

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No. 71/MP/2020
along with IA No.30/2020**

**Coram:
Shri P.K. Pujari, Chairperson
Shri I.S. Jha, Member
Shri Arun Goyal, Member**

Date of Order: 15th June, 2020

In the matter of :

Petition seeking approval under Section 17(3) and 17(4) of the Electricity Act, 2003, read with Article 15.3 of the Transmission Service Agreement dated 6.1.2016 and Regulation 12 of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of Transmission Licence and other related matters) Regulations, 2009 and in the matter of Lender's right to substitute performance of the Borrower with the Nominee of the Lenders and consequent assignment of transmission licence and assignment of other financing documents and movable and immovable projects assets of Warora Kurnool Transmission Limited in favour of the Nominee of the Security Trustee/Lenders.

And in the matter of:

1. Warora Kurnool Transmission Limited
6th Floor, Plot No. 19,
Film City, Sector 16, Gautam Buddha Nagar,
Noida, Uttar Pradesh - 201 301

2. Yes Bank Limited
Yes Bank Tower, IFC-2, 15th Floor,
Senapati Bapat Marg,
Prabhadevi (West), Mumbai - 400 013

3. IDBI Trustee Services Limited
Asian Building, Ground Floor,
17 R, Kamani Marg, Ballard Estate
Mumbai - 400 001

.....Petitioners

1. Tamil Nadu Generation and Distribution Corporation Limited
144, Anna Salai,
Chennai - 600 002.

2. Southern Distribution Company of Andhra Pradesh Limited
D.No. 19-13-65/A, Srinivasapuram,
Tiruchhanur Road, Kesavayana Gunta,
Tirupati - 517 503, Andhra Pradesh

3. Eastern Distribution Company of Andhra Pradesh Limited
P&T Colony, Seethmmadhara,
Vishakhapatnam - 530013, Andhra Pradesh

4. Southern Distribution Company of Telangana Limited
2nd Floor, H. No. 6-1-50, Mint Compound,
Hyderabad - 500063
5. Northern Power Distribution Company of Telangana Limited
H. No. 2-5-31/2, Corporate Office,
Vidyut Bhavan, Hanamkonda,
Warangal - 506001
6. Bangalore Electricity Supply Company Limited
Krishna Rajendra Circle,
Bangalore - 560001
7. Gulbarga Electricity Supply Company Limited
Station Road, Kalaburagi,
Karnataka - 585102
8. Hubli Electricity Supply Company Limited
Corporate Office, P.B. Road,
Navanagar, Hubli - 580025
9. Mangalore Electricity Supply Company Limited
Paradigm Plaza, A. B Shetty Circle,
Pandeshwar, Mangalore - 575001
10. Chamundeshwari Electricity Supply Company Limited
No. 29, CESC Corporate Office,
Hinkal, Vijaynagar 2nd Stage,
Mysuru - 570017
11. Kerala State Electricity Supply Company Limited
Vydyuthi Bhawanam, Pettom,
Tiruvananthapuram, Kerala - 695 004
12. Electricity Department, Govt. of Puducherry
137, NSC Bose Salai,
Puducherry - 605001
13. Electricity Department, Govt. of Goa
Vidyut Bhavan, Panaji,
Nr. Mandvi Hotel, Goa - 403001
14. Central Transmission Utility
Saudamini, Plot 2,
Sector - 29, Gurugram - 122001
15. Essel Infraprojects Limited
6th Floor, Plot No. 19,
Film City, Sector -16, Gautam Buddha Nagar,
Noida, Uttar Pradesh - 201 301
16. Export-Import Bank of India
21st Floor, Centre One Building,
World Trade Centre Complex,
Cuffe Parade, Mumbai - 400005.
17. Indian Renewable Energy Development Agency Limited

Core- 4A, 1st Floor, India Habitat Centre,
East Court, Lodhi Road, New Delhi - 110003

18. Adani Transmission Limited
Adani House, Nr. Mithakhali Six Roads,
Navrangpura, Ahmedabad - 380009

.....**Respondents**

Parties present:

Shri Amit Kapur, Advocate, Petitioners
Ms. Aparajita Upadhyay, Advocate, Petitioners
Shri Vivek Singla, Petitioners
Shri Vinod Bahety, Yes Bank
Shri T. D. Sivakumar, Exim Bank
Shri S. Vallinayagam, Advocate, TANGEDCO

ORDER

The Petitioners, Warora Kurnool Transmission Limited (in short '**WKTL**'), its lead lender Yes Bank Limited (in short '**Yes Bank**') and IDBI Trusteeship Services Limited (in short '**IDBI Trustee**') (hereinafter collectively referred to as 'the Petitioners') have jointly filed the present Petition under Section 17(3) and (4) of the Electricity Act, 2003 (hereinafter referred to as 'the Act') read with Regulation 12 of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of Transmission Licence and other related matters) Regulations, 2009 (hereinafter referred to as 'Transmission Licence Regulations') and Article 15.3 of the Transmission Service Agreement (in short 'TSA') dated 6.1.2016 seeking approval of the Commission to transfer the shares and management control of WKTL in the favour of the nominee of WKTL's lenders. The Petitioners have made the following prayers:

"(a) Allow the present Petition;

(b) Allow the Petitioners to place on record by way of an affidavit the name and credentials of the Lender's Nominee after the registration of the present Petition before this Commission;

(c) Grant approval to the substitution of Warora Kurnool Transmission Ltd. with Nominee of the Lenders, as the Transmission Service Provider under the TSA dated 6.1.2016 in terms of Article 15.3.2 of the TSA;

(d) Grant approval for the assignment of the transmission licence granted by this Commission to Warora Kurnool Transmission Ltd. and underlying transmission assets in favour of the Nominee of the Lenders in accordance with Section 17 (3) of the Act; and

(e) Permit transfer of all consents, permits, permissions, exemptions, registration granted to Warora Kurnool Transmission Ltd. in favour of the Nominee of the Lenders so as to facilitate continuation of operations without any hinderance.”

2. Subsequently, the Petitioners have filed Interlocutory Application No. 30/2020 seeking amendment of the Petition to formally place on record the name and credentials of nominee of lender. The Petitioners have submitted that in terms of Article 15.3 of the TSA, the lead lender, Yes Bank, has selected a nominee, M/s Adani Transmission Limited (in short ‘ATL’), Respondent No. 18, for execution of the Project. Hence, the entire shareholding of M/s Essel Infraprojects Limited (hereinafter referred to as Essel Infra) in WKTL including the management control of WKTL is proposed to be transferred to ATL by way of a Share Purchase Agreement. ATL shall discharge the debt liabilities of WKTL and shall execute the transmission system in terms of the TSA. The Petitioners have submitted that in order to successfully discharge all obligations of WKTL under the TSA, ATL is required to take control of the ownership and management of WKTL in order to protect the interest of the lenders and to recover the funding advanced by the lenders. Accordingly, the Petitioners have revised their prayers as under:

“(a) Allow the present Petition;

(b) Allow the Lenders to exercise their substitution rights under Article 15.3.1 and 15.3.2 of the TSA ;

(c) Grant approval for transfer of 100% shareholding/ any other securities held by Essel Infra or its affiliates (including that which is held under pledge by the Lenders) in WKTL in favour of ATL (Adani Transmission Limited) by execution of Share Purchase Agreement.”

Background

3. WKTL is a fully owned subsidiary of Essel Infra which was selected as a successful bidder through the international tariff based competitive bidding process under Section 63 of the Act to establish the transmission system of the “Additional inter-Regional AC link for import into Southern Region i.e. Warora-Warangal and Chilakaluripeta-Hyderabad-Kurnool 765 kV Link” (hereinafter referred to as “Transmission System” or “Project”) on Build, Own, Operate and

Maintain (BOOM) basis and to provide transmission service to the Long Term Transmission Customers (LTTCs) of the Project.

4. WKTL was incorporated as a special purpose vehicle by PFC Consulting Limited (PFCCL) as part of Tariff Based Competitive Bidding process for implementing the Project on BOOM basis. Essel Infra participated in the competitive bidding process conducted by PFCCL and upon emerging as the successful bidder, Letter of Intent (LOI) was issued by PFCCL to Essel Infra on 29.2.2016. In accordance with the bidding documents, Essel Infra acquired 100% of the shareholding in WKTL by executing a Share Purchase Agreement with PFCCL on 6.7.2016. WKTL entered into the Transmission Service Agreement (TSA) with LTTCs on 6.1.2016. The Commission in its order dated 29.9.2016 in Petition No. 111/TL/2016 granted transmission licence to WKTL for inter-State transmission of electricity. As per the TSA, the transmission system comprised of seven elements and Scheduled Commercial Operation Date (SCOD) for elements 1 to 6 of the transmission system was 40 months from the effective date whereas, element seven was to be commissioned matching with Warora Pool-Ranganandgaon 765 kV D/C line by November, 2018.

5. For the purpose of financing the Project, WKTL had requested lender, namely, Yes Bank to provide financial assistance to the extent of Rs.2790 crore (with Letter of Credit facility of Rs. 1400 crore) as Rupee Term Loan for construction, development and implementation of the Project on the terms and conditions set out in the Facility Agreement dated 22.3.2017 and other financing documents. Yes Bank agreed to act as lead bank for the consortium, if any, of the lender. For this purpose, WKTL and the lender appointed IDBI Trusteeship Services Limited as Security Trustee who agreed to act as Security Trustee for the lender and its novates, assignees and transferees and entered into Security Trustee Agreement on 22.3.2017. WKTL, thereafter, approached the Commission in Petition No. 78/MP/2017 for approval under Section 17(3) and

17(4) of the Act read with Article 15.2.2 of the TSA to create security interest over all movable and immovable assets of the Project in favour of IDBI Trusteeship Services Limited, acting for the benefit and on behalf of the lender. The Commission in its order dated 24.5.2017 in Petition No.78/MP/2017 accorded in-principle approval allowing WKTL to create security interest in favour of IDBI Trusteeship Services Limited, acting as Security Trustee pursuant to Security Trustee Agreement by way of mortgage and/or hypothecation and/or assignment and/or substitution and/or charge, as the case may be, on Project assets by execution of indenture of mortgage for the Project. Accordingly, WKTL entered into Deed of Hypothecation with IDBI Trusteeship Services Limited on 29.6.2017 creating a first charge in favour of IDBI Trustee.

6. Subsequently, Yes Bank transferred its commitment under the Facility Agreement to an extent of Rs. 200 crore each to Exim Bank and IREDA. Out of Rs. 2790 crore loan facility, WKTL has been disbursed Rs.1200 crore so far.

7. The Petitioners have submitted that the implementation of the transmission Project has been impeded due to various RoW issues and other Force Majeure events faced by WKTL and has already been delayed by over six months. The Petitioners have further submitted that, on account of deteriorating financial condition of Essel Infra, there has been continuous default by WKTL in its debt repayment to its lenders. It has been pointed out that it was not feasible for Essel Infra to raise funds needed for equity infusion or for leveraging WKTL for completion of the transmission project. Apprehending further time and cost over-run, the lenders have decided to exercise their 'Lender's Substitution Rights' as per Article 15.3 of the TSA and identified ATL as its nominee to acquire management control and shareholding of WKTL for completion of the transmission project and discharge the debt obligations of WKTL to its lenders.

8. In light of the above, the Petitioners have filed the present Petition under Section 17(3) and (4) of the Act read with Regulation 12 of the Transmission Licence Regulations and Article 15.3 of the TSA dated 6.1.2016 seeking approval of the Commission for substitution of Essel Infra with ATL for execution of the transmission Project.

Maintainability of the Petition

9. The Petition was heard on 12.5.2020. During the course of hearing, the lead LTTC, Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) objected to the maintainability of the Petition. Vide Record of Proceedings for the hearing dated 12.5.2020, TANGEDCO was directed to file its reply on maintainability of the Petition. The Petitioners were directed to submit details pertaining to process adopted by the lenders for selection of nominee and resolution of lenders regarding selection of ATL as lender's nominee.

10. TANGEDCO has filed its reply on maintainability of the Petition and has mainly submitted as under:

- (i) As per Regulation 12 of Transmission Licence Regulations, lenders are required to file the application for assignment of licence to a nominee of the lenders in case of default in debt repayment by the licensee. However, in the present Petition, the licensee, WKTL itself has prayed for transfer of licence in favour of nominee of its lender when the allegations of default are made by the lenders against the borrower. The passing remarks made by the Commission in order dated 24.5.2017 in Petition No 78/MP/2017 cannot be relied upon to state that the Commission granted leave to WKTL to approach the Commission for transfer of licence under Regulation 12 of the Transmission Licence Regulations. Therefore, the present Petition is not maintainable in law.
- (ii) As per Article 15.3.2 of the TSA, in case of default by TSP (transmission service provider) in debt repayments, the Appropriate Commission may, on an application made by lenders, assign the licence to the nominee of the lenders subject to fulfilment of Transmission Licence Regulations. However, in the present Petition, no document has been placed on record to

substantiate that there was any default on the part of the Transmission Service Provider (TSP)/ licensee in debt repayment which necessitates filing of present Petition. WKTL has commissioned one element of the transmission asset and the balance elements are yet to be commissioned. During this period, WKTL is required to pay only IDC and repayment of debt would accrue once COD is achieved. A conjoint reading of Article 15.3.1 and 15.3.2 of the TSA makes it clear that repayment of debt would start once the TSP operates and maintains the project under the provisions of the transmission licence. Therefore, the present Petition is premature and is not maintainable.

- (iii) WKTL has colluded with its lender and Security Trustee to seek approval of the Commission to transfer the transmission licence granted to WKTL to the nominee of its lender. In terms of Article 18.2 of the TSA, Essel Infra to which PFCCL had transferred 100% shareholding of WKTL is mandated to maintain 51% (majority and controlling shareholding) for a period of three years and thereafter, 26% for a period of another two years. Through a bilateral arrangement with the nominee of the lender, Essel Infra cannot circumvent the provisions of Article 18.2 of the TSA by wrongly relying on Article 15.3.2 of the TSA. The requirement to maintain the majority and controlling shareholding by the bidder is sacrosanct and fundamental to the bidding process held.
- (iv) The only exception which is provided under Article 18.2 of the TSA is lender's substitution right. Such a right is to be exercised by the lenders, but WKTL cannot file a Petition and have lenders merely participating in the hearing without exercising the lender's substitution rights, enforcing performance guarantees, etc. against Essel Infra and thereafter initiating a competitive bidding process to select the purchaser for the shares of WKTL or for vesting the licence granted to WKTL.
- (v) TANGEDCO as lead LTTC has also approved WKTL's request for transfer of 7,70,50,000 shares of Rs 10/- each from Essel Infra to its affiliate company M/s Smart Power Grid Limited (SPGL) as per the provisions of Article 18.2 of the TSA. Accordingly, SPGL should have been impleaded as necessary party to the Petition.
- (vi) The Petitioners have contended that the Project execution has been delayed due to objections raised by Singareni Collieries Company Limited (SCCL) and Western Coalfield Limited (WCL). Based on the direction of

Ministry of Power (MoP), a committee has been constituted by CEA with PFCCL as one of its members to resolve the crisis. Therefore, SCCL, WCL, PFCCL and CEA should have been impleaded as necessary parties. Further, WKTL is a registered Public Limited Company under the Companies Act, 2013. The Registrar of Companies (RoC) is empowered to ensure that the companies comply with the statutory requirements under the Companies Act, 2013. Since, WKTL has not complied with the statutory requirements, RoC should have been impleaded in the instant Petition. Since the Petitioners have failed to implead aforesaid entities as necessary parties, the present Petition is not maintainable.

- (vii) The reliance of the Petitioners on Section 17(3) and 17(4) of the Act is misplaced as conjoint reading of the said Section read with Part IV of the Act i.e. Section 12 to 24 make it clear that the licensee is not entitled to transfer of its licence/utility unless such transfers are based on open competitive selection process by calling for applications from eligible purchaser on the basis of higher and best price by the Commission. Also, Section 17(3) and 17(4) of the Act are not relevant as the Project has not achieved COD. Section 19 of the Act empowers the Commission to revoke the licence in case of default by the licensee. Further, licence need to be revoked in terms of Regulation 19(1)(d) of the Transmission Licence Regulations, if the licensee is unable to fully and efficiently discharge the duties and obligations imposed on it by its licence due to financial crisis. In this context, Section 20 of the Act mandates acquisition of the utility of the licensee whose licence has been revoked through open competitive selection process by calling for applications from eligible purchaser on the basis of higher and best price offered for the utility.
- (viii) The Commission vide its order dated 29.9.2016 while granting the transmission licence had directed WKTL that there should not be any lapse on the part of the licensee to meet scheduled COD. Since the licensee did not comply with the conditions stipulated in the licence/TSA and provisions of the appropriate Regulations and the Act, the licence is liable for revocation.
- (ix) The lenders cannot act as a bid process coordinator to choose the transmission licensee by overriding the express provisions of the Act and Transmission Licence Regulations. It can be inferred from Article 15.3 of the TSA that the lenders can exercise their substitution rights only when there is

a default in debt repayment by the licensee after the Project is completed and declared under commercial operation. In terms of Regulation 6(a) of the Transmission Licence Regulations referred to in Article 15.3.2 of the TSA, the licence can only be assigned or granted to any person who is selected through a transparent process as per the competitive bidding guidelines.

- (x) The lenders have not initiated any action provided in Section 230 and Section 231 of the Companies Act, 2013 against WKTL to recover the loan amount. The lenders have not produced any document related to the discharged loan amount and making an attempt to act as a mediator/facilitator for illegal transfer of licence. Since these issues are outside the jurisdiction of the Commission, the Petition is liable to be dismissed.
- (xi) In an earlier matter, Powergrid Vizag Transmission Limited (PVTL), a TBCB project, had sought approval of TANGEDCO vide letter dated 18.2.2020 in terms of Article 18.2 of the TSA for divestment of the shareholding of PGCIL in PVTL only after completion of the equity lock in commitment period.
- (xii) Further, in another Petition, the Commission had relied on Section 19 and Section 20 of the Act in its order dated 2.9.2015 in Petition No 19/MP/2013 and 20/MP/2013 filed by CTU seeking revocation of licences of NKTCL and TTCL due to abnormal delay in execution of the Project. Subsequently, the Commission vide its suo-motu order dated 5.11.2015 in Petition No 13/SM/2015 had issued show cause notice for revocation of transmission licence granted to NKTCL and TTCL. Therefore, it is evident that in case of non-execution of the Projects awarded through TBCB route, Sections 19 and 20 of the Act and Regulation 20 of the Transmission Licence Regulations shall have to be relied upon.

11. The Petitioners vide their rejoinder dated 26.5.2020 to reply filed by TANGEDCO have submitted as under:

- (i) TANGEDCO has deliberately filed its reply in response to the unamended Petition No. 71/MP/2020 that was filed on 19.12.2019 which had inter-alia sought transfer of WKTL's transmission licence to lender's nominee. The Petitioners are no longer seeking such prayer. The Petitioners, through an amendment of the Petition vide IA No 30/2020, are only praying for approval of the Commission for transfer of 100% shareholding of WKTL held by Essel Infra in favour of lender's nominee i.e. ATL by execution of a

Share Purchase Agreement. The transmission licence granted to WKTL shall continue to remain with WKTL.

- (ii) SPGL does not hold any share of WKTL as the transaction of 7,70,50,000 shares for which TANGEDCO's consent was sought by WKTL never took place. Essel Infra holds 99.9% of WKTL's shares. Therefore, the occasion to implead SPGL as party to the Petition does not arise.
- (iii) The main contention raised in the present Petition is substitution of holding company of WKTL with nominee of the lenders. With regard to delay of the transmission Project, WKTL has filed a separate Petition on 4.3.2020 seeking relief on account of force majeure events including extension of SCOD. Therefore, impleadment of SCCL, WCL, PFCCL and CEA is neither mandated nor required. Further, the Commission has specific jurisdiction to deal with the issues relating to present Petition. After the approval is granted by the Commission for the proposed transaction, filing requirements with RoC shall be complied with to place on record the change in shareholding of WKTL. Therefore, the RoC is not required to be made a party to the present Petition under the Act. Neither any relief has been sought against the parties sought to be impleaded by TANGEDCO nor their non-impleadment hampers adjudication of the present Petition. Therefore, in terms of the judgments of the Hon'ble Supreme Court in ***Udit Narayan Singh Malpaharia vs Additional Member Board of Revenue, Bihar and Anr.*** [AIR 1963 SC 786] and ***Kasturi vs Iyyamperumal and Ors: [(2005) 6SCC733]***, such parties are neither necessary nor proper for the present proceedings.
- (iv) TANGEDCO has made contradictory submission by contending in paragraph 6 to paragraph 9 of its reply that the shares of WKTL cannot be transferred from Essel Infra to ATL in view of specific restriction under Article 18.2 of the TSA. At the same time, TANGEDCO has admitted in para 10 that the only exception to Article 18.2 of the TSA is lender's substitution rights to be exercised by the lenders. The Petitioners have filed the present Petition under Article 15.3 of the TSA which confers right on the lenders of WKTL to approach the Commission in case of default in repayment by WKTL. Further, the equity lock-in clause will be applicable after the COD of the transmission Project has been achieved. Since the transmission Project is still under construction stage, Article 18.2 does not pose a bar to the proposed transfer of WKTL's share in favour of ATL.

- (v) The contention of TANGEDCO that lenders are merely participating in the hearing without exercising lender's substitution rights is denied as lenders have exercised their substitution rights after detailed deliberation and the Petitioners have filed the details of the same on 26.5.2020 as part of compliance of Record of Proceedings. As regards contention of enforcement of performance guarantee against Essel Infra, it is noted that Essel Infra is writing off the entire equity of Rs 516.6 crore that is infused so far in the transmission Project as loss and a part of the remaining debt is already proposed to be assigned to Essel Infra as per the decision taken by the lenders.
- (vi) TANGEDCO has wrongly contended that filing of the present Petition by WKTL is contrary to Regulation 12 of the Transmission Licence Regulations and stated that only lenders can approach the Commission in case of default in debt repayment. The Petitioners have not prayed for transfer of licence in favour of nominee of lenders and the licence for the implementation of the Project still remain with WKTL. Only the shares and management of WKTL is proposed to be transferred to ATL. The Commission in its order dated 24.5.2017 in Petition No 78/MP/2017 while allowing creation of security interest on the assets of WKTL had directed WKTL, its lenders and the Security Trustee to approach the Commission in case of default in debt repayment by WKTL. Therefore, the Petition has been filed jointly in compliance of the aforesaid directions of the Commission. The direction of the Commission was to ensure that in case any substitution is required due to default in debt repayment, the same may be done with the participation of all parties to the financing and security documents.
- (vii) The submission of TANGEDCO that no document has been placed on record to substantiate that there was any default on part of WKTL in debt repayment is incorrect. The Petitioners have already placed on record the default letters issued by the lenders to WKTL which conclusively prove that WKTL defaulted in servicing its debt to lenders. The contention of TANGEDCO that there is no default in debt repayment since lenders are only entitled to interest during construction period is denied. WKTL has an outstanding of Rs. 75 crore, 5.09 crore and 6.37 crore towards interest payment to Yes Bank, Exim Bank and IREDA respectively. Lenders have already disbursed considerable amount to WKTL. In absence of further

equity infusion by Essel Infra, the lenders could not have continued to disburse further loan as it would disrupt the debt -equity ratio (69.75:30.25) mandated as per Article 1.1.3 of the Facility Agreement dated 22.3.2017. Further, even failure to pay the interest on the loan makes the borrower liable to be declared NPA as per RBI's Master Circular No RBI/2015-16/101 dated 1.7.2015.

- (viii) Section 17(3) and 17(4) of the Act are applicable in the present case as the intent behind the Section is to seek regulatory approval whenever there is a condition or activity which is likely to have a key impact on the licensee. Therefore, change in ownership of the licensee is required to be reported to the Commission under Section 17 (3) and 17(4) of the Act.
- (ix) Article 15.3.2 of the TSA is to safeguard the interest of the lenders who have provided financial assistance for implementation of the Project and to ensure operationalization of the Project by the licensee. The Article has no correlation to achieving Commercial Operation Date under the TSA. If such right were to be linked with the COD, it would defeat the purpose of Article 15.3 of the TSA.
- (x) The reliance of TANGEDCO on the provisions of Section 19 of the Act for revocation of licence is incorrect as the conditions prescribed under sub-sections (a) to (d) of Section 19 (1) of the Act are not fulfilled i.e. there is no wilful or prolonged default by WKTL of any provisions of the Act or its licence. The Commission is empowered under Section 19(4) of the Act to let WKTL execute the Project under its licence and impose any conditions as it may deem fit instead of revoking the licence. The Commission may direct WKTL under Section 19(4) of the Act to improve its financial condition by bringing in new promoter that will infuse equity in the Project and expeditiously complete the Project. Neither the lenders nor the LTTCs stand to gain anything if the licence is revoked as it will further impede the construction of the Project. Without prejudice to above, TANGEDCO cannot seek revocation of WKTL's licence in the present Petition and may have to approach the Commission through a separate Petition.
- (xi) The contention of TANGEDCO that the lenders cannot select a nominee for the transmission Project, is wrong as the same is contrary to the terms of the TSA as well as Transmission Licence Regulations. Further, selection of ATL by the lenders has been done through a competitive bidding process

and details of the same have been submitted to the Commission on 26.5.2020 in compliance of the RoP dated 12.5.2020.

- (xii) TANGEDCO cannot raise question regarding non-compliance of the Companies Act, 2013 as it is outside the jurisdiction of the Commission. TANGEDCO should raise its objections before the right forum and not in the present Petition. Further, Section 230 and 231 of the Companies Act, 2013 are not applicable to the present transaction as there is no arrangement being undertaken as specified in Section 230, which requires intervention of the National Company Law Tribunal. The present case is governed by the TSA entered into between the TSP and LTTCs. Therefore, the contention raised by TANGEDCO with respect to violation of Companies Act, 2003 is devoid of merits. As regards action against WKTL, it is the commercial decision of the lenders whether they want to revive the Project or they want to take action against WKTL to recover the loan amount. Lenders in this case have chosen to revive the transmission Project by transferring control of WKTL in favour of its nominee i.e. ATL.

Analysis and Decision

12. The Petitioners have, vide affidavit dated 26.5.2020, submitted the information/ details sought by the Commission in the RoP of hearing dated 12.5.2020. The Petitioners have submitted that the consortium of lenders convened a meeting on 8.7.2019 with Essel Group to discuss the proposed resolution plan for WKTL's debt. After detailed deliberations, the lenders decided for 'change in management' of WKTL from Essel Infra to the nominee of lenders and to conduct a time bound bidding process to select the nominee. The consortium of lenders appointed a third party consultant, namely, BDO India LLP (BDO) as Bid Process Coordinator to ensure a transparent and independent bidding process. The Petitioners have also summarized the process adopted by BDO and justification for selection of ATL as the nominee of lenders. As regards, resolution of lenders regarding selection of ATL as lender's nominee, the Petitioners have placed on record the Board Resolution of the lead lender dated 17.4.2020.

13. We have considered the submissions made by the lead LTTC, TANGEDCO and Petitioners on maintainability of the Petition. The issue for our consideration is whether the Petition is maintainable in view of the objections raised by TANGEDCO.

14. The maintainability of the present Petition has been challenged by TANGEDCO on the following counts:

- (a) WKTL, the borrower and licensee itself has prayed for transfer of licence in favour of the nominee of its lender which is contrary to Regulation 12 of Transmission Licence Regulations.
- (b) The Petition made under Article 15.3.2 of the TSA is premature as there is no default by the TSP in debt repayment.
- (c) The shares held by Essel Infra in WKTL cannot be transferred in view of the restrictions imposed by Article 18 of the TSA.
- (d) The Petition suffers from non-joinder of proper and necessary parties as SPGL, SCCL, WCL, CEA, PFCCL and RoC have not been impleaded.
- (e) The Petitioner is seeking an order in violation of the Act and hence the Petition is not maintainable.
- (f) Section 17(3) and 17(4) of the Act are not applicable in the present case as the Project has not achieved COD.
- (g) The Petition is contrary to Regulation 6 of the Transmission Licence Regulations as the lender cannot exercise the power of the Commission or Bid Process Coordinator to select the eligible person for transfer of the licence.
- (h) The application is not maintainable as the Petitioners are seeking an order in the Petition in violation of provisions of the Companies Act, 2013.

The objections raised by TANGEDCO have been dealt with in succeeding paragraphs.

15. The first objection of TANGEDCO is that as per Regulation 12 of Transmission Licence Regulations, it is the lender who can make the application for assignment of licence and not the licensee who is in default of debt repayment. However, contrary to Regulation 12, WKTL which is the borrower and licensee itself is seeking transfer of licence in favour of the nominee of its lender wherein the allegations of default are made by the lender against the borrower. TANGEDCO has further submitted that WKTL cannot rely on the passing remarks made by the Commission in the order dated 24.5.2017 in Petition No.78/MP/2017 to contend that it has been granted “leave” to approach the Commission for transfer of licence under Regulation 12 of the Transmission Licence Regulations. The Petitioners in their rejoinder have submitted that the Petitioners have sought amendment of the Petition through IA No.30/2020 and in the amended Petition, the Petitioners are seeking approval of the Commission for transfer of management control and shareholding of WKTL to ATL. The Petitioners have submitted that TANGEDCO, despite knowing that amended Petition has been filed, has proceeded to make arguments against transfer of licence of WKTL which is not the subject matter of the amended Petition.

16. We have considered the submissions of the Petitioners and TANGEDCO. We notice that the original Petition was filed by the Petitioners by invoking the provisions of Section 17(3) and (4) of the Act, Regulation 12 of the Transmission Licence Regulations, Article 15.3 of the TSA and the order of the Commission dated 24.5.2017 in Petition No.78/MP/2017. The Petitioners had prayed for substitution of WKTL with the nominee of the lenders as Transmission Service Provider under Article 15.3.2 of the TSA, assignment of licence granted to WKTL in favour of the nominee of lenders in accordance with Section 17(3) of the Act and permission for transfer of all consents, permits, permissions, exemptions, registration granted to WKTL in favour of the nominee of the lenders. Though the Petitioners have modified the prayers in the amended Petition seeking approval

to exercise substitution rights of lenders under Articles 15.3.1 and 15.3.2 of the TSA and grant approval for transfer of 100% shareholding/ any other securities held by Essel Infra in WKTL in favour of Adani Transmission Limited by execution of Share Purchase Agreement, the Petition has been filed under the same provisions as in the pre-amended Petition. Regulation 12 of the Transmission Licence Regulations provides as under:

“12. Assignment of Licence

In case of default by the licensee in debt repayment, the Commission may, on an application made by the lenders, assign the licence to a nominee of the lenders.”

Article 15.3.2 of the TSA provides as under:

“15.3.2 However, in the case of default by the TSP in debt repayments, the Appropriate Commission may, on an application from the Lenders, assign the Transmission License to the nominee of the Lenders subject to the fulfilment of the qualification requirements and provisions of the Central Electricity Regulatory Commission (Procedure, terms and Conditions for grant of Transmission License and other related matters) Regulations, 2006 or as amended from time to time.”

17. In order dated 24.5.2017 in Petition No.78/MP/2017, the Commission had directed as under:

“11.....It is, however, made clear that the transmission licence granted by the Commission to the First Petitioner and the underlying assets cannot be assigned in favour of the nominee of the Security Trustee unless prior approval of the Commission is obtained at the time of creating rights in favour of such nominee. Before agreeing to transfer the licence and the assets of the first petitioner to the nominee of Security Trustee, the Commission shall evaluate such a nominee’s experience in development, design, construction, operation and maintenance of transmission lines, and to be able to execute the project and undertake transmission of electricity. The licensee, lenders, security trustee and the nominee, accordingly, shall be jointly required to approach the Commission for seeking approval. This will give an opportunity to the Commission to satisfy itself of the circumstances necessitating such transfer. This decision of ours is in accordance with Regulation 12 of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of Transmission Licence and other related matters) Regulations, 2009 which reads as under:

“12. Assignment of Licence

In case of default by the licensee in debt repayment, the Commission may, on an application made by the lenders, assign the licence to a nominee of the lenders.”

Accordingly, in case of default by the licensee in debt repayment, the Commission may, on a joint application made by the licensee, lenders, Security Trustee and the nominee, approve the assignment of the licence to a nominee of the lenders subject to proper due diligence of the process. Therefore, specific prior approval of the Commission for assigning the licence to the nominee of Security Trustee or transfer of any assets to them shall always be needed. Lastly, finance documents and statements may be filed by the first petitioner as and when required by the Commission for any specific purpose”

18. Though as per Regulation 12 of Transmission Licence Regulations and Article 15.3.2 of the TSA, the lenders have to approach the Commission for assignment of licence in case of default in debt repayment, the Commission in its order dated 24.5.2017 in Petition No.78/MP/2017 has specifically directed that in case of default in debt repayment, a joint application shall be made by the licensee, lenders, security trustee and nominee for assignment of the licence to the nominee of the lenders. The purpose of such direction is that the Commission will have the opportunity to satisfy itself about the circumstances necessitating such transfer. In the present case, the licensee, WKTL and lenders have filed the Petition as Petitioner and the nominee of the lenders ATL is impleaded as Respondent No.18. In our view, there is no infirmity in WKTL being the Petitioner along with the lenders in the present Petition. Therefore, we do not find any merit in the objection of TANGEDCO on this count.

19. The second objection of TANGEDCO is that the Petition made under Article 15.3.2. of the TSA is premature as no documents have been placed on record to substantiate that there was any default on part of the Transmission Service Provider (TSP)/ licensee in debt repayment which necessitates filing of such a Petition. TANGEDCO has submitted that as per Article 15.3.2 of the TSA, only in case of default by the TSP in debt repayment, the Appropriate Commission may, on an application from the lenders, assign the transmission licence to the nominee of the lenders subject to fulfilment of the qualification requirements and provisions of Transmission Licence Regulations. TANGEDCO has submitted that a conjoint reading of Article 15.3.1 and 15.3.2 of the TSA makes it clear that repayment of debt would start after commissioning of the Project and during the construction period, only IDC is required to be paid. TANGEDCO has submitted that in the present case, since only one transmission asset has achieved COD, WKTL is required to pay only IDC during this period and repayment of debt would accrue once COD of all assets is achieved. In

response, the Petitioners in their rejoinder have submitted that the default letters issued by the lenders to WKTL providing for the details and amounts of pending payments conclusively prove that WKTL defaulted in servicing its debts to the lenders. The Petitioners have submitted that WKTL was in default of considerable interest payments and as per RBI Master Circular of 1.7.2015, failure to pay interest on loan makes WKTL liable to be declared as NPA. The Petitioners have further submitted that in the absence of further equity infusion by Essel Infra, the lenders could not have continued to disburse further loan since it would have disrupted the debt-equity ratio. The Petitioners have also placed on record the Minutes of the Consortium Meeting of WKTL held on 8.7.2019 in which decision was taken for change of management of WKTL from Essel Infra.

20. We have considered the submission of TANGEDCO and the Petitioners. The objection of TANGEDCO is that there is only default in payment of IDC and no default in repayment of loan and hence Petition by the lenders seeking approval in exercise of right of substitution under Article 15.3.2 is premature and not maintainable. It is observed that the Petitioners have placed on record in the Petition and in the amended Petition the default letters issued by the lenders to WKTL. The Petitioners have submitted in their rejoinder that Yes Bank, EXIM and IREDA have disbursed Rs. 1067 crore, Rs. 44 crore and Rs. 83 crore respectively to WKTL and the outstanding interest payment due to Yes Bank, Exim Bank and IREDA is Rs. 75 crore (as on 1.5.2020), Rs 5.09 crore (as on 31.1.2020) and Rs 6.37 crore (as on 31.1.2020) respectively. It is further noticed from the Minutes of the Consortium Meeting of WKTL held on 8.7.2019 (which has been placed on record by the Petitioners vide their submission dated 26.5.2020) that on account of severe liquidity issues faced by it in ongoing verticals, Essel Group had suggested for change of management as Resolution Plan for account which was agreed by the lenders. In our view, it is the lenders' prerogative to take a call whether the TSP is in default of repayment of loan after

considering all relevant factors and to invoke the provisions of Article 15.3.2 of the TSA. The lenders after assessing the liquidity position of Essel Infra and the default of repayment of interest have decided in consultation with Essel Infra for change of management of WKTL and have invoked their right of substitution in terms of Article 15.3.2 of the TSA. It is neither envisaged nor considered necessary for the Commission to go into the question whether the lenders have properly exercised their right of substitution or not. Therefore, the objection with regard to the maintainability of the Petition on this count is rejected.

21. The third objection of TANGEDCO is that the shares held by Essel Infra in WKTL cannot be transferred in view of the restrictions imposed by Article 18 of the TSA and hence the Petition is not maintainable. TANGEDCO has contended that in terms of Article 18.2 of the TSA, Essel Infra is mandated to maintain 51% shareholding for a period of three years and thereafter, 26% for a period of another two years in WKTL. In view of this provision in TSA, TANGEDCO has contended that Essel Infra cannot have arrangement with the nominee of the lender to transfer any part of the 51% shareholding it has in WKTL and that the nominee of the lenders cannot acquire such share in contravention of the provisions of Article 18.2 of the TSA. The Petitioners have submitted that the equity lock-in clause will be applicable after the COD of the transmission Project has been achieved. Since the transmission Project is still under construction, Article 18.2 does not pose a bar to the proposed transfer of WKTL's shares in favour of ATL. The Petitioners have submitted that even as per TANGEDCO's own admission (para 10 of the reply), lenders' right of substitution under Article 15.3 of the TSA is an exception to the equity lock-in under Article 18.2 of the TSA.

22. We have considered the submissions of TANGEDCO and the Petitioners. The question whether the right of substitution under Article 15.3 of the TSA can be exercised in view of the equity lock-in provision under Article 18.2 of the TSA

is an issue to be decided on merit and cannot be raised as an objection to the maintainability of the Petition. TANGEDCO is at liberty to raise this objection while filing its reply on merit if the Petition is held to be maintainable and is admitted.

23. The fourth objection of TANGEDCO with regard to maintainability is on account of non-joinder of proper and necessary parties such as M/s Smart Power Grid Limited (SPGL), Singareni Collieries Company Limited (SCCL), Western Coalfield Limited (WCL), Central Electricity Authority (CEA), PFC Consulting Limited (PFCCL) and Registrar of Companies (RoC). According to TANGEDCO, Essel Infra had approached TANGEDCO for transfer of 7,70,50,000 shares of Rs.10 each to SPGL which was approved by TANGEDCO as lead LTTC vide its letter dated 14.7.2017. EIL had also approached TANGEDCO for transfer of 49% shares to other investors in response to which TANGEDCO had declined approval on account of equity lock-in provision in the TSA. TANGEDCO has further submitted that since the Petitioners have contended that the Project was delayed due to the objections raised by SCCL and WCL and that MoP had constituted a Committee under CEA with PFCCL and CTU as members, all these entities should have been impleaded in the Petition. TANGEDCO has further submitted that WKTL has not complied with the statutory requirements under the Companies Act, 2013 and RoC which is responsible for compliance of the statutory requirements under the Companies Act, 2013 should have been impleaded. *Per contra*, the Petitioners have submitted that the main contention in the Petition is substitution of the holding company of WKTL i.e. Essel Infra by a nominee of the lenders and SCCL, WCL, PFCCL and CEA have no role to play in the present proceedings. WKTL has filed another Petition seeking relief on account of force majeure events under the TSA including extension of SCOD. At this stage, RoC has no role to play. After the prior approval of the Commission to the proposed transaction is received and compliances related to acquisition of

shares in WKTL have been fulfilled, filing requirements with the RoC will be complied with. The Petitioners have submitted that the proposed transaction with SPGL for which approval of TANGEDCO was sought never took place and hence SPGL has not been made a party. The Petitioners have submitted that SPGL, WCL, SCCL, PFCCL, CEA and RoC are neither necessary parties nor proper parties to the present Petition and hence have not been impleaded.

24. We have considered the submissions of TANGEDCO and Petitioners. In Udit Narayan Singh Malphaharia Vs. Additional Member Board of Revenue, Bihar and Anr [AIR 1963 SC 786], Hon'ble Supreme Court has laid down the principle to determine necessary and proper parties to a proceedings as under:

"....To answer the question raised it would be convenient at the outset to ascertain who are necessary or proper parties in a proceeding. The law on the subject is well settled: it is enough if we state the principle. A necessary party is one without whom no order can be made effectively; a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding."

Further, Hon'ble Supreme Court in Kasturi Vs. Iyyamperumal and Others [(2005) 6 SCC 733] has laid down that two tests are to be applied for determining the 'necessary party' in a proceedings, i.e. (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings; and (2) no effective decree can be passed in the absence of such party.

25. In the present Petition, the Petitioners are seeking prior approval for exercising their right of substitution under the TSA. Though there is passing reference regarding delay in execution of the transmission Project, no relief has been prayed in the Petition in this regard. The proposed transfer of shares to SPGL has not materialized as is evident from the latest shareholding pattern of WKTL as certified by the Company Secretary which has been placed on record as Annexure PR-1. Further, it is the responsibility of the Petitioners to ensure due compliance with the Companies Act, 2013 after the transactions with regard to transfer of shares take place and any non-compliance on that account will fall within the purview of RoC. The Commission does not have the jurisdiction to

decide whether a party has complied with the requirements of Companies Act, 2013 or not. In the light of the legal principles quoted in para 21 above, SPGL, SCCL, WCL, PFCCL, CEA and RoC are not necessary parties since no relief has been claimed against them in the present proceedings and an effective order can be passed in their absence. Further, these entities are not proper parties as they are neither concerned nor have any role to play in the matter of transfer of shares and management from Essel Infra to the nominee of the lenders in exercise of the right of substitution of lenders. Accordingly, objection of TANGEDCO on this count is rejected.

26. The fifth objection of TANGEDCO is that the Petitioners are seeking an order in violation of the provisions of the Act. TANGEDCO has submitted that since TSP has failed to execute the Project as per the terms and conditions of licence, its licence should be revoked under Section 19 of the Act and that the Commission may undertake action for sale of utility of the licensee under Section 20 of the Act and select a utility for purchase of the assets which fulfills the conditions of Regulation 6 of the Transmission Licence Regulations. *Per contra*, the Petitioners have submitted that there is no willful or prolonged default by WKTL of any provisions of the Act or its licence requiring invocation of Section 19 of the Act by the Commission to revoke the licence. The Petitioners have further submitted that instead of revoking the licence, the Commission is empowered under Section 19(4) of the Act to allow WKTL to execute the Project under its licence and impose any conditions as it may deem fit including allowing WKTL improve its financial condition by bringing in new promoter that will infuse equity in the Project and expeditiously complete the Project. The Petitioners have also submitted that TANGEDCO cannot seek revocation of WKTL's licence in the present Petition and may have to approach the Commission through a separate Petition.

27. We have considered the submissions of the parties. Under Section 17 of the Act, the licensee is prohibited from taking certain actions such as acquiring or taking over or otherwise of the utility of any other licensee, merging its utility with the utility of any other licensee, assigning its licence or transfer of its utility or any part thereof by way of sale, lease, exchange or otherwise without prior approval of the Commission. Under Section 19 of the Act, the Commission after making an enquiry and after being satisfied that public interest so requires, revoke the licence of a licensee (a) if the licensee makes wilful and prolonged default in doing anything required of him by or under the provisions of the Act or the rules or regulations made thereunder; or (b) breaks the terms and conditions of licence breach of which is expressly declared to render the licence liable for revocation or (c) the financial condition of the licensee is such that he is unable to fully and efficiently discharge the duties and obligations imposed on it under the licence. Section 17 of the Act is not subject to Section 19 of the Act. Therefore, the maintainability of the Petition filed under Section 17(3) and (4) of the Act cannot be tested on the consideration that instead of giving approval under Section 17(3) and (4) of the Act, it is more appropriate to initiate action for revocation of licence under Section 19 of the Act. If TANGEDCO seeks revocation of licence of WKTL for the reasons mentioned in its reply, it has to move an appropriate application under Section 19 of the Act. In the absence of an appropriate application for revocation of licence, no action under Section 19 of the Act based on the submission of TANGEDCO in the present Petition can be initiated. In any case, the present Petition has been filed for transfer of the Project to a financially viable nominee for completion of the Project so that terms and conditions of the licence are complied with. In the light of the above discussion, we reject the submission of TANGEDCO that the present Petition filed under Section 17 of the Act is in violation of Chapter 4 of the Act.

28. The sixth objection of TANGEDCO is that the Petition is contrary to Regulation 6 of the Transmission Licence Regulations as the lender cannot exercise the power of the Commission or Bid Process Coordinator to select the eligible person for transfer of the licence. TANGEDCO has contended that in terms of Article 15.3.2 of the TSA, the Commission may assign licence to nominee of the lenders subject to nominee fulfilling the conditions stipulated in Regulation 6 of the Transmission Licence Regulations and as per Regulation 6(a) of the Transmission Licence Regulations, the licence can be granted to any person who is selected through a transparent process as per the competitive bidding guidelines. TANGEDCO has argued that the lender cannot exercise the power of the Commission or Bid Process Coordinator to select the eligible person for transfer of the licence. The Petitioners have submitted that both the TSA and Transmission Licence Regulations empower the lenders to select a nominee itself and submit before the Commission for its approval as is done in the present case. It has been stated that the selection of ATL by the lenders has been done through a competitive bidding process, details of which have been submitted to the Commission in compliance with the RoP dated 12.5.2020.

29. We have considered the submissions of TANGEDCO and the Petitioners. Regulation 12 of the Transmission Licence Regulations provides that “in case of default by the licensee in debt repayment, the Commission may, on an application made by the lenders, assign the licence to the nominee of the lenders. Article 15.3.2 of the TSA provides that in case of default by the TSP in debt repayments, appropriate Commission may on an application from the lenders, assign the transmission licence to the nominee of the lenders subject to fulfilment of qualification requirements and provisions of Transmission Licence Regulations. The Petitioners in terms of Regulation 12 of Transmission Licence Regulations and Article 15.3.2 of the TSA have filed the present Petition for transfer of the shares and management of WKTL to the nominee of the lenders

i.e. ATL. Whether ATL fulfills the qualification criteria under Transmission Licence Regulations is a matter to be decided on merit and this point cannot be raised as a ground for challenging the maintainability of the Petition.

30. The seventh objection of TANGEDCO is that Section 17(3) and 17(4) of the Act are not applicable in the present case as the Project has not achieved COD and the Petitioner has not completed the Project as per the provisions under the TSA. The Petitioners have submitted that achievement of COD is not a pre-condition either under Section 17(3) and 17(4) of the Act or under Article 15.3.2 of the TSA. The Petitioners have submitted that the objective of Article 15.3.2 is to safeguard the interest of the lenders who have provided financial assistance for the Project and to ensure operationalisation of the Project by the licensee and linking the substitution rights under Article 15.3.2 of the TSA would render the purpose of the said Article redundant.

31. We have considered the submissions of the Petitioners and TANGEDCO. On perusal of Section 17(3) and 17(4) of the Act, it is observed that these provisions are applicable to the licensees. As per Article 15.3.2 of the TSA, if the TSP defaults in debt repayment, the lender may make an application to the Commission for assignment of the licence to the nominee of the lender. If the default in debt payment occurs prior to COD, there is no embargo on the lender to approach the Commission under Article 15.3.2 of the TSA. In the absence of any provision that the lender cannot approach the Commission for assignment of licence before COD, the objection of TANGEDCO to the maintainability of the Petition on this ground cannot be sustained.

32. The final objection of TANGEDCO is that the application is not maintainable as the Petitioners are seeking an order in the Petition in violation of the Companies Act, 2013. TANGEDCO has submitted that lenders should have initiated action provided in Section 230 and Section 231 of the Companies Act, 2013 against WKTL to recover the loan amount. Since the lenders approached

the Commission under Article 15.3.2 of the TSA for assignment of licence without initiating any action under Sections 230 and 231 of the Companies Act, 2013 for recovery of debt, the Petition is liable to be dismissed. *Per contra*, the Petitioners have submitted that TANGEDCO cannot raise questions regarding non-compliance with the Companies Act, 2013 as the same is outside the jurisdiction of the Commission. Further, Section 230 and 231 of the Companies Act, 2013 are not applicable to the present transaction as there is no arrangement being undertaken as specified in Section 230 which requires intervention of National Company Law Tribunal. The Petitioners have submitted that a voluntary arrangement between the parties like Share Purchase Agreement in the present case for transfer of shares is governed by the agreed contractual between the parties.

33. The Commission is of the view that it has no jurisdiction to look into the allegations that the Petitioners have not complied with the provisions of the Companies Act, 2013. Further, Article 15.3.2 does not require that the lenders should have taken action under Article 230 and 231 of the Companies Act, 2013 before approaching the Commission for approval of substitution of licensee with the nominee of the lenders. In our view, the objection of TANGEDCO on this count is not relevant and is, therefore, rejected.

34. In the light of the above discussion, we hold that there is no merit in the objections of TANGEDCO as regards maintainability of the Petition and, therefore, the Petition is maintainable.

IA No. 30/2020

35. The Petitioner through IA No. 30/2020 has sought amendment of the Petition and has filed an amended Petition along with the IA. Regulation 114 of the CERC (Conduct of Business) Regulations, 1999 provides as under:

“114. The Commission may, at any time and on such terms as to costs or otherwise, as it may think fit, amend any defect or error in any Proceedings before

it, and all necessary amendments shall be made for the purpose of determining the real question or issue arising in the Proceeding.”

In the light of the above provision, amendment is allowed and IA No. 30/2020 is disposed of. Accordingly, the amended Petition be taken on record. The respondents are directed to file their reply on merit within 15 days of issue of this order and the Petitioners are directed to file rejoinder, if any, within 7 days thereafter.

36. The Petition shall be listed for hearing in due course for which separate notice shall be issued to the parties.

Sd/-
(Arun Goyal)
Member

sd/-
(I.S.Jha)
Member

sd/-
(P.K. Pujari)
Chairperson