryana

17. Sembcorp Energy India Limited,
6-3-1090, Level-5, Block-A,
TSR Tower, Hyderabad-500082

...**Respondents**

Parties present: Shri Sanjay Sen, Senior Advocate, PMJTL
Shri Shubham Singh, Advocate, PMJTL
Ms. Pallavi Saigal, Advocate, PMJTL
Shri Prashant Kumar, PMJTL
Shri Yogeshwar, PMJTL
Shri Manish Kr. Choudhary, Advocate, Bihar Discoms
Ms. Srishti Chaudhary, Advocate, Bihar Discoms

ORDER

The present Petition has been filed by the Petitioner, POWERGRID Medinipur-Jeerat Transmission Limited ('PMJTL'), under Sections 63, 79(1)(c) and 79(1)(d) of the Electricity Act, 2003 ('the Act') seeking extension of time and compensation under Article 12 (Force Majeure/FM) and Article 13 (Change in Law/ CIL) of the Transmission Service Agreement dated 17.11.2016 ('TSA'), which have adversely affected the construction of the '765 kV Strengthening in Eastern Region (ERSS-XVIII)' ('the Project'). 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 17.11.2016 as set out hereinabove;

ii) Hold that the Petitioner is entitled for time extension of 760 days on account of Force Majeure conditions and SCOD of the project would be extended to 26.08.2022;

iii) Hold that the Petitioner shall be entitled to get the increase in cost of Project amounting to Rs.289.21 Crores 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 8.91% 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 Commission;*

vi) *Allow recovery of filing fees and legal expenses in regard to the present Petition;*

vii) *Pass an order restraining the Respondent Nos. 2 and 3 from taking any coercive and/or precipitative action against the Petitioner, including but not limited to invocation of the bank guarantee, pending the hearing of the present Petition; and*

viii) *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 fully owned subsidiary of the Power Grid Corporation of India Limited ('PGCIL'), which was selected as a successful bidder through the tariff based competitive bidding under Section 63 of the Act to establish the Project on a Build, Own, Operate and Maintain ('BOOM') basis. The Petitioner is required to provide the transmission service to the LTTCs (arrayed as Respondent No. 1 to Respondent No. 7) of the Project, which requires establishing the transmission system comprising the following transmission elements:

Sr. No.	Project Elements	Schedule Commercial Operation Date (SCOD)	Actual Commercial Operation Date (COD)	Difference in days owing to FM and CIL
1.	Element 1 765/400kV, 2x1500MVA substation at Medinipur	28.07.2020	9.2.2021	197 days
2.	Element 2 765/400kV, 2x1500MVA substations at Jeerat (New)	28.07.2020	29.9.2021	429 days
3.	Element 3 Ranchi (New) – Medinipur 765kV D/c line with Hexa ACSR Zebra conductor along with 240MVAR, 765kV (765kV, 3x80 MVAR single phase units) switchable line reactor with 750 Ω NGR in each circuit at Medinipur end (total: 765KV, 7X 80 MVAR single phase units, 1 unit as spare)	28.07.2020	9.2.2021	197 days
4.	Element 4 Medinipur-Jeerat (New) 765kV D/C line with Hexa ACSR Zebra conductor along	28.07.2020	29.9.2021	429 days

	with 240MVAR, 765 kV (765kV, 3x80 MVAR single phase units) switchable line reactor with 600 Ω NGR in each circuit at Jeerat (New) end			
5.	Element 5 LILO of both circuits of Chandithala-Kharagpur 400 kV D/C line at Medinipur	28.07.2020	9.2.2021	197 days
6.	Element 6 Jeerat (New)-Subhasgram 400kV D/c line with ACSR Quad Moose	28.07.2020	26.8.2022	760 days
7.	Element 7 Jeerat (New)-Jeerat (WB) 400kV D/c line with ACSR Quad Moose	28.07.2020	29.9.2021	429 days
8.	Element 8 LILO of Jeerat (WB) - Subhasgram (PG) 400kV S/C line section at Rajarhat (PG)	28.01.2020	N/A	Deleted from scope by CEA
9.	Element 9 2 no. 400kV GIS line bays at Jeerat (WBSETCL)	28.07.2020	29.9.2021	429 days

3. The Petitioner was incorporated as a Special Purpose Vehicle ('SPV') by the Bid Process Coordinator ('BPC'), namely, PFC Consulting Limited ('PFCCL') for the purpose of developing and implementing the Project under the Tariff Based Competitive Bidding route. PGCIL participated in the competitive bidding process conducted by PFCCL and on emerging as the successful bidder, a Letter of Intent ('LOI') was issued by PFCCL to PGCIL on 21.2.2017. In accordance with the bidding documents, PGCIL furnished the Contract Performance Guarantee of Rs. 141.89 crores on 24.3.2017. PGCIL acquired 100% of the shareholding in the Petitioner Company by executing a Share Purchase Agreement with PFCCL on 28.3.2017, and accordingly, the TSA dated 17.11.2016 entered into between the Petitioner and the LTTCs became effective from 28.3.2017. The Commission, in its order dated 20.6.2017 in Petition No.83/TL/2017, granted a transmission licence to the Petitioner for the inter-State transmission of electricity, and *vide* order dated 12.6.2017 in Petition No.84/AT/2017, adopted the transmission charges of the Petitioner.

4. As per the TSA, the Project was to be completed and commissioned by 28.7.2020. However, the Petitioner has claimed that the implementation of the Project was affected due to various Force Majeure and Change in Law events, that it encountered during the construction period of the Project, which led to certain delays in achieving the Commercial Operation Date ('COD').

Submissions of the Petitioner

5. The Petitioner has mainly submitted as under:

(a) The Project comprises 9 elements, out of which Element No. 8, i.e., LILO of Jeerat (WB)- Subhasgram (PG) 400kV S/C line section at Rajarhat (PG), was deleted by the CEA from the scope of PMJTL *vide* its letter dated 4.4.2018. Accordingly, the monthly billing amount of PMJTL has been reduced by 0.28% of the total annual transmission charges approved in the TSA (i.e., reduced by % share of Asset No.8 as per TSA).

(b) As per Schedule 3 of the TSA, Element Nos. 1, 3, and 5 were required to be commissioned simultaneously. Also, the Element Nos. 2,4 & 6 or Element Nos. 2,4,7 and 9 were to be commissioned simultaneously, and Element Nos. 1,3, and 5 were prerequisites for the commissioning of Element Nos. 2, 4 & 6 or Element Nos. 2, 4, 7 & 9.

(c) The Project has been categorized into three phases consisting of Phase-I (Elements – 1,3, and 5), Phase -II (Elements – 2,4,7,and 9) and Phase-III (Element - 6). The elements under Phases -I, II, and III were commissioned on 9.2.2021, 29.9.2021, and 26.8.2022, respectively. The Project, including all the elements, had been completed with some delays (Phase-I-delay of 197 days, Phase-II-delay of 429 days, and Phase-III-delay of 760 days) owing to Force Majeure and Change in law events.

(d) The Petitioner has mentioned certain Force Majeure events, including but not limited to the Covid-19 pandemic as well as the Goods and Services Tax Act, 2017, which affected the implementation of the Project. The delay caused due to the Covid -19 pandemic was 150 days for the 1st wave of Covid (25.3.2020 - 25.8.2020), 153 days for the 2nd wave (1.4.2021 - 31.8.2021), and 23 days for 3rd

wave that had occurred during the construction stage and during implementation of the Project, are tabulated below:

Phase - I					
S.No.	Force Majeure event causing delay	Time period	Notice	Delay with overlap	Delay without overlap
Element 1	Restriction in movement of interconnecting transformers and reactors	2.1.2020 - 7.2.2020	2.1.2020, 12.2.2020, Cessation Notice - 12.2.2020	37	37
	Local agitation in the Medinipur substation	30.10.2018 - 4.11.2018	5.11.2018	71	71
		5.12.2018 - 23.12.2018	7.12.2018		
		23.7.2019 - 29.7.2019	23.7.2019		
		4.11.2019 - 8.11.2019	4.11.2019		
		20.11.2019 - 23.12.2019	20.11.2019, Cessation notice – 23.12.2019		
	Cyclone - Titli	8.10.2018 - 12.10.2018		24	22
	Cyclone - Fani	3.5.2019 - 4.5.2019	7.5.2019		
	Cyclone - Bulbul	7.11.2019 - 15.11.2019	8.11.2019		
	Cyclone- Amphan	14.5.2020 - 21.5.2020	21.5.2020		
	Bharat Bandh and other law & order situations	10.9.2018	14.9.2018	5	3
		26.9.2018	1.10.2018		
		12.12.2019-13.12.2019	12.12.2019		
		8.12.2020	9.12.2020		
Element 3	Scarcity of Sand in West Bengal	18.6.2018 - 30.9.2018	20.7.2018	105	88
	Power Line Crossing in WBSETCL	10.5.2018 - 4.7.2018	17.5.2018	56	40
	Requirement of installation of Bird diverters/ deflectors on Transmission Lines.	1.9.2020 - 31.1.2021	22.7.2020	153	153
	Introduction of aerospace safety aspects	4.9.2020 - 31.1.2021	4.9.2020	150	0
	General Elections	11.3.2019 - 23.5.2019	17.4.2019, Cessation notice – 31.5.2019	74	74
	Panchayat election	1.4.2018 - 25.5.2018	12.7.2018	55	55
	Cyclone - Fani	3.5.2019 - 4.5.2019	7.5.2019	19	17
	Cyclone - Bulbul	7.11.2019 - 15.11.2019	8.11.2019		
	Cyclone- Amphan	14.5.2020 - 21.5.2020	21.5.2020		
	Bharat Bandh and other law & order situations.	10.9.2018	14.9.2018	5	2
		26.9.2018	1.10.2018		
		12.12.2019-13.12.2019	12.12.2019		
		8.12.2020	9.12.2020		
	Local disturbances	25.10.2018 - 22.2.2020	-	486	401
Element 5	Scarcity of Sand in West Bengal	18.6.2018 - 30.9.2018	20.7.2018	105	88
	Local disturbances	8.9.2018 - 26.7.2020	20.11.2019	688	624
	Requirement of installation of Bird diverters/ deflectors on Transmission Lines.	1.9.2020 - 31.1.2021	22.7.2020	153	153
	Introduction of aerospace safety aspects	4.9.2020 - 31.1.2021	4.9.2020	150	0
	Power Line Crossing in WBSETCL	10.5.2018 - 4.7.2018	17.5.2018	56	40

	Law & order issues at certain locations.	24.8.2018 - 10.11.2018	17.9.2018	79	41
	General Elections	11.3.2019 - 23.5.2019	17.4.2019, Cessation notice – 31.5.2019	74	0
	Panchayat election	1.4.2018 - 25.5.2018	12.7.2018	55	55
	Cyclone - Fani	3.5.2019 - 4.5.2019	7.5.2019, Cessation notice – 8.5.2019	19	0
	Cyclone - Bulbul	7.11.2019 - 15.11.2019	8.11.2019, Cessation Notice - 15.11.2019		
	Cyclone- Amphan	14.5.2020 - 21.5.2020	21.5.2020		
	Bharat Bandh and other law & order situations	10.9.2018	14.9.2018	5	0
		26.9.2018	1.10.2018		
12.12.2019-13.12.2019		12.12.2019			
8.12.2020		9.12.2020			
Phase - II					
Element	Force Majeure event	Time period	Notice	Delay with overlap	Delay without overlap
Element 2	Non-availability of government land/earth for filling of Jeerat Substation	17.12.2018 - 25.5.2019	17.12.2018 Cessation Notice - 01.06.2019	160	160
	Restriction of truck movement due to damage of bridge in Hooghly River (change in law event also)	10.3.2020 - 20.6.2020	10.03.2020	103	103
	Law and order issues	30.10.2019 - 12.11.2019	30.10.2019, Cessation Notice - 12.11.2019	14	14
	Increase in COVID-19 cases amongst the workers	1.9.2020 - 1.12.2020	02.12.2020	92	92
	Panchayat elections	1.4.2018 - 25.5.2018	12.07.2018	55	55
	Cyclone - Fani	3.5.2019 - 4.5.2019	7.5.2019, Cessation notice – 8.5.2019	19	3
	Cyclone - Bulbul	7.11.2019 - 15.11.2019	8.11.2019, Cessation Notice - 15.11.2019		
	Cyclone- Amphan	14.5.2020 - 21.5.2020	21.5.2020		
	Bharat Bandh and other law & order situations	10.9.2018	14.9.2018	5	5
		26.9.2018	1.10.2018		
12.12.2019-13.12.2019		12.12.2019			
8.12.2020		9.12.2020			
Element 4	Initiation of court cases at various locations on 765 KV Medinipur-Jeerat (New) Line	8.12.2017- 5.1.2021, 14.6.2019 - 12.7.2019, 26.4.2019 - 9.1.2020, 31.7.2019 - 26.3.2021, 4.8.2020 - 25.8.2020	11.10.2018, 5.8.2019, 30.8.2019, 29.10.2020, 15.2.2021, 22.2.2021	1125	1125
	Panchayat elections	1.4.2018 - 25.5.2018	12.07.2018	55	0
	Delay caused by Power Line Crossing in WBSETCL	10.5.2018 - 04.7.2018	17.5.2018	56	0
	Scarcity of Sand in West Bengal	18.6.2018 - 30.9.2018	20.07.2018	105	0

	General Elections	11.3.2019 - 23.5.2019	17.09.2018	74	0
	Cyclone - Fani	3.5.2019 - 4.5.2019	7.5.2019	19	0
	Cyclone - Bulbul	7.11.2019 - 15.11.2019	8.11.2019		
	Cyclone- Amphan	14.5.2020 - 21.5.2020	21.5.2020		
	Increase in COVID cases amongst the workers	1.9.2020 - 1.12.2020	02.12.2020	92	0
	Bharat Bandh and other law & order situations	10.9.2018	14.9.2018	5	0
		26.9.2018	1.10.2018		
		12.12.2019-13.12.2019	12.12.2019		
		8.12.2020	9.12.2020		
	Law and Order Situations	15.3.2019 - 14.12.2020, 22.5.2019 - 23.2.2021, 22.2.2019 - 10.12.2019, 13.9.2018 - 15.3.2020		2127	49
Element 7	Panchayat elections	1.4.2018 - 25.05.2018	12.07.2018	55	55
	Power Line Crossing in WBSETCL	10.5.2018 - 4.7.2018	17.05.2018	56	40
	Scarcity of Sand in West Bengal	18.6.2018 - 30.9.2018	20.07.2018	105	88
	General Elections	11.3.2019 - 23.5.2019	17.09.2018	74	74
	Cyclone - Fani	3.5.2019 - 4.5.2019	7.5.2019	19	8
	Cyclone - Bulbul	7.11.2019 - 15.11.2019	8.11.2019		
	Cyclone- Amphan	14.5.2020 - 21.5.2020	21.5.2020		
	Increase in COVID cases amongst the workers	1.9.2020 - 1.12.2020	2.12.2020	92	92
	Bharat Bandh and other law & order situations	10.9.2018	14.9.2018	5	1
		26.9.2018	1.10.2018		
		12.12.2019-13.12.2019	12.12.2019		
		8.12.2020	9.12.2020		
	Law and order issues/ local disturbances	26.12.2018 - 28.1.2020, 29.7.2019- 22.1.2020, 20.11.2018 - 10.2.2020, 16.8.2019 – 17.2.2020, 6.3.2019 - 2.8.2019	6.3.2019	1361	977
Element 9	Delay in commissioning of the Element 9 was entirely on account of the Force Majeure events that led to delay in commissioning of assets 2, 4 and 7 and were beyond the control of PMJTL.				

Phase - III					
Element	Force Majeure event	Time period	Notice	Delay with overlap	Delay without overlap
Element 6	Initiation/ pendency of court cases at various locations on Jeerat (New)-Subhasgram 400 K/V Line	7.5.2021 - 5.1.2022, 15.2.2022 - 27.7.2022	21.01.2022, 26.04.2022, 23.05.2022	407	407
	Delay caused due to Law and Order issues in various districts	12.6.2019 - 25.3.2021, 9.7.2019 - 2.10.2021, 16.7.2019 - 28.8.2020, 18.7.2019 - 28.8.2020, 3.8.2019 - 8.8.2019, 23.12.2019 - 10.1.2022, 27.8.2019 - 23.7.2021, 3.1.2020 - 20.2.2020, 15.1.2020 - 10.1.2022, 19.2.2020 - 13.1.2022, 12.10.2020 - 15.3.2022, 6.1.2021 - 22.8.2022, 1.10.2021 - 14.1.2022, 11.10.2021 - 10.3.2022, 21.10.2019 - 14.1.2022	09.12.2021	7127	610

	Delay caused due to Scarcity of Sand in West Bengal	18.6.2018 - 30.9.2018	20.07.2018	105	0
	Delay caused by Power Line Crossing in WBSETCL	10.5.2018 - 13.12.2018	17.05.2018	218	218
	Delay caused due to increase in COVID cases amongst the workers	1.9.2020 - 1.12.2020	02.12.2020	92	92
	Delay caused due to General Elections	11.3.2019 - 23.5.2019	17.09.2018	74	74
	Delay caused due to panchayat elections	1.4.2018 - 25.5.2018	12.07.2018	55	39
	Delay caused due to Assembly Elections	27.3.2021 - 2.5.2021	09.04.2021	37	37
	Cyclone - Fani	3.5.2019 - 4.5.2019	7.5.2019	19	17
	Cyclone - Bulbul	7.11.2019 - 15.11.2019	8.11.2019		
	Cyclone- Amphan	14.5.2020 - 21.5.2020	21.5.2020		
	Bharat Bandh and other law & order situations	10.9.2018	14.9.2018	5	5
		26.9.2018	1.10.2018		
		12.12.2019-13.12.2019	12.12.2019		
		8.12.2020	9.12.2020		

(e) Apart from these, the following Change in Law events occurred during the implementation of the Project leading to increase in the cost of Project:

S.No.	Change in Law event	Notice
1.	Notification of Goods and Service Tax Act, 2017 by Government of India	7.7.2017
2.	Change in design of tower due to Power Line Crossings in WBSETCL	17.5.2018
3.	Installation of Bird Diverters/ Deflectors on the Transmission Lines and Aerospace Safety Aspects	22.7.2020 (for Bird diverters), 4.9.2020 (for Aerospace equipment)
4.	Ban of truck movement on bridge over Hooghly river	10.3.2020 (also Force Majeure)

(f) Introduction of GST Laws by the Parliament after the cut-off date (7 days prior to the bid deadline), i.e., 6.7.2016, qualifies to be a Change in Law. The Petitioner has further submitted that the Commission, in its order dated 17.12.2018 in Petition No. 1/SM/2018, *inter-alia*, has already held that the introduction of GST and subsuming/ abolition of specific taxes and duties, etc., in the GST constitute Change in Law. As per the auditor-certified calculation, the net increase in the cost of the Project due to revision in tax rates and introduction of GST after the cut-off date is Rs.54.26 crore (including IDC of Rs.8.41 crore and IEDC of Rs. 2.55 crore).

(g) A new requirement imposed by WBSETCL *vide* memo dated 11.5.2018, which indicated that all power lines must be crossed over only through large angle towers (D-D) on both sides by any PMJTL transmission line, amounts to a Change in Law. The above requirement was a new condition and contrary to the specifications of towers required for the power line crossing as prescribed in Clause (iv) of the

'Specific Technical Requirements for Transmission Lines' of the TSA. As per the auditor-certified calculation, the net increase in the cost of the Project due to due to the new requirement by WBSETCL after the cut-off date is Rs. 4.86 crores (including IDC of Rs. 0.84 crores and IEDC of Rs. 0.22 crores).

(h) On 6.3.2020, the Ministry of Environment, Forest, and Climate Change (MoEFCC) approved the diversion of 0.497 hectares of forest land in favour of PMJTL, subject to the condition that bird deflectors must be fixed on the upper conductor of the transmission line at suitable intervals to avoid bird hits. The condition of installation 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 28.9.2019, which was after the cut-off date of the Project.

(i) With respect to the aerospace equipment, the Petitioner was issued NOC clearance on 28.6.2019 by the CATCO section of the Indian Air Force, Shillong, subject to a few conditions, including placing cable marker and medium intensity type 'B' lights on the transmission line. As per the existing provision, i.e., Clause 4.2 of Amendment No.1 dated July 1994 to IS 5613 (Part 3/Sec 1): 1989 - Code of Practice for design, Installation, and maintenance of Overhead Power Lines, the existing provision pertaining to the installation of visual aids in transmission lines, prior to the cut-off date, was only applicable on such part of the transmission line which was falling within a radius of 10 kms around aerodromes and air to ground firing ranges. However, as per the direction of the Defence Aviation Authorities *vide* their letters dated 10.5.2019, 28.6.2019, 6.8.2020 & 30.7.2020, both day and night visual aids were required to be installed in the entire transmission line and all the towers of the line, respectively, irrespective of their vicinity from the airport. As per the auditor-certified calculation, the net increase in the cost of the project due to the installation of the bird diverters/deflectors and aviation equipment after the cut-off date is Rs. 24.82 crores (including IDC of Rs. 0.57 crores and IEDC of Rs. 1.35 crores).

(j) Further, the construction of the sub-station at Jeerat was affected due to the restriction of truck movement on the bridge (due to damage) over the Hoogly River which further restricted the movement of goods for the construction of the new substation, leading to both time overrun and cost overrun on account of Force Majeure/Change in Law issues. As per the Auditor's certificate, the net increase

in cost of the Project after the cut-off date is Rs 3.13 crores (including IDC of Rs 0.21 crores and IEDC of Rs. 0.16 Crores).

(k) Further, the entire increase in the project cost (100%) on account of the capital expenditure incurred by PMJTL 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 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 and should also include funding and financing costs as well as the overheads.

(l) 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 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').

(m) Also, the Petitioner is 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.

(n) The Contract Performance Guarantee issued by the Petitioner in favour of the LTTCs has been returned by Respondent Nos. 1, 4, 5, 6 & 7 with the endorsement that no claim is pending towards the Bank Guarantee and the terms and all obligations as per the terms and conditions have been fulfilled by PMJTL. However, no communications have been received from Respondents 2 and 3. Even otherwise, in terms of Article 18.1.1 read with Schedule 8 makes it clear that the decision of the Lead LTTC, i.e., Respondent No. 1 is binding upon other LTTCs

and therefore, Respondent Nos. 2 and 3 ought to return the Contract Performance Guarantee issued by PMJTL in their favour.

Hearing dated 13.3.2024

6. The Petition was admitted on 13.3.2024, and notices were issued to the Respondents for filing their reply. The Petitioner was also directed to furnish certain information and to implead all the beneficiaries of the Eastern Region as parties to the Petition and file a revised memo of parties. The Petitioner filed the compliance affidavit dated 10.7.2024 in this regard. Respondent No. 2 (South Bihar Power Distribution Company Limited) and Respondent No. 3 (North Bihar Power Distribution Company Limited) have filed their joint reply on 7.5.2024, and the Petitioner filed its rejoinder to the same on 23.7.2024.

Reply of Respondent No. 2 & 3

7. Respondent Nos. 2 and 3, in their joint reply dated 7.5.2024, have mainly submitted as under:

(i) Although the Petitioner has averred that there were certain Force Majeure events affecting the completion of Element-1, there is no evidence or any proof of any nature in the Petition as to what prudent and continuous efforts were taken by the Petitioner to minimise and mitigate the impact of delay in completion of the Project.

(ii) As per Article 11.5.1 of the TSA, it is mandatory for the Affected Party to give notice, containing full particulars of the Force Majeure event on the Party claiming relief and the remedial measures proposed, to the other Party as soon as reasonably practicable but not later than 7 days after the date on which such party knew or should reasonably have known of the commencement of the event of Force Majeure.

(iii) In terms of the judgment of the APTEL in Appeal No. 212 of 2016 titled Maruti Clean Coal and Power Ltd. vs. PGCIL, dated 7.11.2017, the claims of the Petitioner are liable to be rejected.

(iv) The following Force Majeure notices issued by the Petitioner were not in compliance with Article 11.5. Except for the letter at serial No.(iii), it is unclear from the letters as given by the TSP that they were given not later than seven days after the date on which such party knew or should reasonably have known of the commencement of the event of Force Majeure. The alleged condition of Force Majeure on account of the spread of COVID-19 has affected work since August 2020, but the notice given is December 2020. In the letter dated 15.2.2021, the work at Location 20 has been affected due to court cases for 3 months; similarly, in the letter dated 9.4.2021, the work has been stated to be affected due to Assembly Elections since 27.3.2021. Further, importantly, these letters also do not contain full particulars of the event of Force Majeure, its effects on the Party claiming relief and the remedial measures proposed.

- i. Letter bearing Ref. No. PMJTL/Force Majeure/Post Covid-19/1824 dated 2.12.2020.
- ii. Letter bearing Ref. No. PMJTL/Force Majeure/JSTI/ 1825 dated 2.12.2020.
- iii. Letter bearing Ref. No.: PMJTL/Force Majeure/Bharat Bandh/1785-98 dated 9.12.2020.
- iv. Letter bearing Ref. No.: PMJTL/Force Majeure/Court Case-MJTL/3015 dated 15.2.2021.
- v. Letter bearing Ref. No.: PMJTL/Force Majeure/ Court Case-MJT/3430 dated 22.2.2021
- vi. Letter bearing Ref. No. PMJTL/Force Majeure/Jeerat/SS & TL/93 dated 9.4.2021
- vii. Letter bearing Ref. No. PMJTL/Force Majeure/ Jeerat (New) /94 dated 12.4.2021

(v) As per Article 5.1.3, the TSP is responsible for obtaining all clearances and permits relating but not limited to road/rail/river/canal/power line/crossings, etc., right of way/ way-leaves and environment and forest clearances from the relevant authorities for carrying out its obligations under this Agreement in general and Article 5.1.1 in particular.

(vi) As per Article 5.1.4, the TSP was also responsible for the final selection of the Site, including its geo-technical investigation; survey, and geo-technical investigation of line route to determine the final route of the transmission lines, and seeking access to the Site and other places where the Project is being executed, at its own cost. The Force Majeure clause cannot be interpreted as to completely override the primary responsibilities of the Petitioner.

(vii) Further, the Force Majeure event of local agitation is not at all contemplated by Article 11.3, rather it falls in the exclusion in the light of sub-clause 11.4.1 (d) read with sub-clause 11.3 (ii) (i.e., Force Majeure does not include strikes or labour disturbances at the facilities of the Affected Party, what is contemplated is an industry-wide strike and labour disturbances, having a nationwide impact).

(viii) Similarly, mere pendency of the court cases is not contemplated by Article 11.3. Pendency of the court cases occasioned on account of any fault/negligence/lapse on the part of TSP and/or without an order inhibiting work cannot be relied upon by Petitioner (only with respect to loc. 20 an injunction order has been mentioned but without any details). It was incumbent upon the Petitioner to demonstrate that the circumstance was not within its reasonable control (directly/indirectly) and could not have been avoided had it taken reasonable care or complied with Prudent Utility Practices. No such particulars in this regard have been given in the letters.

(ix) Assembly Elections, too, are not a Force Majeure circumstance, and the same ought to have been in the contemplation of TSP, and mitigative steps ought to have been accordingly taken by it. Reduced manpower on this account is not covered by the Force Majeure clause.

(x) Further, in the light of the Project Execution Plan submitted by the TSP it ought to be seen as to how the works stated to have been affected by the claimed Force Majeure events continued till the tail end or at that particular stage of the Project i.e., survey work associated with 400 kV D/C Jeerat-Subhasgram Line Construction, obtaining clearances and ROW, works that may require heavy dependence on local labour, etc.

(xi) Additionally, for the same date, i.e., 2.12.2020, two letters of Force Majeure events have been given, the first citing the impact of Covid-19 as a Force Majeure event and the other local agitation, thereby demonstrating that the Force Majeure event stated in the previous letter did not affect the entire Project. Further, the letter dated 9.12.2020, given a week after the aforesaid two letters citing Bharat Bandh as a Force Majeure event, also does not show that the alleged Bharat Bandh was an industry-wide strike and labour disturbances having a nationwide impact.

(xii) With respect to the notices dated 2.12.2020 and 12.4.2021 issued in respect of Covid, it is apparent that by December 2020, admittedly, PMJTL was well aware of the prevalent situation ensuing on account of the outbreak of Covid-19. As

admitted in the letter dated 02.12.2020 Lockdown all over India was relaxed for 3-4 months. hence, the Petitioner ought to have taken mitigative steps, which it was also contractually bound to undertake. Further, the letter dated 12.4.2021 is also ambiguous as, on the one hand, it states that the testing and commissioning of the 765kV circuit breaker was delayed, while, on the other, it states that the labour in line construction was affected. No impact of the claimed Force Majeure event on unavoidably delaying the performance of obligation was shown by the Petitioner. Reliance, in this regard, was placed on the judgment dated 29.5.2020 passed by the Hon'ble Delhi High Court in OMP (I) COMM 88/20 titled Halliburton offshore Services Inc. vs. Vedanta Limited & others.

(xiii) Regarding Element 3, the Petitioner has wrongly contended that the progress was affected during the period from 18.06.2018 to 30.09.2018 as there was a scarcity of sand across all the districts of West Bengal. As per the Petitioner's submission, the District Land & Land Reforms, Bankura, West Bengal, had issued notice dated 18.7.2018 to the effect that no sand mining activities will be allowed to be carried out in the district from 18.06.2018 to 30.09.2018. From the perusal, it is clear that the sand mining activity was prohibited in only Bankura District, West Bengal. Further, the notice of sand mining restriction was issued on 18.7.2018 (with retrospective effect from 18.06.2018), the Petitioner has failed to explain how the progress of the line was affected from 18.6.2018 itself.

(xiv) Regarding the Force Majeure events affecting Phase II of the project, the following may be noted:

(a) With regard to Suit No. 488/2017 (delay of 1125 days), it is pointed out that an ad-interim injunction in the form of status quo was passed on 11.12.2017 itself, and the same was confirmed on 16.1.2020. However, there is no averment to the effect of the steps taken by the Petitioner for vacation of the ad-interim order dated 11.12.2017 passed in the said suit. There is no averment or explanation as to why the said order was not challenged in appeal at the earliest.

(b) Further, the perusal of another Writ Petition No.10403 of 2019 filed before the Hon'ble High Court of Calcutta shows that there was no stay of any nature, and hence, the delay of 29 days claim cannot be justified.

(xv) Regarding the apprehension of encashment of the Contract Performance Guarantee, as per Schedule 2 of the TSA, Respondent No. 1 (West Bengal State Electricity Distribution Company Ltd/ WBSEDCL) is the Lead LTTC. WBSEDCL,

vide its letter dated 23.2.2023, and DVC, vide its letter dated 28.2.2023, had already released BG of PMJTL without claiming LD for the said delay in commissioning of the project in terms of Article 6.4 of the TSA. Respondent No. 2 & 3 vide letter No.617 dated 5.9.2023 had requested WBSEDCL to provide the grounds/basis for releasing BG to PMJTL and for not claiming LD. However, no reply was received from WBSEDCL.

(xvi) Further, the said BGs had already expired on 29.2.2024. However, the BGs are claimable up to 28.2.2025. Since the matter is subjudice, the said Contract Performance Guarantee is not going to be invoked by the Respondents during the pendency of the present Petition.

(xvii) There is no provision under the TSA that provides for carrying cost nor is there any provision under the PPA that deals with the restitution.

Rejoinder on behalf of the Petitioner

8. The Petitioner, in its rejoinder dated 23.7.2024 to the reply filed by Respondent No. 2 & 3, has submitted as under:

(i) Regarding the Force Majeure Notice dated 2.12.2020, a notice was issued with respect to Element No. 2. The construction of the Jeerat (New) sub-station was delayed due to an increase in Covid cases amongst the workers. Even though the lockdown had been partially lifted, however, the Covid cases were increasing amongst the workforce. The notice provided specific instances where construction was halted due to the spreading of corona virus.

(ii) Concerning another Force Majeure Notice dated 2.12.2020 with respect to local agitation in the construction of Element No.6, the representatives of Petitioner were regularly following up with the local authorities to resolve the issues. A copy of the meeting held with the local administration, where it has been directed that no survey work can be done without obtaining a clearance from the local administration has also been attached.

(iii) Another Force Majeure Notice dated 9.12.2020 pertained to the Bharat Bandh that was declared by the farmers protesting against the Central Government Farm Laws on 8.12.2020, which resulted in widespread agitation throughout the country. No work could be done on 8.12.2020.

(iv) Regarding the Force Majeure Notice dated 15.2.2021, the notice was issued with respect to the delay in the construction of Element No. 4 on account of the case of Nirod Baran Roy Vs. POWERGRID & Anr. (O.S No. 17/2019). On 31.7.2019, a case was filed against POWERGRID praying to restrain it from installing an infrastructure tower for the High Tension Electricity Line for electricity supply, alleging that no compensation has been paid to the aggrieved party. Thereafter, on 23.12.2020, an interim order was passed against POWERGRID. This prohibited the Petitioner from continuing its construction works. The interim order was only vacated by the final order dated 26.3.2021, resulting in a total stoppage of work for more than three months in the said location. PMJTL/POWERGRID took all steps to vacate the interim order and ultimately succeeded.

(v) In respect of Force Majeure Notice dated 22.2.2021, regarding the delay in construction of Element No. 4 on account of various interim orders passed against POWERGRID in various cases such as Nirod Baran Roy Vs. POWERGRID & Anr. (O.S No. 17/2019), Suit No. 488/2017, titled Salt Lake Projects Pvt. Ltd. & Ors. Vs. POWERGRID before the Court of Ld. Civil Judge (Junior Division), 2nd Court, Chinsurah, Hooghly and W.P 5738 (W) Of 2020 - M/S Dhoom Mercantile Pvt. Ltd. The interim injunction order granted against POWERGRID/ cases filed against POWERGRID could only be rejected/dismissed due to efforts made by POWERGRID.

(vi) Regarding another Force Majeure Notice dated 9.4.2021, the notice was issued on account of assembly elections in the State of West Bengal. The Assembly elections were conducted in 8 stages. On account of the unavailability of support from the local administration officials for resolving right-of-way issues in view of the Assembly Elections in West Bengal, the construction of the Project was affected. The Petitioner has also placed on record a copy of the letter dated 5.4.2021 from L&T to the Petitioner that shutdown of lines from WBSEDCL was not possible during the said assembly elections.

(vii) In respect of the Force Majeure Notice dated 12.4.2021, a notice was issued as a result of the Second wave of Covid 19 causing widespread disruption of work.

(viii) The construction of Element No. 4 was delayed due to the pendency of various court cases at different locations. Due to the interim stay passed by the Court of Civil Judge (Junior Division), 2nd Court, Chinsurah, Hooghly, in the case of Salt Lake Projects Pvt. Ltd. & Ors. Vs. POWERGRID (Suit No. 488 of 2017),

the construction activities at Loc. Nos.96/2, 96/3, 96/4, 96/5, 97/0, 97/1, 97/2, 97/3 & 97/4 were affected.

(ix) The contention of the Respondents that the PMJTL did not take steps to expedite the trial is not tenable. PMJTL, in fact, filed a petition to expedite the hearing; the same is evident from the Order dated 19.2.2019 passed by Civil Judge, Hooghly. The delay in the matter was solely due to adjournments being taken by the plaintiffs – Salt Lake Projects Pvt. Ltd. PMJTL also filed an appeal before the District Judge, Hooghly, against the Order dated 16.1.2020 passed by the Civil Judge, Hooghly, along with a stay application.

(x) The delay in passing any orders by said Courts was due to the COVID-19 pandemic since the Courts were not functioning properly. Therefore, the Petitioner took all necessary steps to expedite the hearing and vacate the ad interim stay orders.

Hearing dated 22.8.2024

9. The matter was heard on 22.8.2024. The Commission, after hearing the parties at length, reserved the matter for order. The parties were permitted to file their respective written submissions. Further, the Commission also sought certain information from the Petitioner. The Petitioner has filed the compliance affidavit dated 22.10.2024 in this regard. Also, the Petitioner has filed its written submissions dated 11.11.2024 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 Nos. 2 and 3 and perused the documents available on the record. The following issues arise for our consideration:

Issue No. 1: What shall be the COD of the elements in Petitioner's Project in terms of TSA dated 17.11.2016?

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 above issues have been dealt with in succeeding paragraphs.

Issue No. 1: What shall be the COD of the elements in Petitioner's Project in terms of TSA dated 17.11.2016?

11. The Petitioner, POWERGRID Medinipur-Jeerat Transmission Limited (PMJTL), was implementing the "765 kV Strengthening in Eastern Region (ERSS-XVIII)" scheme under TBCB. The TSA was signed by the Petitioner and the LTTCs on 17.11.2016. The scope of the scheme and corresponding COD of the elements as declared by the Petitioner is as under:

S. No.	Element	Element Name	SCOD	CoD declaration letter date	Declared COD
1.	Element-1	765/400kV, 2x1500MVA substation at Medinipur.	28.07.2020	09.02.2021	09.02.2021
2.	Element-2	765/400kV, 2x1500MVA substations at Jeerat (New)	28.07.2020	29.09.2021	29.09.2021
3.	Element-3	Ranchi (New) – Medinipur 765kV D/c line with Hexa ACSR Zebra conductor along with 240MVAR, 765kV (765kV, 3x80 MVAR single phase units) switchable line reactor with 750 Ω NGR in each circuit at Medinipur end (total: 765KV, 7X 80 MVAR single phase units, 1 unit as spare)	28.07.2020	09.02.2021	09.02.2021
4.	Element-4	Medinipur-Jeerat (New) 765kV D/C line with Hexa ACSR Zebra conductor along with 240MVAR, 765 kV (765kV, 3x80 MVAR single phase units) switchable line reactor with 600	28.07.2020	29.09.2021	29.09.2021

		Ω NGR in each circuit at Jeerat (New) end			
5.	Element-5	LILO of both circuits of Chandithala-Kharagpur 400 kV D/C line at Medinipur	28.07.2020	09.02.2021	09.02.2021
6.	Element-6	Jeerat (New)-Subhasgram 400kV D/c line with ACSR Quad Moose	28.07.2020	26.08.2022	26.08.2022
7.	Element-7	Jeerat (New)-Jeerat (WB) 400kV D/c line with ACSR Quad Moose	28.07.2020	29.09.2021	29.09.2021
8.	Element-8	LILO of Jeerat (WB) – Subhasgram (PG) 400kV S/C line section at Rajarhat (PG)	28.01.2020	Removed from scope of Works vide CEA letter dated 04.04.2018	
9.	Element-9	2 no. 400kV GIS line bays at Jeerat (WBSETCL)	28.07.2020	29.09.2021	29.09.2021

12. Article 6.1.1 of the TSA dated 17.11.2016, provides as under:

“6.1.1. The TSP shall give the RLDC(s), CTU/STU, as the case may be, the Long Term Transmission Customers and any other agencies as required at least sixty (60) days advance written notice of the date on which it intends to connect an Element of the Project, which date shall not be earlier than its Scheduled COD or Scheduled COD extended as per Article 4.4.1 of this Agreement, unless the Lead Long Term Transmission Customer otherwise agrees.”

As per the above, the Petitioner was obligated to issue at least 60-day advance written notice to CTUIL/STU, WRLDC, and LTTCs of the date on which it intends to connect the element of the Project.

13. Further, Article 6.2.1 of TSA has the following provision for the declaration of the COD of the elements:

“6.2 Commercial Operation:

6.2.1 An element of the Project shall be declared to have achieved COD seventy-two (72) hours following the connection of the Element with the Interconnection Facilities or seven (7) 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 or seven (7) days after the date of deferment, if any; pursuant to Article 6.1.2.

Provided that an Element shall be declared to have achieved COD only after all the Element(s), if any, which are pre-required to have achieved COD as defined in Schedule 3 of this Agreement, have been declared to have achieved their respective COD.”

As per the above, an element of the Project can be declared to have achieved COD seventy-two hours following the connection of the element with the Interconnection Facilities subject to all pre-requisite element(s) (if any) having achieved COD.

14. Now let us peruse whether the Petitioner followed the abovementioned Article 6.1.1 and Article 6.2 of the TSA while declaring COD of the respective elements of the transmission scheme. The element-wise details of the CEA approval for energisation and WRLDC successful trial run is as under:

S. No.	Element	Elements that are prerequisite for COD as per TSA	CEA Energisation Certificate dated	Details of WRLDC successful trial-run
1.	Element-1	Elements 1, 3, and 5 are required simultaneously	27.01.2021	Certificate dated 26.03.2021 (trial run done from 07.02.21 to 08.02.21)
2.	Element-2	Elements 2, 4, 6 OR 2, 4, 7 and 9 are required simultaneously	03.09.2021	Certificate dated 03.02.22 for ICT-2 (trial run done from 26.09.21 to 27.09.21) Certificate dated 10.02.22 for ICT-1 (trial run done from 16.09.21 to 17.09.21)
3.	Element-3	Elements 1, 3, and 5 are required simultaneously	21.12.2020	Certificate dated 04.05.2021 (trial run done from 07.02.21 to 08.02.21)
4.	Element-4	Elements 2, 4, 6 OR 2, 4, 7, and 9 are required simultaneously	03.09.2021	Certificate dated 10.02.22 (trial run done on 16.09.21 to 17.09.21)
5.	Element-5	Elements-1, 3, and 5 are required simultaneously	27.01.2021	Certificate dated 26.04.21 (trial run done on 05.02.21 to 06.02.21)
6.	Element-6	Elements 2, 4, 6 OR 2, 4, 7, and 9 are required simultaneously	12.08.2022	Certificate dated 07.11.22 (trial run done on 24.08.22 to 25.08.22)
7.	Element-7	Elements 2, 4, 6 OR 2, 4, 7, and 9 are required simultaneously	03.09.2021	Certificate dated 10.02.22 (trial run done on 16.09.21 to 17.09.21)
8.	Element-8	-	-	Removed from scope of Works vide CEA letter dated 04.04.2018

S. No.	Element	Elements that are prerequisite for COD as per TSA	CEA Energisation Certificate dated	Details of WRLDC successful trial-run
9.	Element-9	Elements 2, 4, 6 OR 2, 4, 7, and 9 are required simultaneously	03.09.2021	Certificate dated 10.02.22 (trial run done on 16.09.21 to 17.09.21)

The elements of the Project have been categorized into three phases consisting of Phase-I (Elements-1, 3, and 5), Phase -II (Elements – 2,4,7 and 9) and Phase-III (Element - 6). The elements under Phase-I, II, and III were declared COD by the Petitioner on 9.2.2021, 29.9.2021, and 26.8.2022, respectively.

Phase-I

15. The Phase-I elements 1, 3, and 5 are required simultaneously for the declaration of the COD. The Petitioner served advance notice as per Article 6.1 for the intended connection of these elements on 20.11.2020. Thereafter, the Petitioner declared COD for all these elements as 09.02.2021 after the CEA's approval for energisation dated 21.01.2021 and 27.01.2021. The Petitioner has furnished the trial run certificates issued by WRLDC, whereby the date of the interconnection is 07.02.2021, and the date of completion of the trial run is 08.02.2021 for Elements 1 and 3 and 6.02.2021 for Element 5. As per Clause 6.2 of the TSA, an element of the Project can be declared to have achieved COD seventy-two hours following the connection of the element with the Interconnection Facilities subject to all pre-requisite element(s) (if any) having achieved COD. Since Elements 1,3,5 are prerequisites of each other, and Elements 1 and 5 got connected with the interconnection facilities on 7.02.2021, the COD can be declared 72 hours following 07.02.2021, i.e., 11.02.2021. However, the Petitioner declared COD on 09.02.2021, i.e., immediately following the successful trial operation. As discussed above, the COD of the elements 1, 3, and 5 is approved as 11.02.2021.

Phase-II

16. The Phase-II elements 2, 4, 7, and 9 are required simultaneously. The Petitioner has declared COD for the elements 2, 4, 7, and 9 as on 29.09.2021 after serving advance notice as per Article 6.1 for these elements on 26.02.2021 and issuance of a CEA energization Certificate dated 03.09.2021. We note that Element - 2 comprises 2 Nos. ICTs. The date of the interconnection of the ICT-1 is 16.09.2021 and for ICT-2 is 26.09.2021, of the element-2, post which they achieved the successful trial operation for 24 hours. The date of interconnection for Elements 4, 7, and 9 is 16.09.2021, after which they achieved successful trial operation for 24 hours. Therefore, as per Article 6.2 of the TSA, the Petitioner can be declared COD 72 hours after 26.09.2021 (the latest date of all elements), i.e., 30.09.2021. Accordingly, the COD of Phase-II elements 2, 4, 7, and 9 is approved as 30.09.2021.

Phase-III

17. For Element- 6, the Petitioner served advance notice as per Article 6.1 for intended connection on 31.03.2022, after the successful trial run for energization between 24.08.2022 to 25.08.2022 and CEA energization Certificate dated 12.08.2022.. The Petitioner declared COD as on 26.08.2022. Element 6 got interconnected on 24.08.2022. Therefore, as per Article 6.2 of the TSA, the Petitioner can declare COD 72 hours after interconnection, i.e., 28.08.2022. Accordingly, the COD of the element- 6 is approved as 28.08.2022.

18. In terms of the above, the actual date of Commissioning of the Project elements is approved as under:

Particular	Elements	Declared COD	Approved COD
Phase-I	Elements-1, 3 and 5	09.02.2021	11.02.2021
Phase-II	Elements-2, 4, 7 and 9	29.09.2021	30.09.2021

Phase-III	Elements-6	26.08.2021	28.08.2022
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The Petitioner is directed to return the transmission charges received from the LTTCs/ beneficiaries, if any, from the date of its declared COD till the COD approved in the instant Order. CTUIL is directed to raise the bills on the Petitioner accordingly and adjust such charges from future bills of the Petitioner.

19. The issue is answered accordingly.

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?

20. The Petitioner has claimed relief under Article 11 (Force Majeure) of the TSA.

Article 11.5.1 of the TSA provides as under:

“11.5 Notification of Force Majeure Event

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

Provided that such notice shall be a pre-condition to the Affected Party's entitlement to claim relief under this Agreement. Such notice shall include full particulars of the event of Force Majeure, its effects on the Party claiming relief and the remedial measures proposed. The Affected Party shall give the other Party regular reports on the progress of those remedial measures and such other information as the other Party may reasonably request about the Force Majeure.

11.5.2 The Affected Party shall give notice to the other Party of (i) the cessation of the relevant event of Force Majeure; and (ii) the cessation of the effects of such event of Force Majeure on the performance of its rights or obligations under this Agreement, as soon as practicable after becoming aware of each of these cessations.”

21. As per Article 11.5.1 of the TSA, an affected party shall give notice to the other Party of any event of Force Majeure as soon as reasonably practicable but not later than seven days after the date on which the party knew or should have reasonably

known of the commencement of the event of Force Majeure. It further provides that such notice shall be a pre-condition to the affected party's entitlement to claim relief under the TSA.

22. Also, the Petitioner has claimed relief under Article 12 (Change in Law) of the TSA. In this regard, 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."

23. 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 a Change in Law and its effect on the TSP.

24. The Petitioner has placed on record the various notices issued to the LTTCs intimating the Force Majeure events leading to delay in implementation of the Project (Phase-I, II, and III) element-wise, as referred to in paragraph 5 (d) *supra*. However, the Respondents, SBPDCL and NBPDCCL, have stated that various notices given by the Petitioner are not in compliance with the requirements under Article 11.5 of the TSA. The Respondents have also referred to seven particular notices and have sought to point out that not only were such notices issued belatedly, but they also failed to disclose the full particulars of events, their effects, and the remedial measures

proposed to be undertaken. In response, the Petitioner has submitted that the Respondents have deliberately clubbed various notices of Force Majeure events to mislead the Commission. The Petitioner has duly complied with the requirements as provided in Article 11.5 of the TSA.

25. We have considered the submissions made by the parties. We have perused the various Force Majeure notices issued by the Petitioner as placed on record. However, we find that certain notices are not strictly in accordance with the provisions of Article 11.5 of the TSA, as some of the notices did not provide any indication as to the cessation of the relevant Force Majeure event as required under Article 11.5.2. Also, as per Article 11.5.1, the affected party is required to give the notice to the other party of any event of Force Majeure event as soon as reasonably practicable but not later than 7 days after the date on which the such Party knew or should reasonably have known of the commencement of event of Force Majeure. However, certain notices issued by the Petitioner as such do not strictly fall within the above stipulation inasmuch as the date of these notices does not correspond to the window of 7 days from the commencement of Force Majeure event(s) so claimed. Also, in the case of Elements 3 & 4, no notice is provided in the pleadings in respect of the delay caused due to local disturbances, and in the absence thereof, the Petitioner may not be eligible to seek any Force Majeure relief on this count. Nevertheless, keeping in view the certain subjectivity associated with the precise date of the commencement of Force Majeure event(s) for the events, particularly, in respect of the delays arising out of the RoW / Law & Order issues and pendency of the Court cases in respect of various locations, we find it proper to consider the above notices, except for the event of delay caused due to local disturbances in respect of Elements 3 & 4, in compliance with the provisions of the TSA.

26. 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 Goods and Service Tax Act, 2017 by the Government of India dated 7.7.2017, (ii) Change in design of tower due to Power Line Crossings in WBSETCL dated 17.5.2018, and (iii) Installation of Bird Diverters / Deflectors on the Transmission Lines and Aerospace Safety Aspects dated 22.7.2020 (for Bird diverters), 4.9.2020 (for Aerospace equipment). However, insofar as the Change in Law event, viz. the Ban of truck movement on the bridge over the Hooghly River, is concerned, it is observed that the notice dated 10.3.2020 was issued under Article 11.5, invoking only a Force Majeure event. The said notice does not seek to invoke or rely upon Article 12 (Change in Law) at all. In view of the above, we find that the Petitioner has largely complied with the requirement of prior notice of Change in Law event in terms of Article 12.3 of the TSA except for the event of the Ban of truck movement on the bridge over Hooghly River as noted above.

27. This issue is answered accordingly.

Issue No. 3: Whether the various events so claimed by the Petitioner qualify to be Force Majeure event(s), entitling the Petitioner to the extension of time under Force Majeure?

28. The Petitioner has sought an extension of time under Article 11 (Force Majeure) of the TSA on account of the occurrence of Force Majeure events as already mentioned in paragraph 5(d) during the construction/ implementation of the Project, which has led to delays in achieving the commercial operation of the Project.

29. Before dealing with the issue of Force Majeure, it will be apposite to refer to the relevant provisions of TSA. Article 11 of the TSA provides as under:

“11 FORCE MAJEURE

11.1 Definitions



11.1.1 The following terms shall have the meanings given hereunder.

11.2 Affected Party

11.2.1 An Affected Party means any of the Long-Term Transmission Customers or the TSP whose performance has been affected by an event of Force Majeure.

11.2.2 An event of Force Majeure affecting the CTU/STU or any agent of the Long-Term Transmission Customers, which has affected the Interconnection Facilities, shall be deemed to be an event of Force Majeure affecting the Long Term Transmission Customers.

11.2.3 Any event of Force Majeure shall be deemed to be an event of Force Majeure affecting the TSP only if the Force Majeure event affects and results in, late delivery of machinery and equipment for the Project or construction, completion, commissioning of the Project by Scheduled COD and/or operation thereafter;

11.3 Force Majeure

A "Force Majeure" means any event or circumstance or combination of events and circumstances including those stated below that wholly or partly prevents or unavoidably delays an Affected Party in the performance of its obligations under this Agreement, but only if and to the extent that such events or circumstances are not within the reasonable control, directly or indirectly, of the Affected Party and could not have been avoided if the Affected Party had taken reasonable care or complied with Prudent Utility Practices:

(a) Natural Force Majeure Events:

act of God, including, but not limited to drought, fire and explosion (to the extent originating from a source external to the Site), earthquake, volcanic eruption, landslide, flood, cyclone, typhoon, tornado, or exceptionally adverse weather conditions which are in excess of the statistical measures for the last hundred (100) years,

(b) Non-Natural Force Majeure Events:

i. Direct Non-Natural Force Majeure Events

- Nationalization or compulsory acquisition by any Indian Governmental Instrumentality of any material assets or rights of the TSP; or
- the unlawful, unreasonable or discriminatory revocation of, or refusal to renew, any Consents, Clearances and Permits required by the TSP to perform their obligations under the RFP Project Documents or any unlawful, unreasonable or discriminatory refusal to grant any other Consents, Clearances and Permits required for the development/ operation of the Project, provided that a Competent Court of Law declares the revocation or refusal to be unlawful, unreasonable and discriminatory and strikes the same down; or
- any other unlawful, unreasonable or discriminatory action on the part of an Indian Governmental Instrumentality which is directed against the Project, provided that a Competent Court of Law declares the action to be unlawful, unreasonable and discriminatory and strikes the same down.

ii. Indirect Non - Natural Force Majeure Events

- *act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action; or*
- *radio-active contamination or ionising radiation originating from a source in India or resulting from any other Indirect Non-Natural Force Majeure Event mentioned above, excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Site by the Affected Party or those employed or engaged by the Affected Party; or*
- *industry wide strikes and labour disturbances, having a nationwide impact in India.*

11.4 Force Majeure Exclusions

11.4.1 Force Majeure shall not include (i) any event or circumstance which is within the reasonable control of the Parties and (ii) the following conditions, except to the extent that they are consequences of an event of Force Majeure:

(a) Unavailability, late delivery, or changes in cost of the machinery, equipment, materials, spare parts etc. for the Project;

(b) Delay in the performance of any Contractors or their agents;

(c) Non-performance resulting from normal wear and tear typically experienced in transmission materials and equipment;

(d) Strikes or labour disturbance at the facilities of the Affected Party;

(e) Insufficiency of finances or funds or the Agreement becoming onerous to perform; and

(f) Non-performance caused by, or connected with, the Affected Party's:

- i. negligent or intentional acts, errors or omissions;*
- ii. failure to comply with an Indian Law; or*
- iii. breach of, or default under this Agreement or any Project Documents."*

30. Prior to dealing with the events of Force Majeure events, it may be relevant to note that in terms of Schedule 3 of the TSA, Elements 1, 3, and 5 were required to be commissioned simultaneously. In other words, any individual element amongst them could not have been commissioned despite being ready if the others were not ready for the commissioning. Similarly, the Elements 2, 4 & 6 or the Elements 2, 4, 7 & 9 were required to be commissioned simultaneously. Moreover, for the commissioning of either of the batches, the commissioning of Elements 1, 3, and 5 was a pre-requisite. In view of these stipulations and based on the actual commissioning of these

Elements, the Petitioner has categorized these elements into three phases: Phase I comprising Elements 1, 3, and 5, which achieved the actual COD on 11.02.2021. Phase II comprising Elements 2, 4, 7, and 9, achieved the actual COD on 30.09.2021, and Phase III comprising Element 6, achieved the actual COD on 28.08.2022, as decided in aforementioned para 18. We also find it appropriate to deal with the claims of Force Majeure events Phase-wise, wherein the benefit of a Force Majeure event in respect of an individual element, if any, will extend to the entire Phase. Further, in the forgoing paragraphs, we have also examined the declaration of the COD of the various Elements and/or Projects by the Petitioner and, upon perusal of the supporting documents furnished by the Petitioner, have proceeded to approve the COD of the various Elements and/or Project, which is different from the COD claimed by the Petitioner. Given this, we shall examine the Petitioner's claims of the Force Majeure events in respect of its Elements and/or Project up to the COD as approved by the Commission in the foregoing paragraphs.

31. However, prior to dealing with the Phase-wise Force Majeure claims of the Petitioner, we may deal with the time-overrun claim of the Petitioner arising out of Covid-19 and the introduction of GST Laws, which, as per the Petitioner, attributed the delays in implementing all the Elements / Phases.

Delay due to Covid-19

32. The Petitioner has sought a total extension of 332 days on account of the Covid-19 pandemic. The Petitioner has attributed the delay of 150 days to the First Wave of Covid-19, the delay of 153 days, i.e., from 1.4.2021 to 31.8.2021, to the Second Wave of Covid-19, and the delay of 29 days, i.e., from 2.1.2022 to 31.1.2022, to the Third Wave of Covid-19. 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 terms of Orders dated 14.4.2020 and 1.5.2020 of the Ministry of Home Affairs, Govt. of India, the lockdown remained in force till 17.5.2020. This led to severe disruptions to the transportation, manufacturing, and distribution of goods and services in the Country and impaired the fulfillment 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. Further, the Ministry of Power, Govt. of India, vide Circular dated 27.7.2020, granted a 5-month extension in respect of SCOD of all ISTS Projects that were under construction as on the date of the proclamation of lockdown. The Petitioner has submitted that during the period from 1.4.2021 to 31.8.2021, the progress of the Project was affected on account of the Second Wave of the COVID-19 pandemic. On 15.5.2021, the Govt. of West Bengal issued an Order revising the COVID-19 directives and extended the lockdown up to 30.5.2021. Subsequently, the Govt. of West Bengal also continued revising the directives and extending the restrictions by Orders dated 29.5.2021, 14.6.2021, 28.6.2021, 14.7.2021, 29.7.2021, and 13.8.2021. Similarly, during the period from 2.1.2022 to 31.1.2022, the progress of the Project was affected on account of the Third Wave of Covid-19. On 2.1.2022, the Govt. of West Bengal issued an Order laying down the revised restriction and relaxations measures to be implemented in the State up to 15.1.2022, which was later extended up to 31.1.2022, in view of the surge in Covid-19 due to the new variant Omicron. The extension of the lockdown and the revised restrictions interfered with the construction works – foundation, erection, and stringing- thereby delaying the progress of the Project.

33. We have considered the submissions made by the Petitioner. It may be noted that the electrical power transmission having been recognized as an essential service, the activities such as laying/erection of transmission lines along with other activities

(as indicated in a letter dated 25.3.2020) were allowed during the lockdown period in terms of letters dated 25.3.2020 and 17.4.2020 of the Ministry of Power, Govt. of India read with paragraph 16 of Consolidate Revised Guidelines issued by the Ministry of Home Affairs dated 15.4.2020, albeit subject to conforming to the social distancing norms as other sectoral requirements. Hence, the imposition of a lockdown *per se* cannot be treated as a Force Majeure event for the transmission licensee. However, keeping in view the representations of transmission utilities pointing out the adverse impacts to the construction activities at project sites due to lockdown measures and the disruption in the supply chain and manpower, the Ministry of Power, Govt. of India by its order dated 27.7.2020 decided to provide an extension of 5 months in respect of SCOD of the all inter-State transmission projects, which were under construction as on the date of lockdown, i.e., 25.3.2020 and whose, SCOD was post 25.3.2020. The relevant extract of the above order reads as under:

“

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

Sir,

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.”

34. Keeping in view that the SCOD of the Petitioner's Project was 28.7.2020, i.e., post 25.3.2020, the above blanket extension granted by the Ministry of Power, Govt. of India, squarely applies to the Petitioner herein. Accordingly, the Petitioner is entitled to an extension of 5 months (150 days) in respect of the SCOD of all its Elements/Projects. However, besides this blanket extension, no further extension of SCOD can be considered on account of the Second or Third Wave of the Covid-19 as claimed by the Petitioner, as the various activities relating to the laying /erection of transmission lines were, as such, not restricted under the Covid-19 led lockdowns.

Delay due to Notification of GST Laws:

35. The Petitioner has submitted that pursuant to the notification of GST Laws w.e.f. 1.7.2017, the Petitioner encountered various unforeseen issues, including and in particular, disruption of material/supplies from the vendors for the period from 1.7.2017 to 27.11.2017, and this qualifies to be a force majeure event falling within the meaning of Article 11 of the TSA.

36. We have considered the submissions made by the Petitioner. It is noticed that no details have been placed on record by the Petitioner to corroborate its submissions that the notification of GST Laws led to the disruption of material/supplies from its vendors. In the absence of any supporting documents indicating how the Petitioner was affected by the aforesaid event in the performance of its obligations under the TSA, which could not be avoided by exercising reasonable care/control or by complying with the Prudent Utility Practices, we are not inclined to condone the delay for the period from 1.7.2017 to 27.11.2017 as a Force Majeure event, on account of notification of GST Laws.

37. Next, we proceed to examine the individual Force Majeure claims relating to each phase of the Project. As per the Petitioner, the complete Project, including all the elements, was completed with some delays as detailed below after considering the COD approved as per para 18 above, owing to Force Majeure and Change in Law events:

- (i) Phase-I (Elements 1,2, and 5) – Delay of 199 days
- (ii) Phase-II (Elements 2,4,7, and 9) – Delay of 430 days
- (iii) Phase-III (Element 6) – Delay of 762 days

Phase-I (Elements 1,3, and 5)

38. Although the Petitioner has made individual Force Majeure claims in respect of all three elements, i.e. Elements 1,3 & 5, we deem it appropriate to firstly deal with the events which contributed to the higher delay in the implementation of the Project and have already been considered by the Commission and/or the APTEL in its previous orders/decisions.

39. Regarding the implementation of Element 5, the Petitioner has claimed that there was a delay of 624 days (without overlap) owing to local disturbances during the period from 8.9.2018 to 26.7.2020 created by the local villagers, who were demanding abnormal compensation in lieu of damage to their crops. The Petitioner has claimed that all the prudent efforts (as tabulated below) were undertaken by the Petitioner. However, such events were beyond reasonable control of the Petitioner.

Date	Subject
24.5.2019	PMJTL wrote to the District Magistrate regarding delay in foundation works of the transmission line due to local agitation by villagers.
14.6.2019	PMJTL again wrote to the District Magistrate, intimating that the delay is continuing.
19.6.2019	PMJTL wrote a letter to the Commissioner, Govt. of West Bengal and District Magistrate, stating that despite several meetings held with landowners and payment of crop compensation, the landowners are still being rigid and causing hindrance in the construction of the Chanditala-Kharagpur LILO
20.6.2019	PMJTL wrote to Additional Chief Secretary, Power, Govt. of West Bengal stating the same facts and requesting for help in resolving of ROW issues.
19.11.2019	PMJTL wrote a letter to the Sub Divisional Officer Dist.- Paschim Medinipur, West Bengal requesting for administrative help in the construction of the Chanditala-Kharagpur LILO. In the said letter, PMJTL informed the SDO of

	the villagers who have forcefully stopped the foundation work of the transmission line since 14.04.2019.
11.12.2019	PMJTL wrote to Sub-Divisional Officer, Ghatal, Distt. – Paschim Medinipur, West Bengal reiterating the Right of Way problems.
21.1.2020	PMJTL wrote to Sub-Divisional Officer, Ghatal. Dist – Paschim Medinipur, West Bengal requesting for police force;
10.2.2020	PMJTL wrote to the Add. Superintendent of Police regarding need of administrative support at 3 locations
18.2.2020	PMJTL wrote to the District Magistrate informing them that an FIR has also been lodged at the Daspur Police Station by PMJTL w.r.t stoppage of work;
2.3.2020	PMJTL wrote to the Superintendent of Police, Midnapore, West Bengal, that the issue remains unresolved;
14.3.2020	PMJTL wrote to the District Magistrate reiterating that the matter remained unresolved for the last two months
17.3.2020	PMJTL wrote to the DIG Midnapore Range w.r.t the continued delay in construction works
11.6.2020	PMJTL wrote to the District Magistrate informing that the 2 nos. of towers could not be completed due to resistance by villagers, and the matter continues to remain unresolved;
23.6.2020	PMJTL wrote to the District Magistrate informing that the 2 nos. of towers could not be completed due to resistance by villagers, and the matter continues to remain unresolved;
22.7.2020	PMJTL wrote to the Superintendent of Police requesting administrative help in completing the balance works of the Chanditala-Kharagpur LILO.

40. From the perusal of such letters, we note that indeed, the delay in the completion of the construction of the transmission line, had occurred on account of the agitation of the farmers who were not willing to permit the Petitioner to carry on the construction of the transmission line, and the situation was neither within the control of the Petitioner nor could have been anticipated by it at the time of execution of the TSA. Such a law and order situation created by the farmers made it not only difficult but also impossible for the Petitioner to complete the Project, and therefore, this unprecedented event ought to be considered as a Force Majeure event, which prevented the Petitioner from fulfilling its obligations under the TSA. It is also to be noted that the Petitioner had time and again approached the Government Authorities, including the District Magistrate, to tackle the RoW and Law & Order situations. Thus, it would be wrong to say that the Petitioner had not employed prudent utility practices to resolve the RoW issue, which had arisen due to local agitation launched by farmers.

41. Previously, the Commission, in its order dated 7.5.2022 in Petition No. 13/MP/2021 in the matter of *POWERGRID Southern Interconnector Transmission System Limited v. Southern Power Distribution Company of Andhra Pradesh Limited and Ors.* did not allow the delays arising out of RoW and Law & Orders issues as Force Majeure event. The Commission opined that the issues of RoW, resistance by landowners, and issues of compensation are well known, and the transmission licensee undertaking the implementation of the transmission projects is expected and required to anticipate and factor such issues. The Commission also observed that the transmission licensees are expected to resolve such issues by exercising prudent utility practices and availing of various remedies available. Accordingly, the Commission refused to consider the delays arising out of RoW and Law & Order issues on account of a Change in Policy regarding land compensation as a Force Majeure event, as these issues could have been timely addressed by the licensee had it exercised reasonable care in settling the issues relating to insufficiency of land compensation as per the remedies available to the licensees under the statutory provisions including Section 16 of the Telegraph Act.

42. However, the aforesaid findings of the Commission did not find favour with the APTEL. Vide its judgment dated 12.8.2024 in Appeal No.194 of 2022, the APTEL, while condoning the delays arising out of RoW and Law & Order issues as Force Majeure events, held as under:

"28. From the various communications addressed in this regard by the Appellant to various Government Authorities as well as the LTTCs, of which the Learned Commission had also taken note in the impugned order, we find that the construction of the transmission line was stopped by the land owners on 24th February, 2017 who were demanding excess payment towards compensation for the land affected by the transmission line and this created a huge law and order problem for the District Administration also and the Appellant was making all its efforts to resolve the impasse.

.....

30. We wonder how the Appellant could have timely addressed and resolved the said ROW issue which had become a serious law and order problem even for the District Administration also. The Appellant had all along been willing to pay the compensation

to the affected land owners which was to be determined by the District Magistrate. The Appellant had no role at all in the determination of the compensation. It was for the District Administration to either pacify the land owners and persuade them to accept the compensation to which they were eligible as per the Government guidelines and to allow the construction of the transmission line or to enhance the compensation as per their demands to be paid by the Appellant. Perusal of the minutes of the meeting dated 23rd April, 2019 held by the Chief Secretary, Andhra Pradesh, reproduced herein above, would show that the Collector, Krishna District along with Sub-Collector, Vijayawada had conducted the number of the meetings with the farmers and had convinced them for a certain reasonable compensation for tower foundations and the Appellant had agreed to put up the proposal for said enhanced compensation before its management so that the project is completed at the earliest. The minutes further shows that the Appellant had even offered to deposit the compensation amount with the District Collector, Krishna to be disbursed to the farmers. Therefore, it would be highly imprudent as well as unconscionable to say that the Appellant had not employed the prudent utility practices to resolve the ROW issue which had arisen on account of agitation launched by the farmers. To say that the Appellant had failed to settle the land compensation issue would be absolutely incorrect for the reason that it was not for the Appellant to determine the compensation amount, it was the job of District Collector. Further, it also needs to be considered that the Appellant has completed the entire stretch except the small stretch of 40 kms of the transmission system. In case, the Appellant is responsible in delaying the payment of compensation, it should have been the case for the entire transmission system and not just for a small portion of the transmission system.

31. Hence, we are unable to accept the findings of the Learned Commission on this issue. It is manifest that the delay in completion of the construction of the transmission line had occurred on account of the agitation of the farmers who were not willing to permit the Appellant to carry on the construction of the transmission line, and the situation was neither within the control of the Appellant nor could have been anticipated by it at the time of execution of the TSA. Such law and order situation created by the farmers had made it not only difficult but also impossible for the Appellant to complete the construction of the transmission line and therefore this untoward as well as unprecedented event shall have to be considered as Force Majeure event which prevented the Appellant from fulfilling its obligations under the TSA. It needs to be appreciated that even the highest Government Authorities failed to control the situation. Thus, the Appellant had become entitled to claim relief under Article 11.7 of the TSA and the delay of 289 days occasioned in the completion of the construction of the element 6 of the transmission line on account of said "Force Majeure" event is liable to be contained.

32. We may also note that the Learned Commission has in similar situation condoned the delay in completion of the transmission line in the matter of Kudgi Transmission Ltd. V/s. Bangalore Electricity Supply Company Ltd. to the Petition No. 248/MP/2016 decided on 24th January, 2019. The relevant paragraph of the judgement passed in the said petition is reproduced herein :-

"61. From the sequence of events narrated above, it is evident that the works of Elements 2 and 3 of the Petitioner were affected even after the SCOD (31.12.2015). It is noted that there has been continuous obstruction/resistance from the landowners in various locations/villages including Bijapur, Bellary district, Hagari Bommanahali Taluk, Tumkur and Ramanagara district which resulted in the stoppage of construction activities in these locations. Despite the Petitioner obtaining approvals of the Railways and National Highway Authorities to enter the private premises for the construction work of the Project and also making compensation payment in terms of the orders of the Deputy Commissioner, it was

unable to proceed with the construction work of the transmission lines due to serious law & order and ROW issues. The Petitioner in our view, had taken reasonable efforts to mitigate the delay by seeking help and cooperation of the District authorities to permit the construction work and police protection for its personnel working in these lines, In addition to this, the ex-parte orders of injunction by Court, the hearings before the District authorities (Deputy Commissioner & District Magistrate) for compensation payments to landowners and obtaining clearances for ROW had also contributed to the delay in the completion of the work beyond the SCOD of Elements 2 and 3. These events which resulted in delay in completion of the construction work of Elements 2 and 3 are events of force majeure which have affected the execution of the Project within the SCOD. Therefore, the Petitioner is entitled for relief under force majeure.”

*33. Thus, the Learned Commission has also failed to maintain the consistency and uniformity in its decisions which is against the principles of equity and natural justice.
.....”*

43. The above view of the APTEL, in our view, squarely applies to the present case, and also, we do not find any lack of efforts undertaken by the Petitioner to resolve the RoW and Law & Order issues involved in this case. The Petitioner is, therefore, entitled to claim relief under Article 11 of the TSA. As we have already condoned the delay of 150 days on account of Covid-19 as a Force Majeure event, thereby condoning the remaining period of delay of 49 out of 199 days for Phase I of the Project, we do not find need to go into the rest of the Force Majeure claims of the Petitioner with respect to the Phase I elements.

Phase-II (Elements 2,4,7, and 9)

44. The Petitioner has submitted that there has been a delay of 429 days in implementing and commissioning the Phase II comprised Elements 2, 4, 7, and 9. As has been noted in respect of Phase I, while the Petitioner has made individual Force Majeure claims in respect of elements i.e. Element 2, 4 & 7, we deem it appropriate to firstly deal with the events which contributed to the highest amount of delay in implementation of the said Phase and have already been considered by the Commission in its previous orders.

45. It is noticed that in respect of Element 4, i.e., Medinipur-Jeerat (New) 765 kV D/c line, the Petitioner has attributed a non-overlapping delay of 1125 days due to the initiation of court cases at various locations on the said MJ Line. The Petitioner has submitted that during the period from 8.12.2017 to 26.3.2021, the construction of the said line at the locations 96/2, 96/3, 96/4, 95/5, 97/0, 97/1, 97/2, 97/3, 97/4, 34/6, 88/0-89/1 were affected due to various cases filed by the locals. These cases filed before the different forums led to the complete stoppage of work because of temporary injunctions granted by the Forums/Courts. While such injunctions orders were challenged by the Petitioner and the Courts were pleased to vacate/set aside such orders, considerable time was spent in these proceedings before the appropriate Civil Courts/High Courts vacated the restraining/injunctions orders. Thus, the delay caused due to the above is not attributable to the Petitioner and deserves to be condoned as a force majeure.

46. We have considered the submissions made by the Petitioner. The brief summary of the Court cases at the locations 96/2, 96/3, 96/4, 95/5, 97/0, 97/1, 97/2, 97/3, 97/4, 34/6, and 88/0-89/1 of MJ Line as brought out by the Petitioner is as under:

S. No.	Date	Summary of Event
Suit No. 488 of 2017		
1	8.12.2017	A suit was filed against POWERGRID, titled as " <i>Salt Lake Projects Pvt. Ltd. & Ors. Vs. POWERGRID</i> " before the Court of Ld. Civil Judge (Junior Division), 2 nd Court, Chinsurah, Hooghly praying for declaration and permanent injunction against laying down of High Voltage electrical line over the subject property, i.e., Loc. No.96/2, 96/3, 96/4, 96/5, 97/0, 97/1, 97/2, 97/3 & 97/4.
2	8.12.2017	An application was filed by Salt Lake under Order 39 Rule 1&2 read with Section 151 of the Civil Procedure Code,1908 praying for injunction against POWERGRID.
3	11.12.2017	The above-mentioned application under Order 39 Rule 1 & 2 read with Section 151 of CPC was taken up for hearing, and the Ld. Civil Judge granted an ad-interim injunction in the form of status quo vide its Order No. 2 restraining POWERGRID from taking high-voltage electrical lines over the subject property.

S. No.	Date	Summary of Event
		The Order No. 2 provided that the defendants are restricted from installing any electric pole of any electrical line on or over the said locations.
4	16.01.2020	Order No. 21 was passed by Ld. Civil Judge (Junior Division), 2nd Court, Chinsurah, Hooghly, in the case of Salt Lake Projects Pvt. Ltd. & Ors. Vs. POWERGRID (Title Suit No. 488/2017) allowed the application filed under Order 39 Rule 1 & 2 read with section 151 of CPC and directed the parties to maintain the status quo in respect of nature, character, possession of the suit property till the disposal of the suit.
5	2020	Aggrieved by the order dated 16.01.2020, an appeal was filed before the Hon'ble District Judge, Hooghly.
6	5.1.2021	The order dated 16.01.2020 was set aside by the Hon'ble District Judge, Hooghly in Misc. Application No. 10/2020 filed by POWERGRID and protection with respect to the suit property was lifted and POWERGRID could continue installing electric poles.
Writ Petition No. 10403 (W) of 2019 – Brojendra Nath Dey		
1	14.06.2019	Filing of writ petition in High Court by Brojendra Nath Dey aggrieved by alleged non-payment of compensation.
2	03.07.2019	Hearing held in High Court, wherein the writ petition was disposed off
3	12.07.2019	Order notified in the Calcutta High Court portal, and work was allowed to be resumed thereafter by the landowner
Writ Petition No. 9292 (W) of 2019 Siddhi Vinayak Developers at Polba		
1	26.04.2019	The filing of the writ petition in Calcutta High Court by Siddhi Vinayak Developers, who owned the land from Loc.no. 88/0-89/1 of MJTL, claiming for relocation of line. Accordingly, work was stopped in the entire stretch.
2	01.07.2019	Hearing held in High Court and the matter was referred to District Magistrate, Hooghly, while directing the parties to maintain the status-quo as on the date with regard to the said land till the DM decides the matter.
3	20.08.2019	1st hearing was scheduled before the District Magistrate, Hooghly, which was postponed.
4	30.08.2019	1 st hearing before the District Magistrate, Hooghly.
5	09.09.2019	Order passed by District Magistrate, Hooghly in relation to 1 st hearing restraining POWERGRID to work, and directed to submit technical feasibility of alternative route and DPR before next date of hearing is fixed
6	12.09.2019	POWERGRID submitted a detailed reply citing relevant clauses of Indian Telegraph Act, 1885, and submitted that there is no alternative technically feasible route for shifting of the tower at Loc no. 89/0 since foundation work at preceding and succeeding towers were already completed.
7	30.09.2019	2 nd hearing before the District Magistrate, Hooghly wherein it was directed to relocate Medinipur-Jeerat transmission line over the suit property and constituted a joint inspection team to look in to the matter to ascertain alternate feasible routes for installation of towers passing over the PMJTL's property.

S. No.	Date	Summary of Event
8	05.11.2019	Reply filed by POWERGRID on the joint investigation report stating that the new proposed alternative route was not technically feasible and the same would result in huge monetary losses to the tune of Rs.3.37 Cr. Further, it was informed that such re-alignment/relocation would cause delays in other locations of the project, where similar writ petitions have been filed.
9	11.12.2019	Final hearing before the District Magistrate, Hooghly.
10	09.01.2020	Final order passed by District Magistrate, Hooghly was issued wherein the towers were directed to be relocated for implementation of the industry of Siddhi Vinayak Developers.
OS No.17/2019 Civil Judge (Sr. Division) 2nd Court, Paschim Medinipur – Nirod Baran		
1	31.07.2019	A suit was filed against POWERGRID, praying to restrain it from installing an infrastructure tower for a High Tension Electricity Line for electricity supply, alleging that no compensation has been paid to the aggrieved party.
2	23.12.2020	An ad-interim order (Order No. 08) of injunction was passed against POWERGRID. This prohibited POWERGRID from continuing its construction works.
3	26.03.2021	The ad-interim injunction was vacated by the Court vide Order No.17. The Hon'ble Court held that it has no territorial jurisdiction to entertain the present suit.
Writ Petition No. 5738 (W) of 2020 – Dhoom Mercantile Pvt. Ltd.		
1	04.08.2020	W.P. 5738(W)/2020 filed before the Calcutta High Court against POWERGRID requesting relocation of the line passing over their land (pertaining to Loc No. 86/0 & 86A/0).
2	04.08.2020	The Single Judge of the High Court passed an order directing that a change of route alignment was not possible at this stage as it was a belated request, nor was it a viable idea as the alignment fixed by POWERGRID was on technical and other feasible considerations.
3	25.08.2020	Aggrieved by the Order passed by the Single Judge of the High Court, an appeal was filed before the Divisional Bench of the High Court. The Divisional Bench of the High Court dismissed the appeal.

47. Perusal of the above summary of proceedings and the supporting documents furnished by the Petitioner in this regard clearly indicates the construction of JM Line was severely affected by the various court cases initiated by the locals and/or the concerned landowners. Also, in these proceedings, for a considerable period, the Petitioner was restrained from carrying out the construction/installation works at the concerned locations due to the temporary injunction orders / status-quo orders passed

by the Courts. The above details indicate that in Suit No. 488/2017, an injunction order directing the parties to maintain the *status quo* in respect of the suit property was in operation for the period from 11.12.2017 to 5.1.2018 (26 days) and from 16.1.2020 to 5.1.2021 (356 days). In respect of the above *status quo* orders, the Respondents, Bihar Discoms, have submitted that the Petitioner has failed to make any averments regarding the steps taken by it for the vacation of ad-interim orders dated 11.12.2017 and 16.1.2020. It is also submitted that there is no explanation as to why the said orders were not challenged in the appeal at the earliest. In response, the Petitioner has denied that it did not take any steps to expedite the trial, and in fact, it had also filed a Petition to expedite the hearing, as is evident from the order dated 19.2.2019 passed by Civil Judge Hooghly. It is further submitted that the delay in the matter was solely due to the adjournments being taken by the Plaintiff – Salt Lake Projects Pvt. Ltd. and that the Petitioner had also filed an appeal before the District Judge, Hooghly, against the order dated 16.1.2020 along with a stay application. The Petitioner has also indicated that the delay in passing the orders by the said Courts was also due to the Covid-19 Pandemic since the Courts were not functioning properly at that time.

48. We have noted the above submissions made by the parties. The order dated 19.2.2019 in Suit No. 488/2017 indeed reflects the defendant therein, i.e., the Petitioner having filed an application for expediting the injunction hearing. The order dated 13.2.2020 of District Judge Hooghly in Misc. Application No.10/2020 also reveals that the Petitioner filed an appeal against the order dated 16.1.2020 passed by the Civil Judge, Jr. Division, 2nd Court Hooghly in Suit No. 488/2017, along with the stay application. Hence, no clear inaction can be attributed on the part of the Petitioner to take the necessary measures for vacating the injunction order in the said case. Similarly, in WP No. 9232 of 2019, the Hon'ble High Court, by order dated 1.7.2019, directed the parties to maintain the *status quo* in respect of Loc. No. 88/0-89/1 till the

determination of the issue of relocation of the line by the District Magistrate, which came to be decided only on 9.1.2020. Thus, the *status quo* order was in effect for a period of 193 days. In OS No. 17/2019, the Petitioner was restrained from installation works for the period from 23.12.2020 to 26.3.2021 (94 days). Thus, in effect, the delay of 287 non-overlapping days was attributed to the *status quo /temporary injunction* orders passed by the Courts in WP No. 9232 of 2019 and OS No. 17/2019 itself. Such delays on account of a temporary injunction order passed against the Petitioner to carry out the construction/installation works deserve to be condoned as a Force Majeure event. Pertinently, similar view has been taken by the Commission in the order dated 23.6.2023 in Petition No. 470/MP/2019 in the matter of Alipurduar Transmission Ltd. v. SBPDCL and Ors, wherein the Commission has considered the period during which the licensee was effectively restrained from carrying out the construction works at one or other locations as force majeure event and consequently, condoned such delay in achieving the COD of the Project.

49. Keeping in view that out of the total delay of 430 days in achieving the commercial operation of Phase II, the delay of 150 days has already been condoned in terms of the Ministry of Power's order dated 27.7.2020, we find it appropriate to the condone the balance delay of 280 days, which is non-overlapping, on account of the delay caused to the initiation of various court proceedings at various locations keeping in view temporary injunctions granted by the various Courts restraining the Petitioner to carry out the works at various locations as noted above.

Phase III (Element 6)

50. The Petitioner has attributed the delays of approximately 407 days (without overlap) to the initiation/pendency of court cases at various locations and 610 days (without overlap) due to the Law & Order issues in various districts. The Petitioner has

submitted that during the period from 7.5.2021 to 27.7.2022, the construction of JS Line at locations 55/0 and 36/0 was affected due to various cases filed by the locals on various issues. The landowners at various locations filed the cases before different forums, which led to a complete stoppage of work on account of temporary injunctions granted by these Forums/Courts. Such injunction orders were also challenged by the Petitioner, and the Courts were to vacate/set aside such orders. However, considerable time was spent in the proceedings before the appropriate Civil Court/High Court in vacating the restraining/injunction orders. Similarly, the progress of the said line was also affected due to the various law & order issues in various districts. The delays were due to the stoppage of construction work by the local villagers who demanded exorbitant compensation for crops or, in the alternative, sought diversion of the said line. The local villagers also staged protests at various significant locations of the JS Line, which affected the construction works of the said line.

51. The locations at which such local agitation/disturbances affected the progress of line included (i) Baruipur South 24 Parganas (12.6.2019 to 25.3.2021), (ii) Loc. No. 2/0, Sonkhali under Haringhaha Block, Nadia (9.7.2019 to 2.10.2021), (iii) Loc.No.47/0 Rajballavpur, Under Habra-I Block, Nadia, (16.7.2019 to 28.8.2020), (iv) Loc. No. 47/0 Sastsimulia under Haringhata Block (18.7.2019 to 28.8.2020), (v) Haringhata Block (3.8.2019 to 8.8.2019), (vi) Loc No. 37/0 Gopalpur Mouza under Gaighata Block (23.12.2019 to 10.1.2022), (vii) Loc No. 46/1 Manchlandpur – 2 GP under Gaighata Block (27.8.2019 to 23.7.2021), (viii) Chandalhati under Kalsur GP in Deganga Block (3.1.2020 to 20.2.2020), (ix) Loc. No.36/0 Charvigachi Mauza under Dharampur- 2 GP in Gaighata Block (15.1.2020 to 10.1.2022), (x) Loc. No.114C/0 to 122/0 Bhangar-I Block in Sought 24 Parganas (19.2.2020 – 13.1.2022), (xi) Loc. 111B/0 to 114B/0 Bhangar Block (12.10.2020 to 15.3.2022), (xii) Haringhata and Deganga Blocks under

Nadia and North 24 Parganas (1.10.2021 to 14.1.2022), (xiii) Tree cutting at Bangaon and Gaighata Block (11.10.2021 to 10.3.2022) and (xiv) Tree cutting at Deganga Block under North 24 Parganas (21.10.2019 to 14.1.2022).

52. We have considered the submissions made by the Petitioner. The Petitioner has, in total, attributed the non-overlapping delay of 407 days (7.5.2021 to 5.12.2022 and 15.5.2022 to 27.7.2022) due to the initiation/pendency of the court cases at locations 55/0 and 36/0 of the JS Line and the delay of 610 days due to the various Law & Order issues at various locations. In respect of the initiation and pendency of court proceedings at location Nos. 55/0 and 36/0, the Petitioner has given a summary of these proceedings as under:

S. No.	Date	Summary of Event
Loc. 36/0- WPA No. 5538 of 2021 – Biswajit Saha and Biplab Saha		
1	07.05.2021	PMJTL intimated District Magistrate, North 24 Parganas regarding severe issues encountered at 36/0 as well as at 37/0, 50/0 & 72/0 and requested for issuance of orders U/s 16(1) of Indian Telegraph Act, 1885 so that work could be resumed.
2	02.07.2021	The District Magistrate called the landowners of 36/0, viz. Biswajit Saha and Biplab Saha for hearing the matter before passing any order. However, the landowners were not present during the hearing and subsequently, next date of hearing was fixed on 12.08.2021.
3	14.07.2021	Meanwhile, one Mr. Biswajit Saha and Mr. Biplab Sinha filed WPA No. 5538 of 2021 before High Court, Calcutta disputing the compensation assessed by PMJTL for payment against Loc no.36/0.
4	03.08.2021	The first hearing of WPA No. 5538 of 2021 was held at High Court where no resolution could be finalized and the matter was postponed to another date.
5	12.08.2021	During the hearing held by the District Magistrate, it was informed by the Land Owners that a WPA No. 5538 of 2021 has been filed before the High Court, Calcutta, which was to be heard on 16.08.2021.
6	23.11.2021	Hearing before the District Magistrate wherein it was directed that no further proceedings in the matter should be undertaken till the order is passed by the High Court.
7	23.12.2022	Order passed by the High Court in favour of PMJTL, <i>inter-alia</i> , holding as under – <i>“.....the respondent authority has assessed the compensation to be paid to the PMJTLs in compliance with section 10(d) of the 1885 Act, and there is nothing on record to suggest any illegality/irregularity in the decision making process of the respondent. The PMJTLs’ application for shifting the tower location to an alternative route has been rejected by the authority by a reasoned order and no violation of the notification dated February 16, 2018 or provision of section 10 of the Act of 1885 is found within the four corners of the record.</i>

S. No.	Date	Summary of Event
		<p>..... the PMJTLs are at liberty to approach the District Judge within whose jurisdiction the property is situate, for determination of adequate compensation payable to them.”</p> <p>The writ petition was thereby, dismissed.</p>
8	05.01.2022	The District Magistrate, in line with the order passed by the Hon'ble High Court, allowed PMJTL permission to resume the work at Loc. No.36/0.
Loc. 55/0 – Title Suit No. 241/2022 Mira Gain v. POWERGRID		
1	07.03.2022	A suit for restraining POWERGRID from making any foundation work for drawing of the 400 KV D/C electric connection upon the subject property was filed & registered before Ld. Civil Judge (Jr. Division), 2nd Court, Barasat, West Bengal titled as Mira Gain Vs. POWERGRID.
2	07.03.2022	<p>Order No. 1 passed by Ld. Civil Judge (Jr. Division), 2nd Court, Barasat, West Bengal restraining POWERGRID from making any foundation work for drawing of the 400 K/V D/C electric connection upon the subject property and ad-interim order of injunction was granted. The order provides as under :-</p> <p>“ORDERED that the defendant is restrained from making any foundation work or drawing of the 400 KV DIC electric connection upon the schedule property of the plaintiff and/or disturbing the peaceful possession of the plaintiff upon the same and/or from dispossessing the plaintiff forcibly from the same till 12.04.2022.”</p>
3	14.03.2022	Order No. 3 passed by the Ld. Civil Judge issuing Notice to POWERGRID.
4	12.04.2022	Order No. 7 passed by the Ld. Civil Judge extending the stay.
5	2022	Misc. Appeal No. 45 of 2022 titled as POWERGRID Vs, Mira Gain was filed before Addl. District Judge, 8th Court, North 24 Parganas, Barasat against the above-mentioned orders passed by Ld. Civil Judge.
6	27.07.2022	Order passed by Addl. District Judge in Misc. Appeal No. 45 of 2022 setting aside the orders dated 07.03.2022, 14.03.2022 and 12.04.2022 and vacated the ad-interim order of injunction granted by the lower court.

53. Perusal of the above reveals that in respect of Loc. No. 36/0, the Petitioner had approached the DM, North 24 Parganas, seeking the issuance of an order under Section 16(1) of the Telegraph Act so as to enable it to resume the works at the said site. However, prior to the issuance of any order therein, Mr. Biswajit Saha and Bipal Sinha filed WPA No. 5538 of 2021 before the Hon'ble High Court of Calcutta, disputing the compensation assessed by the Petitioner for the said location. While the said WPA ultimately came to be dismissed by the Hon'ble High Court by order dated 23.12.2022, the proceedings seeking the issuance of the necessary order u/s 16(1) were also

deferred by the District Magistrate given the pendency of the Writ Proceedings. Only after the dismissal of WPA by the Hon'ble High Court did the District Magistrate issue permission to the Petitioner to resume the work at Loc. No. 36/0 on 5.1.2022. While the Petitioner has sought to attribute the delay on account of the above proceedings right from 7.5.2021, i.e. the date on which it sought the issuance of order from District Magistrate u/s 16(1) of the Telegraph Act, we are of the view that the delay beyond the control of the Petitioner can be reckoned from 12.8.2021, i.e., deferment of the proceedings under Section 16(1) due to the filing and pendency the WPA filed by the landowners before the Hon'ble High Court till 5.1.2022. Hence, we find that the delay of 147 days, i.e., from 12.8.2021 to 5.1.2022, was beyond the control of the Petitioner and deserves to be condoned as a force majeure event. Similarly, perusal of the proceeding in Title Suit No. 241/2022 initiated by Mira Gain v. PMJTL in respect of loc.55/0 indicates that on 7.3.2022 itself, the Petitioner was restrained from making any foundation work for drawing the JS Line upon the property of the applicant therein and after the Petitioner having moved Misc. Application No. 45/2022 against the stay orders passed, the Additional District Judge passed an order dated 27.7.2022 vacating the ad-interim order of injunction against the Petitioner. Thus, for the period from 7.3.2022 to 27.7.2022, i.e., 143 days, the Petitioner was restrained from carrying out the foundation work at loc. 55/0 and such delay being beyond the control of the Petitioner deserves to be condoned as a force majeure event.

54. With respect to the Law & Order issues faced by the Petitioner at various districts/locations, the Petitioner has also given a brief summary of the various steps taken by it to address such RoW issues. The perusal of such summary reveals that despite having attributed the delays of more than 2 years in respect of certain locations, the Petitioner has only furnished a couple of letters issued to the BDO seeking administrative support to resolve such issues. For instance, to justify the delay

at (i) Loc. No.2, Sonakhali, (ii) Loc. No.47/0 Rajballavpur, (iii) Loc. No.47/0 Sastsimulia, (iv) Haringhata Block, (v) Loc. 37/0 Gopalpur Mouza, (vi) Chandalhati, (vii) Loc 111B/0 and 114B/0 Bhangar Block, (viii) Tree cutting at Bangaon and Gaighata Block, (ix) Tree cutting at Deganga Block, the Petitioner has only pointed out a couple of letters issued by it to the concerned authorities seeking the necessary administrative support. The Petitioner having failed to indicate the necessary actions it took to resolve the Law & Order issues at such locations, its plea to force majeure and condonation of delay cannot be considered at such location. At the same time, it also appears that in respect of the following locations, the Petitioner has furnished the documentary proof indicating the details of efforts undertaken by it, including seeking the necessary assistance from the Chief Secretary, WB, to resolve the Law & Order issues:

Sr.	Location	Period and total delay	Summary of Events & Correspondence
i	Baruipur, South 24 Parganas	12.6.2019 to 25.3.2021 (653 days)	<p>a. By letter dated 12.6.2019, PMJTL requested SDO, Baruipur, for assistance in relation to the RoW issues during the construction works.</p> <p>b. By letter dated 17.6.2019, PMJTL pointed out the severe RoW issues, even while carrying out the survey works, to DM - South 24 Parganas and requested the necessary advice to the concerned SDO & BDO for taking the appropriate actions so that the line could complete within the schedule.</p> <p>c. By letter dated 19.6.2024, PMJTL also requested the assistance from Sabhapati, Sonarpur Panchayat Samiti, South 24 Parganas for the assistance in respect of RoW issues at the construction stage.</p> <p>d. By letter dated 7.11.2019, DM South 24 Parganas asked the SDO, Baruipur to look into the matter as raised by CGM, PMJTL and take the remedial measures.</p> <p>e. By letter dated 8.12.2020, PMJTL pointed out the stiff resistance being faced at Tower Loc. 148/0 and sought the assistance from BL & LRO, Baruipur to identify the correct owner for the disbursement of compensation.</p> <p>f. By letter dated 8.12.2020, PMJTL requested the assistance from Addl. DM, South 24 Parganas for issuance of necessary instruction</p>

			<p>to the BL & LRO for extending the support to PMJTL in relation to various land related issues.</p> <p>g. By letter dated 6.1.2021, PMJTL also highlighted severe RoW issues being faced at every stage in the areas, namely, Bhangar I & II, Sonarpur of 24 Parganas South, Deganga, Haroa, Basirhat-II of 24 Parganas North to Principal Secretary, Power Deptt. WB and requested to provide the necessary administrative support to resolve these critical RoW issues.</p> <p>h. By letter dated 19.1.2021, PMJTL requested DM, South 24 Parganas for administrative action against the obstruction in construction of JS Line while pointing out the severe RoW issues, request for huge compensation, demands for diversion of land, threats to manhandle the staffs, etc. leading to the stoppage of works.</p> <p>i. By letter dated 26.2.2021, PMJTL requested the BDO, Baruipur to intervene and settle the obstruction of works by the locals, particularly at tower loc. 148.</p> <p>j. By letter dated 8.3.2021, PMJTL again requested DM, South 24 Parganas for the administrative support for the construction of JS Line and direction to the concerned authorities to provide necessary administrative support in resolving the critical RoW issues.</p> <p>k. By letter dated 15.3.2021, PMJTL highlighted the severe RoW issues being faced, particularly at six locations [4 under North 24 (P) and 2 under South 24(P)] to Additional Chief Secretary, Power Deptt., WB and requested to pass an appropriate direction to the DMs/Authorities for passing an order under Section 16 at the earliest so as to resolve these RoW issues.</p> <p>l. By letter dated 22.3.2021, PMJTL also requested the administrative support from the Chief Secretary, Govt. of WB for the construction of JS Line in view of the severe RoW issues being faced at Districts Nadia (Haringhata, Chakdah Blocks), North 24 (P) (Haroa, Barishat II, Baduria, Oeganga, Habra-I, Bongau), and South 24 (P) (Bhangar I & II, Sonarpur and Baruipur).</p> <p>m. By letter dated 25.3.2021, PMJTL requested DM, South 24 Parganas for the administrative help in resolving severe RoW issues being faced at 51 Nos. locations.</p>
ii	Loc. No. 2/0, Sonakhali, Haringhata Bloc, Nadia	9.07.2019 to 2.10.2021 (817 days)	<p>a. By letter dated 9.7.2019, PMJTL requested the BDO, Haringhata Block for the clearance of RoW issues being faced at tower loc. No.2/0. It was <i>inter alia</i> pointed out that land owner was demanding a huge compensation and caused stoppage of works.</p>

iii	Loc. No. 47/0: Rajballavpur, Habra-I Block, Nadia	16.7.2019 to 28.8.2020 (410 days)	a. By letter dated 16.7.2019, PMJTL requested the BDO, Habra I Block for the clearance of RoW issues being faced at tower loc. No.47/0. It was <i>inter alia</i> pointed out that land owner was demanding a huge compensation and caused stoppage of works.
iv	Location No. 47/0, Sastsimulia, Haringhata Block, Nadia	18.7.2019 to 28.8.2020 (408 days)	a. By letter dated 18.7.2019, PMJTL requested the BDO, Habra I Block for the clearance of RoW issues being faced at tower loc. No.16/0.
v	Haringhata Block	3.08.2019 to 8.08.2019 (6 days)	a. By letter dated 9.8.2019, PMJTL issued a Force Majeure Notice to LTTCs in terms of Article 11.5 of the TSA in respect of non-allowance of conducting tower foundation/erection activity by local people, villagers, landowners, etc. for JS Line for the period from 3.8.2019 to 8.8.2019, which was normalised after the intervention of local administration.
vi	Location No.37/0, Gopalpur Mouza, Gaighata Block, 24 Parganas North.	23.12.2019 to 10.1.2022 (750 days)	a. By letter dated 23.12.2019, PMJTL requested the BDO, Ghaigata Block for the clearance of RoW issues being faced at tower loc. No.37/0. It was <i>inter alia</i> pointed out that land owner caused the stoppage of work by demanding the diversion of line.
vii	Location No.46/1, Machlandpur- 2 GP, Gaighata Block, 24 Pargana North	27.8.2019 to 23.7.2021 (697 days)	<p>a. By letter dated 27.8.2019, PMJTL pointed out its inability to start the construction works at Mouza Dorimadabpur, Bonogram & Kamarhati of Chandeneswar II GP, Bhanger I Block due to the intervention of influential local youth of the area and requested BDO, Bhanger I to take suitable action to enable PMJTL to complete the works.</p> <p>b. By letter dated 25.9.2019, PMJTL again requested BDO, Bhanger I for the necessary action in relation to the RoW issues being faced by it.</p> <p>c. By letter dated 21.11.2019, PMJTL requested the BDO, Bhanger II for the necessary cooperation for resolving the RoW if faced during the construction stage.</p> <p>d. By letter dated 24.12.2019, PMJTL requested the BDO, Habra I Block for clearance of RoW issues being faced at location No.46/1. It was <i>inter alia</i> pointed out that the land owner caused the stoppage of works by demanding the diversion of the line.</p> <p>e. By letter dated 28.1.2020, PMJTL requested for necessary cooperation from SDO, Baruipur in light of the stiff resistance being faced from influential leaders in Sonarpur, Bhanger I & II blocks.</p> <p>f. By letter dated 12.1.2021, PMJTL requested the BDO, Bhanger II Block for providing the necessary cooperation.</p> <p>g. By letter dated 19.1.2021, PMJTL requested DM, South 24 Parganas seeking administrative action against the obstruction in construction of JS Line. It was <i>inter alia</i> pointed out that PMJTL was facing severe RoW issues especially in Bhanger II Block as villages were asking for</p>

			<p>huge compensation, diversion of, threatening to manhandle the staff, etc.</p> <p>h. By letter dated 5.2.2021, PMJTL requested the BDO, Bhangar II seeking the intervention at 2 of the Bheri locations for completion of the balance survey works and the commencement of foundation works at village/agricultural areas.</p> <p>i. By letter dated 4.5.2021, PMJTL again requested the BDO, Bhangar II seeking the assistance in completion of balance survey works (20 locs.) and administrative support for clearing the RoW issues of balance foundations.</p> <p>j. By letter dated 23.7.2021, PMJTL requested the DM, South 24 Parganas for the administrative help in resolving the critical/severe RoW issues.</p>
viii	Location No. 61/0 Chandalhati, Kalsur GP, Deganga Block	3.1.2020 to 20.2.2020 (49 days)	a. By letter dated 3.1.2020, PMJTL issued a Force Majeure Notice to LTTCs in terms of Article 11.5 of the TSA in view of the stoppage of works by local villagers of Chandalhati, Kasur GP, Deganga Block, in particularly at Location No. 61/0.
ix	Location No.36/0 Charvigachi Mauza, Dharmapur 2 GP, Gaighata Block	15.1.2020 to 10.1.2022 (727 days)	<p>a. By letter dated 15.1.2020, PMJTL requested the BDO, Gaighata Block, North 24 Parganas for the clearance of RoW issues at location No.36, Mauza, Charvigachi, Dharmapur 2, Gaighata Block. It was <i>inter alia</i> submitted that by demanding the diversion of the line, the land owner caused the stoppage of works.</p> <p>b. By letter dated 13.8.2020, L&T – Contractor of PMJTL – also requested PMJTL to extend its support for resolving RoW issues at various critical locations (7 Nos. in Nadia District and 46 Nos. in North 24 Parganas District).</p> <p>c. By letter dated 29.9.2020, PMJTL again requested BDO, Gaighata Block for clearance of RoW issues at Loc. 36/0.</p>
x	Location No. 114C/0 to 122/0, Bhangar I Block, South 24 Parganas	19.2.2020 to 13.1.2022 (695 days)	<p>a. By letter dated 17.2.2020, PMJTL requesting DM, North 24 Parganas, to pass an appropriate order under Section 16(1) of the Telegraph Act and provide administrative support to complete the construction work at Location Nos. 51/0 and 52/0.</p> <p>b. By letter dated 26.2.2020, PMJTL requested BDO, Habra-I Block, for clearance of RoW issues at location No.50/0. It was <i>inter alia</i> pointed out that the land owner, by threatening the employees to divert the line caused the stoppage of works.</p> <p>c. By letter dated 19.3.2020, PMJTL again requested DM, North 24 Parganas to pass an order under Section 16(1) of the Telegraph Act and provide the administrative support to complete the work at location Nos. 51/0 and 52/0. In the said letter, it was also indicated that the new route as suggested by the land owner, was not technically feasible.</p>

			<p>d. By letter dated 22.3.2021, PMJTL again requested the DM, North 24 Parganas to pass an order under Section 16(1) of the Telegraph Act and provide administrative support to complete the construction work at Loc. 50/0.</p> <p>e. By letter dated 7.5.2021, PMJTL requested DM, North 24 Parganas to issue the order under Section 16(1) of the Telegraph Act in the applications filed in respect of tower loc. 36/0, 37/0, 50/0, and 72/0 so that PMJTL can resume the work and complete the construction of line.</p> <p>f. By letter dated 19.1.2022, PMJTL intimated the land owner (Biswajit Saha) regarding the starting of the construction work in terms of the order passed by DM, North 24 Parganas dated 12.8.2020.</p>
xi	Location No. 111B/0 and 114B/0, Bhangar Block	12.10.2020 to 15.3.2022 (520 days)	<p>a. By letter dated 2.12.2020, PMJTL issued a Force Majeure notice in terms of Article 11.5 of the TSA in respect of stoppage of work/survey work starting from loc. 111B/0 to 114B/0 due to local agitations.</p> <p>b. On 12.10.2020, a Block level meeting regarding the construction of JS Line was held at the Chamber of BDO, Bhangar-II, South 24 Parganas and consequently, a resolution of the said meeting was issued on 15.10.2020.</p>
xii	Haringhata and Deganga Block under Nadia and North 24 Pargana Districts	1.10.2021 to 14.1.2022 (106 days)	<p>a. By letter dated 1.10.2021, PMJTL requested the Superintendent of Police, Ranaghat Police District to provide protection to the staff and work gang for the completion of construction work at Village, Sonakhali, Birohi-I, Haringhata, particularly for the obstruction caused by Sh. M. A Mondal and N. Mia</p> <p>b. By letter dated 7.10.2021, PMJT requested the Superintendent of Police, North 24 Parganas to instruct Deganga PS to extend their support for the construction of line and resolving the RoW issues in the Deganga Block. It was <i>inter alia</i> also pointed out that the DM had also issued an order allowing PMJT to carry out the work.</p>
xiii	Tree Cutting at Bangaon and Gaighata Blocks under North 24 Parganas	11.10.2021 to 10.3.2022 (151 days)	<p>a. By letter dated 11.10.2021, PMJTL requested the SDO, Bangaon, for the issuance of an order as per Section 18 of the Telegraph Act for the removal of trees standing on the RoW corridor 25/1-25/2. It was <i>inter alia</i> pointed out that the concerned land owner was demanding an exorbitant amount of compensation for trees and the RoW corridor and consequently, caused the stoppage of work.</p> <p>b. By letter dated 12.10.2021, PMJTL requested SDO, Bangaon for the issuance of an order as per Section 18 of the Telegraph Act for the removal of trees standing on the RoW corridor 28/0-29/0. It was <i>inter alia</i> pointed out that the concerned land owner was demanding an exorbitant amount of compensation for trees and the RoW corridor and, consequently, caused the stoppage of work.</p>

xiv	Tree Cutting at Deganga Block under North 24 Parganas District	21.10.2019 to 14.1.2022 (817 days)	a. Vide letter dated 7.12.2021, PMJTL requested DM, North 24 Parganas, to provide assistance in resolving the RoW issues in Deganga at locations 72/0, 100/A, 90B/2-91/0. b. Vide letter dated 8.12.2021, DM & Collector, Barasat asked the Superintendent of Police to take the necessary action against the obstruction as indicated by PMJTL in its letter dated 7.12.2021.
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55. Perusal of the above summary of events and the various communications as placed on record by the Petitioner clearly indicates that the construction works of JS Line were severely affected by the RoW issues in the Haringhata Block, Nadia District, Deganga & Gaighata Blocks in North 24 Parganas, Bhangar I & II, Sonarpur Blocks of South 24 Parganas District and to resolve such RoW issues, the Petitioner had repeatedly sought the necessary assistance from the State Authorities right from the concerned BDO(s) to the Chief Secretary, Govt. of WB. The Petitioner had also filed the applications under Section 16(1) of the Telegraph Act before the concerned DMs for the issuance of the necessary order thereunder. Although in respect of some of the locations indicated above, the correspondence/documents furnished by the Petitioner do not corroborate the extensive period of delays attributed to such locations, for instance, locations at sr. (ii), (iii), (vi), (vii), (xi) to (xiv) above, for the balance locations, the severity of the RoW issues can be gathered through the documents placed on record. Keeping in view that we have already found it appropriate to condone 290 days on account of initiation and pendency of Court cases and 150 days in terms of the Ministry of Power's Order dated 27.7.2020, we also find it appropriate to condone the balance delay of 322 days on account of severe RoW issues faced by the Petitioner as indicated above as a Force Majeure event.

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

Enactment of GST Laws:

56. The Petitioner has submitted that the Cut Off date of the Project, i.e., 6.7.2016, was before the notification of the GST Laws on 1.7.2017 by the Government of India, and the enactment of GST Laws qualifies to be a Change in Law event in terms of Article 12 of the TSA. The Commission in the Suo-Motu Order dated 17.12.2018 in Petition No. 1/SM/2018, in the matter of Additional Tax Burden on Transmission Licensee on the introduction of Goods and Service Tax Compensation Cess, has already held the introduction of GST w.e.f. 1.7.2017 shall constitute a Change in Law event, and the differential between the taxes subsumed in GST and the rates of GST on various items shall be admissible under the Change in Law. The Petitioner has submitted that in its case, the net increase in the cost of the Project due to revision in tax rates and introduction of GST after the Cut Off date is Rs. 54.26 crores, including the IDC of Rs. 8.41 crores and IEDC of Rs. 2.55 crores.

57. We have considered the submissions made by the Petitioner. As already noted above, the “Change in Law” has been defined in Article 12.1.1 as “the occurrence of any of the following after the date, which is seven (7) days prior to the Bid Deadline resulting into any additional recurring/nonrecurring expenditure by the TSP or any income to the TSP”. Thus, any event specified in the bullets under Article 12.1.1 which have occurred after the date, which is seven days prior to the bid deadline, and which results in any additional recurring or non-recurring expenditure to the TSP or income to the TSP shall be covered under Change in Law. The Commission, in its order dated 17.12.2018 in Petition No.1/SM/2018 in the matter of “Additional tax burden on transmission licensees on the introduction of Goods and Service Tax Compensation Cess”, has held that the introduction of GST with effect from 1.7.2017 constitutes a Change in Law event. In the said order, the Commission has also directed that the TSPs shall work out and provide the details of the increase or decrease in the tax liability in respect of the introduction of GST to the LTTCs duly supported by the

auditor's certificate and the additional expenditure on account of GST shall be reimbursed by the LTTCs as per the relevant provisions of the TSA. The relevant extract of the order dated 17.12.2018 in Petition No. 1/SM/2018 is reproduced below:

"27. From the forgoing, it is observed that due to varied nature of such taxes, duties and cess etc. that have been subsumed/abolished on introduction of GST, it is not possible to quantify the resulting impact in a generic manner for all the TSPs. The abolition of taxes, duties, cess, etc. on the introduction of GST are "Change in Law" events and the savings arising out of such "Change in Law" should be passed to the beneficiaries of the TSPs. Similarly, the introduction of GST has also resulted in imposition of new or increase in existing taxes, duties, cess etc. which constitute "Change in Law" events and accordingly the additional impact due to introduction of GST shall be borne by the beneficiaries. The details of the increase or decrease in the taxes, duties, cess etc. shall be worked out by the TSPs and the beneficiaries. The TSPs should provide the details of increase or decrease in the taxes, duties, cess etc. supported by Auditor Certificate and relevant documents to the beneficiaries and refund or recover the amount from the TSPs due to the decrease or increase in the taxes, duties, cess etc. as the case may be. Since the GST liveable on the transmission licensees pertain to the construction period, the impact of GST shall be disbursed by the beneficiaries to the transmission licensees in accordance with the provisions in the TSA regarding relief for Change in Law during construction period. In case of any dispute on any of the taxes, duties, cess etc., the beneficiaries may approach the Commission.

Summary

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

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

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

(c) The TSPs shall work out and provide the details of increase or decrease in the tax liability

in respect of introduction of GST to the beneficiaries/Long Term Transmission Customers duly supported by Auditor's Certificate.

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

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

58. In the present case, as on the Cut-Off date, i.e., 6.7.2017, there was no GST. Subsequently, the Parliament and State Legislative Assemblies, in order to introduce a unified indirect tax structure, have introduced a fresh set of taxation laws, which

replaced various Central and State level taxes through various enactments (GST Laws), which came into effect from 1.7.2017. Since the additional recurring and non-recurring expenditure, which has been incurred by the Petitioner, is by virtue of an Act of Parliament after the Cut-Off date, i.e., 6.7.2017, the same is squarely covered under the Change in Law. Resultantly, the Petitioner shall be entitled to Change in Law reliefs regarding its claim arising out of the introduction of GST Laws. However, the claim has to be strictly concerning the additional tax expenditure due to the introduction of the GST, i.e., the difference in tax incidence between the GST regime and the pre-GST regime. While claiming the Change in Law compensation on account of the introduction of GST Laws, the Petitioner and the LTTCs may carry out the reconciliation of incremental expenditure due to GST impact by taking into account tax rates in the Pre-GST regime and post-GST regime, exhibiting clear and one-to-one correlation with the Project activities and invoices raised as backed by auditor certificate.

Requirement of Change in Tower Design for Powerline Crossing:

59. The Petitioner has submitted that Clause iv of the Specific Technical Requirement as specified in the TSA provided that (i) Power line crossing for 400 kV & above should be done only with D-D types of towers (i.e. large angle towers & dead end tower with tension string), (ii) Power line crossing for 220 kV & 132 kV lines could be done with angle tower as per requirement, and (iii) Power line crossing for 66 kV & below could be done with any type of tower. Subsequently, when the Petitioner wrote to WBSETCL on 4.5.2018 seeking its approval of the Power line crossing proposal in respect of the transmission lines to be constructed under the Project, WBSETCL issued a Memo dated 11.5.2018 indicating that all the power lines, including 220 kV and below, must be crossed only through large angle towers (D-D) on both sides by any of the Petitioner's transmission lines. The imposition of this new requirement by

WBSETCL in all Powerline crossings, irrespective of voltage levels in West Bengal led to the re-engineering of all the crossing cases and resulted in excess time and additional expenditure. It is stated that the above requirement was a new condition and contrary to the specification of towers required for powerline crossing as prescribed in Clause (iv) of the Specific Technical Requirements for Transmission Lines of the TSA. The Petitioner has submitted that the net increase in the cost of the Project due to the above new requirement by WBSETCL, after the Cut-Off date, is Rs. 4.86 crore, including the IDC of Rs. 0.84 crores and IEDC of Rs. 0.22 crores.

60. We have considered the submissions made by the Petitioner. It is relevant to note that a similar issue had come up for the consideration of the Commission in Petition No. 453/MP/2019, in the matter of Sipat Transmission Limited v. MSEDCL and Ors., wherein the Commission, after taking into account the submissions of the licensees as well as the CEA, held as under:

“....22. We have perused submission of the Petitioner, the Respondents, opinion of CEA and various Standards and proceed to analyse the issue in this light. The standards provide as follows:

(a) IS 802- Use of Structural Steel in Overhead Transmission Line Towers-- Code of Practice)

Type of Tower	Angle of deviation	Type of Tower *
<i>Suspension tower</i>	<i>Tangent towers (0°) with suspension string</i>	<i>A Type tower</i>
	<i>Intermediate towers (0° to 2°) with suspension string</i>	
	<i>Light angle towers (0° to 5°) with suspension string</i>	
<i>Tension Tower</i>	<i>Small angle towers (0° to 15°) with tension string</i>	<i>B Type tower</i>
	<i>Medium angle towers (0° to 30°) or (15° to 30°) with tension string</i>	<i>C Type Tower</i>
	<i>Large angle towers (30° to 60°) with tension string</i>	<i>D Type Tower</i>
	<i>Dead-end towers with tension string</i>	
	<i>Large angle and dead-end towers with tension string</i>	

**nomenclature as submitted by Petitioner*

(b) IS 5613 (Part-3) specifies as follows:

“6.5.1...

h) Power line crossings

Where a line is to cross over another line of the same voltage or lower voltage, suspension/tension tower with suitable extensions shall be used”

As per above, suspension/tension towers are to be used while crossing other line.

(c) The CBIP manual, provides at Clause No. 11.3.2, page No. 335 as follows:

“STATUTORY REGULATION FOR CROSSING OF ROADS, POWER LINES, TELECOMMUNICATION LINES, RAILWAY TRACKS, ETC.

11.3.2 Power Line Crossing

The angle of crossing shall be 90° as far as possible for Power Line Crossing. However, the same shall not be below 75° where a line is to cross over another line of the same voltage or lower voltage. Suspension/tension towers with standard extensions shall be used. Wherever the line to be constructed is crossing another important line for which shutdown is difficult, suspension towers with required extensions in combination with dead end towers shall be used. The Crossing Line shall pass over the Crossed Line in the middle as far as possible to get the max clearance between power crossing lines at the point of crossing.”

As per above, where line is to cross any other line of same or lower voltage suspension/tension tower are required to be used, however while crossing an important line where shutdown is difficult, suspension tower in combination with dead end tower (‘D’ type) is required to be used.

(d) Indian Electricity Rules, 1956 provides as follows:

“(2) When it is intended to erect a telecommunication line or an overhead line which will cross or be in proximity to an overhead line or a telecommunication line, as the case may be, the person proposing to erect such line shall give one month’s notice of his intention so to do along with the relevant details of protection and drawings to the owner of the existing line.

(3) Where an overhead line crosses or is in proximity to another overhead line, guarding arrangements shall be provided so as to guard against the possibility of their coming into contact with each other”

As per above provision, it is necessary that guarding arrangements need to be provided so as to guard against possibility of two lines coming into contact of each other.

23. CSPTCL vide letter dated 4.5.2016 stated as follows on the proposal of the Petitioner to use ‘B’ /‘C’ type tower to cross CSPTCL line:

“A proposal for overhead crossing of existing 220 k V Churri-Mopka line of CSPTCL by under construction 765 kV 3rd S/C Sipat-Bilaspur Transmission line of M/s Sipat Transmission Limited has been submitted for approval, it is understood that the 765 kV 3rd S/C Sipat-Bilaspur transmission line of M/s Sipat Transmission Limited is proposed to cross the existing 220 kV Churri-Mopka line of CSPTCL across location AP 13B/0 and AP 14/0 by erecting (SQD+9M) and (SQC+9 M) type towers respectively on crossing locations.

In connection with the proposal of overhead crossing as above, it is to convey that the tower proposed at location AP 14/0 SQC+9M (30Degree) type may not be able to restrict effect of severe mechanical disturbances erupted on section of proposed line prior to location AP 14/0 from falling on CSPTCL's existing 220 kV Churri-Mopka line.

In view of the above observation, the proposal of crossing is returned herewith in original for resubmission duly corrected."

As per above, CSPTCL observed that proposed tower of 'C' type may not be able to restrict effect of severe mechanical disturbances erupting on the section.

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

(a) CEA in its meeting held on 16.9.2016 emphasized the safety and security concerns while erecting a transmission line of 400 kV or 765 kV stating that 400 KV as well as 765 kV lines carries huge quantum of power and in the event of their failure due to collapse of tower would lead to huge financial loss due to failure of power transmission and long outage, and the grid security due to failure HVAC system is also to be ensured. CEA also noted that Railways are strictly following the practice of line crossing with only "D-D" towers.

(b) PGCIL in its submissions confirmed the requirement of D-D towers while crossing its line to petitioner citing security concerns.

(c) CSPTCL in its letter dated 4.5.2016 also cited security concerns while rejecting 'B' and 'C' type proposal of the Petitioner to cross its 132kV / 220 kV lines.

(d) PGCIL has submitted that where D-D is not possible 'D-A-D' is used based on feasibility. The Petitioner has not submitted anything on whether it proposed to use suspension 'B' or 'C' type tower along with 'D' type, rather we observe that the Petitioner had proposed to use 'A' type tower after 'C' type while crossing 220 kV Churi-Bilaspur line of CSPTCL, which CSPTCL did not allow.

(e) CSPTCL did not allow the Petitioner to cross its 132 kV line or 220 kV line with any tower (the Petitioner proposed 'B' and 'C' type) other than 'D' type. In fact, even after CEA suggestions to the effect that in voltages lower than 400 kV, towers other than 'D' type may be used, the Petitioner did not approach CSPTCL with CEA minutes to ensure that CSPTCL allows it to use 'B' or 'C' type as the Petitioner had planned while bidding.

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

25. The Petitioner under competitive bidding claims to have considered lighter towers 'B' or 'C' type considering its economy. However, whenever any transmission licensee is supposed to cross an existing line, it needs to take permission of existing line owner as per the safety requirements of such owner. On a specific query of Commission vide ROP for hearing dated 22.12.2022 as to whether the Petitioner at pre-bid stage while carrying out its own independent enquiry and/or survey as per the RfP and/or TSA had approached the concerned licensee(s) in relation to the necessary tower configurations for its power line crossing. In this regard petitioner has not replied whether it approached the licensees to confirm its assumption of 'B' / 'C' type towers to cross existing transmission lines of PGCIL or CSPTCL. The Petitioner has not submitted any details regarding whether it had

proposed 'D' type tower immediately after 'B' type or not, as suggested by PGCIL that he could have used 'DA-D' combination if the Petitioner did not wish to use 'D-D'. The CBIP manual clearly provides that important line must be crossed using suspension in combination with dead end towers ('D' type) as PGCIL has also suggested. However, the Petitioner has not shown anything on record to prove that where it had placed dead end tower pursuant to crossing an important 400 kV line.

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

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

The above findings of the Commission also apply to the present case. As noted therein, all the standards, be IS or CBIP manual or CEA standards or the Indian Electricity Rules, 1956, keep the safety and reliability of transmission lines as the main criterion while designing any transmission line. Also, the 'D' type tower configuration was in place much prior to the CEA meeting on 16.9.2016 and was being actively used for power line crossing, as was indicated by PGCIL in its submissions. Whenever any transmission licensee is supposed to cross an existing line, it needs to take permission from the existing line-owner as per the safety requirements of such owner. The Petitioner in this case, similar to Sipat Transmission Ltd. in that case, has not placed any details as to whether at the pre-bid stage while carrying out its independent inquiry/survey as per RfP and/or TSA had approached the concerned licensee about the necessary tower configurations for its power line crossing. Thus, the requirement

of D-D type towers for transmission line crossing by WBSETCL cannot be held as a Change in Law event. The Petitioner's reliance on Clause (iv) of the Specific Technical Requirements as provided in the TSA also does not advance the case. It specifically provided that Power line crossing for 220 kV & 132 kV lines could be done with an angle tower "*as per requirement*". The liberty to use the angle tower allowed therein is qualified by the phrase "*as per requirement.*" The requirement therein would also include the requirements of a concerned licensee, whose transmission lines the Petitioner is required to cross while constructing its lines. In view of the above, no Change in Law relief can be allowed to the Petitioner on this count.

Requirement of Installation of Bird Diverters/Deflectors

61. The Petitioner has submitted that the Ministry of Environment, Forest & Climate Change (MoEFCC) approved its application for the diversion of 0.497 Ha. of forest land on 6.3.2020, subject to the condition that the bird deflectors must be fixed on the upper conductor of transmission lines at the suitable intervals to avoid the bird hits. As per the Petitioner, the above condition of installation of bird diverters/deflectors was imposed as a new condition pursuant to the Cut-Off date and had not existed earlier. The condition of bird diverters has been introduced as general guidelines in Part C of the Handbook of Forest Conservation Act, 1980 and Forest Conservation Rules, 2003 (Guidelines and Clarification) published by MoEFCC on 28.9.2019, which was after the Cut-Off date of 6.7.2016 for the Project. Thus, the above condition could not have been envisaged by the Petitioner at the time of the bidding and constitutes a Change in Law event.

62. We have considered the submissions made by the Petitioner. As pointed out by the Petitioner, the Stage II / Final approval to its proposal for the diversion of 0.497 Ha of forest land for the construction of the 400 kV Medinipur Substation to LILO point

of Chanditala – Kharagpur transmission line under the Medinipur Forest Division was granted by MoEFCC, vide communication dated 6.3.2020, and the said approval was *inter alia* subject to the fulfilment of certain conditions including the installation of bird deflector on the upper conductor of the transmission line at the suitable intervals by the user agency at its own cost. The relevant extract of the said approval is reproduced hereunder:

“In this connection, I am to say that In the basis of the compliance report furnished by the State Govt, vide their letter No.211-For/O/L/10T-08/2018 dated 28.01.2020, State-1 I/final approval of the Ministry of Environment, Forest & Climate Change is hereby granted under Section 2 of the Forest (Conservation) Act, 1980 for diversion of 0.497 ha of forest land in favour of Power Grid Medinipur Jeerat Transmission Ltd. for construction of 400 KV Medinipur Substation to LIL0 point of Chanditala-Kharagpur transmission line under Medinipur Forest Division, subject to the fulfilment of the following conditions:-

.....

v) 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.....”

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 LILO point of Chanditala -Kharagpur transmission line in terms of MoEFCC's Stage II approval dated 6.3.2020.

Requirement of Installation of Aerospace Equipment

64. The Petitioner has submitted that in response to its Proposal for the Aviation Clearance for the construction of the LILO of Chanditaka – Kharagpur Line and Ranchi – Medinipur Line, CATCO Section of India Air Force, Shillong issued the 'No Objection Certificate' dated 10.5.2019 and 28.6.2019 respectively, subject to a few conditions, including the placing of cable markers on all the cables and medium intensity Type B obstruction lights in a combination of low-intensity Type B light to be installed on all the towers. Thereafter, on 28.2.2020, the Petitioner wrote to a Group Captain, CATCO Section of Indian Air Force, Shillong, for confirmation of the distance of the Ranchi-Medinipur line for placing the cable marker and the obstruction lights. However, on 30.7.2020, Air Headquarters, Vayu Bhawan issued a letter to the CATCO Section of Indian Air Force, Shillong, expressing their agreement with the above condition as stipulated in the NOC dated 28.6.2019 and basis of this, the CATCO Section of Indian Airforce, reiterated the requirement of above imposition for the transmission lines even beyond the 10 km. The Petitioner has submitted that as per Amendment No.1 dated July 1994 to IS 5613 (Part 3/Sec 1): 1989 – Code of Practice for Design, Installation, and Maintenance of Overhead Power Lines, the requirement of installation of visual aids, prior to the Cut-Off date, was only applicable on such part of the transmission lines which fell within the radius of 10 km around the aerodromes and air to the ground

firing ranges. The Petitioner has submitted that no portion of the Ranchi-Medinipur transmission line fell within the radius of 10 km of any airport, and hence, there was no explicit requirement as per the existing guidelines to install any day or night visual aids in the said line. The nearest location to any airport was at a distance of approximately 12 km, viz., loc. No. 72 from Ranchi airport. However, as per the direction of the Defence Aviation Authorities vide letters dated 10.5.2019, 28.6.2019, 6.8.2020 & 30.7.2020, both day and night visual aids were required to be installed in the entire transmission line and all the towers of the line, respectively, irrespective of their vicinity from the airport. Thus, the imposition of the above requirement squarely qualifies as a Change in Law event under Article 12 of the TSA.

65. We have considered the submissions made by the Petitioner. It is noticed that the Petitioner's Proposal for the Aviation Clearance in respect of LILO of Chanditala Kharagpur Line and Ranchi- Medinipur Line were approved by the CATCO Section of Indian Airforce Shillong by its communications dated 10.5.2019 and 28.6.2019 subject to the certain conditions, which *inter alia* included the Petitioner making provision for placing the cable markers on all cables and installation of medium intensity type B obstruction lights in a combination of low-intensity type B light on all the towers. The relevant extract of the said communications reads as under:

*"2. The application has been examined under Gazette of India GSR 751 (E), Works of Defence Act 1903 and other relevant orders on the subject Air Headquarters has no objection for **construction of 765 kV D/C Ranchi Medinipore Transmission line** subject to following conditions:-*

(f) The applicant company shall make provision for placing cable markers on all cables. Medium intensity Type 'B' obstruction lights in combination with Low intensity Type 'B' light shall be installed on all towers. The obstruction lights shall be kept ON' at all times during day & night as per specifications given IS 5613 (part-3/Section-1, and subsequent arrangements) and ICAO Annex-14. Applicant shall maintain all the markers and obstacle lights in fully serviceable and visible conditions. ..."

66. It is noticed that the above stipulation was also confirmed by the Air Headquarters, Vayu Bhawan, in its letter dated 30.7.2020 issued to CATCO Section, Indian Air Force, Shillong. The relevant extract of the said letter reads as under:

"2. The issues wrt provisioning of cable markers and medium intensity type 'B' lights on transmission line towers by M/s PGCIL was deliberated with Dte of Aerospace Safety at this HQ.

3. Dte of Aerospace Safety is in agreement with conditions mentioned in Para 2 (f) of NOC issued vide EAC/6381/11/1/ATC (74/2019) dated 28 Jun 19.

In view of the aforesaid, applicant may be intimated to adhere with the conditions mentioned in para 2 (f) of NOC.

67. Consequently, the CATCO Section of Indian Air Force, Shillong, in its letter dated 6.8.2020, reiterated the requirement specified in para 2(f) in respect of the transmission line of the Petitioner, which was beyond 10 km in view of ensuring the Aerospace Safety requirements. The relevant extract of the said letter reads as under:

"2. The issue wrt provisioning of cable markers and medium intensity type 'B' lights on transmission line towers was taken up with Air head Quarters (Vayu Bhavan), New Delhi. Matter was deliberated keeping view of Aerospace Safety aspects. Air HQ has intimated that the conditions mentioned in Para 2(f) of NOC issued vide EAC/6381/11/1/ATC (74/2019) DATED 28 Jun 19 are essential to ensure Aerospace Safety requirements.

3. In view of above, it is imperative that the transmission line be appropriately marked with visual aids, even beyond 10 km, as mentioned in para 2 (f) of the NOC issued by this office.

68. As per the Amendment No.1 to IS 5613 (Part 3/Sec 1): 1989-Code of Practice for Design, Installation, and Maintenance of Overhead Power Lines, all the transmission lines and transmission line structures falling within the safety zone of airfields and air to ground firing ranges is required to meet the requirements of the Directorate of Flight Safety, Air Headquarters given in Annex. B. The Annex. B, which deals with visual aids for denoting the transmission lines and transmission line structure – Requirement of Directorate of Flight Safety, reads as under:

"4.2 For the safety requirement of low flying Military Aircrafts, all the transmission lines and transmission line structures falling within the safety zone of airfields and air to ground firing ranges shall meet the requirements of Directorate of Flight Safety, Air Headquarters given in Annex B.

ANNEX B (Clause 4.2)

VISUAL AIDS FOR DENOTING TRANSMISSION LINES AND TRANSMISSION LINE STRUCTURES — REQUIREMENT OF DIRECTORATE OF FLIGHT SAFETY

All the Power Utilities shall comply with the following:-

- a) The transmission lines and transmission line structures of height 45 m and above shall be notified to the Directorate of Hight Safety (DFS) Air Headquarters (Air HQ), New Delhi.*
- b) For construction of any transmission line/structure or a portion thereof, falling within a radius of 20 km around the Defence aerodromes and air to firing ranges provisions of the Aircraft Act 1934 Section 9A as amplified by the associated Gazette Notification SO 988 Part II, Section 3, Subsection (n) dated 1988-03-26 shall be complied with Towards this, a No Objection Certificate (NOC) shall be obtained from the concerned aerodrome authorities.*
- c) Within a radius of 10 km around aerodromes and air to ground firing ranges, all transmission lines and structures of height 45 meters or more shall be provided with day and night visual aids.*
- d) In all other areas, outside a radius of 10 km from aerodromes, only those portions of transmission lines and structures of any height identified to pose a hazard to aircraft by the Directorate of Flight Safety shall be provided with day visual aids.”*

69. As per the above provisions, the transmission lines and transmission line structures of height 45 m and above shall be notified to the Directorate of Flight Safety, Air Headquarters, New Delhi. Further, for construction of any transmission lines/ structure or a portion thereof falling within a radius of 20 km around the Defence Aerodrome and air to bring ranges provisions of the Aircraft Act, 1934 Section 9A as amplified by the associated Notification SO 988 Part II, Section 3, Sub-section (n) dated 1988-03-26 is to be complied with and will consequently, obtain NOC from the concerned aerodrome. It is also provided that within a radius of 10 km around aerodromes and air-to-ground bring ranges, all transmission lines and structures of height 45 m or more shall be provided with day and night visual aids, and in all other areas, outside the radius of 10 km from aerodromes, only those portion of transmission lines and structures of any height identified to pose a hazard to aircraft by the Directorate of Flight Safety shall be provided with day visual aids.

70. Thus, a bare reading of the above provisions makes it clear that the requirement to provide the day and night visual aids in respect of the transmission lines and

structures of height 45 m or more was there only if such line and/or structure was within a radius of 10 km around the aerodromes and air to ground bring ranges. However, at the same time, for those transmission lines and structures which fell outside the radius of 10 km from aerodromes, there was a requirement of installation of day visual aids in respect of the portion of such structure and/or line that may pose a hazard to the aircraft as identified by the Directorate of Flight Safety. In the present case, since no portion of Ranchi-Medinapur Line and LILO of Chanditala Kharagpur Line fell within the radius of 10 km, the imposition of the requirement of installing the night visual aids (medium intensity type B obstruction lights in combination with low intensity type B lights), in our view, qualifies as the imposition of a new requirement, which the Petitioner could not have envisaged as on the Cut-Off date and thus, qualifies to be a Change in Law event. However, the imposition of the installation of day visual aids, i.e., marker cable, as confirmed by the Directorate of Flight Safety to ensure the aerospace safety requirement, cannot be considered a Change in Law event and consequently, no Change in Law relief can be allowed for the expenditure incurred towards the same.

Ban on Truck Movement on Bridge over Hooghly River:

71. The Petitioner has submitted that as per the conditions of the contract and discussion held with the TBEA Limited (sub-contractor), it was envisaged that the equipment for the Jeerat Substation had to cross the Hooghly River through Ishwar Gupta Setu Bridge. However, the above bridge was damaged on 25.8.2017, and the heavy vehicle movement was stopped from Ishwar Gupta Setu Bridge. It is submitted that after a period of more than one and half year, in January 2019, the vehicle movement resumed, but the cracks developed on the bridge in the same month itself, and the movement of heavy vehicles was stopped again. In the month of December, 2019, the bridge failed the requisite health test, and hence, no movement was allowed

thereafter. The Petitioner has submitted that in view of the complete stoppage of movement of heavy vehicles on Ishwar Gupta Setu Bridge, an alternative route was envisaged passing through Vivekanand Setu Bridge to bypass the Ishwar Gupta Setu as the same was the only viable route to transport the equipment to Jeerat. Though the route was feasible, it was observed that at both ends of the bridge, railways under passes with height constraint of a maximum of 5.35 meter existed but the same was still feasible as choosing any other route would have led to a substantial delay in commissioning the Jeerat S/s. The Petitioner has submitted that in order to transport the equipment, a special drop deck vehicle was employed to transport the equipment as against the Hydraulic Axle Trailer that would have been employed to cross through the Ishwar Gupta Setu Bridge, and this resulted in both the time overrun and cost overrun on account of the Change in Law/force majeure event due to no fault or delay on the part of the Petitioner.

72. We have considered the submissions made by the Petitioner. As already noted above, while the Petitioner has sought to agitate the event of “Ban on Truck Movement on Bridge over Hooghly River” as Change in Law, the Petitioner did not issue any Change in Law notice in respect of such event as required under Article 12.3. of the TSA. the said Article requires the TSP, i.e., the Petitioner, to give notice to the LTTCs of a Change in Law event as soon as reasonably practicable after becoming aware of the same if it wishes to claim any relief in respect of such Change in Law event. While the Commission has, in the past, taken a liberal view in this regard and observed that mere delay in issuing such notice would not take away the right of the affected party to claim the reliefs in the absence of any specific provision to this effect, in the present case though, no notice at all has been issued by the Petitioner invoking the Change in Law provisions of the TSA. The Notice dated 10.3.2020, as relied upon by the Petitioner, only seeks to invoke the Force Majeure provisions of the TSA and has been

issued only under Article 11.5 of the TSA. Hence, in the absence of any Change in Law notice in terms of Article 12.3 of the TSA, the Petitioner's Change in Law claim under this head cannot be considered.

73. Notwithstanding the above, even if we are to look at the merits of the instant claim, we are not convinced that the said event can be qualified as a Change in Law event. As per the Petitioner, in terms of the conditions of the contract and discussion held with TBEA Ltd., the equipment for Jeerat S/s had to cross the Hooghly River through Ishwar Gupta Setu Bridge, and the movement of a heavy vehicle on the said bridge was stopped since 25.8.2017 itself. The perusal of the documents placed on record, along with communication exchanged between the Petitioner and its sub-contractor TBEA Ltd., reveals that even approval of MRTTH for the movement of heavy equipment meant for Medinipur S/s (despatch of which preceded the despatch of Equipment (ICTs & Reactors) for Jeerat S/s) was applied for on 31.7.2019. Also, one of the letters of the Sub-Contractor addressed to the Petitioner refers to the contract entered into between the parties dated 14.11.2017, i.e., much after the movement of the heavy vehicle was already stopped on Ishwar Gupta Setu Bridge. Nothing has been placed on record by the Petitioner indicating that the movement of the S/s equipment meant for Jeerat S/s was to be passed through Ishwar Gupta Setu Bridge as per the route approved by MRTTH. As already noted above, the heavy vehicle movement of Ishwar Gupta Setu Bridge stopped way back on 25.8.2017, and it was, thus, incumbent upon the Petitioner and/or its sub-contractor to plan the route for the movement accordingly. No Change in Law relief, even if considered the said claim on merits, can be given to the Petitioner on this count.

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

Force Majeure:

74. As to the available relief for the Force Majeure event, the relevant Articles of the TSA provide as under:

“11.7 Available Relief for a Force Majeure Event Subject to this Article 11

(a) no Party shall be in breach of its obligations pursuant to this Agreement except to the extent that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure Event;

(b) every Party shall be entitled to claim relief for a Force Majeure Event affecting its performance in relation to its obligations under this Agreement.

(c) For the avoidance of doubt, it is clarified that the computation of Availability of the Element(s) under outage due to Force Majeure Event, as per Article 11.3 affecting the TSP shall be as per Appendix III to the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations 2014 as on seven (7) days prior to the Bid Deadline. For the event(s) for which the Element(s) is/are deemed to be available as per Appendix III to the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations 2014, then only the Non Escalable Transmission Charges, as applicable to such Element(s) in the relevant Contract Year, shall be paid by the Long Term Transmission Customers as per Schedule 5, for the duration of such event(s).

(d) For so long as the TSP is claiming relief due to any Force Majeure Event under this Agreement, the Lead Long Term Transmission Customer may, from time to time on one (1) day notice, inspect the Project and the TSP shall provide the Lead Long Term Transmission Customer's personnel with access to the Project to carry out such inspections, subject to the Lead Long Term Transmission Customer's personnel complying with all reasonable safety precautions and standards.

4.4 Extension of time:

4.4.1 In the event that the TSP is prevented from performing its obligations under Article 4.1(a), (b) and (e) by the stipulated date, due to any Long Term Transmission Customers' Event of Default, the Scheduled COD shall be extended, by a 'day for day' basis, subject to the provisions of Article 13.

4.4.2 In the event that an Element or the Project cannot be commissioned by its Scheduled COD on account of any Force Majeure Event as per Article 11, the Scheduled COD shall be extended, by a 'day for day' basis, for a maximum period of one hundred and eighty (180) days. In case the Force Majeure Event continues even after the maximum period of one hundred and eighty (180) days, the TSP or the Majority Long Term Transmission Customers may choose to terminate the Agreement as per the provisions of Article 13.5.

4.4.3 If the Parties have not agreed, within thirty (30) days after the affected Party's performance has ceased to be affected by the relevant circumstance, on how long the Scheduled COD should be deferred by, any Party may raise the Dispute to be resolved in accordance with Article 16.”

75. The above article, *inter alia*, provides that no party shall be in breach of its obligations under the TSA except to the extent the performance of its obligation was

prevented, hindered, or delayed due to a Force Majeure event. Further, every party shall be entitled to claim relief for a Force Majeure event affecting its performance of its obligations under the TSA. Further, as per Article 4.4.2 of the TSA, in the event an element or the Project cannot be commissioned by its SCOD on account of Force Majeure event as per Article 11, the SCOD shall be extended on a day-to-day basis for a maximum period of 180 days and in case, the Force Majeure event continues even after the maximum period of 180 days, the TSP or the Majority LTTC may choose to terminate the TSA as per Article 13.5. Article 4.4.3 further provides that if the Parties have not agreed within 30 days after the affected Party's performance has ceased to be affected by the relevant circumstances on how long the SCOD should be deferred, any Party may raise a dispute to be resolved as per Article 16 of the TSA.

76. In the foregoing paragraphs, we have already held that the delay in achieving the commercial operation of Phase I, II, and III of the Project was attributable to the Force Majeure events as these events unavoidably delayed the Petitioner in performing its obligations under the TSA and were beyond the control of the Petitioner. Consequently, the Petitioner cannot be considered to be in breach of its obligation to achieve the commercial operation of the Elements/Projects by the SCOD. Further, in terms of Article 4.4.2 of the TSA, the Petitioner is entitled to an extension of SCOD for the period affected by the Force Majeure events, as already noted above. Pertinently, in the present case, neither the Petitioner nor the majority of the LTTCs chose to terminate the TSA for the delay beyond 180 days. In fact, all the LTTCs, except for Respondents 2 & 3, have returned the Contract Performance Guarantees issued by the Petitioner *inter alia*, indicating that no outstanding claim is pending against the said Bank Guarantee and the Petitioner having fulfilled its obligations as per the terms & conditions of the TSA. Accordingly, the SCOD of the Elements/Project is extended to COD of the Elements/ Project as indicated below:



Sr.	Phase	Element	Original SCOD	Extended SCOD & the delay condoned account of Force Majeure	COD
1	Phase I	Element 1: 765/400kV, 2x1500 MVA substation at Medinipur	28.7.2020	11.2.2021 (199 days)	11.2.2021
2		Element 3: Ranchi (New) – Medinipur 765kV D/c line with Hexa ACSR Zebra conductor along with 240MVAR, 765kV (765kV, 3x80 MVAR single phase units) switchable line reactor with 750 Ω NGR in each circuit at Medinipur end			
3		Element 5: LILO of both circuits of Chandithala-Kharagpur 400 kV D/C line at Medinipur			
4	Phase II	Element 2: 765/400kV, 2x1500 MVA substations at Jeerat (New)		30.9.2021 (430 days)	30.9.2021
5		Element 4: Medinipur-Jeerat (New) 765kV D/C line with Hexa ACSR Zebra conductor along with 240MVAR, 765 kV (765kV, 3x80 MVAR single phase units) switchable line reactor with 600 Ω NGR in each circuit at Jeerat (New) end			
6		Element 7: Jeerat (New) – Jeerat (WB) 400 kV D/c line with ACSR Quad Moose			
7		Element 9: 2 no. 400kV GIS line bays at Jeerat (WBSETCL)			
8	Phase II	Element 6: Jeerat (New)-Subhasgram 400kV D/c line with ACSR Quad Moose		28.8.2022 (762 days)	28.8.2022

Change in Law

77. As regards the Change in Law relief(s), Article 12.2 of the TSA provides as under:

“12.2 Relief for Change in Law

12.2.1 During Construction Period:

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

*For every cumulative increase/decrease of Rupees **Ten Crore Thirty Nine lakh Only (Rs. 10,39,00,000/=)** in the cost of the Project up to the Scheduled COD of the Project, the increase/decrease in non-escalable Transmission Charges shall be an amount equal to 0.32 percent (0.32%) of the Non- Escalable Transmission Charges.”*

78. In the foregoing paragraphs, the Commission has allowed the Petitioner’s claims for additional expenditure incurred due to (i) enactment of GST Laws, (ii)

requirement of installation of the Bird Diverters/Deflectors, and (iii) requirement of installation of the Aerospace Equipment to the extent of night visual aids, 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 the supporting documents, including the auditor certificate, to the LTTCs while raising its supplementary invoices for the revised transmission charges.

IDC & IEDC

79. As already noted above, the Petitioner has not only claimed the IDC and IEDC on the additional expenditure incurred due to the Change in Law events but has also claimed the IDC and IEDC for all the Elements for the actual period of delay, i.e., from SCOD of the Project to respective COD of each Phase/Elements on account of the Change in Law and Force Majeure events that affected the timely completion of the Project. In support of the above, the Petitioner has also placed reliance on the APTEL's in Bhopal Dule Judgment and NRSS Judgment and also on the orders passed by the Commission dated 11.5.2022 in Petition No. 195/MP/2017 (on remand in terms of NRSS Judgment) and order dated 11.3.2023 in Petition No. 333/MP/2019 in the case of POWERGRID NM Transmission Limited v. IL & FS Tamil Nadu Power Co. Ltd. & Ors.

80. 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 of 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 2019 in – 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."

81. In the Bhopal Dhule Judgment, the APTEL observed that the denial of IDC on the admitted Change in Law by this Commission was in contravention of the provisions of 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 NRSS Judgment, the APTEL observed that this Commission erred in not allowing the IDC and IEDC once having held the unforeseen requirement of forest clearance as 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 the licensee entitled to be fully compensated for IDC and IEDC incurred on account of the Change in Law and Force Majeure events.

82. However, in the present case, the delay in achieving the commercial operation of the Project has been condoned on account of events that were solely force majeure events. The Commission has, in the past, already taken a view that for the sole force majeure events, the TSA as such does not provide for any compensation to the Petitioner, and the available reliefs for the delay in achieving the COD are the corresponding extension of the SCOD and the consequent exclusion from the liability of Liquidated Damages arising out of such delay. In this regard, the reference may be drawn in the findings of the Commission in an order dated 25.7.2022 in Petition No. 210/MP/2017 (Paragraphs 40 & 41), order dated 31.12.2023 in Petition No. 237/MP/2021 (Paragraph 140) and the order dated 13.5.2024 in Petition No.87/MP/2022 (Paragraphs 122 & 123).

83. The Petitioner has, in this case, however, also sought to claim certain events as Change in Law and the delays arising out of them as force majeure reliefs, and if such claims are found to have merits on both the counts, the Petitioner has to be held entitled to IDC and IEDC incurred due to the Change in Law and Force Majeure

events. It is observed that the Petitioner has claimed the introduction of GST as a Change in Law and also a Force Majeure event, attributing the delay of 150 days, i.e., from 1.7.2017 to 27.11.2017. However, in the preceding part of this order, the Commission has already dealt with the Petitioner's Force Majeure claim on this count and did not find any merit in such a claim. Similarly, the Petitioner has also claimed the requirement of Change in Tower Design for Powerline Crossing by WBSETCL as a Change in Law event and the consequent delay accrued in terms thereof as a Force Majeure event. However, the Commission has not considered the requirement of change in Tower Design for the Powerline Crossing as a Change in Law event as claimed by the Petitioner. In respect of the Petitioner's Change in Law and Force Majeure claim arising out of the Ban on truck movement on the bridge over the Hooghly River, the Commission has already declined the Petitioner's such claim as Change in Law claim in the preceding part of this order.

84. This leaves us to the claims of the requirement of installation of the bird diverters/ deflectors and aerospace safety requirements, claimed to be a Change in Law, and the ensuing delays as Force Majeure events. Since the Commission has considered the requirement of installation of a bird diverter and aerospace safety equipment (to the extent of night visual aids), it is pertinent to examine whether the delay attributed by the Petitioner to these requirements qualifies as Force Majeure events or not. In respect of both these events, the Petitioner has attributed the delays on the ground that these requirements led to the requirement of re-engineering, procurement & implementation of a large number of Bird diverters/deflectors and the day (cable markers) & night (Medium & low intensity lights) visual aids. However, undeniably, the licensee, as a prudent practice, is required to obtain the necessary Consent, Clearances, and Permits, as required for laying the transmission lines well in advance. It is not the case of the Petitioner that the requirement of obtaining the

forest clearance and the NOC from the concerned Aerodrome Authorities sprang up as a completely new requirement. In fact, in the case of NOC from the concerned Aerodrome Authorities, the Petitioner was, as noted above, required to envisage the requirement of installation of day visual aids as prescribed by the Directorate of Flight Safety. Hence, we are of the view that no delay can be attributed to the activities such as re-engineering, procurement & implementation of the Bird diverters/deflectors and night (Medium & low intensity lights) visual aid as claimed by the Petitioner, let alone considering them to be a force majeure event. As noted above, such permissions being required to obtain at the initial stages itself, various activities, as pointed out by the Petitioner, can easily be accommodated along with the construction of the line, and no delay can be attributed to such activities for considering them to be a Force Majeure event. Given the above, the Petitioner's claims of IDC and IEDC for all the Elements for the actual period of delay, i.e., from SCOD of the Project to respective COD of each Phase/ Elements, are hereby rejected. 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:

85. The Petitioner has also prayed for the carrying cost from the COD till the date of order to be issued by this 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.

86. *Per contra*, the Respondents have opposed the Petitioner's entitlement to a carrying cost. It is submitted that neither there is a provision in the TSA that provides for a carrying cost, nor is there any provision that deals with the principle of restitution. As held by the Hon'ble Supreme Court in the case of Shree Ambica Medical Stores v. Surat People's Cooperative Bank Ltd. [(2020) 13 SCC 564], the Court cannot rewrite or create a new contract between the parties, and the Court has to simply apply the terms and conditions of the agreement as agreed between the parties.

87. *Per contra*, the Petitioner has submitted that the issue of carrying cost is no longer res-integra on account of the various judgments of the APTEL and Hon'ble Supreme Court and has placed the reliance on the judgments of the Hon'ble Supreme Court in Civil Appeal No. 684 of 2021 dated 3.3.2023 in the matter of Maharashtra State Electricity Distribution Co. Ltd. v. Adani Power Maharashtra Ltd. & Ors., Civil Appeal No. 7129 of 2021 dated 24.8.2022 in the matter of Uttar Haryana Bijli Vitran Nigam Limited v. Adani Power (Mundra) Limited and Uttar Haryana Bijli Vitran Nigam Ltd. v. Adani Power Limited [(2019) 5 SCC 325]. Also, the APTEL, in its judgment dated 20.10.2020 in Appeal No. 208 of 2019 in the case of Bhopal Dhule Transmission Co. Ltd. v. Central Electricity Regulatory Commission and Ors., has provided that the party is entitled to IDC and corresponding carrying costs on account of a Change in Law.

88. We have considered the submissions made by the parties. Pertinently, similar issue has already been examined by the Commission in the order dated 15.2.2023 in Petition No. 453/MP/2019, wherein the transmission licensee has been held entitled

to a carrying cost on the Change in Law relief allowed by the Commission subject to the outcome of the decision of the Hon'ble Supreme Court in Civil Appeal No. 8880 of 2022 in the case of Telangana Northern Power Distribution 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 Trehen 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 funds (supported by Auditor's Certificate) or the rate of interest on working capital as per applicable CERC Tariff Regulations or the late payment surcharge rate as per the TSA, whichever is the lowest. Once a supplementary bill is raised by the Petitioner in terms of this order, the provision of Late Payment Surcharge in the TSA would kick in if the payment is not made by the Respondents."

89. 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 28.8.2022) and the date of filing of Petition, i.e., 9.11.2023 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. Once a supplementary bill is raised by the Petitioner in terms of this order, the provision of the Late Payment Surcharge in the TSA would kick in if the payment is not made by the Respondents.

90. 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.

91. 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. This Petition is a Miscellaneous Petition and not a tariff petition; reimbursement of the filing fee is not allowed. Accordingly, the prayer of the Petitioner for reimbursement of the filing fee is hereby rejected.

92. Petition No. 372/MP/2023 is disposed of in terms of the above discussions and findings.

Sd/-
(Harish Dudani)
Member

sd/-
(Ramesh V. Babu)
Member

sd/-
(Jishnu Barua)
Chairperson

