

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 237 of 2020

Case filed by Adani Transmission Ltd. and Kharghar Vikhroli Transmission Private Limited seeking directions to Tata Power Co. Ltd.- Transmission for compliance of the Orders and directions of the Commission for execution of 400 kV Vikhroli Project.

Coram

**Sanjay Kumar, Chairperson
I.M. Bohari, Member
Mukesh Khullar, Member**

Adani Transmission Limited (ATL) and
Kharghar Vikhroli Transmission Private Limited (KVTPL) -----Petitioners
V/s

1. Tata Power Company – Transmission (TPC-T)
2. State Transmission Utility (STU) -----Respondents

Appearance

1. For Petitioners Adv. Deepa Chawan
2. For TPC-T Adv. Venkatesh
3. For STU Shri Sanjeevkumar Suradkar(Rep.)

ORDER

Dated: 24 May, 2021

1. Adani Transmission Limited (ATL) and Kharghar Vikhroli Transmission Private Limited (KVTPL)[Petitioners] have filed a Case on 23 December, 2020 under Sections 142 and 146 read with Section 86 (1) (c) of the Electricity Act, 2003 (EA) seeking directions to Tata Power Co. Ltd.- Transmission (TPC-T) for compliance of the Commission’s Orders dated 12 September, 2018 and 29 January, 2019 in Case No. 204 of 2017 and Case No. 3 of 2019 respectively, read with the directions issued by the Commission vide letters dated 20 June, 2019, 14 September, 2020 and 3 October, 2020.

2. Petitioners' main Prayers are as follows:

- a. *"Hold that TPC has acted in non-compliance of the directions of this Hon'ble Commission issued vide the Orders dated 12.09.2018 and 29.01.2019 passed in Case No. 204 of 2017 and Case No. 3 of 2019 respectively, read with directions issued vide the letters dated 20.06.2019, 14.09.2020 and 03.10.2020;*
- b. *Direct TPC to take all necessary steps to ensure transfer of complete title and possession of the land Parcel B at Vikhroli in compliance of this Hon'ble Commission's directions issued vide communications dated 20.06.2019, 14.09.2020 and 03.10.2020;*
- c. *Hold that the Petitioner be allowed access to substation land and Transmission Line corridors;*
- d. *Direct TPC to withdraw the onerous conditions mentioned in the Petition herein above in the ROW Agreement; or the conditions of ROW be same as adopted by Government of Maharashtra for the land it permits to be used for similar works;*
- e. *Direct TPC to withdraw the unlawful/unreasonable conditions in CIDCO lease transfer application for Kharghar land.*
- f. *Hold that the Petitioner shall be responsible for O&M of the whole asset including transmission line from Darave to Vashi Creek."*

3. KVTPL in its Petition has stated as follows:

Background of the Case:

- 3.1. Asset specific Licence dated 14 August, 2014 was granted by the Commission in Case No. 112 of 2014 to TPC-T. Detailed Project Report (**DPR**) for Vikhroli project was approved by the Commission on 2 June, 2011 and revised in the year, 2015 and the same was to be executed by TPC-T under Section 62 of the EA. However, on account of the inordinate delay caused in implementation of Vikhroli scheme by TPC-T, the Commission vide Order dated 12 September, 2018 in Case No. 204 of 2017 (**2018 MTR Order of TPC-T**) has deem closed 400 kV Vikhroli scheme. The Commission also suggested that the Vikhroli Project may be implemented under the Tariff Based Competitive Bidding (**TBCB**) route. TPC-T had sought review of Commission's 2018 MTR Order of TPC-T. The Commission vide its Order dated 29 January 2019 in Case No. 3 of 2019 rejected the prayer of TPC-T to allow it to execute the Vikhroli project and directed STU to submit its recommendation regarding execution of 400kV Vikhroli scheme under TBCB. The Commission also directed to setup a credible project monitoring mechanism to track the progress of the Vikhroli project. TPC-T had challenged the Commission's Orders before the Hon'ble Appellate Tribunal for Electricity (**APTEL**) in Appeal No. 88 of 2019 and IA No. 372 of 2019. The Hon'ble APTEL in IA No. 372 of 2019 in Appeal No. 88 of 2019 directed STU to continue with TBCB process but asked STU to keep on hold the issuance of Letter of Assurance (**LOA**) till its final judgement. Hon'ble APTEL vide its final Judgement dated 23 September, 2019 in Appeal No. 88 of 2019 rejected TPC-T's appeal and upheld the Commission's Orders.
- 3.2. The execution of Vikhroli project had commenced from 2011 by TPC-T and hence it was a brown field project. TPC-T had claimed that it has incurred Rs.135.44 Crores, till 31 May, 2019 towards procurement of land parcel, surveys, statutory approvals, design,

engineering, and other developmental charges for Vikhroli project as a predevelopment expense for 400kV Vikhroli Project.

- 3.3. MSETCL/STU, being Bid Process Coordinator for 400kV Vikhroli TBCB (**BPC**) and to bring a clarity on the recovery of predevelopment expenditure incurred by TPC-T before issuance of the Request for Proposal (**RFP**), vide letter dated 19 June, 2019 requested the Commission to direct TPC-T to claim the expenditure incurred on Vikhroli Project in Aggregate Revenue Requirement (**ARR**) of TPC-T's regulated transmission business. MSETCL also requested to ask TPC-T to furnish the information and No Objection Certificate (**NOC**) sought by MSETCL in respect of Vikhroli project as RFP document for the Project under TBCB was to be issued to the Bidders on 22 June 2019.
- 3.4. In order to comply with provisions of RFP Documents for Vikhroli Project under TBCB and to bring the clarity on the issue before issuance of RFP, the Commission vide letter dated 20 June, 2019 directed MSETCL and TPC-T that the pre-development expenses incurred by TPC-T amounting to Rs. 135.44 Crores will be paid by the successful bidder to Special Purpose Vehicle (**SPV**) [i.e., KVTPL] set up for 400kV Vikhroli Project, which in turn would be reimbursed to TPC-T. Further, it was directed that any deviation from the said pre-development expenses would be incorporated by TPC-T in its Tariff Petition as part of its regulated business.
- 3.5. Thereafter, for execution of Vikhroli project under TBCB route, MSETCL/STU invited bids under the RFP dated 22 June, 2019 for selecting a Transmission Service Provider (**TSP**) for the Vikhroli Project.

Facts pertaining to the present disputes as submitted in the Petition:

- 3.6. TPC-T had entered into an understanding with Godrej and Boyce Manufacturing Company Limited (**Godrej**) with respect to the land required for construction of 400kV receiving Station at Vikhroli on land admeasuring 9606.21 sq. m. The said land was to be acquired in two parts (Parcel "A" admeasuring 8015 sq. m (**Parcel A**) and Parcel B admeasuring 1591.21 sq. m (**Parcel B**). TPC had deposited Rs. 24.68 Crore - with Godrej for land Parcel A.
- 3.7. On 28 June, 2019 (MoM were issued on 29 June, 2019) a meeting was conducted by MSETCL with the representatives from MSETCL, STU and TPC regarding the transfer of documents, clearances/permissions held by TPC to KVTPL. In the said meeting, the following action points were decided:

Land for Vikhroli Receiving Station (RSS) -No Objection Certificate:(Parcel A and Parcel B)

- TPC-T to provide NOC in the SPV's name for Parcel A and Parcel B of Vikhroli RSS land within 3 days from BPC letter dated 29 June, 2019.
- TPC to obtain permission from Godrej to transfer Parcel A and B land in the name of SPV within 10 days from BPC letter dated 29 June, 2019.

- Expenses related to transfer of approval/clearances/land etc. in favour of SPV will be borne by TPC and are to be claimed in the tariff Petition, as per the Commission's directions vide letter dated 20 June, 2019.

Kharghar Substation Land (CIDCO Land):

- TPC-T to provide NOC in the name of SPV within 3 days from the date of letter.
- TPC-T to enter into modified lease deed with CIDCO for time extension up to September, 2022 within 7 days from BPC letter dated 29 June,2019.
- TPC-T to apply to CIDCO for obtaining NOC for transferring land in favour of SPV within 3 days from BPC letter dated 29 June,2019.
- Expenses related to transfer of approval/clearances/land etc. in favour of SPV will be borne by TPC-T and are to be claimed in the tariff Petition, as per the Commission's directions vide letter dated 20 June, 2019.

Land for Right of Way of transmission line from Kharghar Hill to Vashi Creek (TPC-T existing lines):

- Existing corridor will be utilised (if required) by the successful Bidder for the proposed transmission line.

3.8. Thereafter, TPC-T vide letter dated 5 July,2019 addressed to MSETCL in response to the above MoM dated 29 June, 2019 mentioned that the process of transfer of approvals/ clearances/ land shall take place only after the disposal of the Appeal No. 88 of 2019 pending before the Hon'ble APTEL.

3.9. Hence, another meeting was held on 12 July,2019 in presence of the Secretary (Energy), GoM, CMD (MSETCL), STU, TPC-T, AEML-T etc. wherein previously recorded action points in the MOM dated 29 June, 2019 were revised. Summary of the Action Points is as follows:

Land for Vikhroli RSS-NOC – Parcel A

- TPC to provide NOC in SPV's name for Parcel A of the land with the condition that the NOC is subject to adjudication and outcome of Appeal No. 88 of 2019, within 3 days. Accordingly, TPC-T will also request Godrej to transfer Parcel A of the land in favour of SPV within 3 days. TPC-T to approach the Commission w.r.t the directions issued vide letter dated 20 June, 2019 if it has any issues on expenses related to transfer of approvals/clearances/land, etc can be claimed by TPC-T in its Tariff Petition.

Land for Vikhroli Substation -NOC – Parcel B

- TPC-T to approach the Commission w.r.t the directions issued on 20 June,2019 if it has any issues on expenses related to transfer of approvals/clearances/land, etc can be claimed by TPC-T in its Tariff Petition.

Kharghar AIS Land (CIDCO Land)

- TPC-T to provide NOC in the name of SPV with the condition that NOC is subject to adjudication and outcome of Appeal No. 88 of 2019, within 3 days. Accordingly, TPC-T to submit a request letter to CIDCO for transfer of Kharghar land in the name of SPV within 3 days.
- TPC-T to approach the Commission in respect of the directions issued on 20 June, 2019 if it has any issues on expenses related to transfer of approvals/clearances/land, etc can be claimed by TPC-T in its Tariff Petition.

Land/Right of Way corridor for transmission line from Kharghar Hill to Vashi Creek

- TPC-T to approach the Commission for the directions issued on 20 June, 2019 if it has any issues on expenses related to transfer of approvals/clearances/land, etc can be claimed by TPC-T in its Tariff Petition.

3.10. Thereafter, TPC-T vide its letter dated 22 July, 2019 addressed to the CMD, MSETCL informed that NOC for transfer of land Parcel A and B of the Vikhroli land in the name of SPV was subject to the adjudication and outcome of Appeal No. 88 of 2019. TPC-T further stated that in terms of the Letter of Allotment by Godrej, prior written approval was required from Godrej before making any transfer of land.

3.11. In the meantime, BPC issued clarifications to the queries of Bidders vide its letters dated 19 July, 2019 and 6 August, 2019. One of the queries posed by the bidders was regarding maintenance of corridor from Darave to Vashi creek for which TPC-T has to provide corridor of its existing 110 kV line. The said corridor was to be converted into Multi Circuit (MC) line. BPC has clarified that issue related to maintenance of MC line was to be dealt with by the Commission at the time of adjudicating the Petition for grant of Transmission Licence. The issue of maintenance of MC line is also being raised in the present Petition in order to demonstrate the prejudice/adverse impact of the issue on the implementation of Vikhroli Project by SPV.

3.12. Thereafter, on 14 August, 2019 the Transmission Service Agreement (TSA) was executed between SPV and the Long-Term Transmission Customers (LTTCs). Further, Hon'ble APTEL vide its final Judgement dated 23 September, 2019 in Appeal No. 88 of 2019 rejected TPC-T appeal and directed MSETCL to issue Letter of Intent (LOI) in favour of the successful bidder. After completion of the TBCB process, ATL was declared as a successful bidder and LOI was issued on 12 December, 2019.

3.13. There were issues with respect to the acquisition of land by TPC-T from Godrej. Godrej vide its letter dated 5 December, 2019 addressed to TPC-T stated that on a perusal of TPC-T's letter dated 22 July, 2019 it appears that TPC-T has misconstrued the facts pertaining to the understanding reached between them. Godrej has stated that possession of land was handed over to TPC-T subject to conditions such as deposit of certain amount, TPC-T to secure sanctions, not to transfer the land to other party etc. as per the understanding stated in the letter dated 11 August, 2011. However, even after 8 years appropriate steps were not initiated by TPC-T to acquire the said land from Godrej.

Therefore, in absence of any land acquisition proceedings being initiated Rs. 24,68,65,700/-paid for 9606.21 sq. m. (Parcel-A: 8015 sq. m. and Parcel- B: 1591 sq. m.) remains as a mere deposit with Godrej and the ownership and title to the said land remains exclusively with Godrej. Further, Godrej stated that it is well within its rights to terminate the understanding recorded in its letter dated 30 November, 2011. Godrej however, called upon TPC-T to initiate the land acquisition process within 6 months from date of receipt of the said letter.

- 3.14. ATL thereafter vide its letter dated 14 December, 2019 has requested MSETCL to facilitate the conduct of due diligence of SPV by ATL before it proceeded to acquire it. ATL has also sought the breakup of acquisition price and the bank account details in which the SPV acquisition price was to be transferred. MSETCL vide its letter dated 26 December, 2019 provided the said details.
- 3.15. TPC-T vide its letter dated 26 December, 2019 has requested Godrej for issuance of NOC to facilitate transfer and possession of land to SPV. Godrej issued a letter dated 16 January,2020 in response to TPC-T, whereby Godrej reiterated the position that it had taken in its letter dated 5 December, 2019.
- 3.16. Subsequently, ATL vide its letter dated 6 January,2020 intimated MSETCL that the amount of Rs. 17.21 Crores towards bid processing consulting charges and reimbursement of expenses to MSETCL will be paid by ATL by 6 January,2020 itself. ATL has further stated that it was in the process of making payment of Rs. 135.44 Crores towards pre-development expenses. ATL also sought for MSETCL's indulgence in resolution of issues pertaining to transfer of land, approvals/clearances etc.
- 3.17. Meanwhile, a meeting of representatives from TPC-T, Godrej, ATL and MSETCL was held on 10 January,2020 and MoM were issued on 24 January,2021. At the meeting ATL requested TPC-T to provide all correspondences pertaining to Vikhroli land including NOC from Godrej. Also, the other issues of transfer of the approvals etc were also discussed in the meeting. ATL suggested that it would go through all the documents and then approach TPC-T and Godrej to find a way forward. MSETCL in this meeting emphasized on the critical importance of Vikhroli Project and requested TPC-T and Godrej to resolve their issues at the earliest and transfer the land to ATL so that the Project implementation work can commence.
- 3.18. ATL vide its letter dated 29 January,2020 has requested Godrej to transfer the land and issue its NOC considering that the implementation of the Project had been delayed for over 8 years. Godrej however, stated that the said delay was not attributable to Godrej.
- 3.19. ATL was also requesting TPC-T to provide documents / clarifications with respect to various approvals / clearances. There are multiple exchange of letters between TPC-T, ATL, MSETCL etc such as 29 January, 2020, 4 February, 2020, 5 February, 2020, 11 February, 2020, and 26 February, 2020. Also, TPC-T replied to ATL stating that it had already shared all the information of Vikhroli project as requested by MSETCL as part of the bidding process. TPC also stated that issuance of LOI to ATL after the submission of bids by bidders itself shows that the documents/disclosures/information provided by TPC were sufficient.

- 3.20. Thereafter, a meeting was held on 15 February, 2020 (MoM issued on 20 February, 2020) by MSETCL in presence of the CMD (MSETCL), ATL, TPC-T and Godrej in order to resolve the issues related to the transfer of land, documents, clearances /approvals to SPV from TPC-T. The issues regarding transfer of land at Vikhroli i.e., Parcel B was discussed in the said meeting. TPC-T stated that although Godrej has disputed the ownership of the Parcel B (the matter being sub judice), TPC-T stated that land Parcel B is in possession of TPC-T and it owns the same. TPC-T stated that land Parcel B could be transferred to SPV upon issuance of NOC by Godrej and upon receipt of the predevelopment expenses of Rs.135.44 Crores, and an additional payment for the said parcel of land. TPC-T also demanded for either upfront payment for land Parcel B or an assurance that the said amount will be considered in its ARR Petition before transfer of the possession of land to SPV. ATL in the said discussions, expressed its willingness to pay the predevelopment expenses in due receipt of the NOC to transfer the land, clearance/approvals, and documents in favour of the SPV. MSETCL in this regard, has stated that additional payment towards land Parcel B be claimed by TPC-T in its ARR Petition.
- 3.21. ATL thereafter vide its letter dated 15 February, 2020 requested MSETCL for extension of the bid validity up to 31 March, 2020 as land issues are yet to resolved, which was accepted by MSETCL vide its letter dated 17 February, 2020.
- 3.22. Thereafter, ATL vide its letter dated 25 February, 2020 intimated to MSETCL that TPC-T in the meeting held on 15 February, 2020 has stated that it has made an application before the Commission for approval of additional expenses of Rs. 52 Crore towards compensation for transfer of Vikhroli land parcel i.e., Parcel B, RoW Compensation, GST impact, etc. However, as per the Commission's directions, vide letter dated 20 June, 2019, any deviation in predevelopment expenses are to be claimed by TPC-T in its tariff Petition as part of regulated business. However, contravention to the Commission's direction, TPC-T sought MSETCL / successful bidder of the project to pay the said expenses as well as the predevelopment expenses of Rs. 135.44 Crores. TPC-T's claim is therefore in contravention of the Commission's directions vide letter dated 20 June, 2019.
- 3.23. The CMD, MSETCL vide its letter dated 27 February 2020 addressed to the Chairman Godrej had requested for early resolution of land transfer issues. ATL vide its letter dated 13 March, 2020 also requested TPC-T for early resolution of land transfer issues.
- 3.24. Further, ATL vide its letter dated 30 March, 2020 has sought extension of bid validity from MSETCL on account of Covid-19 pandemic leading to the nation-wide lockdown. ATL requested MSETCL to complete the formalities for acquisition of SPV as well. MSETCL accepted ATL's request vide its letter dated 31 March, 2020 stating that considering the delay in compliance of activities in terms of Clause 2.4 of the RFP and granted the extension up to 31 May, 2020.
- 3.25. On 30 March, 2020, the Commission has issued MYT Order in TPC-T's Case No. 299 of 2019.

- 3.26. ATL once again vide its letter dated 8 April, 2020 requested MSETCL to expedite the transfer of SPV. ATL stated that TPC-T in contravention of the Commission's directions vide letter dated 20 June,2019 has sought intervention of MERC to direct MSETCL/successful bidder of the project for payment of additional amount of Rs. 52 Crore towards compensation of transfer of Vikhroli land Parcel B and other expenses over and above the predevelopment expenses. ATL has also stated that it was ready to make the payment of additional claim of Rs. 71.70 Crores (for transfer of ownership of land Parcel A as asked by Godrej over and above the amount paid by TPC-T). ATL will claim it as a change in law, despite not being liable to pay the same, to secure the transfer of Vikhroli land parcels.
- 3.27. MSETCL vide its letters dated 14 April,2020, in response to ATL's letter dated 8 April, 2020, intimated to ATL that payment of the balance amount of Rs.135.44 Crores be made to SPV account and after verification by STU, the said amount will be reimbursed to TPC-T. In reply, ATL vide its letter dated 20 April, 2020 has confirmed to MSETCL that it had no issues for payment of Rs. 135.44 Crores towards acquisition of SPV pending verification of claimed amount in accordance with the MYT Order dated 30 March, 2020. ATL also sought for MSETCL's indulgence regarding the payment of Rs. 71.70 Crores to SPV for payment to Godrej. ATL reiterated that without the sub-station land, the acquisition could not be completed.
- 3.28. MSETCL vide its letter dated 20 April, 2020 requested TPC-T to submit certain documents related to pre-development expenses such as documentary support for payment made, Auditor certificate, expenses capitalised etc for validation of pre-development expenses in terms of the Commission's MYT Order dated 30 March,2020.
- 3.29. MSETCL vide its letter dated 21 April, 2020 informed ATL that it has sought details from TPC-T in terms of the Commission's Order dated 30 March,2020. Further, MSETCL stated that the issue of payment of Rs. 71.70 Crores by ATL and applicability of Change in Law was being examined for necessary action.
- 3.30. ATL vide its letter dated 29 May,2020 intimated to MSETCL about the completion of transfer of funds of Rs.135 Cr for acquisition of KVTPL. Also, ATL has sought for an extension of bid validity from MSETCL due to Covid-19. MSETCL vide its letter dated 30 May, 2020 extended the bid validity up to 10 July, 2020.
- 3.31. MSETCL vide its letter dated 11 June, 2020 intimated to ATL that the issue of payment of Rs. 71.70 Crores (for Land Parcel A) was referred to the Empowered Committee (EC). The EC concluded that ATL may approach the Commission as per the provisions of the TSA for the payment of Rs. 71.70 Crores as a Change in Law. However, ATL was able to acquire the SPV only after executing the Share Purchase Agreement with MSETCL, KVTPL on 25 June, 2020. Thereafter, KVTPL filed Applications for Grant of Transmission Licence and Adoption of Tariff before the Commission on 9 July, 2020.
- 3.32. On 13 July, 2020, ATL issued a letter to TPC-T stating that Godrej has agreed to issue its NOC for the transfer of Vikhroli land parcels.

- 3.33. Thereafter, TPC-T issued a letter dated 14 July, 2020 to ATL stating that Godrej's NOC is one of the conditions as referred in TPC-T's letter dated 22 July, 2019 and that it had clearly mentioned other conditions in their letters dated 05 July, 2019, 02 August, 2019, MOM dated 10 January, 2020 and 27 January, 2020 to MSETCL, for transfer of Vikhroli land to KVTPL. Moreover, as per the Commission's directions, the pre-development expenditure of Rs 135.44 Crores (computed till 31.05.2019) and an additional claim of Rs. 52.2 Crores which inter alia includes the cost for transfer of land Parcel B is to be validated by MSETCL. Considering this, TPC-T submitted all the documents to MSETCL for validation and awaiting further development in this regard.
- 3.34. In response to the above, ATL issued a letter dated 17 July, 2020 to TPC-T intimating that all issues pertaining to transfer of Vikhroli land parcel to KVTPL are resolved and therefore ATL requested TPC-T to coordinate with Godrej for transfer the land parcel, provide NOCs, documents, information, possession of land parcel etc.
- 3.35. Thereafter, MSETCL issued a letter dated 22 July, 2020 to ATL stating that part of the acquisition price Rs. 135.44 Crore is to be reimbursed to TPC-T after due verification and validation by STU as per the Commission's directions. Once the verification and validation of the amount to be transferred to TPC-T is completed by STU, modalities of reimbursing the amount to TPC-T will be worked out with due consideration. MSETCL requested ATL to proceed with the execution of the project as the SPV has already been transferred to ATL.
- 3.36. ATL issued a letter dated 25 July, 2020 to MSETCL stating that the transfer of Rs. 135.44 Crore towards acquisition price and resolution of key issues pertaining to land transfer were the bottlenecks in starting the execution of Project. ATL thus requested MSETCL to coordinate with TPC-T to expedite the resolution of the key issues as mentioned including the matter of transfer of possession of land. ATL emphasised that without possession of land and NOC for clearances, it was impossible to proceed with the development & construction of the project.
- 3.37. On 26 August, 2020, Godrej handed over the NOC to transfer and assignment of TPC-T's rights and interest in favour of KVTPL as and when KVTPL procures such transfer and assignment from TPC-T.
- 3.38. The Commission issued a letter dated 14 September, 2020 to MSETCL regarding transfer of pre-development expenses payable to the TPC-T whereby the Commission approved an amount of Rs. 118.27 Crores towards pre-development expenses against Rs. 135.44 Crores. Further, it was informed by way of the said letter that TPC-T may consider its additional claim of Rs. 52.20 Crore as a deviation against pre-development expenses towards land cost w.r.t land Parcel B, RoW compensation, GST impact, short closure of contracts, etc., as a part of its regulated business in its next ARR Petition. Additionally, MSETCL was directed to prepare a methodology for transfer of the validated pre-development expenses to TPC-T within fifteen days and transfer the amount of Rs. 118.27 Crore to TPC-T, under intimation to the Commission and directed TPC-T to ensure that possession of land is given forthwith along with handing over all requisite documents/permissions etc. to KVTPL. The Commission's letter shows that categorical directions have been issued to TPC-T to claim the sum of Rs. 52

Crores towards land cost (for Parcel B), RoW Compensation, GST impact, etc., in its next ARR Petition as regulated business.

- 3.39. Thereafter, ATL vide its letter dated 15 September, 2020 requested MSETCL to facilitate the transfer of Rs. 135.44 Crores (Rs. 118.27 Crores as approved by the Commission) and hand over both the land parcels, NOCs and balance documents pertaining to the Vikhroli Project from TPC-T to KVTPL. ATL also requested for a joint meeting along with TPC-T to finalize the modalities of transfer.
- 3.40. Accordingly, a meeting was conducted by MSETCL on 21 September, 2020 in presence of representatives from MSETCL, ATL and TPC-T. The methodology to transfer the predevelopment expenses were discussed. Further, MSETCL directed TPC-T to cooperate for transfer of Kharghar & Vikhroli land and all the NOCs for clearances, permits and project related documents to KVTPL immediately for timely completion of project.
- 3.41. ATL intimated to the Commission vide its letter dated 26 September, 2020 that the project work cannot be started without transfer of both the land parcels (Parcels A and B) at Vikhroli. Several critical project activities such as land survey, land development, soil investigation, finalization of overall layout, detailed engineering, site execution etc can only be initiated once both the land parcels are transferred to KVTPL. Therefore, ATL requested the Commission that the transfer of pre-development expenses to TPC-T be done only after TPC-T has transferred the possession of both land parcels (A and B) at Vikhroli and Kharghar to KVTPL and deposited documents with MSETCL.
- 3.42. On 3 October, 2020, the Commission issued a letter to MSETCL, TPC-T and ATL regarding Transfer of pre-development expenses payable to the TPC-T and directed MSETCL to transfer the validated amount of Rs. 118.27 Crore to TPC-T as approved by the Commission based on STU's validation report. It also directed TPC-T to ensure that the possession of the complete land is given forthwith along with handing over of all the requisite documents/permissions etc to KVTPL.
- 3.43. Despite the aforesaid categorical directions of the Commission, issues with respect to the transfer of land specifically Parcel B of the Vikhroli land, and Right of Way in the Darave-Vashi corridor (**ROW**) and unlawful/unreasonable conditions in the CIDCO lease Transfer Application for Kharghar Land were still persisting. TPC-T continued to place onerous, illegal, and arbitrary conditions on the transfer of the land in the said area, risking the fate of the Project.
- 3.44. On 5 October, 2020, TPC-T issued a letter to KVTPL clarifying its position on the issues of transfer of land Parcel B and ROW of the Darave-Vashi corridor. TPC-T in its letter stated that Parcel B of the land required for construction of the 400 kV receiving station is owned by it and is lying below its existing transmission lines. The consideration amount for the said land amounting to Rs. 20.5 Crores was required to be paid by the SPV through a suitable lease agreement. TPC-T's such a stand is in complete contravention of the directions issued by the Commission with respect to the transfer of land. TPC-T clarified here that it would hand over Parcel A of the land. With respect to

ROW in the Darave-Vashi corridor, TPC-T submitted that the said ROW was to be shared by TPC-T and ATL upon payment of Rs. 13.45 Crore as compensation.

- 3.45. On 5 October, 2020 itself, ATL issued an email to TPC-T requesting for the transfer of complete parcels of land as required by KVTPL. In the said email, ATL emphasized on the compliance with the directions of the Commission and requested TPC-T to transfer the land in adherence of the said directions. It was clarified that ATL has already transferred the amount of Rs. 135 Crs to KVTPL and is available with MSETCL.
- 3.46. Thereafter, TPC-T vide its letter dated 7 October, 2020 informed the Commission that it has no objection with respect to handing over the possession of complete land and this has been communicated at various forums. A request was made by TPC-T to arrange to confirm said understanding to facilitate the handing over of the complete land to ATL.
- 3.47. On 10 October, 2020, ATL issued a letter to TPC-T whereby ATL reiterated that the Commission has already directed in its letters dated 20 June, 2019 and 14 September, 2020 that TPC-T may consider its additional claim towards land cost for Parcel B, RoW compensation, GST impact, short closure of contracts, etc., as a part of its regulated business in its next ARR Petition, as a deviation against pre-development expenses. It may be appreciated that this flexibility / dispensation is not available to KVTPL, since the Project is now being developed under the TBCB mechanism. Further, the project work cannot be started without transfer of complete land parcels and NOC for transfer of all the project approvals/applications.
- 3.48. On 3 November, 2020, a meeting was held by Principal Secretary (Energy), GoM to discuss the handing of the land Parcel B, which was still pending on account of TPC-T, in spite of the Hon'ble Chief Minister's directives, vide meeting held on 16 October, 2020. It was decided in the meeting that advance possession of Parcel B shall be given by TPC-T and the same shall be taken over by KVTPL immediately by signing necessary documents without prejudice to the rights of either party.
- 3.49. ATL sought intervention of MSETCL vide its letter dated 13 November, 2020 on the following key issues in the ROW Agreement of the Project:
- i. TPC-T's Unilateral right to revoke access to ROW.
 - ii. Multiple statutory and construction related compliance, and
 - iii. Stamp duty and other charges related to transaction.
- 3.50. ATL vide its letter dated 20 November, 2020 addressed its concerns to the Commission. ATL stated that even when TPC-T has been directed by the Commission to handover the complete land parcels procured for the project by TPC-T to SPV, TPC-T has failed till date to handover the land Parcel B at Vikhroli and RoW of Darave – Vashi corridor to the SPV.
- 3.51. On 25 November, 2020 (MoM issued on 10 December, 2020) a meeting was conducted by the CMD MSETCL with TPC-T and ATL regarding the issues involved for timely

completion of 400 KV Vikhroli TBCB project by KVTPL. In the said meeting the following action points were arrived upon after detailed discussions:

Issue No. 1 - Land Parcel B at Vikhroli:

- MSETCL directed TPC-T to give advance possession of land Parcel B (balance land) i.e. 1591.03 sq. m. and KVTPL shall take over advance possession immediately without prejudice to the right of TPC-T.
- TPC-T shall approach the Commission subsequently citing the prayer that whether the said transfer of land is by ownership or on lease basis, as per the MOM dated 03 November, 2020, held with PS (Energy), GoM.

Issue No. 2 – Right of Way of Corridor between Darave and Vashi

- MSETCL concluded that ROW is the issue between two transmission licensees KVTPL and TPC-T. These issues should be settled amicably by both the transmission companies.

3.52. In response to the above letter, TPC-T vide its letter dated 30 November, 2020 addressed to the Commission, has made several incorrect submissions. With respect to land Parcel B, TPC-T has stated that it owns the same land and ATL will have to enter into a lease agreement with TPC-T for its transfer, in contravention of the directions of the Commission. TPC-T wrongly alleges that the same was acknowledged by the BPC as well and that the said stipulation to enter into a lease agreement was envisaged at the beginning itself. With respect to ROW in the Darave-Vashi corridor, TPC-T has stated in its letter that since the said route is also common to TPC-T's existing 110 kV transmission lines, the stipulations being placed by TPC-T are necessary. TPC-T also stated that it is placing such conditions for its own safety.

3.53. In response to TPC-T's letter dated 30 November, 2020, ATL issued another letter dated 18 December, 2020, whereby ATL laid emphasis on the fact that TPC-T is acting above and beyond the specific directions of the Commission and is using illegal, onerous, and arbitrary conditions placed by it to delay the execution of the Project.

4. Main Grounds for filing the Petition are as follows:

- A) Issues with Respect to Transfer of Land Parcel B at Vikhroli:
- B) Illegal Terms and Conditions being placed by TPC with respect to the Right of Way ("RoW") for the Darave-Vashi corridor:
- C) Clarification with Respect to Maintenance of Multi Circuit (MC) Towers to be taken up by the Petitioners:
- D) Unlawful/Unreasonable Conditions in CIDCO Lease Transfer Application for Kharghar Land:

5. TPC-T and STU have filed their responses to the Petition. Petitioners have also filed their Rejoinder to reply filed by TPC-T and STU. These submissions have been taken on record and discussed issue-wise in subsequent Paragraphs.

6. At the e- hearing through video conferencing held on 6 April, 2021:

6.1 Advocate for Petitioners reiterated its submission as made out in the Petition and rejoinder and stated that:

- i. Any Licensee normally does not like to initiate proceedings under Sections 142 and 146 of EA against other Licensee. The Petitioners held various meetings and follow up with TPC-T to resolve the issue. However, TPC-T failed to comply with the Orders of the Commission and since there was no other efficacious remedy available therefore the present Petition has been filed for appropriate directions to TPC-T.
- ii. In spite of the repetitive directives of the Commission, TPC-T has not transferred the land Parcel B at Vikhroli which is essential for execution of Vikhroli project. Darave-Vashi is feasible route for construction of Kharghar - Vikhroli Line. However, TPC-T is placing onerous and illegal terms and conditions for transfer of RoW of the said corridor such as unilateral revocation of ATL's access, multiple statutory and construction related compliance etc. which is causing hindrance in execution of the scheme. TPC-T is also asking the Petitioners for the payment of RoW compensation, land cost, stamp duty, land transfer charges etc. These expenses are part of the pre-development expenses and need to be recovered by TPC-T from its regulatory business in next Tariff Petition as directed by the Commission vide letter dated 20 June, 2019.

6.2 Advocate for TPC-T reiterated its submission as made out in the reply and stated that:

- i. The Petition is liable to be dismissed as it has failed to establish the non-compliance of the Commission's Orders.
- ii. The land Parcel B at Vikhroli was always envisaged to be transferred under lease and TPC-T has offered it since inception on lease. The Commission in its Orders/letters never asked to transfer the title and ownership of the said plot. Hence, Petitioners claim of ownership of the Plot B is belated and not tenable. Also, TPC-T has not put any onerous condition in the land lease as well as ROW lease agreement as alleged by the Petitioners.
- iii. TPC-T also confirmed that it has given the advance possession of land Parcel B to KVTPL without prejudice to the right of TPC-T. The land Parcel B at Vikhroli is owned by TPC-T.
- iv. If at all the Commission wishes to transfer the title and ownership of the land Parcel B in favour of KVTPL then procedure as per Section 17 of the EA need to be followed to transfer the land title and ownership of said land. Also, TPC-T needs to be compensated as the land is owned by it. Further, such

compensation amount shall not be recovered by KVTPL from the LTTCs otherwise it will defeat the purpose of the TBCB process.

- 6.3 The representative of STU stated that it has filed the written submission and had nothing to add to it.
- 6.4 The Commission enquired as to whether STU has setup a credible mechanism for continuous monitoring of the Vikhroli project to ensure that the project remains on track to avoid any further delay as directed by the Commission vide its Order dated 29 January 2019 in Case No.3 of 2019. The representative of STU replied that MSETCL is yet to set up such mechanism.
- 6.5 Advocate for Petitioners in the rejoinder stated that KVTPL got the advance possession of the land Parcel B only after the Commission's Order dated 23 January, 2021 in Case No. 141 of 2020.
- 6.6 At the hearing as per the request of Petitioners and TPC-T, the Commission granted two weeks' time to file the written submission.
7. In accordance with e-hearing held on 6 April 2021, TPC-T and Petitioners filed their respective written submissions. The Commission notes that the Parties in the present Petition i.e., KVTPL/ATL, TPC-T and STU, have made multiple submissions in the form of Petition, Reply to the Petition, Rejoinders, Written Submissions etc. Also, multiple issues have been raised by the Parties along with numerous correspondences in order to support/object the Petition. Hence, for the sake of brevity, the Commission has undertaken an issue-wise analysis and rulings which are elaborated in the subsequent paragraphs of this Order.
8. The Commission has taken on record the following submissions of the Parties:

Sr No.	Party	Details of submission
1	TPC-T	a. Reply dated 24 February 2021. b. Written submissions dated 15 April 2021.
2	STU	a. Reply dated 19 March 2021.
3	KVTPL/ATL	a. Rejoinder dated 3 April 2021. b. Written submissions dated 26 April 2021.

9. The Commission further notes that there are numerous exchanges of correspondences between MSETCL (BPC), STU, KVTPL/ATL and TPC-T on the various issues since the inception of Vikhroli project. Also, there are multiple letters/submissions by TPC-T, ATL, KVTPL, CIDCO, Godrej etc. Hence, for ease of understanding of the various communications and their linkage, chronology of the events is summarised in the Table below:

Date	Description of Events
20.5.1938	Vikhroli Land Plot-B was acquired by TPC-T upon payment of market rates from the Governor of Bombay <i>vide</i> a registered conveyance deed.

Date	Description of Events
November, 2010	Mumbai faced two grid disturbances that impacted power supply of the Mumbai Metropolitan Region (MMR). The Commission setup Khaparde Committee to review the position of the exiting power supply and suggest a plan to provide adequate capacity to cater the projected future load demands of MMR, both in terms of generation and transmission infrastructure.
6 .4.2011	A parcel of land admeasuring 8015.12 Sq. M. (“ Plot-A ”) located at Vikhroli was sold by Godrej to TPC-T against a consideration of Rs. 24.68 Crore. The possession was taken by TPC-T on 31 October, 2011.
June, 2011	A Standing Committee was constituted by the Commission to review the situation and to suggest remedial measures to overcome the existing transmission bottlenecks of MMR.
2 .6.2011	DPR of TPC-T for the 400 kV Vikhroli project was approved by the Commission. The initial date for completion of the Project was March, 2015.
14 .8. 2014	The Commission granted TPC-T Transmission License for various existing and proposed transmission assets including the Vikhroli Project in Case No. 112 of 2014. The license granted to TPC-T included the lines and bays along with the related infrastructure.
27.12.2017	TPC-T filed MTR Petition in Case No. 204 of 2017 for the 3 rd MYT control period.
12.09.2018	The Commission passed an Order in Case No. 204 of 2017 with the direction in respect of Vikhroli project and deemed closed Vikhroli project. The Commission also directed STU to submit its report to the Commission on review of TPC-T’s proposed 400 kV Vikhroli Receiving Station within a month.
31.10.2018	TPC-T filed Appeal No. 88 of 2019 against the Order dated 12.09.2018 before the Hon’ble APTEL. In its Appeal, there were several issues on tariff related matter other than deemed closure of Vikhroli Project.
02.01.2019	TPC-T filed Case No. 03 of 2019 before the Commission seeking review of MTR Order dated 12.09.2018. The prayer therein was limited to a withdrawal of the direction of deemed closure and grant of permission to TPC-T to continue and execute the Vikhroli Project.
29.01.2019	The Commission dismissed Case No. 03 of 2019, rejected the prayer of TPC-T. The Commission also directed STU to submit its recommendations regarding execution of the 400 kV Vikhroli Transmission Project under TBCB as per GoM’s Resolution dated 04 January 2019. STU was also directed to setup a credible mechanism for continuous monitoring of the project to ensure that the project remains on track to avoid any further delay.
February, 2019	I.A. No. 372 / 2019 in Appeal No. 88 of 2019 was filed by TPC-T bringing the issue of deemed closure to the attention of the Hon’ble

Date	Description of Events
	Tribunal in the said Appeal. The issue was thus made part of the Appeal.
15.06.2019	TPC-T informed that in order to develop the Project, TPC-T had incurred Rs. 135.44 Crore till 31.05.2019 towards procurement of land parcels, surveys, statutory approvals, design, engineering, and other developmental charges etc. The documents for the Project would be given by TPC-T to SPV upon payment of such expense.
20.06.2019	<p>The Commission issued a letter to MSETCL and TPC-T informing that:</p> <p>(a) In the RFP to be issued by for the Project, the bidders are to be informed that the predevelopment expenses incurred by TPC-T 135.44 Crore will have to be paid by the successful bidder to SPV, which is turn would pay to TPC-T.</p> <p>(b) Any deviation in this expense on account of transfer of approval/clearances/land etc. in favour of the SPV shall be claimed by TPC-T in its upcoming tariff petition.</p> <p>(c) TPC-T would provide its NOC for transfer of the land required for the Project. It was understood that this would be contingent on payment of the expenses incurred on pre-development.</p>
22.06.2019	MSETCL, as BPC, invited bids for the Project under RfP with various provisions such as payment of acquisition price within a period of 10 days of the issuance of the LOI., Pre-bid clarifications, bidders to conduct their independent due diligence before bidding etc.
28.06.2019 MoM dated 29.06.2019	Meeting held between CMD, MSETCL and TPC-T regarding the transfer of documents, clearance, and permissions by TPC-T to the proposed SPV for the Project. MoM of the meeting dated 28 June,2019 were issued on 29 June, 2019. The action points on the issues, RoW, were decided.
05.07.2019	<p>TPC-T informed MSETCL that it is in-principle agreeable to transfer of land subject to :</p> <p>(a) Transfer of Plot-B would be through a lease agreement for 35 years at the then current annual rent of Rs. 3.08 Cr, with revision every five years. This was later modified to a onetime deposit of Rs. 20.5 Cr. for simplicity. TPC-T had requested the STU to communicate both of these aspects to the prospective bidders before they made a bid.</p> <p>(b) To use the land owned by TPC-T below its transmission lines between Nerul and Vashi Creek, a ROW agreement would have to be entered into with TPC-T. Ownership of the land would remain with TPC-T with rights to further develop the land. TPC need to compensate as per the GoM GR dated 31 May,2017.</p>
12.07.2019	Meeting was held in presence of Energy Secretary, CMD MSETCL, STU and TPC-T. It was decided that TPC-T will approach the Commission in respect of the directions issued on 20 June, 2019 if it has any issues on expenses related to transfer of

Date	Description of Events
	approvals/clearances/land, etc which can be claimed by TPC in its Tariff Petition.
19.07.2019 and 06.08.2019	<p>BPC, issued pre-bid clarifications to queries raised by the Bidders regarding the transfer of land, clearances and permissions from Statutory Authorities, utilisation of existing RoW, issue of maintenance of MC towers etc. as follows(Annexure-1 to the replies to queries on RFP) :</p> <p>a) Route of proposed lines: BPC has clarified that the proposed route of the line was indicative, and TSP was free to choose any other suitable route.</p> <p>b) Maintenance of MC line : Issue related to maintenance of MC tower to be taken up by TSP with the Commission while applying for Transmission License.</p> <p>c) Utilisation of existing lines: The matter was already taken up with the owner of existing line(TPC-T). Subsequent to acquisition of SPV by Successful Bidder, it will be the responsibility of SPV to obtain necessary undertakings/ confirmations.</p> <p>d) Land issue : BPC has clarified that a meeting was convened with TPC on 28 June,2019. MoM were issued on 29 June,2019. The TPC replied to the said Minutes vide its letter dated 5 July,2019 (land at Vikhroli plot B will be on lease for 35 years). Also, another meeting was held on 12 July,2019 and MoM issues on 16 July,2019. (MoM record the TPC-T's submission that land at Vikhroli plot B will be on lease for 35 years). Further it was decided that TPC-T to approach the Commission in respect of the directions issued on 20 June,2019 if it has any issues on expenses related to transfer of approvals/clearances/land, etc can be claimed by TPC-T in its Tariff Petition).</p> <p>Note: BPC in its clarification has given references of MoMs and TPC-T's letter.</p>
22.07.2019	TPC-T issued a letter to MSETCL informing that it had no objection to transfer of Plot-A and Plot-B to SPV subject to the outcome of Appeal No. 88 of 2019 filed before the Hon'ble ATE. It was further informed that the written approval of Godrej would be required before such transfer could be made.
02.08.2019	TPC-T issued a letter to MSETCL intimating inter alia that Plot-B would be leased on payment of a one-time deposit of Rs. 20.5 Crores. This was essentially a reiteration of TPC-T's letter dated 5.07.2019.
14.08.2019	KVTPL, MSETCL, MSEDCL, AEML-D, Tata Power-D, inter alia, entered into a TSA for the Project.
21.8.2019	Last date of submission of Bids

Date	Description of Events
29.08.2019	A reverse auction was held wherein ATL emerged as the successful bidder for the Project.
23.09.2019	The Hon'ble ATE dismissed TPC-T's Appeal No. 88 of 2019 and upheld the Commission's Orders .
12.12.2019	A LoI was issued to ATL upon emerging as the successful bidder for the Project. ATL was also requested to inter alia comply with the terms of the RfP, including Clause 2.4, 2.5 and 2.6 within the timeline prescribed therein.
23.12.2019	MSETCL asked TPC-T to submit the original project documents and bank account details for transfer of the pre-development expenses.
26.12.2019	In response to ATL's letter dated 14.12.19, MSETCL issued a letter to ATL reiterating the terms determined by the Commission <i>vide</i> letter dated 20.06.2019 on which the Project is to be undertaken,
26.12.2019	<p>TPC-T issued a letter to Godrej stating:</p> <p>(a) Plot-A had been acquired from Godrej against a consideration. Although TPC-T remained in possession of the plot since 31.10.2011, various formalities and a litigation in the Bombay HC was pending, which had delayed acquisition.</p> <p>(b) Plot-B had been acquired under a duly registered conveyance deed from the Governor of Bombay.</p> <p>(c) The Vikhroli Project, which required both plots, is to be executed by KVTPL as a result of the TBCB process.</p> <p>(d) MSETCL has asked TPC-T to submit all original documents pertaining to the Project. Thus, Godrej was requested to issue an NOC to facilitate the transfer of Plot-A to KVTPL.</p>
06.01.2020	ATL issued a letter to MSETCL stating, <i>inter alia</i> would pay the bid processing charges on the same day and is in the process of paying the pre-development expenses.
10.01.2020	<p>A meeting was held between MSETCL (STU and BPC), ATL, TPC-T and Godrej pursuant to ATL's letter dated 6.01.2020. In the meeting, the following was resolved, <i>inter alia</i>:</p> <p>(a) Parties explore the possibility of providing NOC for the two plots so that the Project could be undertaken swiftly.</p> <p>(b) MSETCL, as BPC, will provide the original copies of all approvals etc. already provided by TPC-T.</p>

Date	Description of Events
29.01.2020 and 31.01.2020	Pursuant to the meeting of 10.01.2020, ATL issued a letter to Godrej requested for transfer of Plot-A on an <i>as-is</i> basis while resolution of the issue of ownership of Plot-B and other related issues is arrived at.
29.01.2020	ATL issued a letter to TPC-T requesting for further documents relating to the Project as part of its “due diligence”.
31.01.2020	Godrej rejected ATL’s proposal of handing over Plot-A on an <i>as-is</i> basis given the delay in land acquisition, while keeping the door open for any other reasonable proposal.
04.02.2020	ATL issued letter to TPC-T requesting for documents pertaining to CRZ clearance of the Project.
5.2.2020	<p>In response to ATL’s letters, TPC-T issued a letter stating:</p> <p>(a) In terms of the RFP, ATL ought to pay the pre-development expenses since the LoI was issued on 12.12.2019. This has not happened.</p> <p>(b) All statutory approvals, records etc., has been shared with MSETCL on 21.06.2019.</p> <p>(c) Requests for NOC for transfer of the plots for the Project (Vikhroli and CIDCO) from Godrej and CIDCO had been met <i>vide</i> letter dated 22.07.2019.</p> <p>(d) TPC-T had taken all prospective bidders to Kharghar, Vikhroli and the transmission line route on 25.07.2019 for familiarization with the complexities of the Project as per request of MSETCL.</p> <p>(e) TPC-T had informed bidders that the Project would likely involve transfer of TPC-T’s own land at Vikhroli, i.e., Plot-B, and ROW at Navi Mumbai. This was shared <i>vide</i> letter dated 02.08.2019.</p>
11.02.2020	ATL issued another letter to TPC-T stating that it had paid the bid processing charges and reimbursed MSETCL its expenses. It was now in the process of clearing the pre-development expenses subject to transfer of title of Plot-A and B, execution of modified lease deed for Kharghar land etc.
15.02.2020	<p>A meeting was held between the CMD MSETCL, TPC-T and ATL, Godrej . The suggestions recorded were as follows:</p> <p>(a) MSETCL suggested that cost of Plot-B be recovered by TPC-T in its upcoming ARR.</p> <p>(b) For Plot-A, MSETCL shall write to Godrej requesting an early NOC.</p>

Date	Description of Events
	(c) ATL agreed to pay the pre-development expenses upon the suggestion of MSETCL.
15.02.2020 and	ATL requested MSETCL for an extension of the bid validity period up to 31.03.2020. This was accepted by MSETCL on 17.02.2020.
26.02.2020	TPC-T responded to ATL's letter of 11.02.2020 denying that it had not precipitated any positive steps in the transfer of land for the Project. TPC-T has shared all documents and disclosures. The RfP was issued on the basis such documents. ATL was required to conduct its due diligence prior to making a bid.
27.02.2020	The CMD MSETCL wrote to the Chairman Godrej requesting for a resolution in the transfer of Plot-A to KVTPL.
13.03.2020	ATL issued a letter to TPC-T for the early resolution of land transfer issues. ATL also stated that TPC-T is yet to revert on its agreement on ATL paying the pre-development expenses pursuant to the meeting held on 15.02.2020 etc. and need to resolve earlier.
30.03.2020	ATL requested MSETCL for an extension of the bid validity period up to 31.05.2020. This was accepted by MSETCL on 31.03.2020.
30.03.2020	The Commission passed its Order in TPC-T's MYT Petition being Case No. 299 of 2019 wherein the Commission has observed that TPC-T's additional claim of Rs. 52.20 Crore towards pre-development expenses was a mere estimate and was premature to evaluate. Therefore, the Commission has not considered any impact of pre-development expenditure of Rs 135.55 Crore as well as additional claim of Rs.52.20 Crore in MYT Order.
08.04.2020	ATL once again vide its letter dated 8 April, 2020 requested MSETCL to expedite the transfer of SPV
14.04.2020	In response to ATL's letter dated 08.04.2020, MSETCL issued a letter stating that in terms of Clause 2.4 of the RFP and the meeting held on 15.02.2020, ATL is required to clear the pre-development expenses in order to facilitate transfer to the SPV (KVTPL) from ATL.
20.04.2020	ATL issued another letter to MSETCL stating that it has no problem in paying the pre-development expenses subject to MSETCL confirming that it will verify the expense in terms of the Commission's Order passed on 30.03.2020. Consent of MSETCL was requested for paying Godrej an additional cost for Plot-A and clearing the pre-development expenses.

Date	Description of Events
20.04.2020	Pursuant to the Order dated 30.03.2020, MSETCL wrote to TPC-T seeking the documents for verification of the pre-development expenses.
29.05.2020	ATL issued a letter to MSETCL informing that it had paid the pre-development expenses of Rs. 135 Cr. On the same day, another letter was issued requesting for an extension of the bid validity, which was accepted by MSETCL by granting extension till 10.07.2020.
11.06.2020	MSETCL wrote to ATL informing that the Empowered Committee had resolved that having paid the pre-development expenses, ATL shall approach the Commission for resolution of the other two issues, i.e., payment of additional cost to Godrej for acquisition of Plot-A and claiming such cost as a Change in Law event.
25.06.2020	Share Purchase Agreement signed between MSETCL, KVTPL and ATL for acquisition of KVTPL by ATL.
9.7.2020	KVTPL filed Applications for Grant of Transmission License and Adoption of Tariff before Commission in Case No. 141 of 2020 and 142 of 2020.
13.07.2020	ATL wrote to TPC-T stating that Godrej has agreed to issue its NOC for transfer of Plot-A and therefore, TPC-T may coordinate such transfer.
17.07.2020	ATL reverted stating that all issues for transfer of the Plot A had been resolved. ATL also requested TPC-T to coordinate with Godrej for transfer of the land parcel.
21.07.2020	In reply, TPC-T stated that the validation of the pre-development expense was vital to the transfer of the Plots since the TPC-T is required to be reimbursed the said expense under the RFP.
22.07.2020	MSETCL informed ATL that to protect the interest of all stakeholders, it had transferred the pre-development expenses paid by ATL from KVTPL's account to that of MSETCL's, pending verification of the said expenses. Once verified, TPC-T shall be reimbursed. In the meanwhile, ATL was requested to go ahead with execution of the Project.
26.08.2020	Godrej handed over its NOC for transfer of Plot-A.
02.09.2020	MSETCL, as STU, submitted its Report on the "Verification & Validation of Pre-Development Expenses for 400 KV Vikhroli Receiving Station as per MERC order". It was explicitly stated therein that the MSETCL, as BPC, had shared its correspondences with TPC-T with the bidders as part of the pre-bid clarifications.

Date	Description of Events
14.09.2020	<p>The Commission issued a letter to MSETCL, inter-alia, stating that:</p> <p>(a) Rs. 118.27 Cr. has been approved as the pre-development expenses of TPC-T.</p> <p>(b) TPC-T's may consider its additional expense of Rs. 52.20 Cr as a deviation against the pre-development expenses and claim it in its next ARR.</p> <p>(c) TPC-T to hand over "possession" of the Plots in Vikhroli to KVTPL for execution of the Project.</p>
15.09.2020	ATL wrote to MSETCL requesting transfer of the pre-development expenses to TPC-T, inter alia, for transfer of the Plots at Vikhroli.
21.09.2020	Meeting held between MSETCL, KVTPL, ATL and TPC-T for adopting a methodology for transfer of the pre-development expenses to TPC-T.
25.09.2020	The methodology for transfer of the pre-development expenses to TPC-T arrived at in the meeting on 21.09.2020 was communicated by MSETCL to the Commission for directions to transfer the said amount.
03.10.2020	<p>The Commission issued a letter to MSETCL, TPC-T and ATL directing:</p> <p>(a) TPC-T to handover transfer "possession of the complete land, documents , permissions etc " at Vikhroli to KVTPL.</p> <p>(b) MSETCL to transfer the validated pre-development expense of Rs. 118.27 Cr. to TPC-T.</p>
05.10.2020	<p>TPC-T issued a letter to KVTPL stating that:</p> <p>(a) Rs. 20.5 Cr. would have to be paid for transfer of Plot-B through a lease deed.</p> <p>(b) The ROW for the Nerul to Vashi Creek would be shared under an agreement subject to payment of Rs. 13.45 Cr. A copy of the ROW agreement was also attached with the letter.</p>
05.10.2020	In response to TPC-T's letter, ATL sent an email requesting TPC-T to transfer Plot-B once the verified pre-development expense is transferred to TPC-T. For any other amount, TPC-T was asked to approach the Commission.
07.10.2020	TPC-T issued a letter to the Commission stating that TPC-T is going ahead with the transfer of the complete land at Vikhroli in terms of the letter dated 03.10.2020 issued by the Commission.
17.10.2020	KVTPL was issued a "Permission to Commence Work" notice by TPC-T for the CIDCO Land.

Date	Description of Events
03.11.2020	<p>A meeting was held between the Principal Secretary (Energy), GoM, MSETCL, ATL, AEML and TPC-T. The following was resolved:</p> <p>(a) TPC-T has already handed over “possession” of Plot-A.</p> <p>(b) Advance possession of Plot-B be given to KVTPL, without prejudice to rights of either party.</p> <p>(c) TPC-T shall approach the Commission for a decision on whether transfer of the lands is to be by ownership or by lease basis.</p>
13.11.2020	ATL issued a letter to MSETCL stating that the onerous conditions have been imposed in the draft RoW Agreement by TPC-T.
20.11.2020	ATL issued a letter to the Commission stating that TPC-T in the “Advance Possession Agreement” has stated that in case the Commission refused to entertain or adjudicate the petition for decision on the mode of transfer of the Plots at Vikhroli within 3 months, the land would have to be returned to TPC-T.
25.11.2020(MoM 10.12.2020)	A meeting was held between the CMD , MSETCL, ATL, KVTPL and TPC-T. On the issue of land Parcel B it was decided that TPC-T shall approach the Commission citing the prayer that whether the said transfer of land is by ownership or on lease basis, as per the meeting MOM dated 03 November, 2020, held with PS (Energy).
30.11.2020	TPC-T wrote to the Commission clarifying that Since the inception, Plot-B was to be transferred under a lease. Safeguards had been added in the Advance Possession MOU to protect the interest of TPC-T etc.
18.12.2020	ATL addressed a letter to the Commission seeking its intervention in resolving the issues arising from TPC-T’s letter dated 30.11.2020.
22.12.2020	ATL filed the present petition.
31.12.2020	TPC-T submitted a detailed letter to the Commission in view of ATL’s letter of 18.12.2020.
13.01.2021	A meeting was held between the Principal Secretary (Energy), GoM, MSETCL, ATL, KVTPL and TPC-T. It was resolved that advance possession of land Parcel B shall be given by TPC-T and taken over by KVTPL immediately by signing necessary document without prejudice to the rights of either party. M/s ATL shall approach MERC subsequently citing prayer that whether the said transfer of land is by ownership or on lease basis.
23.01.2021	The Commission issued Order in Case No. 141 of 2020 and 142 of 2020 for grant of Transmission Licence and adoption of Transmission Tariff.

Date	Description of Events
27.01.2021	Advance possession of Plot-B given to KVTPL by TPC-T.
23.02.2021	Review Petition in Case No. 15 of 2021 filed by TPC-T before the Commission.
24.02.2021	TPC-T filed its Reply in Case No. 237 of 2020.
12.04.2021	The Commission passed an Order in Case No. 15 of 2021 allowing the review filed by TPC-T on the issue of title of the land.

10. The Commission now deals with the issues raised in the aforesaid submissions of the Parties as under:

11. Issue No. 1: Maintainability of the Petition:

TPC-T's submission:

11.1 The reliefs sought by the Petitioners in terms of the prayers are misconceived and non-sustainable in law and liable to be rejected for the following reasons:

- i. TPC-T is in complete compliance of the Commission's Orders dated 12 September, 2018 and 29 January, 2019 in Case No. 204 of 2017 and 03 of 2019 respectively and letters dated 20 June, 2019, 14 September, 2020, and 3 October, 2020. Therefore, no case under Section 142 read with Section 146 of the EA is made out by KVTPL.
- ii. Contrarily, ATL has failed to comply with the terms of RFP dated 22 June, 2019 pursuant to which LOI dated 12 December, 2019 was issued to execute 400 kV Vikhroli project under TBCB. The record shows that ATL has tried to seek modification of the terms of RFP, which not only renders its bid invalid but also non-suits the bidders whom it surpassed to bag the project.
- iii. No onerous condition (s) are being imposed by TPC-T upon the Petitioners either in the draft agreement for the RoW of Darave-Vashi corridor or in the draft lease Transfer application for transfer of the Kharghar land.

11.2 Subsequent to filing the present Petition on 23 December, 2020 by KVTPL, TPC-T was asked to attend a meeting with the Principal Secretary (Energy), GoM on 13 January, 2021 along with KVTPL and ATL to discuss the delay in execution of Vikhroli project. (MoM issued by GoM on 20 January, 2021). The action points arrived in the meeting were as under:

*“ i) Advance possession of Part-2 (balance land) i.e. 1591.03 sq.mtr shall be given by TPC-T and taken over by KVTPL immediately by signing necessary document **without prejudice to the rights of either party.***

ii) M/s ATL shall approach MERC subsequently citing prayer that whether the said transfer of land is by ownership or on lease basis.

*iii) **Once MERC takes its final decision, the appropriate process of registration shall be done.***

*iv) **Part-I-8015.12 sq.m had already transferred to Adani Transmission ltd. but Adani Transmission ltd yet to submit action plan to STU hence Principal Secretary (Energy) directed Adani Transmission ltd. to submit action plan within 3 days to STU.***

11.3 The Plot B of 1592 sq.m. was acquired by TPC-T through a duly registered Conveyance executed with the Governor of Bombay on 20 May, 1938. TPC-T had offered possession of the land Parcel B on multiple occasions on lease. Plot-A, which had been acquired from Godrej was transferred with complete title and possession to KVTPL. Therefore, the instant petition does not raise a dispute with respect to Plot-A.

11.4 TPC-T is a Licenced Entity operating under the aegis of the Commission. Therefore, transferring possession of Plot-B required the approval of the Commission. Transfer of an asset of a regulated entity such as TPC-T can only take place in accordance with Section 17 of the EA. Accordingly, TPC-T based on meeting dated 13 January, 2021 with Energy Secretary was in the process of preferring an application before the Commission praying for appropriate directions to KVTPL to enter into a lease agreement in respect of Plot-B without prejudice to the right of either party and subject to the outcome of the instant Petition.

11.5 Meanwhile, an Order dated 23 January, 2021 in Case No. 141 of 2020 was issued by the Commission and granted the Transmission Licence to KVTPL. In the said Order the Commission has directed TPC to comply with all the directions issued vide Orders dated 12 September, 2018 and 29 January, 2019 passed in Case No. 204 of 2017 and Case No. 3 of 2019 respectively, read with directions issued vide letters dated 20 June, 2019, 14 September, 2020, and 3 October, 2020 (Orders and letters), to ensure transfer of complete title and possession of the land Parcel B at Vikhroli within one month from the issuance of this Order.

11.6 Therefore, in order to avoid any further delay in the Project, TPC-T, has granted advance possession of Plot-B to the Petitioners on 27 January, 2021. However, in respect of the direction of the Commission for transfer of title of Plot-B, TPC-T has filed an Application No. 15 of 2021 for Review of the Commission’s Order dated 23 January, 2021.

11.7 Further, TPC-T on the issues of the maintainability of the Petition has submitted as follows:

A) *The Petitioners have mutilated the TBCB Process:*

11.8 The Petitioners have contended that the ownership and title of Plot-B was to be transferred by TPC-T and not mere possession by way of a lease agreement. However, the provisions of RFP are contrary. STU, in compliance of the Commission's Order dated 29 January, 2019 in Case No. 3 of 2019 had invited bids for the Vikhroli Project on 22 June, 2019. Clause 2.14.2.1 of the RFP provides as follows:

“2.14.2.1 The Bidders shall make independent enquiry and satisfy themselves with respect to all the required information, inputs, conditions and circumstances and factors that may have any effect on his Bid. ----- Accordingly, each Bidder acknowledges that, on being selected as Successful Bidder and on acquisition of one hundred percent (100%) of the equity shares of the Kharghar Vikhroli Transmission Private Limited, the TSP shall not be relieved from any of its obligations under the RFP Project Documents nor shall the TSP be entitled to any extension in Scheduled COD mentioned in this RFP or financial compensation for any reason whatsoever.”
[Emphasis supplied]

11.9 Since the beginning of the bid process, TPC-T has maintained its position that transfer of Plot-B would be through a Lease Agreement for 35 years at then current annual rent of Rs. 3.08 Crore, with revision after every five years which was modified to onetime deposit of Rs. 20.5 Cr. for simplicity which is clear from the following documents:

- a) TPC-T's letter dated 5 July, 2019;
- b) MoM dated 16 July, 2019 (meeting held by the Principal Secretary – Energy on 12 July, 2019);
- c) TPC-T's letter dated 2 August, 2019 addressed to STU after the issuance of RFP. In the said letter TPC-T specifically requested BPC that TPC-T's submissions be communicated to the prospective bidders in the TBCB process.
- d) STU's Report dated 2 September, 2020 on “*verification & validation of Pre-Development Expenses for 400 KV Vikhroli Receiving Station as per MERC order*” stated that MSETCL as BPC had shared all these correspondence with bidders as part of pre-bid clarification correspondence.
- e) TPC-T's letter dated 30 November, 2020 addressed to ATL has reiterated the above issues.

11.10 Accordingly, BPC, was required to intimate this condition to the bidders. In fact, on 12 July, 2019, TPC-T had intimated STU, as BPC, of such condition, which is recorded in the MoM held by the Principal Secretary Energy on 12 July, 2019 as issued by STU on 16 July, 2019. MoM recorded that the debate whether TPC-T may claim the cost of transfer of the land in its upcoming tariff Petition or as a part of its pre-development expenses was recommended by BPC, to be clarified by way of a Petition being presented by TPC-T before the Commission. However, no objection was raised by ATL at that time on the issue of the mode of such transfer i.e., through a lease.

- 11.11 BPC also issued a Clarification [Annexure 1 to Replies of Queries Received on RFP Document: Note on Project Development Related Activities] to the prospective bidders of the TBCB Process. Point 7 C and 7 D of the Annexure 1 relates to the above-mentioned letters issued by TPC-T.
- 11.12 Therefore, right from inception the Petitioners and other prospective bidders were made aware about the conditions put by TPC-T for transfer of Plot B on lease. The Petitioners have not pleaded or referred to the Annexure-1 in their Petition. On this point alone, the Petition is liable to be dismissed for non-disclosure of material facts. The Petitioners cannot be permitted to question the terms of the competitive bidding after bidding has been concluded. The said action of the Petitioners is against the very purpose and intent of competitive bidding.
- 11.13 Once ATL submitted its bid in compliance of Clause 2.14.2.1, the clear implication is that it was aware of such condition and bid accordingly. During the site visit dated 25 July, 2019 arranged by TPC-T as per request of MSETCL, TPC-T has clarified to all the bidders of all conditions regarding transfer of, *inter alia*, Plot-B. This is evident from the TPC-T's letter dated 5 February, 2020 addressed to ATL. Therefore, ATL's turn around after having been awarded the LOI and claim that transfer of Plot-B was not to be through a lease is against the letter and spirit of the doctrine of *Caveat emptor qui ignronce non debuit quod just alienum emit* ("**Caveat emptor**").
- 11.14 ATL failed in its responsibility under RFP, which is evident from its own letter dated 14 December, 2019 whereby it had requested permission of STU to conduct due diligence after having been awarded the LOI. Therefore, it is clear that no due diligence was conducted by ATL prior to submission of bid.
- 11.15 If the Commission entertains the present Petition and the reliefs sought therein then the entire object of competitive bidding would be mutilated. In fact, ATL by its conduct has put the veracity of the entire competitive bidding under question as a successful bidder is now seeking to alter the terms of the bid after the contract has been awarded.

B) Commission's Orders dated 12 September, 2018 (Case No. 204 of 2017) and 29 January,2019 (Case No. 3 of 2019) have ceased to operate and there is no non-compliance of these Orders by TPC-T:

- 11.16 By virtue of the doctrine of merger, Commission's Orders dated 12 September, 2018 and 29 January, 2019 have ceased to operate, having merged into the Hon'ble APTEL's Order dated 23 September, 2019 in Appeal No. 88 of 2019.
- 11.17 TPC-T preferred a review of the Commission's Order dated 12 Sptember,2018 vide Case No. 03 of 2019 on the issue of deemed closure of the Vikhroli project. The review has been rejected by the Commission vide its Order dated 29 January,2019 in Case 3 of 2019.
- 11.18 Subsequently, TPC-T included the issue of deemed closure through I.A. No. 372 of 2019 in Appeal No. 88 of 2019 originally filed on 31 October, 2018, which was already before the APTEL against the Order dated 12 September,2018 in Case No. 204 of 2017.

11.19 The Hon'ble APTEL while deciding the issue of deemed closure of Vikhroli project (as per Commission's Order in Case No. 204 of 2017) in its Judgment dated 23 September, 2019 has noted Commission's Order dated 29 January, 2019 in Case No. 3 of 2019.

11.20 Therefore, in terms of the Judgement of the Hon'ble Supreme Court in *Kunhayammed v State of Kerala, (2000) 6 SCC 359*, upon the Judgment dated 23 September, 2019 being passed by APTEL, the Commission's Orders in Case No. 204 of 2017 and 3 of 2019 stood merged into it and ceased to exist in law with respect to the deemed closure of Vikhroli project. Therefore, instant Petition in respect of the Hon'ble APTEL Judgment dated 23 September, 2019, is not maintainable in law.

11.21 The Petitioners in the Petition have nowhere demonstrated any direction of the Commission vide its Orders dated 12 September, 2018 and 29 January, 2019 have been violated by TPC-T. Therefore, the present Petition fails to meet the threshold of Section 142 of the EA and does not disclose a cause of action for initiation of proceedings under said Section.

C) The present proceeding could not have been initiated for alleged non-compliance of the letters dated 20 June, 2019, 14 September, 2020, and 3 October, 2020:

11.22 Jurisdiction under Section 142 read with 146 of the EA can only be exercised for non-compliance of a quasi-judicial Order and / or direction passed by the Commission and not of an administrative letter. In this regard, reference may be made to the powers of contempt vested in a court, which are exercisable only in respect of a judicial Order, as held by the Punjab & Haryana High Court in *Mani Ram v Umrao Singh, PLR (2002) 130 P&H*. The Commission vide its letters dated 20 June, 2019, 14 September, 2020, and 3 October, 2020 has directed TPC-T for facilitating the execution and supervision of Vikhroli Project in furtherance of the Order dated 29 January, 2019. Further, in terms of the law laid down by the Hon'ble Supreme Court in *Shankarlal Aggarwala & Ors. v Shankarlal Poddar & Ors., AIR 1965 SC 507*, the Commission's letters are purely administrative. Thus, the present proceedings are not maintainable in respect of such administrative letters.

D) Notice dated 9 January, 2021 issued by the Commission is not in conformity with Section 142 of the EA :

11.23 Notice dated 9 January, 2021 issued by the Commission does not conform to the conditions laid down under Section 142 of the EA and as such, the instant proceedings cannot be entertained on the basis of said Notice.

11.24 Notice is general in nature, and absent of any reference to the satisfaction arrived at by the Commission to the fact that, *prima facie*, TPC-T is in non-compliance of the Commission's Orders and directions through letters. The Notice issued by the Commission reiterates the reliefs prayed for by the Petitioners in the Petition without recording the particulars of alleged violations by TPC-T. Therefore, the Notice cannot be relied upon to pass any Order under Section 142 of the EA or, without prejudice, with Section 146.

11.25 The Hon'ble APTEL in its Judgment dated 19 April, 2011 passed in BSES Rajdhani Power Ltd. v Delhi Electricity Regulatory Commission, Appeal No. 183 of 2010 has ruled that State Commission has to arrive at prima facie satisfaction, that it is a fit case for initiation of Section 142 of the proceedings and then it has to record its satisfaction in the show cause notice in respect of the specific allegations and send it to the person for the purpose of giving an opportunity to such a person to defend or rebut such specific allegation. These procedures are contemplated to follow the principle of natural justice by giving full opportunity to the Appellant to defend the allegation.

Petitioners' Submission:

- 11.26 The Petitioners are seeking the compliance of the directions issued by the Commission vide the MTR Order and Review Order, read with the directions issued vide letters dated 20 June, 2019, 14 September, 2020 and 3 October, 2020. The directions issued by the Commission in the said letters are in furtherance of the MTR Order and the Review Order. Section 142 of the EA deals with contravention of any direction of the Commission wherein the person infringing the same is to be penalized in terms of the said provision. However, TPC-T has erroneously contended that the instant proceedings cannot be initiated for non-compliance of Orders that have ceased to exist.
- 11.27 It is well settled principle that generally Order of the Court of first instance merges in the Order of the Appellate Court. However, this generalization does not preclude situations wherein the Order of a Trial Court issuing directions to the party is upheld by the Appellate Court and the party concerned does not implement such directions.
- 11.28 Moreover, the contention of TPC-T is that as per the doctrine of merger, Commission's MTR Order and Review Order have ceased to exist in terms of the Judgment of the APTEL is flawed. The Hon'ble APTEL vide its Judgment dated 23 September, 2019 in Appeal No. 88 of 2019 has upheld the decision of the Commission and has directed to issue the LOI in favour of the successful bidder for Vikhroli project.
- 11.29 TPC-T has relied upon the Judgment of the Hon'ble Supreme Court in the case of Kunhayammed v State of Karnataka cited as (2000) 6 SCC 359. It is submitted that such an interpretation and reliance placed by TPC-T is incorrect. The Judgment while interpreting the doctrine of merger, also lays down certain exceptions, which TPC-T has chosen to ignore conveniently. The relevant excerpts of the said judgment are extracted as follows:

“ 44.

(iii) The doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or capable of being laid shall be determinative of the applicability of merger. The superior jurisdiction should be capable of reversing, modifying, or affirming the order put in issue before it. Under Article 136 of the Constitution the Supreme Court may reverse, modify, or affirm the judgment-decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of

petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not to the latter.”

[Emphasis Supplied]

- 11.30 Further, the Hon’ble APTEL in Appeal No. 88 of 2019 has upheld the Commission’s MTR and Review Order in Case No.204 of 2017 and 3 of 2019. Hence, TPC-T has no basis to challenge the legality of the present Petition in terms of the Hon’ble APTEL Judgement.
- 11.31 TPC-T has wrongly submitted that the letters issued by the Commission are administrative in nature and therefore, Sections 142 and 146 of the EA cannot be invoked. The letters issued by the Commission are in furtherance of MTR and Review Order of the Commission in Case No. 204 of 2017 and 3 of 2019 and also independent directions of the Regulator. Therefore, there is no basis for TPC-T to negate the application of the directions issued vide the same.
- 11.32 TPC-T has erroneously contended that the notice issued by the Commission on 9 January,2021 was not in conformity with Section 142 of the EA. The notice has been issued to TPC-T in the present matter and the Commission has provided an opportunity to file its reply which is sufficient to demonstrate that the Commission is acting in terms of the principles of natural justice.

Commission’s Analysis and Ruling:

- 11.33 TPC-T’s main contention is that the Petition is not maintainable because of the reasons such as Petitioner’s contention that ownership and title of Plot-B at Vikhroli was to be transferred by TPC-T is contrary to the provisions of the RFP and there is no non-compliance of Commission’s Orders. Commission’s Orders ceased to operate in terms of Hon’ble APTEL Judgment, non-compliance proceedings cannot be initiated on administrative letters and the Notice issued by the Commission is not in conformity with the provisions of the Section 142 of the EA, etc., in terms of Hon’ble APTEL Judgment.
- 11.34 The counter arguments of the Petitioners are that the Commission’s directions through letters are in furtherance of the MTR and Review Orders dated 12 September, 2018 and 3 January, 2019, respectively. Also, the Hon’ble APTEL in its Judgment has upheld the Commission’s Orders. TPC-T has wrongly interpreted that the Commission’s Order has ceased to operate in terms of the doctrine of merger as held by Hon’ble Supreme Court. The Supreme Court Judgment while interpreting the doctrine of merger has also laid down certain exceptions. Also, the notice issued by the Commission provides an opportunity to TPC-T to file its reply on alleged non-compliance.
- 11.35 The Commission notes that as explained in the background part of the Petition, genesis of the Commission’s Orders dated 12 September, 2018 and 29 January, 2019 lies with conceptualisation of 400 kV Vikhroli Project and the in-principle approval by the Commission in the year 2011 to the Capex proposed by TPC-T based on the recommendation of STU. The Vikhroli scheme was identified and continues to be one

of the important critical schemes for strengthening Mumbai Transmission system as a remedial measure post 2010 partial grid failure in Mumbai Metropolitan Region (MMR). Also, Mumbai Distribution Licensees were unable to procure long-term power requirement under competitive bidding route and the Commission had to extend their MoU based procurement due to transmission constraints in Mumbai. The Vikhroli scheme was deemed closed by the Commission on the ground of substantial delay in execution of the scheme and lack of physical progress by TPC-T. With this background, the Commission directed STU to take up the scheme under TBCB. The Hon'ble APTEL has also upheld the decision of the Commission to execute the Vikhroli scheme under TBCB vide its Judgment dated 23 September 2019 in Appeal No. 88 of 2019.

11.36 Post directives of the Commission to execute the Vikhroli scheme, MSETCL had initiated TBCB process. During TBCB process there were multiple communication between the Commission, MSETCL, ATL, KVTPL, etc., on different issues such as transfer of land parcels, documents, NOCs, payment of pre-development expenses on the Vikhroli project by bidder to SPV for passing them on to TPC-T, RoW issues, etc. Some of these communications are listed under chronology of events at Para 9 above of this Order.

11.37 The Vikhroli project was taken up for implementation from 2011 by TPC-T and hence, it was a brown field project for TBCB. TPC-T claimed that it incurred pre-development expenditure of Rs.135.44 Crore till 31 May, 2019, towards procurement of land parcels, surveys, statutory approvals, design, engineering, and other developmental charges before the TBCB process began. After the completion of TBCB process, the Vikhroli project was allotted to ATL as it was successful bidder. Hence, the issues of transfer of the documents, approvals, designs, land, etc., from TPC-T to the selected bidder ATL under TBCB arose. TPC-T agreed to handover the old approval and documents subject to payment of the expenses incurred by it as a predevelopment expense towards Vikhroli project, before project was awarded to successful bidder (i.e., ATL). Hence, the Commission, in order to facilitate the execution of Vikhroli project, vide its following letters directed as follows:

- a) The Commission vide its letter dated 20 June, 2019 has directed MSETCL and TPC-T as follows:

“-----4 (iii) Any deviation in the predevelopment expenses of Rs. 135.44 Crores on account of expenses required on transfer of approval/clearances/land etc. in favour of SPV, viz. Kharghar Vikhroli Transmission Pvt. Ltd., TPC-Transmission shall incorporate the same as a part as a part of its regulated business in it is upcoming Tariff Petition with requisite information and supporting documents in accordance with prevailing MYT Regulations.

iv. TPC-T shall provide its NOC to transfer the land acquired for the project and clearances / permissions obtained from the various Authorities in the name of SPV ("Kharghar Vikhroli Transmission Pvt. Ltd.") along with copy of survey report and other related documents immediately for issuance of RFP Document Requirement.

v. ***MSETCL/STU shall ensure there would not be double recovery of the expenses. ---(emphasis added)***

- b) The Commission in its Order dated 30 March, 2020 in Case No. 299 of 2019 (TPC-T MYT Petition) on the issues of pre-development expenses claimed by TPC-T has ruled as follows:

“ 4.4.21 It is clarified that the amount of Rs. 135.55 crore as claimed by TPC-T till September 30, 2019, is also not finalised, and needs to be verified and validated by the STU, before being paid by the successful bidder and reimbursed to TPC-T. As regards the additional claim of Rs. 52.20 crore, TPC-T has not submitted any information or supporting documents. TPC-T may co-ordinate with STU for such recovery, as STU has to verify whether these expenses are a deviation with respect to the predevelopment expenses and the justification for such additional expenses. Hence, the Commission is of the view that this additional claim is a mere estimate and it is premature at this stage to evaluate the same.

*4.4.22 Therefore, the Commission has not considered any impact of pre-development expenditure of Rs 135.55 Crore as well as **additional claim of Rs.52.20 Crore in the present proceeding. The issue is open, and the Commission will consider the same at an appropriate time based on the due diligence of STU in consultation with TPC-T and AEML-T.----**” ---- (Emphasis added)*

- c) As per the directives of the Commission in its MYT Order dated 30 March, 2020, STU vide its letter dated 2 September, 2020 has submitted the Report on verification and validation of pre-development expenditure for 400 kV Vikhroli scheme. Further, STU requested Commission to accord its approval to the validated amount to be transferred to TPC-T against its claims of pre-development expenses. After analysing the STU report, the Commission vide its letter dated 14 September, 2020 directed TPC-T as follows:

“ ----

2. The Commission has approved the amount of Rs. 118.27 Crore towards pre-development expenses against Rs. 135.44 Crore claimed by TPC-T, as recommend by STU vide its Report dated 2 September, 2020.

3. STU in its validation Report dated 2 September, 2020 has recommended to keep on hold the amount of Rs. Rs. 9.30 Crore towards IDC as TPC-T has not submitted the requisite information. Hence, TPC-T is directed to submit the requisite documents and justification complete in all respects to STU within a month. Any delay in doing so shall be to TPC-T's account. After compliance by TPC-T up to the expectation of STU, validated amount by STU can be paid by MSETCL to TPC-T towards IDC under intimation to the Commission.

4. The Commission has approved the disallowance of Rs.7.87 Crore, incurred/estimated by TPC-T post closure of the scheme towards the activities such as survey related expenses, Engineering Consultancy, site development

expenses, pre-development expenses, and estimated claim of Return on Investment (ROI) for the period January 2019 to May 2019, etc., as shown in the “Annexure A”, as recommended by STU.

5. TPC-T may consider its additional claim of Rs.52.20 Crore as a deviation against predevelopment expenses towards land cost, RoW compensation, GST impact, short closure of contracts, etc., as a part of its regulated business in TPC-T’s next ARR Petition as per the Commission’s letter dated 20 June, 2019 and MYT Order dated 30 March, 2020. The Commission may take an appropriate view on the said amount after prudence check based on the STU’s validation report dated 2 September, 2020 and TPC-T’s justification to be submitted in the ARR Petition, based on actual incurrence of expenses, rather than mere estimation. -----

7. TPC-T may be directed to ensure that the possession of land is given forthwith alongwith handing over the all the requisite documents/permissions etc to KVTPL and shall also extend its support and further cooperation to KVTPL/STU/BPC for early commencement and timely completion of the project. ---” ----(Emphasis added).

The Commission’s aforesaid letter shows that the Commission has accepted the STU’s validation report. The Commission also approved the amount of Rs. 118.27 Crore as against Rs. 135.44 Crore. Further, the Commission has approved disallowance of Rs. 7.87 Crore on the cost incurred or proposed to be incurred by TPC-T post closure of the scheme as recommended by STU. TPC-T has also accepted the said amount of Rs. 118.27 Crore. Further, the Commission has asked TPC-T to consider its additional claim of Rs. 52.20 Crore as a deviation against pre-development expenses in its next ARR Petition. The amount of Rs. 118.27 Crore approved by the Commission is towards the expenses incurred by TPC-T before closing of the scheme by the Commission vide its Order dated 12 September, 2018 in Case No. 204 of 2017 and as validated by STU. The additional expenses incurred by TPC-T post closure of the scheme, i.e., after deemed closure of project on 12 September, 2018, are considered as deviation in pre-development expense.

- d)** It is worthwhile to note that the Commission’s stand on the payment of pre-development expenses and additional expenses of Rs. 52.20 Crore is clearly stated in the Commission’s letter dated 20 June, 2019, MYT Order dated 30 March, 2020 and the Commission’s latest letter dated 14 September, 2020. However, TPC-T again at meeting held on 21 September, 2020 for discussion on the issue of payment of pre-development expenses and handing over of the land parcels, etc., demanded the monetary compensation of Rs. 20 Crore against land Parcel B of 1591 sq.mtr. at Vikhroli, which is part of additional claim of Rs 52.20 Crore. TPC further stated that it will take up the matter with the Board again for transfer of Part B land parcel at Vikhroli without getting compensation at this stage.

- e) In spite of the above directives by the Commission vide letter 14 September 2020, issue of land transfer was not resolved. Hence, the Commission vide its letter dated 3 October, 2020 again directed TPC-T as follows:

*“1. The Commission once **again directs TPC-T to ensure that the possession of the complete land is given forthwith alongwith handing over the all the requisite documents/permissions etc to KVTPL and shall also extend its support and further cooperation to KVTPL/STU/BPC for early commencement and timely completion of the project.***

2. MSETCL is directed to transfer the validated amount of Rs. 118.27 Crore to TPC-T as approved by the Commission based on STU’s validation report. This amount may be transferred in accordance with methodology prepared by MSETCL.” ---- ----(Emphasis added)

- 11.38 The contents of the above referred letters issued in furtherance of the Orders of the Commission and also rulings in the Orders of the Commission amply clarifies that the whole intention behind the directives to TPC-T/MSETCL to transfer the land and approvals, documents, clearances obtained, etc., was to expedite the execution of the Vikhroli scheme, which is essential for strengthening of Mumbai transmission.
- 11.39 The Commission notes that TPC-T in its reply, rejoinder at the hearing and various letters placed on record has submitted that TPC-T as prudent business entity and a long-time stakeholder has always acted in conformity with the directions passed by the Commission as well as in the larger interest of the Project. Also, TPC-T stated that as per the Commission’s letters, it has assisted the BPC for TBCB process and handed over the various statutory approvals, survey reports, designs, documents, etc.
- 11.40 More importantly, the Commission notes that as per the directives of the Commission vide its letter dated 20 June, 2019, TPC-T under its MYT Petition has claimed Rs.52.20 Crore as pre-development expense towards different heads such as Land Parcel B, RoW compensation, GST, expenditures towards short-closure of three Contracts, charges towards design & engineering, statutory permission, etc. Also, TPC-T has accepted Rs.118.27 Crore towards the pre-development expenses paid by MSETCL/STU after due validation as directed by Commission. Further, since beginning, TPC-T has agitated that though the Commission vide its letter dated 20 June, 2019 has directed to pay the pre-development expenses, the Petitioners have delayed the payment.
- 11.41 Further, TPC-T in the proposed Draft Lease Agreement for land Parcel B and RoW of Darave-Vashi line agreement has proposed that as per the Commission’s Order vide letters dated 14 September, 2020 and 3 October, 2020, claim as regards the cost of the land Parcel B (Rs.20.50 Crore) and RoW compensation (Rs.13.35 Crore) will be filed by TPC-T as a part of its regulated business in TPC-T’s next ARR and in the subsequent proceedings, which the KVTPL has agreed to support.
- 11.42 Further, the Commission vide its Order dated 23 January, 2021 in Case No. 141 of 2020, in reference to the aforesaid letters and Orders has directed TPC-T to transfer

the land Parcel B at Vikhroli to KVTPL within a month. Accordingly, TPC-T has given the advance possession of the said land to KVTPL on 27 January, 2021 without prejudice to the rights of either party. From the chronology of the events, it is clear that TPC-T has followed the directions of the Commission in the Orders and letters for claiming and accepting the amount of pre-development expenses. However, contrary to its earlier stand, now TPC-T is contesting that the said Orders and letters of the Commission have ceased to operate. The argument of TPC-T is without any merit especially when the aforesaid order of the Commission recognising additional claim of TPC-T has already attained finality.

- 11.43 On the issue of deviation from the provisions of the RFP and TBCB process in respect of land Parcel B at Vikhroli, the Commission in its Review Order dated 12 April, 2021 in Case No. 15 of 2021 (Petition filed by TPC-T for review of Commission's Order in Case No. 141 of 2020) has clarified its stand and ruled that Commission's direction to transfer land Parcel-B of Vikhroli on as is where is basis required for Vikhroli project is in line with the provisions of the RFP and TSA. Hence, in terms of the Commission's rulings in Case No. 15 of 2021, TPC-T's argument on this issue does not survive.
- 11.44 The prayer of the Petitioners shows that they have also raised other issues such as RoW lease agreement conditions, access to land and RoW (existing Darave-Vashi corridor), O&M of the lines, ownership of the towers, etc., which are related to the execution of Vikhroli project. Also, TPC-T itself has responded to these issues in its submission and at the hearing based on the merit and referred to the provisions of the RFP, Commission's Orders, letters, etc., in justification of its stand. Accordingly, the Commission has considered these issues in the subsequent paragraphs of this Order.
- 11.45 Further, as regards TPC-T's contention that the Notice issued for hearing is in non-conformity of Section 142, the Commission notes that Regulation 52 of the MERC (Conduct of Business) Regulations, 2004 provides that the *Commission may admit the Petition for hearing without requiring the attendance of the party, provided that the Commission shall not pass an order refusing admission without giving the party concerned an opportunity for hearing*. Also, Regulation 53 of the MERC (Conduct of Business Regulations), 2004 provides for issuance of the notice for filing the submissions, replies, rejoinder, and for hearing of the Petition. Accordingly, the Commission has issued the preliminary notice based on the Petition filed by the Petitioners to give an opportunity to the Respondents to file their representations on the issues. The Commission is yet to arrive at its prima-facie satisfaction for initiation of Section 142 proceedings as laid down by Hon'ble APTEL in its Judgment dated 19 April, 2011 in Appeal No. 183 of 2010 (BSES Rajdhani Power Ltd. v Delhi Electricity Regulatory Commission). The Petitioners in the instant Petition have only brought to the notice of Commission the non-compliance on the part of TPC-T and the Commission has to decide on the matter after hearing the parties and by following the due process as detailed out in aforesaid Hon'ble APTEL Judgment. The Commission can also initiate a show cause notice on suo moto basis, if it is satisfied that there is a non-compliance of the provisions of Section 142 and 146 of the EA.
- 11.46 Further, the Commission notes that directions to handover the land, various approvals, designs, drawings, etc., at various stages for execution of Vikhroli project, though delayed have been complied with by TPC-T. Lastly, post Commission's

Order dated 23 January, 2021 in Case No. 141 of 2020, TPC-T has also given the advance possession of land Parcel B at Vikhroli on 27 January, 2021.

- 11.47 In view of the foregoing, the Commission notes that there were certain directions from the Commission to handover land/NOC/statutory clearances obtained/approvals, etc., for Vikhroli project which have been belatedly complied by TPC-T. Also, as was directed by the Commission in the Order in Case No. 141 of 2020, TPC-T has handed over possession of land Parcel B at Vikhroli and other documents/approvals, etc. TPC-T has taken almost one and half year to hand over the possession of land inspite of repeated directions from the Commission. This is contrary to TPC-T's contention that as prudent business entity and a long-time stakeholder it has always acted in conformity with the directions passed by the Commission as well as in the larger interest of the Project. As of now, TPC-T has complied with the directions of the Commission.
- 11.48 As referred above, in order for expeditious execution of 400 kV Vikhroli Project within specified timelines as per TSA, there were specific directions that were given to the Petitioners/Respondents (including MSETCL) and there are certain implementation issues (with reference to the Orders of the Commission) raised in the Petition, which need to be addressed by the Commission so as to ensure compliance of the Commission's Order(s). The non compliance of the directions by any party resulting in likely delay needs to be looked into by the Commission (after hearing the concerned) and hence the Commission rules that the Petition is maintainable.

12. Issue No. 2: Transfer of Land Parcel B at Vikhroli:

Petitioners' submission:

- 12.1. TPC has no basis to deny the transfer of ownership and title of land Parcel "B" to ATL, when no such stipulation has been made in either the directions issued by the Commission or the bid documents.
- 12.2. TPC-T's allegations that the Petitioners are in non-compliance of the terms of RFP and the LOI and are causing inordinate delay in implementation of the Project are unmeritorious and are an attempt to mislead the Commission.
- 12.3. Nowhere in the RFP or the information provided by STU was there any mention of the land Parcel B being transferred only on lease basis. Moreover, the said requirement was only communicated by TPC-T at various stages, however, neither the STU nor the Commission at any point in time acknowledged/ accepted the said position of TPC-T. Therefore, TPC-T cannot place reliance on its own submissions and compel the Petitioners to do something, which is completely beyond the terms of bidding.
- 12.4. The condition laid down by TPC-T in the lease agreement that in case the Commission refuses to entertain or adjudicate the Petition filed by TPC-T within a period of 3 months from the date of filing of the Petition, the land will be handed back to TPC-T, is completely unreasonable. There is no basis for TPC-T to place such conditions, which are completely arbitrary and non-conducive for the

implementation of the Vikhroli Project. The handover of the land parcel should be unconditional as the work cannot be started in the absence of clear possession of the land.

- 12.5. The Project was initially meant to be implemented by TPC-T. However, it was only on account of the huge and inordinate delay on part of TPC-T that the Project was directed to be implemented under the TBCB process.
- 12.6. TPC-T has no basis to allege that the delay in implementation of the Project is attributable to ATL, when in fact the same is on account of the non-transfer of title of the Vikhroli land Parcel B and various onerous conditions, which are being imposed by TPC-T upon the Petitioners.
- 12.7. Arm-twisting tactics are being employed by TPC-T to coerce KVTPL into entering into a lease deed when the same is in contravention of the requirement that the ownership and title of land Parcel B has to be transferred by TPC-T in favour of KVTPL.
- 12.8. On 27 January, 2021, TPC-T has given the advance possession of land Parcel B to KVTPL in terms of the Commission's Order dated 23 January, 2021 in Case No. 141 of 2020. TPC-T proceeded with transferring only the advance possession of land Parcel B instead of transferring the ownership and title as well, when in fact KVTPL has been chasing TPC-T to resolve the issues pertaining to transfer of land Parcel B at the earliest. TPC-T has been using the urgency of implementation of the Project, as a means to pressurize KVTPL to enter into the lease agreement, instead of transferring the ownership and title of land Parcel B in its favour.
- 12.9. Perusal of the Commission's letter dated 14 September, 2020 shows that categorical directions have been issued to TPC to claim Rs. 52 Crore, which inter-alia includes the cost for transfer of ownership of land Parcel B, in its next ARR Petition. As such, TPC-T cannot be permitted to travel beyond said specific directions of the Commission.
- 12.10. TPC-T is demanding one-time deposit of Rs. 20.52 Crore for the lease of the land Parcel B as part of Rs. 52 Crore towards deviation of pre-development expenses in the ARR Petition. The amount of Rs. 20.5 Crore is total cost of plot of land Parcel B, which is calculated based on current value of land, i.e., transfer of title. The same can be verified from the Tariff Petition filed by TPC-T before the Commission in Case No. 299 of 2019. It is imperative to reiterate that the title and possession of land should be transferred to KVTPL as TPC-T is recovering amount equivalent to the land rates. Further, after completion of 35 years of lease deed, TPC-T will once again recover the same amount or may be higher amount, which will amount to double recovery from the consumer for the same land of Parcel-B. Additionally, it may be possible that TPC-T would have already recovered the cost of land as part of its licensed business.
- 12.11. Further, in spite of the directives of the GoM and MSETCL to approach the Commission for clarity whether the land Parcel B is of lease or title transfer and

payment of the pre-development expenses, TPC-T has failed to approach the Commission.

- 12.12. Also, TPC-T is not transferring the land to the Petitioners in spite of the clear directions of the Commission. The said action / inaction of TPC-T ought to be considered as non-compliance of the directions of the Commission, which is leading to delay in execution of Vikhroli project.

TPC-T's submission:

- 12.13. At the outset, issue of Plot B and its transfer of title has been decided by the Commission in its Review Order dated 12 April, 2021 in Case No. 15 of 2021. However, for the sake of completeness, TPC-T is filing its written submissions on merits of the contention of ATL.

- 12.14. Primary grievance of the Petitioners in respect of Plot-B pertains to TPC-T's position that transfer of the plot has to take place through a lease deed, which would not entail transfer of ownership and title in favour of KVTPL.

- 12.15. Demand of the Petitioners to transfer the title of the land is completely unsustainable in law. The words "transfer of land" employed by the Commission in its letter dated 20 June, 2019 has been wrongly interpreted by the Petitioners to suit its own cause in spite of having been fully aware of the clarification given by TPC-T regarding leasing of Plot B vide letter dated 5 July, 2019 issued to STU. The term must draw its meaning from Section 5 of the Transfer of Property Act, 1882 ("T.P. Act"), which provides as follows:

"5. Transfer of property" defined.—In the following sections "transfer of property" means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself, [or it himself] and one or more other living persons; and "to transfer property" is to perform such act. [in this section "living person" includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations, or bodies of individuals.]

- 12.16. Although the term 'transfer' has been defined in the context of 'conveyance', which implies the transfer of an estate of land, it is settled law that conveyance includes any form of assurance such as mortgage, lease, charge, sale, etc.

- 12.17. Three letters of the Commission whose non-compliance by TPC-T has been contended are silent as regards to the transfer of ownership of Plot-B and the same is evident from the following:

- (a) Vide letter dated 20 June, 2019, the Commission merely required TPC-T to "provide its NOC to transfer the land". No positive direction to transfer ownership of Plot-B was given.
- (b) Vide letter dated 14 September, 2020, TPC-T was directed to ensure that possession of the land is given to KVTPL.

- (c) The fact that TPC -T would only lease the land was made aware to all bidders prior to ATL being declared a successful bidder.
- (d) In fact, the Petitioners were aware and accepted that the transfer would be done by way of lease. Hence, the Petitioners insisted upon only possession of Plot-B, as is evident from the perusal of letters dated 6 January, 2020, 17 July, 2020, 25 July, 2020, 26 September, 2020, and 10 October, 2020. The Petitioners only vide letter dated 20 November, 2020 for the first time contested the Lease of Land by the TPC -T without asserting any right of ownership. Further, only on 18 December, 2020 did the Petitioners for the first time raise the claim that the ownership of Plot-B ought to be transferred to it. It is relevant to note that ATL vide its letter dated 8 April, 2020 had incorrectly indicated that it is now seeking for transfer of title and ownership of Plot-B relying upon MoM dated 10 January, 2020 and 15 February, 2020. However, in its subsequent communications, ATL had only insisted upon transfer of possession of Plot-B. Thus, the issue of ownership as stated above was raised for the first time only on 18 December, 2020 by ATL. Therefore, it is evident that after one year of TBCB process they first time raise the issue of ownership of Plot-B. Hence, the claim of the Petitioners' for transfer of complete title and possession of land Parcel B is a belated claim.
- (e) Further, the position adopted by TPC-T to transfer land Parcel B through lease was never questioned either by STU or prospective bidders and therefore, would be taken to have been accepted without demur or protest once the bid was concluded and the successful bidder was declared.
- (h) Therefore, the insistence on transfer of ownership of Plot-B is wholly without merit and extraneous to the scope of Competitive Bidding and hence, is liable to be rejected with exemplary costs.

12.18. Further, while granting a licence under Section 14 of the EA, the Commission cannot transfer TPC-T's ownership over Plot-B as a 'condition' of the transmission licence as per Section 16 of the EA. In this regard:

- a. Transfer of ownership of an Asset belonging to a Licensee is possible either through a voluntary deed of sale executed by the transferor or by operation of law, i.e., through land acquisition proceedings with the prior approval of the Commission.
- b. Without admitting, even if it is assumed that an administrative direction passed by the Commission did warrant transfer of ownership of Plot-B to the Petitioners, the same does not amount to 'law' within the meaning of Article 300A of the Constitution of India.
- c. In order to direct a transfer of assets under a licence, the procedure under Section 17 of the EA (transfer of assets cannot be without permission of the Commission) is to be followed and cannot be deviated from. This procedure requires the

Commission to exercise its quasi-judicial functions and the same cannot be discharged through administrative letters.

- 12.19. If title of Plot-B was to be transferred, then the regulatory procedure envisaged under the EA at appropriate value would have to be carried out in order to execute this transfer. Transfer of land cannot be done by mere administrative letters or through the Order of 23 January, 2021 in Case No. 141 of 2020, which was passed without hearing TPC-T on the said issue.
- 12.20. If Plot-B is to be transferred by way of a sale deed, then TPC-T ought to receive the appropriate cost of transfer of title of Plot-B from KVTPL, which cannot be recovered by KVTPL from its Long Term Transmission Customers by treating it as “Change in Law” as per the provisions of the TSA. If the cost is recovered from LTTCs then such transfer would be deemed to be a condition of the RFP.
- 12.21. Moreover, the issue of Transfer of Title of Plot B is now no more res-integra as the Commission in its Order dated 12 April, 2021 in Case No. 15 of 2021 has categorically held that as per the TBCB process, the said land is to be transferred on lease basis and not title and ownership as sought by the Petitioners.
- 12.22. Therefore, the principal claim of the Petitioners on the basis that the Commission in its earlier Orders and letters had directed TPC-T to transfer the Title of Land is not tenable in law as per the categorical finding of the Commission in its Order dated 12 April, 2021 in Case No. 15 of 2021. Therefore, the present Petition deserves to be rejected with exemplary costs.

Commission’s Analysis and Ruling:

- 12.23. The prayer of the Petitioners in respect of the land Parcel B at Vikhroli is seeking direction to TPC-T to take all necessary steps to ensure transfer of complete title and possession of the land Parcel B at Vikhroli in the name of KVTPL in compliance of the Commission’s directions issued vide letters dated 20 June, 2019, 14 September, 2020 and 3 October, 2020. The Petitioners argument is that there is no provision to transfer the land on lease basis either in the directions issued by the Commission or in the RFP/bid document issued under TBCB by STU. Also, TPC-T’s submission that the land Parcel B was to be transferred on lease basis was never accepted by STU or the Commission. TPC-T has failed to approach the Commission on the clarity of transfer of land Parcel B. TPC-T as per the directives of the Commission has claimed the cost of land Parcel B as Rs 20.50 Crore in the ARR Petition. However, it is not transferring the land to the Petitioners is non-compliance of the Commission’s Order. Further, Rs 20.50 Crore is total cost of land Parcel B calculated on current value of land. It may be possible that TPC-T would have already recovered the cost of land Parcel B as a part of its licensed business. Delay in execution of Vikhroli project is on account of non-transfer of title of Parcel B and various onerous conditions being imposed by TPC-T. TPC-T has given advance possession of land Parcel B in terms of Commission’s Order in Case No. 141 of 2020 instead of transferring the ownership. This action of non-compliance is leading to delay in execution of project.

- 12.24. TPC-T's counter argument is that the Vikhroli project has been allocated to KVTPL under TBCB route. During TBCB proceeding, before submission of the Bids/RFP and prior to ATL being declared a successful bidder, TPC-T has intimated to BPC that land Parcel B at Vikhroli will be handed over to the SPV on lease basis for 35 years. The said fact was also informed by BPC to the prospective bidders through clarifications in Annexure -1 to the replies to the queries on RFP, as referred at Para No. 9 above under chronology of events. Further, position of TPC-T on transfer of land Parcel B on lease basis was never questioned by STU or prospective bidders. However, post finalisation of TBCB process and issuance of LOI (i.e., after one year), KVTPL is seeking the transfer of title and ownership of the land Parcel B instead of lease offered by TPC-T. Insistence on ownership is without merit and extraneous to scope of competitive bidding and hence, should be rejected.
- 12.25. TPC-T has further stated that the Commission in its past Orders or Letters has never directed TPC-T to transfer of title/ownership of Plot-B to KVTPL. Commission's three Letters whose compliance are contended are silent as regards transfer of ownership of land Parcel B. TPC-T has always maintained its stand to transfer the land Parcel B on lease basis. The Petitioners first time only on 18 December, 2020 raised the claim that the ownership of Plot-B ought to be transferred to them. Hence, the Petitioner's claim to transfer the land title and ownership of land Parcel B is a belated claim. TPC-T also raised the issue of procedure under Section 17 of EA to be followed for transferring the assets of the regulated business and stated that transfer of asset cannot be done merely by letters. Further, the issue of Plot-B and its transfer of title now conclusively stands decided by the Commission in its Review Order dated 12 April, 2021 in Case No. 15 of 2021. In the said Order, the Commission clarified that the land is to be transferred on lease basis and not title basis as sought. Hence, the Petitioners' claim that Commission in earlier Orders directed to transfer the title of Land Parcel B is not tenable and should be rejected in terms of Order dated 12 April, 2021. TPC-T also stated that if land Parcel B is to be transferred by sale deed, TPC-T ought to receive appropriate cost, which cannot be recovered from LTTCs through change in law as per provisions of TSA. If the cost is recovered, then transfer would be deemed to be condition of RFP.
- 12.26. The Commission notes that the Vikhroli project is being executed under TBCB as per the Commission's Orders, which were upheld by the Hon'ble APTEL in its Judgment in Appeal No. 88 of 2019. BPC has carried out the two-stage bidding process comprising of Request for Qualification (**RFQ**) and Request for Proposal (**RFP**) for 400 kV Vikhroli project. MSETCL has issued RFQ on 24 April, 2019 and in response four bidders submitted RFQ by 23 May, 2019. As per Hon'ble APTEL's Judgment dated 21 May, 2019 in IA No. 372 of 2019 in Appeal No. 88 of 2019, date of submission of Bid for TPC-T participation was extended upto 4 June, 2019. Accordingly, TPC-T had submitted its bid on 4 June, 2019.
- 12.27. Thereafter, RFP was issued by BPC on 22 June, 2019 inviting bids for Vikhroli project. The RFP had certain provisions such as payment of acquisition price of the SPV, payment of TPC-T's predevelopment expenses of Rs.135.44 Crore, pre-

bid clarifications, due diligence by the bidders before bidding, etc. Post issuance of RFP, there were various correspondences between MSETCL/STU, ATL, TPC-T, GoM, etc., regarding transfer of the documents, approvals, possession of land, RoW issues, etc.

- 12.28. After the meeting dated 28 June, 2019 regarding transfer of documents, approvals, possession of land, etc., TPC-T vide its letter dated 5 July, 2019 has intimated to the BPC that the land Parcel B would be transferred through a lease agreement for 35 years. TPC-T had also requested STU to communicate these aspects to the prospective bidders. MoM of the meeting dated 12 July, 2019 has also clarified that land Parcel B of Vikhroli is envisaged under lease by TPC-T to SPV. Further, TPC-T vide its letter dated 2 August, 2019 had reiterated that the land Parcel B will be on lease basis. Thereafter, on 14 August, 2019 TSA was signed between KVTPL, MSETCL, MSEDCL, AEML-D, TPC-D, etc. Last date of submission of bid was 21 August, 2019. ATL had submitted the bid on 21 August, 2019. A reverse auction was held on 29 August, 2019 wherein ATL emerged as the successful bidder for the Vikhroli Project. Accordingly, on 12 December, 2019, LOI was issued on ATL wherein TBCB process was completed by BPC. The LOI specially mentions that it is based on the provisions of the RFP and successful bidder has to comply with it.
- 12.29. The Commission notes various provisions of the clause 2.12 and 2.13 of the RFP in respect of clarification, pre-bid meeting and Amendment of the RFP to accommodate the clarifications sought by the bidders. Accordingly, BPC/MSETCL on the queries sought by the bidders, has clarified that the land Parcel B at Vikhroli will be given on lease. The said clarification was a part of RFP as Annexure 1 to the replies of the queries on RFP as elaborated at Para 9 above as chronology of the events . However, ATL had not objected and acted on the clarification issued by BPC during bidding process.
- 12.30. Further, the Commission's letters dated 20 June, 2019, 14 September, 2020 and 3 October, 2020 as reproduced at Para 11.37 above clarify that there was no directive of Commission to transfer the title and ownership of the land Parcel B. Also, the intention of the Commission's letters behind the directives was to expedite execution of the Vikhroli scheme. In this regard, the Commission recently vide its Order dated 12 April, 2021 in Case No. 15 of 2021 has clarified the intention and the issue of transfer of land Parcel B and also directed TPC-T to transfer the land to KVTPL on *as is where is basis* as per the provisions of the RFP, LOI and TSA. The relevant portion of the Commission's rulings is reproduced as follows:

"27 Therefore, the conjoint reading of the Commission's directives in the Orders and letters and the relevant ruling in the Impugned Order shows that the Commission has asked TPC-T to transfer the land, documents, NOCs to KVTPL on as is where is basis as per the provisions of the RFP, LOI and TSA. The Commission in the past has never asked TPC-T for transfer of land title of Parcel-B. Hence, the Commission's views and its intent while issuing the Impugned Order are in respect of the availability of the land required for Vikhroli project irrespective of the ownership of the land. It is also to be noted that the directions issued to TPC-T in the Impugned Order were only in

continuation of the directions issued by the Commission vide its Orders dated 12 September, 2018 and 29 January, 2019 passed in Case No. 204 of 2017 and Case No. 3 of 2019 respectively, read with the directions issued vide letters dated 20 June, 2019, 14 September, 2020 and 3 October, 2020. -----.”
(Emphasis added)

- 12.31. As regards the contention of the Petitioners that TPC-T has claimed total cost of land Parcel B in the MYT Petition in Case No. 299 of 2019, the Commission notes that TPC-T has mentioned about the expenses of Rs. 20.52 Crore in the MYT Petition but did not claim its impact on ARR in the MYT Petition. Also, it was a mere estimate, and no details of actual expenditure were submitted. Hence, the Commission has not allowed the recovery and asked STU to verify the same. Further, the Commission vide its letters dated 14 September, 2020 and 3 October, 2020 has asked TPC-T to claim the said expenses through its regulated mechanism in the next Tariff Petition. The same fact has also been reflected in the Petitioner’s rejoinder stating that because of the Commission’s rulings in the MYT Order to validate pre-development expenses by STU, there was delay in payment of pre-development expenses. Hence, the aforesaid argument of the Petitioners in respect of claim of land cost in MYT Order for claiming transfer of land title is based on wrong assumptions and cannot be linked to the title and ownership transfer of land Parcel B at Vikhroli.
- 12.32. In view of the foregoing discussions, provisions of the RFP, acceptance of the RFP terms and conditions by ATL without any dispute, the Commission’s rulings in its Order dated 12 April 2021 in Case No. 15 of 2021, the Commission based on merit rejects the prayer of the Petitioners to direct TPC-T to transfer complete title and ownership of land Parcel B at Vikhroli.
- 12.33. TPC-T has submitted that the land Parcel B at Vikhroli is owned by it and is a part of TPC-T’s GFA. Hence, in furtherance to the above ruling, the Commission also notes the submission of TPC-T that it is ready to transfer the title and ownership of the land Parcel B subject to the following:
- a) The Commission needs to follow the procedure as envisaged under Section 17 of the EA to transfer the assets.
 - b) TPC-T will be entitled for appropriate compensation of the land;
 - c) The compensation cannot be recovered by KVTPL from its LTTCs treating it as Change in Law.
- 12.34. Section 17 of the EA provides that licensee cannot assign his licence or transfer his utility, or any part thereof, by sale, lease, exchange or otherwise without the prior approval of the Appropriate Commission. The relevant provisions of the Section 17 of the EA are as follows:

“ Section 17. (Licensee not to do certain things): ---

(1) No licensee shall, without prior approval of the Appropriate Commission,

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(a) undertake any transaction to acquire by purchase or takeover or otherwise, the utility of any other licensee; or

(b) merge his utility with the utility of any other licensee:

Provided that nothing contained in this sub-section shall apply if the utility of the licensee is situate in a State other than the State in which the utility referred to in clause (a) or clause (b) is situate.

(2) Every licensee shall, before obtaining the approval under sub-section (1), give not less than one month's notice to every other licensee who transmit or distributes, electricity in the area of such licensee who applies for such approval.

(3) No licensee shall at any time assign his licence or transfer his utility, or any part thereof, by sale, lease, exchange or otherwise without the prior approval of the Appropriate Commission.

(4) Any agreement, relating to any transaction specified in sub-section (1) or sub-section (3), unless made with the prior approval of the Appropriate Commission, shall be void.----- (emphasis added)

12.35. Hence, the Commission finds merit in the submissions of TPC-T that, for transfer of utility, or any part thereof from one licensee to another, powers of the Commission under Section 17 of the EA have to be invoked and it may not be appropriate to direct TPC-T to transfer the land Parcel B to KVTPL on ownership basis, as prayed by KVTPL, through the present proceeding which has been initiated as a result of Petition filed by KVTPL and ATL under Section 86(1)(c), 142 and 146 of the EA.

12.36. The Commission also notes that since inception of bidding process, the land Parcel B at Vikhroli was envisaged to be under lease for 35 years for the Vikhroli Project. Also as per the provisions of TSA, the validity of the TSA is 35 years which is extensible with the Commission's approval. Hence, it is clear that the land Parcel B at Vikhroli will be available on lease basis for the entire stipulated period of TSA (i.e 35 years). The Commission further notes that on 27 January 2021, TPC-T has given the advance possession of the land Parcel B to KVTPL without prejudice to the rights of TPC-T and KVTPL. The land Parcel A is already in possession of KVTPL on ownership basis. Hence, both the land Parcels A and B are in possession of the Petitioners and there is no impediment to execute the work for want of land possession. Hence, the Commission is of the view that KVTPL cannot raise any difficulty in implementation of the Vikhroli Project citing unavailability of Land Parcel B on ownership basis since the same is available to it for the entire stipulated period of TSA (35 years).

12.37. The Commission further notes that there are a few cases in Maharashtra where in spite of the project land being on lease basis with the project developer (and not on ownership basis), still the projects have been successfully implemented. One such case being the 765 kV Akola Substation of Maharashtra Eastern Grid Power Transmission Co. Ltd.'s (MEGPTCL, which is incidentally a subsidiary of the Petitioners, ATL) is such a case wherein land of MSETCL has been taken on lease basis. Land for Akola-II substation was acquired by MSETCL from the farmers.

Initially, the land was to be handed over to MEGPTCL on ownership basis. However, subsequently MSETCL revisited its decision and leased out this land to MEGPTCL instead of transferring the ownership. In spite of the land being on lease basis, the project has been implemented by MEGPTCL and same has been operationalized as an important Substation of the Intra-State Transmission System of Maharashtra.

- 12.38. Further, the Commission notes that apart from the clarity in the RfP, ATL/KVTPL have not given any reasons or difficulties in completing the project where plot B is on lease. The Commission does not foresee any difficulty in the execution of the project due to this reason of one parcel of land being available on lease, (including the Financial closure) since the lease land has already been identified and would be under possession of the Petitioners under long term lease of 35 years as per provisions of RfP/TSA/LOI.
- 12.39. Also, as per Regulation 62.2 of the MERC (Multi Year Tariff) Regulations, 2019, the rent from land or building is to be included as Non-Tariff Income of Transmission Licensee. Further, the Regulation 62.1 of these Regulations provides that the Non-Tariff Income of transmission business, as approved by the Commission, gets reduced from ARR of the Transmission Licensee while determining the Total Transmission System Cost (TTSC). Thus, the transfer of land Parcel on lease basis will not adversely affect the interest of the consumers.
- 12.40. That being the case, one cannot ignore the advantages to the project if the land is in outright or ownership possession of the Transmission Licensee. In order to avail loan for the project/business, co-lateral (security) is required to be provided by the borrower. If the land is in complete ownership of the borrower, it can be treated as collateral or security for the loan. In such case, no third party collateral is required to that extent. Further, being owner of the land, the Transmission Licensee can possibly negotiate for lower interest rate. If the land is under ownership of the borrower, it gets reflected as an asset making it a strong balance sheet for getting finances. Further, with land as the security, the loan becomes a secured loan and the borrower can negotiate with the finance institutes for better deals such as better interest rates, long loan duration. Though this advantage is not strictly related to financing, with land under lease, there might be restrictions for utilization of the land for other purposes. It is interesting to note that while the Petitioners are stressing for transfer of Land Parcel B on ownership basis, they neither have justified their prayers with benefits that may be derived on account of such transfer instead of transfer on lease basis nor they have come up with any justification as to how such transfer would be in interest of the project and/or the consumers. Also, they have not mentioned any specific provisions under which such transfer can be effected.
- 12.41. Thus, there are pro and cons of both the modes of transfer i.e. transfer under lease and transfer on ownership basis. However, for allowing or directing the transfer of land Parcel B at Vikhroli on ownership basis from TPC-T to KVTPL, various incidental issues such as basis of land cost (market value/ book value), impact on Transmission Tariff payable by the LTTCs, relevant provisions of related

documents such as RFP, TSA and LOI etc. would need to be examined to ensure consistency of such transfer with RFP, TSA and LOI to avoid any future litigations.

12.42. In view of the aforesaid discussion, the Commission is of the view that if KVTPL still intends to pursue the transfer of the title and ownership of the land Parcel B at Vikhroli, the procedure laid down in Section 17 of the EA would need to be followed which is beyond the scope of the present Petition. Thus, this is an independent and unrelated issue of this Petition and could be mutually taken up jointly and cohesively by KVTPL and TPC-T.

13. Issue No. 3: Illegal terms and conditions being placed by TPC-T in the RoW Agreement for the following issues:

- i. TPC-T's unilateral right to revoke access to RoW and imposition of clauses requiring statutory, and construction related compliances;
 - ii. TPC-T's decision to retain ownership as well as O&M of the asset within the RoW corridor and Clarification with respect to maintenance of Multi Circuit (MC) Tower to be taken up by the Petitioners;
 - iii. Payment of Stamp duty and other charges related to transaction as part of pre-development expenses;
- i. TPC-T's unilateral right to revoke access to RoW and imposition of clauses requiring statutory and construction related compliances.**

Petitioners' submission:

13.1. Darave-Vashi corridor is the only feasible route for construction of 400 kV lines from Kharghar to proposed Vikhroli substation.

13.2. ATL has even assured TPC-T that it will comply with all applicable laws and shall provide indemnity to TPC-T on breach of its obligations under the agreement including non-compliance with applicable laws. This also addresses all the concerns raised by TPC-T regarding safety and construction related risks comprehensively. Despite that, TPC-T has placed various onerous conditions in the ROW Agreement such as:

- Unilateral right to revoke access to RoW: TPC-T has sought a unilateral right to revoke KVTPL's access to RoW on breach of any of the terms and conditions in the agreement by KVTPL. Such a condition puts this critical project at risk during both construction and operation phase of the project.
- Multiple statutory and construction related compliances: TPC has sought to impose compliances in the RoW agreement such as:
 - a) Permission for execution of work to be given by TPC-T's Engineer,
 - b) Prescription on design and drawings as per standards mentioned in the agreement,
 - c) Permission to be given by TPC for men and material entering the site,

- d) Prescription on construction techniques,
 - e) Imposition of fines, approvals, etc.
- 13.3. The agreement is meant to provide only RoW to KVTPL and as such the terms and conditions in the agreement should not govern the statutory and construction related compliances of KVTPL. This clause can potentially hamper the project progress.
- 13.4. By retaining the rights of RoW allegedly in the guise to protect its interest, TPC-T can at any point of time withdraw the access granted to the Petitioners. The Petitioners in such a scenario will be left remediless and will not be in a position to maintain and undertake works for its Project. TPC-T while contending about protection of its own interest, has completely ignored these aspects.
- 13.5. As revealed from the terms proposed in RoW agreement by TPC-T, it is trying to take up supervisory role in the project and the same will hamper the project activity. Further, the Petitioners will be the owner of the transmission Assets as defined in RFP and TSA and therefore, providing access to TPC-T serves no purpose.
- 13.6. The Petitioners will ensure compliance with all the applicable laws in coordination with concerned Government Authorities and shall develop the project in compliance with all applicable laws and RFP conditions.
- 13.7. TPC-T has also imposed additional conditions in the form of fine and security deposit, which are also extraneous to the applicable statute and stipulations. Further, TPC-T has specified few conditions, which will ensure the dependency of project progress, on TPC-T.

TPC-T's submission:

- 13.8. The Petitioners are attempting to misinterpret the terms of RFP as well as the correspondences between the concerned parties in order to suit their own cause. As per the DPR approved by the Commission as well as STU, since inception of the scheme, it was envisaged the use of existing RoW between Darave and Vashi for construction of Multi Circuit towers and accommodate both 400 kV Transmission Lines as well as existing 110 kV Lines.
- 13.9. Additionally, TPC-T vide its letter dated 5 July, 2019 has informed BPC, that TPC-T owns the portion of land underlying its two 110 kV transmission lines between Darave (Nerul) and Vashi. If the successful bidder was to utilize such land, it would have to enter into the suitable way leave agreement, which is nothing but the present RoW Agreement. The compensation for such use was to be arrived at in terms of the GoM's GR dated 31 July, 2017, which is @ Rs. 13.45 Crore.
- 13.10. In terms of the TPC-T's letter dated 5 July, 2019, the Petitioners were fully aware that ownership of the land was not going to be transferred to SPV. This is because TPC-T's transmission lines, transmitting power from hydro station at Bhira, are laid in the same RoW for which 400 kV Kharghar -Vikhroli line is proposed.

Therefore, any action or omission on part of the Petitioners could adversely affect the operation of TPC-T's lines in terms of other rights and obligations, safety of the general public, traffic and housing complex present in proximity to the land.

- 13.11. Hence, specific obligations, both statutory and construction related, were included in the RoW Agreement to be performed by KVTPL. Since the agreement is for a long period, TPC-T is entitled under Clause 26 of the draft RoW Agreement to protect its interest by retaining the liberty to withdraw permission of use in case KVTPL breaches any of its contractual obligations, as well as disconnect and dismantle the said transmission line with advance notice.
- 13.12. The Petitioners could have no objection in complying with the terms of the RoW Agreement, if they are agreeable to indemnifying TPC-T on terms that essentially operates along the lines of those in the RoW Agreement. Clauses proposed by TPC-T has been part of standard agreements of a similar nature executed by TPC-T over time. By way of the instant proceedings, TPC-T cannot be directed to part with such of its legal interest and rights.
- 13.13. KVTPL as a Transmission Licensee is not intending to create an encumbrance of any sort on the RoW corridor, which might create problems for TPC-T. It is inconceivable as to why KVTPL is reluctant to accept the standard terms put forth by TPC-T and go ahead with the execution.
- 13.14. In case the conditions imposed by the RoW agreement are not agreeable to the Petitioners, it always has the option to select an alternate route for the Project. The same thing was communicated to the bidders in the clarifications issued by STU/BPC to the queries raised by the bidders at the pre-bid stage.
- 13.15. Having been aware of TPC-T's position for letting it use its RoW for the Vikhroli Project before the bidding, KVTPL with full knowledge decided to use the RoW owned by TPC-T and did not exercise the option of exploring any alternate route for laying the Transmission Lines for the Project.
- 13.16. If the Commission were to accept the stand of the Petitioners, it would amount to rewriting the terms of the RFP and reading into it, terms that did not exist therein.

STU's submission:

- 13.17. RFP is a part of TBCB process and as per which transmission Line Sections between Loc. No. 26 N2 to LOC 46 is being considered on existing RoW of 110 kV Khopoli – Chembur and 110 kV Khopoli-Mankhurd of TPC-T's lines. This is only an indicative route. The bidder may choose alternate route for the line. For O&M of the lines, TPC-T as well as KVTPL requires access to RoW.

Commission's Analysis and Ruling:

- 13.18. The Commission notes the argument of KVTPL and counter argument of TPC-T in respect of the conditions proposed by TPC-T in the RoW agreement as elaborated in their submissions above and are not repeated for brevity.
- 13.19. The issue agitated is related to RoW for construction of proposed Kharghar-Vikhroli line, access to the parties for construction and its utilisation for day to day operation and maintenance (O&M) of the transmission lines. The Commission further notes the feasible route of Darave-Vashi existing corridor of

TPC-T was indicated during TBCB process. This was envisaged for construction of Multi Circuit (MC) towers, which can accommodate proposed 400 kV lines of KVTPL and existing 110 kV lines of TPC-T.

13.20. The Commission notes that some of the proposed conditions in the proposed RoW agreement are as follows:

“ g. The Grantor has agreed to grant to the Grantee a Right of Way herein, for 35 years, with effect from the date of Occupation Certificate or execution of this Deed whichever is sooner; to be used for its sole and Specified Purpose governed in accordance with the terms and conditions herein stated in consideration of the Grantee supporting the Grantor’s claim of onetime compensation, in the petition as more particularly described in para-e herein before and the Grantee will lay, keep, operate & maintain the said EHVT lines in accordance with the terms and conditions hereof and in accordance with rules framed under and the requirements of the Electricity Act, 2003 for EHVT lines whenever necessary from time to time.----

k(14) Work should be carried out after giving prior information to the Grantor. That all excavated material & debris shall become Grantee’s property who shall make necessary arrangement to dispose it off at their costs. The surplus excavated material & debris shall not be dumped in Grantor’s property. Fine of Rs. 100000/ lorry load will be recovered from the Grantee.---

15. That Grantee shall lodge the amount of Rs. 25 lacs as security deposit towards reinstatement charges etc. with Grantor before starting work. The same shall be refunded after satisfactory completion of work by the Grantee.---

20. That permission for execution of work will be given on day to day basis by Grantor’s Engineer and while execution of work utmost care should be taken so that Grantor’s operations are no way affected.---

24. That Grantee shall carry out & complete the work to the entire satisfaction of Grantee.--

27. That for any breach on Grantee’s part to observe any of the conditions herein mentioned or as required under provisions of law, the Grantor shall all the times be at liberty to withdraw the permission hereby granted without giving any reason therefor & , if necessary, to disconnect the connection and dismantle the said transmission line by giving 1 month notice to that effect & in that event Grantee shall not be entitled to any compensation on account of revocation of this license / permission and shall be solely held liable for the expenses so incurred by Grantor.----” (Emphasis added)

13.21. KVTPL is a Transmission Licensee and selected bidder under TBCB process for execution of 400 kV Vikhroli project. The Central Electricity Authority (CEA) has specified the construction standards, design standards, safety specifications, etc., for construction of such lines. Also, the Commission while issuing the

Transmission Licence to KVTPL has directed KVTPL to follow the prevalent Rules, Regulations and Acts such as EA, Grid Code, Works of Licensees Rules, etc. Also, KVTPL has accepted to abide by these Rules and Regulations. Hence, KVTPL, being a Transmission Licensee, is bound to comply with its obligations as specified under its Licence. There is no scope to KVTPL to deviate from the applicable provisions in respect of standard of construction, safety, etc.

- 13.22. Vikhroli scheme is important scheme for strengthening of Mumbai transmission as well as to meet the demand of Mumbai. Hence, it is essential to execute the scheme on top priority without creating further hindrances, rather it should be taken on speedy execution mode as planned under TBCB time frame. The terms, and conditions proposed in the RoW agreement by TPC-T, such as permission for execution of work on day to day basis by TPC-T's Engineer, KVTPL to carry out the work to the entire satisfaction, to maintain the standards, TPC-T can withdraw the permission without giving the reason in case of breach by KVTPL, etc., are unwarranted and may become the cause of dispute and stalling and hampering the work. Further, prima facie it appears that TPC-T is trying to take up supervisory role by putting such onerous conditions. In any case, the agreement is neither part of RFP nor is a standard document approved by any authority. These are the terms and conditions proposed by TPC-T to protect its own interest.
- 13.23. Vikhroli project is a brown field project and before allocation to KVTPL under TBCB it was under execution by TPC-T. The route of Darave-Vashi for erection of 400kV Kharghar-Vikhroli lines was finalised by TPC-T. Also, most of the approvals such as forest, aviation, CRZ, High Court, local authorities, etc., are in place and obtained by TPC-T for which pre-development expenses have been incurred. Also, TPC-T has claimed and accepted pre-development expenses for such completed work. Hence, proposed Darave-Vashi route is most feasible route for execution of Vikhroli project as planned. The erection of 400 kV lines could be completed within schedule/planned time by using this feasible route, as existing RoW can be used. Hence, TPC-T's claim that the proposed route is tentative and KVTPL is free to choose another route cannot be accepted. It would also further delay the execution of Vikhroli project.
- 13.24. STU, in spite of being the planning authority is silent on the important issue of execution of Vikhroli project within the timelines as it has set out. As per the TPC-T's argument, if it is exercised to lay the 400 kV lines on the other alternative route, the work needs to initiate from the basic steps such as survey, statutory approvals, verifying feasibility, revised approvals, etc., which can further delay the project for indefinite time and that too after incurring pre-development expenses and certain activities carried by TPC-T during its execution term. STU has failed in its duty cast upon it as per Section 39 of the EA and the Regulations 8.1, 12 and 13 of MEGC, 2020 regarding planning, development of an efficient, co-ordinated, and economical InSTS, monitoring of progress of the projects for timely completion, adherence of safety standards, etc. Hence, the Commission directs STU to diligently discharge its functions under the statute and should ensure compliance by facilitating process and be responsive.

13.25. The Commission also notes the contents of the MoM of the meeting dated 25 November, 2020 headed by the CMD, MSETCL in presence of the representative of TPCT, ATL, STU where it was opined as follows:

“ MSETCL concluded that ROW is the issue between two transmission licensees KVTPL and TPC-T. These issues should be settled amicably by both the transmission companies.”

However, in spite of the above directives, TPC-T and KVTPL have failed to settle the issues mutually.

13.26. As per the provisions of the Section 39 of the EA, STU is the planning authority for InSTS and has the responsibility to undertake transmission of electricity through InSTS with co-ordination between the Transmission Licensees. The Commission wishes to place on record that it is not open for STU to relieve themselves of their mandated function of planning authority and to ensure the availability of a healthy grid.

13.27. In view of the above, the Commission directs STU to resolve the issue of terms and conditions of RoW agreement. STU, being a statutory authority under provisions of the EA, should issue the appropriate directions, considering the submission of the Parties on the issue of RoW agreement between KVTPL and TPC-T for Darave-Vashi corridor, other similar precedents and consultation with CTU, if required, within a month from the date of this Order under intimation to the Commission. KVTPL and TPC-T shall co-operate to STU to resolve the issue.

ii. TPC-T's decision to retain ownership as well as O&M of the asset within the RoW corridor and clarification with respect to O&M of MC Tower to be taken up by the Petitioners:

Petitioners' submission:

13.28. BPC in RFP has clarified that issue related to maintenance of Multi Circuit towers from Darave to Vashi creek should be put forth by KVTPL before the Commission while applying for Transmission Licence. However, TPC, in the guise of RoW agreement, is trying to impose that O&M will be handled by it. TPC is acting in contravention of the express mandate of bid documents and the directions of the BPC.

13.29. As defined in RFP and TSA, SPV is the owner of the transmission assets including the multi circuit portion of the transmission line. As the multi circuit element would be included for calculation of availability of the project, therefore, the ownership of the same lies with SPV and hence, O&M of the assets is the responsibility of SPV.

13.30. Considering the importance of the Vikhroli project, its timely implementation is essential, and cannot be put to a hold because of the illegal, unreasonable, and arbitrary conditions being placed by TPC-T.

13.31. If the conditions as proposed by TPC-T are allowed, it will be detrimental to the Vikhroli Project execution. TPC should desist from placing any such conditions.

TPC-T's submission:

13.32. At pre-bid query stage, on the issues of maintenance of MC tower, clarification was sought by the bidder and BPC reply was as follows:

<p><u>“Clarification Required</u> <i>Grid map showing double circuit line in between Khargar and Vikhroli. No part M/C (400/110 kV) line is proposed? --- At Existing TATA Lines corridor (is Tata power providing 100 kV corridor from Uran phata to Vashi creek approx. 4 km. If yes, then 2nos 110 kV circuit of Tata power shifted on M/C and after commissioning what shall be the mechanism for maintenance of M/C tower – Not mentioned in RFP) BPC is requested to clarify.</i></p>	<p><u>BPC Reply</u> 1) <i>The indicative route as envisaged in the Survey Report includes the Multi Circuit from location No. 26 to 46. However, TSP is free to choose any other suitable route.</i> 2) <i>The issue related to maintenance of M/C tower to be taken up by TSP with MERC while applying for Transmission License.”</i></p>
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13.33. Therefore, it was clarified that the issue of maintenance of MC tower was to be taken up by TSP with the Commission while applying for Transmission Licence. Hence, under the garb of the present proceedings, where the claim is of alleged non-compliance with prior Orders and directions, the Petitioners cannot be permitted to agitate a new claim and seek clarification on the aspect of the O&M of MC towers. This is because no direction in this regard has ever been passed under any of the two relevant Orders, or for that matter even the letters of the Commission.

13.34. On this issue the provisions of the RFP are as follows:

- a) As per the provisions of the Clause 4.2.3, 4.2.4 and 4.2.5 of the RFP, ATL was required to visit, examine, and investigate the route of the transmission lines associated with the Project as well as the site conditions. Failure to do so would not relieve ATL of its obligation under RFP.
- b) Understanding between the parties was that by granting access to the RoW corridor, KVTPL would be entitled to dismantle TPC-T's existing two 110 kV transmission lines (110 kV Khopoli – Chembur and 110 kV Khopoli-Mankhurd) and install Multi-Circuit (4 Circuits) towers. KVTPL would install its proposed Khargar-Vikhroli transmission lines at top two circuits of the said tower and TPC-T's two 110 kV line at bottom circuits of the tower. Capital expenditure for this was to be met by KVTPL.
- c) However, since the existing 110 kV transmission lines of TPC-T transmits power into Mumbai from hydro station at Bhira and are part of TPC-T's transmission licence, their O&M was to rest with TPC-T. It would be inconceivable to say that merely because access was being granted to the part of the entire RoW corridor, O&M of all the lines (including the lines of TPC-T) would rest with KVTPL.
- d) Thus, KVTPL was to be responsible for the maintenance of the Multi Circuit towers while TPC-T would undertake the O&M of its transmission lines. The

cost incurred by TPC-T in such O&M would be recovered through ARR. Further, any concerns of power outage could as well be easily coordinated through State Load Despatch Centre. In any case, the plea of the Petitioners is fundamentally against the tenor of Section 17 of the EA.

- e) In view of the above, it is clear that access to the substation land and transmission line corridors have not been restricted by TPC-T. Therefore, the contentions raised by the Petitioners are without any merit and based on conjectures, which is liable to be rejected.

STU's Submission:

- 13.35. As far as the O&M of the 400 kV Kharghar- Vikhroli line is concerned, portion of line from Darave to Vashi Creek needs to be considered from the transmission system availability point of view. For O&M activity, access to the common area of EHV lines involved in this project will be required for the officials of both Licensees, i.e., KVTPL and TPC-T.

Commission's Analysis and Ruling:

- 13.36. The issue involved is that the proposed 400 kV Kharghar-Vikhroli transmission lines will be constructed by dismantling the existing TPC-T's 110 kV lines (110 kV Khopoli – Chembur and 110 kV Khopoli-Mankhurd) to utilise the RoW of these lines under Darave-Vashi corridor. TPC-T's existing 110 kV lines will be also reinstated on the proposed MC towers constructed by KVTPL. The Petitioners' claim is that the ownership of assets will remain with them and also O&M of such assets would be carried out by KVTPL (including TPC-T's lines). TPC-T's submissions is that the ownership of its reinstated 110 kV lines will remain with TPC-T and O&M for their 110 kV lines will be carried out by it. O&M of MC towers will be carried out by KVTPL.
- 13.37. The Commission notes that construction of EHV lines requires RoW and various statutory approvals. Considering scarcity of the land and objections from the landowners, construction of lines becomes a difficult task. Hence, for construction of 400 kV Kharghar-Vikhroli lines, TPC-T's existing 110 kV lines are to be dismantled and new MC towers have to be installed by KVTPL. The RoW of these lines will be utilised and proposed 400 kV lines as well as TPC-T dismantled 110 kV lines would be reinstated through construction of the MC towers by KVTPL.
- 13.38. TPC-T's submission made it clear that it is seeking the right of O&M to the extent of its 110 kV lines to be reinstated on the proposed MC towers of the proposed 400 kV Kharghar-Vikhroli lines. The O&M of MC towers and 400 kV lines would be carried out by KVTPL. The stand of the TPC-T seems to be reasonable and in line with the submission of STU. Also, these lines are part of TPC-T's Transmission Licence.
- 13.39. Hence, KVTPL's claim that entire asset's ownership and O&M of 400 kV as well as 110 kV lines will vest with KVTPL is not tenable. TPC-T cannot be deprived from its rights and responsibilities of the assets, which are part of its Transmission Licence issued by the Commission in the year 2014 and as amended time to time.

13.40. As per the clarifications issued by the BPC as a part of the RFP, an issue of maintenance of MC tower was to be taken up by TSP (KVTPL) with the Commission in the Transmission Licence Application. Further, KVTPL has filed the application before the Commission on 7 July, 2020 in Case No. 141 of 2020 for grant of Transmission Licence even before filing the instant Petition. The Commission has issued the Order on KVTPL's Licence Application on 23 January, 2021. However, it is observed that KVTPL has never raised the issue of maintenance of MC towers in the said Transmission Licence application.

13.41. In view of the above, the Commission rules that KVTPL needs to carry out the Operation & Maintenance of Multi Circuit Towers and its 400 kV lines constructed on these towers and its ownership will be with KVTPL as per their Licence. TPC-T should carry out the Operation & Maintenance of its 110 kV lines to be erected on MC towers of KVTPL and ownership of these 110 kV lines will be with TPC-T as per their Licence. In case of any operational or co-ordination issues, STU under Regulation 8.1 of the MEGC, 2020 and Section 39 of the EA shall take necessary action. In any case nothing constrains KVTPL and TPC-T to resolve issues with mutual understanding for betterment of InSTS.

iii. Payment of Stamp duty and other charges related to transaction as part of pre-development expenses:

Petitioners' submission:

13.42. As per the Commission's letters dated 20 June, 2019, 14 September, 2019, and 3 October, 2020, all deviation in pre-development expenses on account of transfer of land and approvals to SPV (KVTPL) will be borne and shall be claimed by TPC-T in its Tariff Petition. However, TPC-T's contention is that these charges should be borne by KVTPL, which is contrary to the Commission's directives.

13.43. The expenditure incurred by TPC-T beyond the pre-development expenses, in any case will be recovered, once claimed by TPC-T in its ARR Petition. Therefore, there is no reason for TPC-T to claim the said expenses from the Petitioners. Therefore, these charges shall be borne by TPC and claimed in its ARR.

TPC-T's submission :

13.44. On the issue of stamp duty and other charges related to the transaction the Petitioner's allegations are based on the direction contained in the Commission's letter dated 20 June, 2019, wherein it was stated that TPC-T shall incorporate any deviation in the pre-development expenses of Rs.135.44 Crore on account of expenses required on transfer of approval / clearances / land, etc., in favour of SPV in the ARR of upcoming Tariff Petition.

13.45. However, the Petitioners' understanding of the same is incorrect. The roots of the Commission's direction are traceable to Clause 2.4 of the RFP, which required ATL to acquire the shareholding of the SPV, i.e., KVTPL within a period of 10 days of issuance of the LOI by paying the Acquisition Price. This Price included

the pre-development expenses of Rs.135.44 Crore payable to TPC-T for the development of the Project, as confirmed in the Commission's letter dated 20 June, 2019. Through a series of letters, TPC-T again reiterated that it had no hesitation in transferring possession of Plot-B subject to payment of the pre-development expense by ATL. In fact, by 30 December, 2019, 18 days after the issuance of the LOI, TPC-T had submitted all relevant documents while ATL was yet to make the above payment. Till 13 March, 2020, ATL had only paid Rs. 16.31 Crore towards bid processing charges and Rs. 0.89 Crore towards reimbursement of expenses of STU. MSETCL has paid only Rs. 118.7 Crore to TPC-T on 14 October, 2020, i.e., after a delay 11 months.

13.46. In this regard, it is noteworthy that:

- (a) The Commission vide its Order dated 30 March, 2020 in Case No. 299 of 2019 (TPC-T's MYT Order for 4th Control Period) has directed that TPC-T's pre-development expenditure of Rs. 135.44 Crore and additional claim of Rs. 52.20 Crore be validated by STU.
- (b) Thereafter, on 2 September, 2020, STU has submitted its validation report, which was accepted by the Commission *vide* letter dated 14 September, 2020. While approving an amount of Rs.118.27 Crore towards pre-development expense, the Commission also directed that TPC-T may consider its additional claim of Rs. 52.20 Crore as a deviation against pre-development expenses towards land cost, RoW compensation, GST impact, short closure of contracts, etc., as a part of its regulated business in TPC-T's next ARR Petition. Also, it was stated that the Commission may take an appropriate view on the said amount after prudence check.
- (c) TPC-T has issued the draft final lease agreement in respect of Plot-B after the amount of Rs. 118.72 Crore was belatedly released on 14 October, 2020. KVTPL vide its letter dated 6 January, 2020 requested MSETCL that the transfer of pre-development expenses shall be contingent upon resolution of various issues, which was never a pre-condition. This has delayed payment of pre-development expenses to TPC-T considerably.

13.47. As regards the deviations from the pre-development expense, TPC-T has claimed an additional cost of Rs. 52.20 Crore, which included the cost of transfer (one-time deposit for 35 years lease) of Plot-B Rs. 20 Crore and one time ROW compensation of Rs. 13.45 Crore. It was the understanding of TPC-T that statutory levies such as stamp duty and registration charges, are required to be paid by the transferee (Grantee in the case of the RoW) as per applicable provisions of law. Such expenses do not form part of the expenses that may be treated by the Commission as deviations. These expenses are to be borne by KVTPL, which has also been recommended by the STU in its validation report. In fact, STU in its validation report has concluded that costs incurred on account of *inter alia* the ROW, if any, would have to be recovered by the KVTPL in its ARR as the bidders were aware of the issues involved. For this reason, the said amount was demanded from KVTPL. Further, TPC-T vide letter dated 7 October, 2020 has sought clarification from the Commission as to whether TPC-T would be reimbursed the amount of Rs. 52.20 Crore in its forthcoming ARR Petition given *inter alia* the

use of the word may in the letter dated 14 September, 2020 issued by the Commission. Therefore, in such ambiguity, TPC-T is not in the position to undertake expenses in relation to Stamp Duty and other related charges.

Commission's Analysis and Ruling:

- 13.48. The contention of the Petitioners is that all deviation in pre-development expenses need to be borne by TPC-T as per the Commission's letters.
- 13.49. TPC-T's submission is that statutory levies such as stamp duty and registration charges, etc., do not form part of the expenses that may be treated by the Commission as deviation and hence, need to be borne by the Petitioners. STU, in its validation report, has concluded that costs incurred on account of ROW, if any, would have to be borne by KVTPL as the bidders were aware of the issues involved.
- 13.50. The Commission notes that in RFP issued by BPC, there is no benchmark date for considering the expenses as pre-development expenses or its deviation, if any. Also, it is not defined as to which type of expenses to be considered as pre-development expenses or deviation thereof. That being the case and lack of clarity in the RFP, the treatment would be given based on the period of incurring such expenses i.e. before the LOI/Handing over of SPV or after that.
- 13.51. The genesis of the payment of pre-development expenses lies in MSETCL's letter dated 11 June, 2019 wherein MSETCL has requested TPC-T to provide the following details regarding the 400 kV Vikhroli Project:
- a) Survey report;
 - b) Land information and NOC for transfer of land acquired for the project in the name of SPV;
 - c) Details Clearances / Permissions from statutory Authorities for the project and NOC for transfer of it in the name of SPV;
 - d) Expenditure incurred by TPC-T for the project.
- 13.52. In Reply to MSETCL's letter 11 June, 2019, TPC-T vide its letter dated 15 June, 2019 stated as follows:

*"In view of the above, you may appreciate that desired documents/information i.e.(a) Survey Report;(b) Land details;(c) Copies of the Statutory Clearances/permissions received along with the status of the statutory clearances/permissions pending to be received by Tata Power for the Project and (c) No Objection Certificate on the Land acquired by Tata Power, entails aforesaid direct costs. As above, the direct cost incurred by Tata Power is to the tune of Rs. 135.44 Crores till 31.05.2019. Tata Power is willing to provide the desired documents / information i.e. (a) to (d) above, subject to MSETCL reimbursing the expenses incurred by Tata Power so far on development of the said project. It is important to point out that such NoC when provided by Tata Power will be subject to the final outcome of the appeal pending for adjudication before the Hon'ble APTEL. **Kindly note that there would be some additional expenditure during the process of transferring the approvals/clearances/land***

etc. in favour of the SPV which will be to SPV's account and the same also be accounted and reimbursed in favour of Tata Power.---- (emphasis added)

13.53. Thereafter, MSETCL vide letter dated 19 June, 2019 requested the Commission to direct TPC-T to claim the expenditure incurred on 400 kV Vikhroli Project in ARR of its regulated transmission business. Also, MSETCL requested the Commission to direct TPC-T to furnish the information and NOC sought by MSETCL on Vikhroli project as RFP document for the Project under TBCB is to be issued to the Bidders on 22 June, 2019.

13.54. Accordingly, the Commission vide its letter dated 20 June, 2019 has directed MSETCL and TPC-T as follows:

“ 4. In order to comply with provisions of RFP Documents for 400kV Vikhroli Project under TBCB and to bring the clarity on the issue before issuance of RFP, I am directed by the Commission to convey followings:

i. The Commission notes that TPC has claimed reimbursement of Rs. 135.44 Crores on predevelopment expenses for development of 400kV Vikhroli Project (including IDC on 400kV Kharghar Vikhroli Line and 400kV Vikhroli Receiving Station) till 31.05.2019.

ii. MSETCL in its RFP shall also clarify that the successful bidder of 400 kV Vikhroli Project shall have to pay the redevelopment predevelopment expenses of Rs.135.44 Crores to SPV (“Kharghar Vikhroli Transmission Pvt. Ltd.”) which in turn would reimburse the same to TPC.

iii. Any deviation in the predevelopment expenses of Rs. 135.44 Crores on account of expenses required on transfer of approval/clearances/land etc. in favour of SPV, viz. Kharghar Vikhroli Transmission Pvt. Ltd., TPC-Transmission shall incorporate the same as a part of its regulated business in its upcoming Tariff Petition with requisite information and supporting documents in accordance with prevailing MYT Regulations.

iv. TPC-T shall provide its NOC to transfer the land acquired for the project and clearances / permissions obtained from the various Authorities in the name of SPV (“Kharghar Vikhroli Transmission Pvt. Ltd.”) along with copy of survey report and other related documents immediately for issuance of RFP Document Requirement.

v. MSETCL/STU shall ensure there would not be double recovery of the expenses. ---(emphasis added).

13.55. Further, the Hon'ble APTEL vide its Judgment dated 23 September, 2019 in Appeal No. 88 of 2019 on the issue of payment of pre-development expenses has ruled that the Commission has observed in the impugned order that in terms of 'Request for Proposal' by BPC, the successful bidder of the project shall have to pay the pre-development expenditure met by TPC-T, in order to reimburse the TPC-T. The Commission has further safeguarded the interest of TPC-T by stating that even if there is any deviation in the pre-development expenditure of Rs.135.44 Crore by the TPC-T, it shall be incorporated as part of its regulated business in its upcoming Tariff Petition.

13.56. Thereafter, TPC-T in its MYT Petition in Case No. 299 of 2019 has submitted that apart from the expenditure of Rs.135.55 Crore till 30 September, 2019 (Rs.135.44

Crore till 31 May, 2019) it has estimated an additional claim of Rs. 52.20 Crore on account of the following heads as part of pre-development expenses:

- a) Rs. 20.50 Crore (Cost of plot of land of 1591.03 sq. m. below existing transmission lines at Vikhroli-Land Parcel “B”);
- b) Rs.13.45 Crore (Compensation towards utilising of the RoW of existing Transmission Line between Nerul and Vashi).
- c) Rs. 8.25 Crore (10% GST component on part of the pre-development expenditure);
- d) Rs.10 Crore (Expenditure to be incurred against short-closure of three Contracts placed for design & engineering, statutory permission, finance charges etc.).

13.57. It is worthwhile to note that TPC-T in the MYT Petition did not consider the impact of the pre-development expenses for FY 2019-20 as reimbursement was expected from the successful bidder. Also, at that time, Rs. 135.44 Crore (till 31 May, 2019) was not verified by STU as directed by the Commission vide its letter dated 20 June, 2019. Accordingly, the Commission in the MYT Order dated 30 March, 2020 ruled that the amount of Rs. 135.55 Crore (till 30 September, 2019) as claimed by TPC-T till 30 September, 2019, is also not finalised, and needs to be verified and validated by STU, before being paid by the successful bidder and reimbursed to TPC-T. As regards the additional claim of Rs. 52.20 Crore, the Commission has ruled that TPC-T has not submitted any information or supporting documents. TPC-T may co-ordinate with STU for such recovery, as STU has to verify whether these expenses are a deviation with respect to the predevelopment expenses and the justification for such additional expenses. The additional claim of TPC-T, being an estimate, it was premature to evaluate the same. Therefore, the Commission had not considered any impact of pre-development expenditure of Rs 135.55 Crore as well as additional claim of Rs.52.20 Crore in MYT Order.

13.58. As per the directives of the Commission in the MYT Order, STU has submitted the validation report of pre-development expenses on 2 September, 2020. Based on the STU’s validation report, the Commission vide its letter dated 14 September, 2020 has approved Rs. 118.27 Crore against Rs. 135.44 Crore. Regarding Rs. 52.20 Crore, the Commission has directed TPC-T to consider it as a part of its regulated business in TPC-T’s next ARR Petition. Also, the Commission vide its letter dated 3 October, 2020 has directed MSETCL to transfer the validated amount of Rs. 118.27 Crore to TPC-T as approved by the Commission based on STU’s validation report. Further, the Commission vide its letter dated 5 March, 2021 has directed MSETCL to transfer the validated amount of Rs. 8.44 Crore towards IDC of pre-development expenses of Rs. 135.44 Crore to TPC-T as approved based on STU’s validation report. The Commission has clarified that the treatment of disapproved amount of Rs.7.87 Crore incurred by TPC-T towards post closure activities of the scheme such as survey related expenses, Engineering Consultancy, site development expenses, pre-development expenses and estimated claim of Return on Investment (ROI) for the period January 2019 to May 2019 and Rs. 0.86 Crore towards IDC will be effected as per the provisions

of the TSA after the commissioning of the 400 kV Vikhroli project as ruled by the Commission vide its Order dated 23 January, 2021 in Case No. 142 of 2020 (KVTPL tariff adoption Petition).

- 13.59. The Commission vide its letter dated 14 September, 2019 has directed MSETCL to prepare a methodology for transfer of the validated pre-development expenses to TPC-T. Accordingly, MSETCL in consultation with STU, ATL, TPC-T has prepared, finalized, and signed methodology for the transfer/payment of validated pre-development expenses and intimated to the Commission vide letter dated 25 September, 2020. As per the joint methodology decided to transfer the pre-development expenses, TPC-T's claim in respect of GST on the pre-development expenditure shall be dealt with as per MERC letter dated 14 September, 2019 which says that TPC-T may consider its additional claim of Rs.52.20 Crore as a deviation against pre-development expenses in TPC-T's next ARR Petition.
- 13.60. From the above discussion, it is clear that the amount of Rs. 135.44 Crore as pre-development expenses has been settled. ATL has also paid Rs 135.44 Crore to MSETCL/SPV. Also, the amount of Rs. 118.27 Crore as approved by Commission has been paid to TPC-T by MSETCL.
- 13.61. In respect of claim of Rs. 52.20 Crore, the Commission has repeatedly directed TPC-T to claim such amount in the ARR Petition with necessary justification. Also, MSETCL in the transfer methodology signed by TPC-T and ATL dated 25 September, 2020 has reiterated the same. Further, TPC-T in the proposed Draft Lease agreement for land Parcel B and RoW of Darave-Vashi line agreement has proposed that as per the Commission's Order vide letters dated 14 September 2020 and 3 October 2020 claim as regards the cost of the land Parcel B (Rs.20.50 Crore) and RoW compensation (Rs.13.35 Crore) will be filed by TPC-T as a part of its regulated business in TPC-T's next ARR and in the subsequent proceedings, which the KVTPL has agreed to support.
- 13.62. The Commission notes that from the submission in the Petition, the Petitioners have not defined the disputed amount, whether it is part of Rs.52.20 Crore or over and above of it. Also, the Petitioners have not submitted any documentary evidence regarding its claim.
- 13.63. In view of the above, the Commission rules that the expenditure towards the stamp duty and other charges related to transaction envisaged as part of Rs. 52.20 Crore (or over and above this amount) shall be incurred by TPC-T and should be claimed in its next ARR Petition as part of its regulated business.

14. Issue No. 4: Unlawful/Unreasonable Conditions in CIDCO Lease Transfer Application for Kharghar Land:

Petitioners submission

- 14.1. The Petitioners and TPC-T agreed to submit the lease transfer agreement to CIDCO to transfer and assign the leasehold rights of Kharghar land to KVTPL. However, TPC in the Draft lease transfer agreement has placed an unlawful

condition that KVTPL shall be liable for all past losses and damages, costs, and expenses, claims, penalties, etc., by transfer of the said premises on lease. Conditions placed by TPC are unlawful as KVTPL cannot be held liable for the past claims as it was not in possession of the Kharghar Land.

- 14.2. TPC-T is also placing the conditions in the lease transfer agreement that the transfer fees shall be borne by the Petitioners. The said condition is against the Commission's directions dated 20 June, 2019, that any deviation in pre-development expenses shall be recovered by TPC-T as part of its regulated business in its upcoming Tariff Petition. Even in light of the categorical directions of the Commission, TPC-T has continued to claim the additional amount from the Petitioners.
- 14.3. KVTPL in its rejoinder and at the hearing has clarified that TPC-T and the Petitioners have agreed to the major terms of lease transfer documents and accordingly, documents have been submitted to CIDCO to transfer and assign the leasehold rights of Kharghar land to KVTPL. The parties have agreed to the terms that liability before handing over of the possessions will be on TPC-T and liability after that will be on the Petitioners.

TPC-T's submission :

- 14.4. CIDCO had executed a registered Agreement on 29 September, 2014 to lease the land in favour of TPC-T granting permission to occupy the land for the purpose of construction of substation.
- 14.5. TPC-T has already addressed letters dated 22 July, 2019 and 22 September, 2020 requesting CIDCO to grant NOC to transfer the land at Kharghar in the name of KVTPL. As part of the process requirement of CIDCO, certain forms are to be jointly filled.
- 14.6. The basis of the Petitioners' objections lies in a fabricated version of a clause of the final draft CIDCO application form. The original version of the clause was as reproduced below:
- “9. ... (a)In consideration of the transfer of the said premises and in pursuance of the said Corporation having agreed to transfer the said premises in the name of the said Transferee, the Transferee, their successors, executors, assignees and administrators shall at all time hereinafter remain liable for and shall fully and effectually indemnify and keep indemnified the said Corporation and its successors and assignees against **all losses and damages, costs, and expenses, claims, penalties or any other action** whatsoever which may be put to or may be incurred or suffered including the costs of litigation, if any, by reason of the transfer of the said premises in the name of said Transferee by the said Corporation.”*
- 14.7. The Petitioners, however, by adding the word ‘past’ before the phrase “all losses and damages...” have submitted that the Petitioners ought not to be held liable for the past claims as they were not in possession of the Kharghar Land. This attempt of the Petitioners to mislead the Commission ought to be deprecated. Interestingly, even the copy of CIDCO application does not contain the word ‘past’, which

shows that it has been fabricated solely by the Petitioners to misguide the Commission.

- 14.8. After the joint verification of the land, the Petitioners were issued a “Permission to Work” on 17 October, 2020 for the land. After putting in possession of the land, Clause 9(a) of the CIDCO application (indemnification for all losses pursuant to transfer of land) would come into play only thereafter. Even the Petitioners have raised no objection in their Petition on this issue.
- 14.9. The second objection raised by the Petitioners pertains to Clause 4 of the CIDCO application, regarding the payment of the requisite transfer charges determined by the Corporation within 15 days from receipt of the demand letter. However, such expenses do not form part of the pre-development expenses as defined in the Commission’s letter dated 20 June, 2019. Hence, the claim of the Petitioners is unsustainable in law and fact.

Commission’s Analysis and Ruling:

- 14.10. The Commission notes that the issue of the past liability, if any, on account of CIDCO land has been resolved mutually by KVTPL and TPC-T.
- 14.11. As regards the payment of transfer charges determined by CIDCO, it is a fact on record that CIDCO land at Kharghar has been transferred on lease to KVTPL and permission to work has been issued on 17 October, 2020 duly signed by representatives of TPC-T and KVTPL. The permission to commence work on plot at Kharghar provides that any liability on account of use, work commencement by KVTPL shall be to the account of KVTPL. The relevant provisions of the said document are as follows:
- “ Therefore, pursuant to reimbursement of pre-development expenses vide MSETCL’s letter dated 14.10.2020, the permission to commence the work is being issued, this day dt. 17.10.2020 subject to KVTPL obtaining all requisite approvals from CIDCO for transfer of the aforesaid land in their name within a reasonable period, with any liability on account of use, work commencement by KVTPL shall be to the account of KVTPL and KVTPL shall indemnify Tata Power against such liability pending transfer of the plot. ”*
- 14.12. Further, the Commission notes that neither the Petitioners nor the TPC-T has disclosed the amount and proof of expenses incurred towards land transfer charges.
- 14.13. The Commission’s letter dated 20 June, 2019 deals with pre-development expense of Rs. 135.44 Crore, which is now settled as explained at Para 13.59 to 13.61 above. Also the said letter specifically provides that any deviation in the predevelopment expenses of Rs. 135.44 Crores on account of expenses required on transfer of approval/clearances/land etc. in favour of SPV TPC-T shall incorporate the same as a part of its regulated business in its upcoming Tariff Petition with requisite information and supporting documents in accordance with prevailing MYT Regulations. Also the CIDCO land transfer charges are not part of Rs. 52.20 Crore, which is clear from the Para 13.57 above. CIDCO land at

Khargar has been transferred to KVTPL by TPC-T on 17 October, 2020. Also in the joint agreement, KVTPL has agreed to obtain the approval at its own liability.

14.14. In view of the above, Commission rules that claim of KVTPL for land transfer charges of CIDCO Khargar from TPC-T to KVTPL needs to be incurred by TPC-T and recovered from its next ARR Petition as part of its regulated business as per the Commission's letter dated 20 June, 2019. Further, the Commission rules that any expenses other than transfer charges incurred towards CIDCO Khargar land post permission to commence work (i.e. 17 October, 2020) need to incur by KVTPL as a part of its project cost as envisaged in the TBCB.

15. ***Issue No. 5: Delay in the execution of the Vikhroli Project is attributable solely to the actions and omissions of the Petitioners.***

TPC-T's submission:

15.1. As per provisions of RFP, once bid is submitted, it would be taken under law to have conducted a complete due diligence of all matters related to the Project. In an attempt to give up such obligations, Petitioners engaged in several dilatory tactics with the intent to either hide delays on account of other reasons or to showcase that the delays are uncontrollable. It is clear from the following facts:

- (a) On 14 December, 2019, two days after the issuance of the LOI, ATL requested BPC to conduct due diligence on matters connected with the Project in violation of RFP. Further, on 6 January, 2020, nineteen days post issuance of LOI, KVTPL attempted to conduct due diligence for a second time without payment of pre-development expenses in terms of the Commission's letter dated 20 June, 2019 and RFP. The Commission's said letter also required payment of pre-development expenses as a condition precedent to procuring NOC for transfer of land.
- (b) Vide letter dated 14 December, 2019, the Petitioners also requested for bank details for transfer of the pre-development expenses. Accordingly, by 22 December, 2019 or 24 December, 2019, the pre-development expenses were required to be transferred by ATL in compliance of Clause 2.4 of the RFP and the Commission's letter dated 20 June, 2019. However, ATL has paid it on 29 May, 2020, i.e., (almost five and a half months post issuance of LOI). Further, ATL vide its letter dated 27 December, 2019 sought the extension for payment of pre-development expenses. Also, the said letter is not kept on record by the Petitioners. However, ATL kept harping on the transfer of documents pertaining to the Vikhroli and Khargar land as factors delaying the Project.
- (c) Admittedly, TPC-T on 5 February, 2020, has intimated ATL that all relevant documents such as copies of the statutory approval (letter dated 21 June, 2019), request to Godrej and CIDCO for their NoCs to transfer the lands to SPV, etc. (letter dated 22 July, 2019), cost details of the project (letter dated 2 August, 2019), original approvals, land deeds and records, survey drawing, etc. (letter dated 30 December, 2019), etc., have already been transferred to KVTPL.

- (d) TPC-T vide its letter dated 25 July, 2019 has intimated that it had conducted site visits with all prospective bidders to help them to familiarize with ground facts of the project site.
 - (e) There is no valid reason as to why ATL delayed payment of pre-development expenses. The Commission's Order of 30 March, 2020 for validation of the pre-development expense was only for STU. It did not and could not have overridden ATL's contractual obligation under RFP to make the payment.
 - (f) STU on 2 September, 2020 has submitted the final report on the validation of TPC-T's pre-development expense. However, ATL had already made the requisite payment on 29 May, 2020. Therefore, ATL's submission that there was delay in payment of the pre-development expense on account of the Commission's MYT Order dated 30 March, 2020 is not true.
 - (g) Further, TPC-T vide letter dated 5 July, 2019 has clarified that land Parcel B at Vikhroli would be transferred by way of a long-term lease, which STU was required to communicate to all bidders. However, KVTPL raised an objection in this respect on 18 December, 2020 only. Therefore, from the conduct of the Petitioners, it is evident that they are raising some or the other issue in finalising the transfer documents and are least interested in timely implementation of the Project.
- 15.2. The Petitioners have put forth a false fact that delay in execution of Vikhroli project is on account of TPC-T.

Petitioners' submission:

- 15.3. It is a matter of record that the Vikhroli Project was initially meant to be implemented by TPC-T. However, on account of the huge and inordinate delay on part of TPC-T the Project was directed to be implemented under the TBCB process.
- 15.4. Vikhroli Project was envisaged to mitigate the prevailing transmission constraints in Mumbai. The project is of prime importance. However, by placing onerous, illegal terms and conditions, TPC-T is creating unlawful hurdles for the Petitioners to implement the Project. TPC-T has no basis to allege that the delay in implementation of the Project is attributable to ATL.
- 15.5. Despite multiple categorical directions of the Commission, issues with respect to the transfer of land Parcel B, ROW in the Darave-Vashi corridor and unlawful/unreasonable conditions in CIDCO lease Transfer Application for Kharghar Land were still persisting. Such illegal and onerous conditions have put the Project at risk. TPC-T continued to place onerous, illegal, and arbitrary conditions on the transfer of the land in the said area, risking the fate of the Project.
- 15.6. TPC-T has been arm twisting the Petitioners into agreeing to conditions, which were neither a part of the bidding documents, nor were they envisaged at any point in time.

- 15.7. Regarding purported delay in transfer of pre-development expenses, it is submitted that MSTECL vide its letter dated 20 April, 2020 requested TPC-T to submit information for verification, validation, and necessary justification in terms of Commission's Order dated 30 March, 2020.
- 15.8. Further, MSETCL stated that the issue of payment of Rs. 71.70 Crore by ATL and applicability of Change in Law in the letter dated 8 April, 2020 is being examined for necessary action. Further, the Commission in its MYT Order dated 30 March, 2020 for TPC-T has observed that the amount of Rs. 135.55 crore as claimed by TPC-T till 30 September, 2019 as pre-development expenses was not final and was required to be verified and validated by STU before reimbursed to TPC-T.
- 15.9. Accordingly, post verification of documents by STU, the Commission on 14 September, 2020 has approved the amount of Rs. 118.27 Crore towards pre-development expenses. Subsequently the Commission on 3 October, 2020 directed MSETCL to transfer the validated amount of Rs. 118.27 Crore as per methodology decided by MSETCL. Thus, pre-development expenses, which have been validated and found prudent have been paid to TPC-T. Further, the Commission has already directed TPC-T to approach the Commission for any additional expenses made by TPC-T and claim the same in its ARR.

Commission's Analysis and Ruling:

- 15.10. On the issue of delay in execution of the Vikhroli scheme, the Petitioners' argument is that TPC-T has already delayed the execution of the scheme as it was initially to be executed by it. Further, even after execution of the scheme under TBCB by the Petitioners, TPC-T is incorporating onerous provisions in the RoW and land lease agreement, which will further delay the execution.
- 15.11. On the contrary, TPC-T's argument is that the Petitioners have failed to follow the provisions of the RFP and to achieve the progress as envisaged. Also, the Petitioners have delayed the payment of pre-development expenses as directed by the Commission vide its letter dated 20 June, 2019.
- 15.12. The Commission notes that it had approved the Vikhroli scheme in the year, 2011 post 2010 Mumbai Grid Disturbance to cater to the increasing demand of Mumbai. It was expected to complete the scheme in the year 2015-16. Again, the scheme was revised in the year 2014-15 to be completed in the year 2018-19. In view of the substantial delay in execution of the scheme and absence of physical progress, the Commission has deemed closed the Vikhroli scheme vide Order dated 12 September, 2018 considering the suggestion of STU to execute it under TBCB route. Further, the Commission in its Order dated 23 September, 2017 in Case No.25 & 26 of 2017, 12 September, 2018 in Case No. 204 of 2017 and 2 January, 2019 in Case No. 249 of 2018 has clearly pointed out that 400 kV Vikhroli scheme has been substantially delayed by TPC-T.
- 15.13. It is a fact that the Commission at every count has given priority to strengthening of Mumbai Transmission thereby protecting power security of Mumbai. Contrary to this, TPC-T had failed to commence the implementation of 400 kV Vikhroli project even after 8 years of its approval thereby putting Mumbai power security

at great risk. In view of this, the Commission had made various correspondences with the CMD, MSETCL, the Energy Secretary, GoM, and TPC-T to expedite the execution of the scheme. Ultimately, the Commission deemed close the project of TPC-T and directed the same to be taken up under TBCB.

- 15.14. Further, after the completion of the TBCB process the Commission has issued the Transmission Licence to KVTPL in Case No. 141 of 2020 and also adopted the Tariff vide its Order dated 23 January, 2021 in Case No. 142 of 2020.
- 15.15. The Commission notes the minutes of the meeting held by the Principal Secretary, Energy, GoM on 13 January, 2021 wherein it has specifically expressed displeasure over the non-compliance of the directives issued by TPC-T and ATL. Also co-ordinated efforts on part of TPC-T and ATL has been recorded in the MoM.
- 15.16. Even after the completion of TBCB process, TPC-T and ATL are raising disputes on various issues for the reasons best known to them instead of resolving them amicably in the interest of the consumers whom they are bound to serve in the capacity of a Regulated entity (Licensee). It is evident from the huge trail of the letters as summarised under chronology of events at Para 9 above mailed by either party repeatedly on the same issue.
- 15.17. Also, in spite of repeated directives by the Principal Secretary Energy, GoM, the CMD (MSETCL) and STU, etc., as per MoM dated 29 June, 2019, 10 December, 2020, 13 January, 2021 to approach the Commission on the disputed land and pre-development expenses, neither TPC-T nor KVTPL/ATL approached the Commission.
- 15.18. Further, the Commission vide its letter dated 20 June, 2019 has identified the pre-development expenses of Rs. 135.44 Crore, which were part of the acquisition price of SPV. After completion of TBCB, LOI was issued on 12 December, 2019 in the name of ATL as successful bidder. It was expected that after issuance of LOI, pre-development expenses would be paid immediately. However, ATL paid it on 29 May, 2020. Also, ATL tried to link the payment of the pre-development expenses to the Commission's directives to validate such expenses by STU before the payment. However, the said directives of the Commission were for STU and not for the ATL/KVTPL. TPC-T, on the other hand is unnecessarily raising issues in spite of the Commission's clear ruling on the additional expenses (Rs 52.2 Crore) that they could submit with justification in the ARR Petition.
- 15.19. In view of the foregoing discussion the Commission is of the view that TPC-T before the ruling of project to be taken up under TBCB and TPC-T as well as ATL/KVTPL after TBCB are in default which is resulting in avoidable delay in execution Vikhroli project.
- 15.20. Hence, the Commission once again directs the Petitioners, TPC-T and STU to resolve the issues amicably, within the framework of the provisions of EA, MEGC,2020 and the Orders/correspondence (for compliance of the order) and focus on the speedy execution of the Vikhroli project instead of wasting resorting to unnecessary litigations and non- meritorious irrelevant issues.

- 15.21. In view of the foregoing submissions and factual analysis, it is clear that TPC-T as well as KVTPL/ATL have failed to carry out timely actions to execute the Vikhroli project inspite of consistent efforts by the Commission, GoM and STU. Further, in view of the above observations, the Commission at this stage, is not inclined to initiate the proceeding as per the provisions of the Section 142 and 146 of the EA.
16. Further, the Commission in its Order dated 29 January, 2019 in Case No. 3 of 2019 has directed MSETCL/STU to setup a credible project monitoring mechanism to track the progress of the Vikhroli project. The Commission notes that STU informed that it has formed a committee on 9 April, 2021 to monitor the progress of the Vikhroli scheme as per the direction of the Commission vide its Order dated 23 January, 2021 in Case No. 141 of 2020. The constitution of the Committee by STU is as follows:
- a) The Engineer, EHV CC O&M Zone, Vashi – Chairman;
 - b) Representative from STU;
 - c) Representative from Lead LTTC (MSEDCL);
 - d) One representative of KVTPL.
17. From the above, it is clear that the Commission had directed to set up a credible mechanism on 29 January, 2019, but STU has formed it on 9 April, 2021 and that too post hearing of the present Case on 6 April, 2021. Further, from the constitution of the Committee it seems that though Vikhroli project is important for MMR transmission strengthening, no officers in leadership position are included in the Committee. Moreover, even designation of the members of the Committee is not mentioned. The Commission is extremely worried and concerned about the actions of the STU and strongly believes that MSETCL/STU will be required to stringently work on the maintaining the timelines of important projects. Considering the importance of 400kV Vikhroli , HVDC Kudus-Aarey Schemes for strengthening the Mumbai Transmission system and remedial actions required to be taken on MMR Grid Failures occurred on 12th October 2020 in Case No. 202 of 2020, the Commission will separately notify a Committee for closely monitoring the progress of these Projects to ensure strict adherence to the planned timelines for its identified milestones. A separate notification will be issued on the same.
18. Hence, the following Order.

ORDER

The Case No. 237 of 2020 is partly allowed.

- 1. The Commission rejects the prayer of the Petitioners to direct the Tata Power Company Ltd.- Transmission (TPC-T) to transfer complete title and ownership of land Parcel B at Vikhroli interms of the rulings at Para 12.23 to Para 12.42 above.**
- 2. The Commission directs State Transmission Utility (STU) to resolve the issue of terms and conditions of Right of Way(RoW) agreement. STU, being a statutory authority under provisions of the Electricity Act should issue the appropriate directions, considering the submission of the parties on the issue of RoW agreement between Kharghar Vikhroli Transmission Private Limited (KVTPL) and TPC-T for Darave-Vashi corridor, other similar precedents, and consultation with Central Transmission Utility (CTU), if required, within a month from the**

date of this Order under intimation to the Commission. KVTPL and TPC-T shall co-operate to STU to resolve the issue.

3. The Commission rules that KVTPL shall carry out the Operation & Maintenance (O&M) of Multi Circuit Towers and 400 kV lines constructed on these towers and its ownership will be with KVTPL. TPC-T shall carry out the O&M of its 110 kV lines and ownership of these 110 kV lines will be with TPC-T.
4. The Commission rules that the expenditure towards the stamp duty and other charges related to transaction envisaged as part of Rs. 52.20 Crore (or over and above this amount) shall be incurred by TPC-T and should be claimed (which would be subject to due diligence) in its next ARR Petition as part of its regulated business.
5. The Commission rules that claim of KVTPL for land transfer charges of CIDCO Kharghar from TPC-T to KVTPL needs to be incurred by TPC-T and shall be recovered from its next ARR Petition as part of its regulated business as per the Commission's letter dated 20 June, 2019.
6. Considering the importance of the Vikhroli project for strengthening of Mumbai Transmission, the Commission directs the Petitioners to execute the Vikhroli project on priority within stipulated time as per the Transmission Service Agreement. TPC-T and STU should extend the necessary co-operation and support to the Petitioners for execution of the Vikhroli scheme.
7. The Commission will separately notify a Committee for monitoring the progress of this Project to ensure strict adherence to the planned timelines for its identified milestones.

Sd/-
(Mukesh Khullar)
Member

Sd/
(I.M. Bohari)
Member

Sd/--
(Sanjay Kumar)
Chairperson


(Abhijit Deshpande)
Secretary

