

7	IDC, Interest, Staff Cost, Preliminary Expenses, Security & other Misc. (Note-1)	19.60
	Total	61.69
	Sub Total (A+B)	135.44

16 From the above Table, it is clear that the amount incurred by TPC on the Khargar land is Rs. 44.68 Crore and the land at Khargar has been transferred to the Petitioner by TPC. Further it is necessary to note that, there are two Plots identified at Vikhroli [Land Parcel “A”(8015.12 sq.mtr) and Land Parcel “B”(1591.35 sq.mtr)] and were required for construction of 400kV Vikhroli Substation by TPC-T itself, when the project was conceptualized way back in the year 2011. The cost of land Parcel A of Vikhroli was considered as Rs.26.00 Crore (excluding stamp duty & registration costs) under the predevelopment expense and same was considered as part of indicated Acquisition Price by BPC for payment of successful bidder. Also, the Land Parcel “B” of Vikroli is allocated to KVTPL on 35 years lease to the Petitioner by TPC-T and agreed to claim one time lease rent of Rs. 20.50 Crore from its ARR as per direction of the Commission. The issue of additional payment by the Petitioner to the Godrej raised in the present Petition is only about the transfer of land parcel A of Vikhroli with the NOC of Godrej. It is worthwhile to note that except land parcel A of Vikhroli, TPC has transferred Khargar and land parcel B of Vikroli required for construction of substation to KVTL without any additional impact on acquisition price set out in RFP.

17 The main issue involved in the case is deciding the Acquisition Price of the SPV which includes the Predevelopment Expenses as set out in the bidding process carried out by MSETCL. In this regard the Commission’s analysis is as follows:

17.1 The Commission notes that the Petitioner has referred to the Commission’s letter dated 20.06.2019 in respect of the pre-development expenses incurred by TPC-T towards Vikhroli project.

17.2 The background and genesis of the Commission’s letter dated 20.06.2019 and payment of pre-development expenses to TPC-T lies in MSETCL’s letter dated 11.6.2019 wherein MSETCL has requested TPC-T to provide the following details regarding the 400 kV Vikhroli Project so as to undertake TBCB process:

- a) Survey report.
- b) Land information and NOC for transfer of land acquired for the project in the name of SPV.
- c) Details of 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.

17.3 In Reply to MSETCL's letter dated 11.6.2019, TPC-T vide its letter dated 15.06.2019 stated that TPC will provide the documents 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)

17.4 TPC-T's above letter clarified that TPC-T has indicated that there would be additional expenditure over and above Rs. 135.44 Crore incurred by TPC during the process of transfer of approvals/clearances/land etc. in favour of the SPV which will be to SPV's account and the same shall be reimbursed to TPC-T.

17.5 Thereafter, MSETCL vide letter dated 19.06.2019 approached the Commission requesting as follows:

- a) To direct TPC-T to claim the expenditure incurred on 400 kV Vikhroli Project in ARR of its regulated transmission business.
- b) 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 22.06. 2019.

17.6 Accordingly, the Commission vide its letter dated 20.06.2019 has clarified and directed MSETCL and TPC-T for complying with the RFP document 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:

- a) *The Commission notes that TPC has claimed reimbursement of Rs. 135.44 Crore 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.*
- b) *MSETCL in its RFP shall also clarify that the successful bidder of 400 kV Vikhroli Project shall have to pay the predevelopment expenses of Rs.135.44 Crores to SPV (“Kharghar Vikhroli Transmission Pvt. Ltd.”) which in turn would reimburse the same to TPC.*

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

17.7 Hence, the Commission’s above letter speaks about the pre-development expenses incurred by TPC-T which also included Rs.26 Crore as land purchase cost of Land Parcel A at Vikhroli in the year 2011. It also provides that TPC-T, to comply with RFP document by BPC, 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. Also, the Commission’s aforesaid letter categorically 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(KVTL), TPC-T shall incorporate the same as a part of its regulated business in its upcoming Tariff Petition. The Commission’s direction was based on the claim of TPC-T to recover the pre-development expenses incurred by it on Vikhroli Project with some additional cost was to be incurred in transfer/ approval/land etc. by TPC-T which presumably includes transfer cost of Land Parcel A at Vikhroli.

17.8 Thereafter, RFP was issued by BPC on 22.6.2019. Further, post RFP, on 28.6.2019, a meeting was held between CMD, MSETCL and TPC-T regarding the transfer of documents, clearances, and permissions by TPC-T to the proposed SPV for the Project. In the said meeting (MoM dated 29.6.2019) MSETCL, on the issue of Land at Vikhroli, directed TPC to provide the NOC of Land Parcel “A” and Land Parcel “B” in the name of SPV i.e., KVTL. Further, TPC-T was asked to obtain permission from Godrej to transfer Land Parcel ‘A’ and ‘B’ in the name of SPV. Further, it was clarified in the MoM that as per the MERC letter dated 20.6.2019, the expenses related to transfer of approval/clearances /land etc in favour of SPV to be borne by TPC-T and to be claimed in ARR Petition.

17.9 Another meeting was held on 12.7.2019 (MoM dated 16.7.2019) in presence of Energy Secretary, CMD MSETCL, STU and TPC-T. In the said meeting, TPC-T was asked to provide the NOC of Land Parcel “A” in the name of SPV subject to adjudication and outcome of the Appeal No. 88 of 2019 filed before the Hon’ble ATE. Further, TPC-T was asked to request Godrej to transfer Parcel "A" of land in the name of SPV. Also, it was

decided that TPC-T will approach the Commission if it has any issues on expenses related to transfer of approvals/clearances/land, etc. as stipulated in Commission's letter dated 20.6.2019, which can be claimed by TPC-T in its Tariff Petition.

17.10 As per the provisions of RFP, on 18.07.2019, MSETCL provided pre-bid clarification thereby providing a breakup of the Predevelopment expenses. The Breakup included Rs. 26.00 Crore towards the Purchase cost of Vikhroli land Parcel "A". The fact that Land Parcel "A" was available and was in possession of TPC-T is clearer from the Pre-bid clarification provided by BPC dated 18.07.2019, in replies to the clarification of the bidders. In respect of the status of Vikhroli land, BPC has stated that already acquired land will be transferred to SPV and successful bidder will be required to acquire additional land, if required, after acquisition of SPV. The relevant portion of pre-bid clarification is extracted herein-below:

<i>S. No.</i>	<i>Clause No. and Existing provision</i>	<i>Clarification required</i>	<i>Suggested text for the amendment</i>	<i>Rationale for the Clarification or Amendment</i>	<i>BPC Reply</i>
3	RFP	<i>The land acquired for Vikhroli RSS by TPCT is adjacent to the National Highway and the area of the Land being provided is not adequate to cater to the requirement of both Substation and erection of Dead End tower. As such, necessary land required for dead end tower of 400 kV lines may be acquired by BPC and handed over to successful bidder at the time of SPV acquisition.</i>	-	-	<i>Please refer to the Note on Project Development related Activities enclosed at Annexure-1. The land already acquired will be transferred to SPV. The additional land if required will have to be acquired by SPV after its acquisition by Successful Bidder.</i>

Annexure 1 to Replies on Queries Received on RFP Documents: Note on Project Development Related Activities

...

5. *The status of land, clearances and permissions from Statutory Authorities arranged by TPC-T for the Project is as shown in the Table below:*

<i>S.No.</i>	<i>Particulars</i>	<i>Status of possession with TPC-T</i>
<i>I</i>	<i>Vikhroli RSS</i>	
<i>1</i>	<i>Land</i>	<i>Available & in possession.</i>

17.11 Further, the Annexure-I of the pre-bid clarification in respect of the land at Vikhroli SS and other approval status provides as follows:

“ List of documents submitted by Tata Power Company-Transmission, and furnished to the Bidders, related to the project 400 kV Vikhroli Receiving Station and Associated Incoming Transmission Lines for Strengthening of Mumbai Transmission System

<i>S.No.</i>	<i>Particulars</i>	<i>Status of possession with TPC-T</i>	<i>List of Documents furnished to the Bidders (Refer to Appendix 3)</i>
<i>I</i>	<i>Vikhroli RSS</i>		
<i>1</i>	<i>Land</i>	<i>Available & in possession.</i>	<i><u>1. Agreement Letter from M/s Godrej & Boyce Mfg. Co. Ltd. dated 30.07.2011</u></i> <i><u>2. Possession Receipt dated 31.10.2011</u></i>
<i>2</i>	<i>NOC from AAI for Height Clearance.</i>	<i>Received</i>	<i>1. NOC dated 04.08.2014</i>
<i>3</i>	<i>Commencement Certificate</i>	<i>Received</i>	<i>1. Commencement Certificate from Municipal Corporation of Greater Mumbai dated 12.06.2015</i>

17.12 From the above, it is clear that the Status of the Vikhroli Land and Agreement Letter from Godrej dated 30.7.2011 and possession receipt dated 31.10.2011 was shared with all the bidders including the Petitioner by the BPC. Further, it is mentioned that land at Vikhroli was available and was in possession of TPC-T to be transferred to SPV. The additional land if required will have to be acquired by SPV after its acquisition by Successful Bidder. However, it is worth noting that the Land Parcel “A” is not the additional land proposed by the Petitioner. It is the same land which was proposed for Vikhroli substation by TPC-T itself and was in the possession of TPC-T since year 2011.

17.13 From the conjoint reading of the Commission’s letter dated 20.6.2019, MoM of dated 28.6.2019 and 12.7.2019 held by BPC, pre-bid clarification held by BPC, clarifies that TPC-T was to obtain the NOC from the Godrej for the Vikhroli land which was already in possession of TPC-T. Further, the expense required for transfer of approvals/clearances/land, etc was to be incurred by TPC-T and to be claimed in the ARR Petition.

17.14 The BPC, as per the provisions of the RFP, vide its letter dated 22.07.2019 informed the Bidders, the Indicative Acquisition Price of SPV as Rs.152.65 Crore (Rs.135.44 Crore as pre-development expenses incurred by TPC-T till 31.05.2019 and Rs. 17.21 Crore as Bid Processing cost.). The relevant provisions of the letter dated 22.7.2019 are as follows:

*“ 2. **The Indicative Acquisition Price** for acquisition of Kharghar Vikhroli Transmission Private Limited by selected bidder is Rs.152,65,04,797/-.—(Emphasis added)*

17.15 Further, the Hon’ble APTEL vide its Judgment dated 23.09.2019 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.

17.16 Hence, from the above background, it is clear that the incurred cost of Rs. 135.44 Crore by TPC-T was to be paid/reimbursed by the successful bidder to TPC-T as a predevelopment expense considered as a part of Acquisition Price. It was also expected that such pre-development expenses may change on account of transfer of land/approval/clearances. With this intent, the Acquisition Price in the RFP was provided as Rs. 152.65 Crore (Rs. 135.44 Crore+ Rs. 17.21 Crore). Further, any deviation in these pre-development expenses was to be incurred by TPC-T and recovered from its regulated business in ARR Petition.

17.17 Further, it is clear that TPC-T has paid Rs. 24.68 Crore to Godrej towards purchase of Land Parcel "A" in the year 2011 for construction of Vikhroli substation. Hence, it was responsibility of TPC-T to obtain the NOC from Godrej and transfer the land in possession in the name of SPV. Also, TPC-T was required to incur the expenses and recover from its ARR Petition. However, TPC-T has neither obtained NOC/nor paid the transfer amount to Godrej as claimed nor did it approach the Commission, inspite of repetitive directives by BPC.

17.18 From the above trail of events, it is clear that nowhere it was mentioned that to transfer the Vikhroli land already in possession of TPC-T, in the name of SPV, additional cost will be required and to be incurred by the successful bidder. However, as cited above, the Petitioner was constrained to pay additional amount of Rs. 71.70 Crore to Godrej, in obtaining NOC for transferring land Parcel A in the name of KVTPL from TPC-T. It is pertinent to note that it was duty of TPC-T to transfer Land after payment of additional amount of Rs. 71.70 Crore to Godrej, which has not been done by TPC-T. KVTPL has paid the same for ensuring the expeditious initiation of construction of the Vikhroli project.

17.19 It is a fact that during the bidding process, the bidders were not informed that they were required to incur the additional cost for transferring the Vikhroli land Parcel “A”, in the name of SPV for the land which was in the possession of TPC-T for which it has already

paid Rs. 24.68 Crore in the year 2011. This information of additional cost came to the knowledge when successful bidder, ATL/KVTPL began the construction activity of the Vikhroli project and when the Godrej raised the additional demand for the first time on 3.3.2020. Hence, the Commission finds merit in the argument of the Petitioner that ATL cannot be held liable for any demand arising later on as it carried out due diligence of the information and documents made available at the time of submission of the bid. Further, the Commission accepts the understanding of BPC and ATL that Vikhroli Land was available and was in possession of TPC-T and no further payment was required to be made for obtaining NOC from Godrej for transfer of Vikhroli Land to SPV.

17.20 In addition to the above facts, the Commission also notes that the Tripartite Agreement between ATL, KVTPL and Godrej dated 07.07.2020 regarding the status of Vikhroli land provides that Land Parcels were in possession of TPC-T since 2011. Further, TPC-T was to secure all necessary sanctions and the plan approvals regarding the acquisition of the Land Parcels within a maximum period of 12 months i.e., by July,2012. However, TPC-T did not comply with the stipulations relating to acquisition of Land Parcels. Had TPC-T completed the Land Acquisition at that point of time, issue of payment of additional cost to Godrej might not have arisen.

17.21 Further, it is worth noting that the Tripartite Agreement between ATL, KVTPL and Godrej dated 07.07.2020 regarding the Acquisition of Land Parcels at Vikhroli provides as follows:

“ 6. ATL shall cause KVTPL to take steps to ensure that the State Government initiates appropriate acquisition proceeding under the provisions of the 2013 Land Acquisition Act or any amendment thereof to acquire the First Plot of Land and the Second Plot of land from Godrej as well as complete the Project within a period of 3 years from the date thereof.----

8. In suppression of what is provided in the Godrej /TPCL Agreement and Godrej’s letter dated 6th April 2011 bearing number MHE/PRB/256-T/VIK-61507(and referred to in the Godrej/TPCL Agreement) upon KVTPL depositing an ad-hoc aggregate sum of Rs. 96,38,98,331/- (Rupees Ninety Six Crores Thirty eight lakh Ninety eight thousand Three hundred and Thirty one only) in the manner set out in Clause 4 hereinabove and upon KVTPL procuring a transfer and assignment of TPCL's rights and interest in, under or through the Godrej / TPCL agreement, Godrej has conveyed its willingness to sell the First Plot of Land and the Second Plot of Land to KVTPL subject to what is provided herein, and in particular the following terms and conditions:

(i) If in the course of acquisition proceedings under the provisions of the 2013 Land Acquisition Act or any amendment thereof, the Land Acquisition Officer concerned awards an amount by way of the compensation/ additional compensation and solatium for the acquisition of the First Plot of Land higher than the aforesaid adhoc aggregate sum of Rs. 96,38,98,331/- (Rupees Ninety Six Crores Thirty eight lakh Ninety eight thousand Three hundred and Thirty one only) to be deposited by KVTPL with Godrej , then in the event Godrej shall be entitled to recover the same from ATL and/ or KVTPL. In the event of Land Acquisition Officer concerned awarding an amount by way of

compensation/ additional compensation and solatium for the acquisition of the First Plot of Land less than the aforesaid ad hoc aggregate sum of Rs. 96,38,98,331/- (Rupees Ninety Six Crores Thirty eight lakh Ninety eight thousand Three hundred and Thirty one only) to be deposited by KVTPL with Godrej , then neither ATL nor KVTPL shall contend or make any claim for any refund from Godrej of any portion of deposit of the aforesaid ad-hoc aggregate sum of Rs.96,38,98,331/- (Rupees Ninety Six Crores Thirty eight lakh Ninety eight thousand Three hundred and Thirty one only) by virtue thereof.----"

17.22 As cited above, the Para 6 of the Tripartite Agreement provides that KVTPL has to acquire the land from Godrej (Both land parcel) as per the 2013 Land Acquisition Act as amended from time to time and complete the Project within a period of 3 years from the date thereof. Further, the Clause 8 of the agreement provides that if during the course of land acquisition proceeding, if the land compensation determined by the Land Acquisition officer is higher than Rs.96,38,98,331/- then Godrej is entitled to recover such amount from ATL/KVTPL. Further, if the Land Acquisition Officer awards additional compensation and solatium for the acquisition of the First Plot of Land less than the aforesaid ad hoc aggregate sum of Rs. 96,38,98,331/-, then neither ATL nor KVTPL shall contend or make any claim for any refund from Godrej of any portion of deposit of the aforesaid ad-hoc aggregate sum of Rs.96,38,98,331/-. In respect of the aforesaid provisions of the agreement, the Commission notes that it is the duty of KVTPL to complete the acquisition of the land within the timeline set out in the agreement and hence rules that KVTPL is required to acquire the land as specified in the aforesaid agreement. In case in the course of acquisition of the land there is any additional compensation and solatium higher than adhoc aggregate value set out in the agreement required to be paid, the same would be governed as per the provisions of the TSA.

17.23 Post completion of the Bidding, the Petitioner was declared as successful bidder and the LOI was issued on 12.12.2019. Thereafter, the Petitioner vide its letter dated 29.1.2020 and 31.1.2020 requested the Godrej for transfer of Land Parcel "A" on an as-is basis as per the bidding documents for construction of substation. However, the Godrej vide its letter dated 31.1.2020 rejected the Petitioner's proposal for handing over of Land Parcel "A" on as-is where basis stating the reason of delay in land acquisition by TPC-T. The relevant extract of the Godrej letter is as follows:

" After a lapse of over 8 years, we are once again being told about time being of the essence to complete the project. As far back as July,2011 on account of the urgency expressed by TPCL Godrej and Boys Manufacturing Co. Ltd.(Godrej) agreed to handover possession of an aggregate area of approximately 9,606.21 square metre of our lands in village Vikhroli(the "said land") to TPCL on the terms and condition recorded in Godrej letter dated 30 July 2011 addressed to TPCL. We wish to make it plain, that Godrej is not and cannot possibly be held liable and responsible for the inordinate delay since July 2011 in the failure of initiating and completing land acquisition proceedings in respect of the said land under the then extant law relating to land acquisition.

In these extenuating circumstances, you will appreciate that it is not possible for us to accede to your proposal of possession of the said land being hand over to the SPV formed for the project on as is basis

However, if you have any other reasonable proposal which contemplates forthwith initiation of land acquisition proceedings forthwith under the new prevailing law relating to land acquisition, we are ready and willing to hold a meeting on “Without Prejudice” basis with you to explorer proposal.---”

17.24 Hence, the Godrej vide letter dated 31.1.2020 clarified that there was inordinate delay on part of TPC-T for land acquisition. TPC-T has not acquired the land though it had taken the possession in the July 2011. Hence Godrej has rejected the proposal of ATL to handover the land on as is where is basis.

17.25 Further, considering the importance of the Vikhroli Project for strengthening of the Mumbai transmission system, the CMD MSETCL vide its letter dated 27.2.2020 requested the Godrej to resolve the issue of transfer of Land Parcel "A" to the Petitioner. Hence, it is clear that MSETCL as BPC and KVTPL as a successful bidder pursued with the Godrej and TPC to transfer the land in the name of SPV on as is where is basis. But the Godrej rejected their demand. Hence, it is not the case that the Petitioner/ MSETCL has not pursued with the Godrej to transfer Land Parcel "A" on as is where is basis without additional cost. Further, it is not the case that the land was available on as is where is basis and the Petitioner acquired alternate land by paying additional cost. As per RFP the location of Vikhroli substation was fixed as project was a brown field project.

17.26 Further, while making the communication with the Godrej on the issue of Land Transfer, TPC was also party to the communication. ATL vide its letter dated 13.7.2020 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. However, TPC-T has not objected for the payment of additional amount of Rs. 71.70 Crore to Godrej to acquire the Land Parcel "A" at that point of time. Hence, objection by TPC-T post issuance of Change in Law notification as per the TSA is not justified.

17.27 Under such a situation, the option for KVTPL/selected bidder was to seek prior approval of the Commission before making the payment of the additional amount of Rs. 71.70 Crore to Godrej to acquire the mandatory land for substation. Needless to say, the process would have delayed the project to that extent. It was not possible for the Petitioner to go ahead with the project activities such as tendering, procurement of material, fixing of agency etc in absence of Land. Hence, the Petitioner, in consultation with BPC and TPC-T, has paid Rs. 71.70 Crore to Godrej on 7.7.2020 for transfer of Land Parcel "A" in Order to start the project activities in time bound manner. The details of the payment made by the Petitioner as per the ready reference are as follows:

Particulars		UoM	Values
Land Area	a	Sq.mt.	8,015
Ready Reckoner Rate	b	Rs./Sq. mt.	85,900
TDR Load Factor	c		1.40
Total Cost as per Ready Reckoner rate	$d = a*b*c$	Rs. Cr	96.39
Received by Godrej from /paid by TPC	e	Rs. Cr	24.69
Received by Godrej from /paid by (Balance) KVTPL	$f=d-e$	Rs. Cr	71.70

17.28 From the above Table it is clear that the Petitioner has paid the difference amount as per the prevalent ready reckoner rate for the Land Parcel "A". The original cost of Rs. 24.69 Crore paid by TPC-T to Godrej in the year 2011 is part of Acquisition Price of SPV. As elaborated above, the additional amount of Rs. 71.70 Crore was to be payable to Godrej was not disclosed during the entire bidding process. Further, the Godrej for the first time on 3.3.2020 after the cutoff date raised the demand for payment for transfer of Land Parcel "A". Hence, the argument of the Respondents that it was the responsibility and liability of the Petitioner to pay Rs. 71.70 Crore to Godrej towards the Land Parcel "A" is not justified. Further, it would not be legally tenable to hold the Petitioner responsible for the cost which was not clearly demonstrated/estimated and disclosed during the bidding process as a part of Acquisition Price and future liability of SPV.

17.29 The bidding documents such as RFP, TSA and SPA as elaborated above, provides the responsibility of the successful bidder to procure the land, pay the compensation, obtain the approval, permissions etc. However, the amount of Rs. 71.70 Crore paid to Godrej is over and above the declared Acquisition Price at which TPC-T should have handed over the land parcels to KVTPL. This expense was additionally incurred after the cutoff date and after completion of the bidding process. Also, the additional amount to be paid to the Godrej which changed the Acquisition Price came to light only on 3.3.2020. Hence, the argument of the respondents that there is no change in Acquisition Price lacks merit.

17.30 The Vikhroli Project being brown field project, the location of Substation and land required was identified by TPC-T. Accordingly, possession of land was taken by TPC-T in the year 2011. Also, TPC-T has incurred certain expenditure in terms of the Acquisition Price. A company under the Companies Act, 2013 by the name "Kharghar Vikhroli Transmission Company Private Ltd. (KVTPL) was incorporated by MSETCL on 13.05.2019, as its 100% wholly owned subsidiary to initiate activities for execution of the project and to act as the TSP after being acquired by the successful bidder. As per the bidding documents, the successful bidder was required to acquire the SPV by purchase of its 100% equity shares. Vikhroli project being a brown field project and considering uncertainties in the various expenses, such as approvals, permissions, land cost, RoW compensation etc the Article 12 of the TSA provides change in Acquisition Price as Change in Law.

17.31 The Article 12 of the TSA defines the Change in Law. The relevant provisions of the article are as follows:

12.1 Change in Law

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

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

12.2 Relief for Change in Law

12.2.1 During Construction Period:

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

For every cumulative increase/decrease of Rupees Four Crore Thirty Nine Lakh (Rs. 4.39/-) in the cost of the Project up to the Scheduled COD of the Project, the increase/decrease in non-escalable Transmission Charges shall be an amount equal to zero point three one three percent (0.313%) of the Non-Escalable Transmission Charges.

12.2.2 During the Operation Period:

During the Operation Period, the compensation for any increase/decrease in revenues shall be determined and effective from such date, as decided by the Appropriate Commission whose decision shall be final and binding on both the Parties, subject to rights of appeal provided under applicable Law.

Provided that the above mentioned compensation shall be payable only if the increase/decrease in revenues or cost to the TSP is in excess of an amount equivalent to one percent (1 %) of Transmission Charges in aggregate for a Contract Year.

12.2.3 For any claims made under Articles 12.2.1 and 12.2.2 above, the TSP shall provide to the Long Term Transmission Customers and the Appropriate Commission documentary proof of such increase/decrease in cost of the

Project/revenue for establishing the impact of such Change in Law.

12.2.4 The decision of the Appropriate Commission, with regards to the determination of the compensation mentioned above in Articles 12.2.1 and 12.2.2, and the date from which such compensation shall become effective, shall be final and binding on both the Parties subject to rights of appeal provided under applicable Law.

17.32 All the LTCCs have signed the TSA agreeing to the terms and conditions of the TSA including the provisions of Change in Law on account of change in Acquisition Price as reproduced above. Further, indicative acquisition price of Rs. 152.65 Crore was informed by BPC even before signing of TSA and SPA. Hence, in terms of Article 12 of the TSA, any Change in Acquisition Price of the SPV after the date, which is seven (7) days prior to the Bid Deadline (i.e., 14.8.2019) resulting into any additional recurring / non-recurring expenditure by the TSP or any income to the TSP is Change in Law. In the present Case, indicative Acquisition Price was intimated as Rs.152.65 Crore by the BPC and the same is defined in the SPA. It means Acquisition Price was susceptible to change. However, the Petitioner, despite follow up with the Godrej, TPC-T and BPC to transfer the land on as is where is basis was constrained to pay additional Rs.71.70 Crore to acquire the land Parcel "A" from the Godrej after the cutoff date. Hence, the Acquisition Price in terms of Land Cost of Parcel "A" increased by Rs.71.70 Crore, from 152.65 Crore to Rs. 224.35 Crore. Further, the amount paid by the Petitioner is non-recurring expenditure towards land required for the Substation. Hence, the Commission finds that it is Change in Law in terms of Article 12 of the TSA. The Commission further notes that as per Article 12.2.4 of the TSA, the decision of the Commission to determine the compensation and date from which such compensation shall become effective, shall be final and binding on both the parties.

17.33 The Commission notes that the Respondents also have raised the following contentions:

- a) Acquisition Price informed by the BPC and the Acquisition Price as defined in the SPA is same i.e., Rs. 152.65 Crore. Hence, there is no Change in Acquisition Price.
- b) The Petitioner has paid the additional amount towards land to the Godrej on 7.7.2020 after signing of SPA dated 25.6.2020 and hence the said amount is not liability of SPV. Hence, the said amount is not justified as Acquisition Price.

- c) The Petitioner approached Commission with delay though directed by Empowered Committee for TBCB projects.
- d) There is delay in execution of Project by the Petitioner.

17.34 On these contentions the Commission finds as under :

- a) Vide its letter dated 20.6.2019, the Commission has directed that any deviation in predevelopment 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. However, it is a fact that TPC-T, despite repeated directives by the BPC and request of ATL did not incur the expenses required for Land Parcel "A". Further, Godrej Letter dated 31.1.2020 and agreement dated 7.7.2020 amply clarifies that TPC-T has delayed the acquisition of land by more than 8 years.
- b) TPC-T in the MYT Petition in Case No. 299 of 2019 filed on 1.11.2019 had submitted that it has proposed the following additional expense over and above Rs. 135.44 Crore to be recovered from the successful bidder. The details of the expenses claimed by TPC-T are as follows:
 - i. Rs. 20.50 Crore (One time lease cost of Land Parcel "B" 1591.03 sq. m.)
 - ii. Rs.13.45 Crore (Compensation towards utilising of the RoW of existing Transmission Line between Nerul and Vashi).
 - iii. Rs. 8.25 Crore (10% GST component on part of the pre-development expenditure);
 - iv. Rs.10 Crore (Expenditure to be incurred against short closure of three Contracts placed for design & engineering, statutory permission, finance charges etc.).
- c) Further, TPC-T had submitted that it has not currently included Rs. 187.75 Crore as part of its ARR for FY 2019-20, as reimbursement is expected from STU/successful bidder. TPC-T further submitted that in case the Commission deems fit for any expenditure listed above to be claimed through ARR, the Commission may accordingly approve through this ARR.
- d) The Land Parcel was in possession of TPC-T since 2011 but TPC-T had not acquired the land. Had, TPC-T as per the Commission's and MSETCL's directives and demand of Godrej incurred the additional expenses to obtain the NOC from the Godrej for Land Parcel "A" and recovered from its ARR, the Petitioner may not have claimed this amount. Further, said amount could have become the part of deviation of pre-development expenses and hence part of Acquisition Price.
- e) Further, it is a fact on record that the Godrej for the first time on 3.3.2020 raised the demand for additional cost of Rs. 71.70 Crore towards Land Parcel "A" at Vikhroli. Hence, though the amount was paid on 7.7.2020 post signing of SPA dated 25.6.2020, the amount was payable since 3.3.2020 and before the signing of SPA. Further, as explained above the amount is part of Acquisition Price in terms of cost of Land Parcel

“A”. The Article 12 of the TSA provides that any Change in Acquisition Price is Change in Law. Further, TSA does not have a provision to restrict the scope of Article 12 till the date of signing of SPA. Article 12 provides the Change in Law during the construction as well as operation period. Hence, the contention of the Respondent that the amount paid by the Petitioner to Godrej is not a change in Acquisition Price is not justified.

- f) Hence, the Commission finds the merit in the argument of the Petitioner that Vikhroli being brown field project and considering the uncertainties in the estimation of transfer cost of land/approvals/consents during bidding process, provision for Change in Law on account of change in Acquisition Price was made in the Article 12 of the TSA. Further, the Acquisition Price informed by the BPC was indicative and prone to change. Hence, though the change in land cost is because of increase in ready reckoner rates, it leads to change in Acquisition Price, which is Change in Law event.
- g) The argument of the Respondents that the additional amount of Rs. 71.70 Crore paid by the Petitioner on 7.7.2020 after signing of SPA dated 25.6.2020 and hence not entitled for Change in Law is misplaced. The liability of the payment itself was known for the first time when Godrej rejected the proposal to handover the land on as is where is basis and raised the demand for additional cost of Rs. 71.70 Crore on 3.3.2020 for transfer of Land Parcel “A” to KVTPL. Further, as per TSA, for acquisition of SPV, signing of SPA was necessary. Hence, the Petitioner, as per the advice of the BPC signed the SPA on 25.6.2020 and acquired the SPV. Hence, such action of the Petitioner signing of SPA before payment of additional Land Cost to Godrej does not deprive it of the provisions of Change in Law. Further, the intention of signing SPA before payment of additional cost to Godrej towards Land Parcel “A” needs to be understood in the correct perspective in the interest of the Project. Also, there was delay in signing of SPA and acquisition of SPV because of transfer of Land issues. Necessary, extension have been granted by BPC. It simply means that payment of Rs. 71.70 Crore made on 7.7.2020 which was due from 3.3.2020, cannot be denied on the ground that it is not a part of Acquisition Price. Further, it is not the case that the Petitioner has claimed the fresh additional claim post signing of SPA. Similarly, the argument of the Respondent that the additional payment by the Petitioner to Godrej towards the Land Parcel "A" is not liability of SPV is not tenable. Had it been incurred by TPC-T it could have reflected in the accounts of SPV as Acquisition Price and Liability of SPV. Further, it was assured that land is available and in possession of TPC-T and will be transferred to TSP along with the necessary NOC.
- h) Regarding the contention of the Respondents that the Petitioner inspite of the directives of the EC vide letter dated 30.5.2020, approached the Commission in Month of November 2021. In this regard, the Commission finds that the Petition was filed by KVTPL on 7.7.2020 for adoption of tariff for Vikhroli Project in Case No. 142 of 2020. In the said Petition, LTTCs objected that KVTPL should restrict itself to the claims regarding adoption of tariff only and suggested that for any claims pertaining to change in law, KVTPL may approach the Commission separately and the Commission may allow the same only after prudence check. Accordingly, the

Commission in the said Order has ruled that the Petition, if any, is filed by KVTPL in future, the Commission shall provide due opportunity to the concerned Stakeholders/Respondents to file their submission/arguments. Also, the Commission notes that the Petitioner in Case No. 142 of 2020 had stated that KVTPL has submitted the bid for the Vikhroli project considering the acquisition cost of Rs. 135 Crore towards the pre-developmental charges by TPC-T for the Project. However, any change over and above Rs.135 Crore, qualifies as change in Acquisition Price and will fall under Change in Law as per Article 12 of the TSA. In the event of an increase in the acquisition price, KVTPL reserved its rights to file a separate Petition in respect of reliefs in relation to the same. Hence, filing of the Petition on Change in Law was envisaged in Case No. 142 of 2020 itself. Hence, the Commission does not find any fault or inordinate delay on part of KVTPL in filing this petition. Further, in respect of the contention of the Respondent that there is delay in execution of the scheme, the Commission notes that the Petitioner has filed the Petition in Case No. 53 of 2022, seeking the extension of COD on various counts. Further, all the LTTCs are parties to the Petition in Case No. 53 of 2022. Hence, it would not be appropriate to rule on delay in project execution in the present matter as issue is not ambit of the present case and same has been raised in Case No. 53 of 2022.

17.35 In view of the foregoing discussion and the material kept of record, the Commission rules that the Petitioner is entitled to claim the additional cost of Rs. 71.70 Crore paid to Godrej to acquire the Land Parcel “A” in terms of the Article 12 of the TSA.

18 Issue No. II: *If the additional amount of Rs. 71.70 Crore is entitled under Change in Law, then whether the Petitioner is entitled for carrying cost in accordance with the restitution principle of Change in Law as claimed?*

A) Petitioner’s Submission:

18.1 In order to offset the adverse financial impact of the aforesaid Change in law event, the Petitioner had to infuse additional capital for construction and timely completion of the Project. For this purpose, the Petitioner has borrowed additional funds from its lenders and paid interest on such additional capital. Therefore, such additional interest incurred by the Petitioner forms part of the additional non-recurring expenditure incurred by the Petitioner due to Change in Law in the form of Carrying cost. Accordingly, the Petitioner is entitled to Carrying Cost on Non-recurring expenditure of Rs. 71.70 Crore till actual realization of this expenditure.

18.2 Carrying cost forms part of ‘compensation’ payable under TSA. As per Article 12 of the TSA, the amount payable on account of ‘Change in Law’ is in the nature of ‘compensation’. The Article 12.2.4 of the TSA provides that the decision of the Appropriate Commission with regards to the determination of the compensation as per Articles 12.2.1 and 12.2.2, and the date from which such compensation shall become effective, shall be final and binding on both the Parties subject to rights of appeal provided under applicable law.

18.3 Carrying Cost is no longer res-integra in light of Hon’ble Supreme Court’s Judgment in Uttar Haryana Bijli Vitran Nigam Ltd. & Anr. Vs Adani Power Ltd., & Ors. (2019) 5 SCC

325 (“Adani Carrying Cost Judgment), which allowed Carrying Cost in relation to a PPA with similar provisions. In terms of the Adani Carrying Cost Judgment, the Hon’ble Supreme Court held that Article 10 of the PPAs therein contains a restitution principle, which provides that the affected party must be restored to the same economic condition as if such change in law did not take place.

18.4 Carrying costs are in the nature of compensation for time value of money not available at the appropriate time and paid after a lapse of time. Accordingly, the Petitioner is entitled to receive the carrying cost so as to reconstitute the Petitioner to its original financial position as if such change in law has not occurred. In support of the claim of carrying cost, the Petitioner referred to the provisions of the following Hon’ble Supreme Court Judgments:

- a) The Hon’ble Supreme Court in case of R.C. Cooper Vs. Union of India reported as AIR 1970 SC 564 has noted that as per the dictionary meaning “compensation” means anything given to make things equal in value: anything given as an equivalent, to make amends for loss or damage”.
- b) The Hon’ble Supreme Court in the case of N.B. Jeejeebhoy Vs. Assistant Collector, Thana Prant, Thana reported as AIR 1965 SCC 1096 has recognized that in relation to Article 31 of the Constitution of India wherein it was held that “the expression “compensation” in Art. 31(2) of the Constitution means “just equivalent” of what the owner has been deprived of.
- c) The Hon’ble Supreme Court in Indian Council for Enviro-Legal Action v. Union of India, (2011) 8 sec 161 (“Enviro Legal Action Judgment”).

18.5 The principle of restitution and putting the affected party to same economic position is intrinsic to the risk allocation clause like in Change in Law. In this regard Clause 3 of the Electricity (Timely Recovery of Costs due to Change in Law) Rules,2021 are as follows:

“ 3 Adjustment in tariff on change in law – (1)On the occurrence of a change in law, the monthly tariff or changes shall be adjusted and recovered in accordance with these rules to compensate the affected party so as to restore such affected party to the same economic position as if such changes law had not occurred.”

B) TPC-D’s Submission:

18.6 The Petitioner’s claim of change in acquisition price on account of change in law is bad in law and against the spirit of section 63 of the EA 2003, therefore no question of carrying cost arises on the same. The issue of carrying cost needs to be discussed only in case there is any legitimate claim outstanding by way of principal amount. In the present case, there is no legally sustainable claim made by the Petitioner and therefore, the question of carrying cost does not arise.

18.7 Further, Petitioner has taken a newfangled argument by way of its written note that Carrying cost forms part of ‘compensation’ payable under the Article 12 of the TSA, stating that the amount payable on account of ‘Change in Law’ is in the nature of ‘compensation’. The said argument of the Petitioner ought not be considered by the

Commission as the same has not been pleaded before the Commission either in the Petition nor in its arguments.

18.8 Article 12.1.1 of the TSA inter alia pertains to Change in Law on account of occurrence of any change in Acquisition Price. No case has been made out by the Petitioner for seeking relief qua Change in Law in terms of Article 12 of the TSA and accordingly, no claim towards compensation shall be allowed.

18.9 The reliance of the Petitioner on the judgments of the Hon'ble Supreme Court in Civil Appeal No. 5865 of 2018 to claim the Carrying is not tenable wherein the Hon'ble Court has observed that the PPA had a specific provision for compensating the party affected by change in law and that the affected party to be restored to the economic position as if such change in law had not occurred.

18.10 However, there is no such restitution clause in Article 12 of the TSA or any other clause of the TSA in the present case. The claim of carrying cost of the Petitioner does not come within the scope of the provisions of the TSA. It is trite position that any compensation, including carrying cost, to be granted as relief, ought to be within the scope of the Agreement, which is not there in the present case.

18.11 Hence, claim of carrying cost on compound interest basis made by the Petitioner, is devoid of merits and accordingly ought to be dismissed.

C) MSEDCL's Submission:

18.12 The Article 12 of the TSA does not provide for restitution of economic position as claimed by the Petitioner. Hence, the Petitioner is not entitled to carrying cost on the claim.

18.13 MSEDCL also referred to the Hon'ble ATE Judgment dated 13.4.2018 in Appeal No. 210 of 2017 (Adani Power Ltd. v/s CERC and others).

D) BEST Submission:

18.14 BEST denies paying carrying cost at the rate of 9.35 % on compound interest basis. The dispute and delay in handing over the land from TPC to KVTCL and subsequent rise in the cost thereof should not compel TSUs to bear further additional transmission charges with compound rate.

E) Submission of GEPL, MBPPL and NUPLLP:

18.15 Increase in land cost is not qualified as Change in Law. Hence the prayer of the Petitioner of allowing the Carrying Cost on such additional cost is also pointless.

Commission's Analysis and Rulings:

18.16 The Petitioner's submission is that Change in Law compensation is premised on the underlying principle of restitution of Change in Law, according to which the affected party is to be restored to the same economic position as if such change in law had not occurred. Supporting its claim, the Petitioner referred to the Hon'ble Supreme Court judgment dated

25.02.2019 in Civil Appeal No. 5865 of 2018 in the matter of Uttar Haryana Vitran Nigam Ltd. (UHBVNL) vs Adani Power Ltd. and the Hon'ble SC Judgment dated 11.04.2017 in Civil Appeal Nos. 5399-5400 of 2016 ("Energy Watchdog Judgment") Judgment etc.

18.17 The Commission notes that in the Civil Appeal No. 5865 of 2018 vide Judgment dated 25.2.2019, the Hon'ble SC has observed that:

- a. ATE vide Order dated 13.4.2018 had allowed carrying cost on the Change in Law amount as per the provisions of the PPA which is challenged before the Hon'ble SC. In the said Order of ATE it has been ruled that in view of the provisions of the PPA, the principle of restitution and judgment of the Hon'ble Supreme Court in case of *Indian Council for Enviro-Legal Action vs. Union of India & Ors.*, the Appellant was eligible for Carrying Cost arising out of approval of the Change in Law events from the effective date of Change in Law till the approval of the said event by appropriate authority.
- b. ATE in the said Order also observed that the Gujarat Bid-01 PPA had no provision for restoration to the same economic position as if Change in Law has not occurred. Accordingly, this decision of allowing Carrying Cost will not be applicable to the Gujarat Bid-01 PPA.
- c. The Hon'ble SC in its aforesaid judgment has referred to the provisions of the PPA, particularly, Clause 13.2 of the PPA which provide as follows:

" 13.2 Application and Principles for computing impact of Change in Law

*While determining the consequence of Change in Law under this Article 13, the Parties shall have due regard to **the principle that the purpose of compensating the Party affected by such Change in Law, is to restore through Monthly Tariff Payments, to the extent contemplated in this Article 13, the affected Party to the same economic position as if such Change in Law has not occurred.—**"*

- d. Accordingly, the Hon'ble SC while upholding the aforesaid ATE Judgment based on the provisions 13.2 of the PPA has ruled as follows:

*"10. A reading of Article 13 as a whole, therefore, leads to **the position that subject to restitutionary principles contained in Article 13.2, the adjustment** in monthly tariff payment, in the facts of the present case, has to be from the date of the withdrawal of exemption which was done by administrative orders dated 06.04.2015 and 16.02.2016. The present case, therefore, falls within Article 13.4.1(i). This being the case, it is clear that the adjustment in monthly tariff payment has to be effected from the date on which the exemptions given were withdrawn. This being the case, monthly invoices to be raised by the seller after such change in tariff are to appropriately reflect the changed tariff. On the facts of the present case, it is clear that the respondents were entitled to adjustment in their monthly tariff payment from the date on which the exemption notifications became effective. **This being the case, the restitutionary principle contained in Article 13.2 would kick in for the simple reason that it is only after the order dated 04.05.2017 that the CERC held that the***

respondents were entitled to claim added costs on account of change in law w.e.f. 01.04.2015. This being the case, it would be fallacious to say that the respondents would be claiming this restitutionary amount on some general principle of equity outside the PPA. Since it is clear that this amount of carrying cost is only relatable to Article 13 of the PPA, we find no reason to interfere with the judgment of the Appellate Tribunal.”

18.18 Further, the Hon’ble SC in the Judgment of Appeal No. 5865 of 2018 has also referred to the Hon’ble SC Judgment in Appeal Nos. 5399-5400 of 2016 (“Energy Watchdog Judgment”) and ruled as follows:

“ 16. Lastly, the judgment of this Court in Energy Watchdog v. Central Electricity Regulatory Commission and Ors., (2017) 14 SCC 80 was also relied upon. In this judgment, three issues were set out and decided, one of which was concerned with a change in law provision of a PPA. In holding that change in Indonesian law would not qualify as a change in law under the guidelines read with the PPAs, this Court referred to Clause 13.2 as follows:

*“57. This being so, it is clear that so far as the procurement of Indian coal is concerned, to the extent that the supply from Coal India and other Indian sources is cut down, the PPA read with these documents provides **in Clause 13.2 that while determining the consequences of change in law, parties shall have due regard to the principle that the purpose of compensating the party affected by such change in law is to restore, through monthly tariff payments, the affected party to the economic position as if such change in law has not occurred.....”***

18.19 Further, the Hon’ble SC in the above Judgment has ruled that there can be no doubt from this judgment that the restitutionary principle contained in Clause of the PPA must always be kept in mind even when compensation for increase/decrease in cost is determined by the CERC.

18.20 It is worth noting that in the present case, the Petitioner has claimed the Change in Law as per the provisions of the Article 12 of TSA. The relevant provisions of the TSA in this respect are as follows:

“12.2.3 For any claims made under Articles 12.2.1 and 12.2.2 above, the TSP shall provide to the Long Term Transmission Customers and the Appropriate Commission documentary proof of such increase/decrease in cost of the Project/revenue for establishing the impact of such Change in Law.

12.2.4 The decision of the Appropriate Commission, with regards to the determination of the compensation mentioned above in Articles 12.2.1 and 12.2.2, and the date from which such compensation shall become effective, shall be final and binding on both the Parties subject to rights of appeal provided under applicable Law.-----

12.4 Payment on account of Change in Law

12.4.1 The payment for Change in Law shall be through Supplementary Bill as mentioned in Article 10.10. However, in case of any change in Monthly Transmission Charges by reason of Change in Law, as determined in accordance with this Agreement, the Monthly Invoice to be raised by the TSP after such change in Transmission Charges shall appropriately reflect the changed Monthly Transmission Charges.”

18.21 The perusal of the Article 12 of the TSA shows that there is no provision of restitution clause akin to the PPA referred in the aforesaid Hon’ble SC Orders. Further, the case laws referred by the Petitioner are related to the PPA and recovery of its due already accrued and delayed because of Change in Law event.

18.22 Hence, the reliance of the Petitioner on the Judgments of the Hon’ble Supreme Court to justify the claim of carrying cost is not justified as these judgements are based on different premises. The Hon’ble Supreme Court in the aforesaid judgements has observed that the PPA had a specific provision for compensating the party affected by change in law and that the affected party to be restored to the economic position as if such change in law had not occurred. However, there is no provision of restitution in the TSA between the Petitioner and LTTCs.

18.23 Further, the Commission in the SOR of MYT Regulations, 2019 on the issue of carrying cost has clarified as follows:

“ The Commission has been allowing interest on Carrying/Holding Cost on simple interest only and there is no question of consideration of compound interest. The issue was raised during MYT Regulations, 2015 and was addressed by the Commission at that time.

*Carrying cost is allowed to the Generating Company/Licensee as a compensation for delay in realizing its revenue on **time due to the regulatory process, at normative rate of interest linked to MCLR prevailing in the markets.** The interest rate for allowance of carrying/holding cost is considered the same across all entities, irrespective of the actual weighted average cost of capital of individual Company.---*”

18.24 In the present case, the amount claimed by the Petitioner is towards the transfer of Land Cost and it becomes the capital cost of the project. Further, entire project of the Petitioner is under construction and COD is yet to be achieved. The provisions of the TSA clearly stipulated the mechanism for adjustment in Transmission Charges linked to variation in project cost as follows:

“ For every cumulative increase/decrease of Rupees Four Crore Thirty Nine Lakh (Rs. 4.39/-) in the cost of the Project up to the Scheduled COD of the Project, the increase/decrease in non-escalable Transmission Charges shall be an amount equal to zero point three one three percent (0.313%) of the Non-Escalable Transmission Charges.---”

18.25 Hence, claim of the Petitioner seeking carrying cost is premature and hence the Commission declines the same.

18.26 In terms of detailed elaboration and rulings at Para 17 above, though the Petitioner is entitled to recover the amount of Rs. 71.70 Crore paid to the Godrej as Change in Law as per the provisions of the TSA, the Petitioner at present is not entitled to recovery of carrying cost as claimed in the Petition on Change in Law amount since the same is premature.

18.27 Hence, the following Order

ORDER

- 1) The Case No. 142 of 2021 is partly allowed.
- 2) The prayer of the Petitioner to change the Acquisition Price of Special Purpose Vehicle by Rs. 71.70 Crore as per the provisions of the Article 12 of the Transmission Service Agreement is allowed without carrying cost.
- 3) The Petitioner will be entitled to recover the impact of Change in Law after declaring the Date of Commissioning of the project in accordance with the provisions of the TSA without any carrying cost.

Sd/-
(Mukesh Khullar)
Member

Sd/-
(I. M. Bohari)
Member

Sd/-
(Sanjay Kumar)
Chairperson


(Abhijit Deshpande)
Secretary

