

### ***Factual Matrix***

11. The Generator and the CTU entered into two agreements namely Transmission/ Connectivity Agreement and the Bulk Power Transmission Agreement (BPTA) for the Long Term Access (LTA) for evacuation of power from the 1200 MW Thermal Generating Station set up by the MBPL, the Generator. The evacuation system for transmission of power from the Generating station to the 765/400 kV Jabalpur pooling point was commissioned by PGCIL as “MB TPS – Jabalpur Pooling Station 400 kV D/c (Triple) line” (hereinafter the “Dedicated Transmission System” or “the Transmission Asset”), for which MBPL shall bear the full transmission charges.

12. On 25.02.2010, the Appellant had applied simultaneously for Connectivity & Long-Term Access (LTA), against which on 19.04.2010, CTU granted Connectivity with effect from 01.02.2013 and LTA with effect from 01.08.2013, identifying the said Transmission Asset as a part of Inter-State Transmission System, for evacuation and transmission of power from the Generating Station of the Appellant to its beneficiaries. As per the LTA sought for, 200 MW is proposed to be evacuated to the Western Region (WR) and 192 MW to the Northern Region (NR) beneficiaries, balance power is proposed to be supplied to Government of Madhya Pradesh (GoMP) and for short term sale.

13. MBPL vide the said letter of 25.02.2010 has requested as under:

*“Dear Sir,*

*As you are aware that we are developing a 1200 MW Coal Based Thermal Power Plant in the District Anuppur of Madhya Pradesh, for which we had already applied for Long Term Open Access vide our application dated 06<sup>th</sup> Jan 2009 along with the requisite fee of Rs. 1 Lac and subsequent consultancy charges of Rs. 22 Lacs (approx.) dated 09<sup>th</sup> May 2008.*

***In line with the “Central Electricity Regulatory Commission (Grant of Connectivity, Long-Term Access and Medium-Term Open Access in Inter-State and related matters) Regulations, 2009”, we hereby apply for “Grant of Connectivity in ISTS” and “Grant of Long-Term Access to ISTS” in the required format. As per the Clause #31 of the “Detailed Procedure on grant of Connectivity, Long-Term Access and Medium-Term Open Access” issued by CERC dated 31-Dec-2009 which outlines “Treatment of Present Long-Term Open Access application already made to CTU”, we are not required to pay either the application fees or Bank Guarantee of Rs. 10,000/- per MW. Accordingly, we are submitting the following documents:***

*For connectivity to ISTS*

- 1) Application of LTA to ISTS in the stipulated form (FORMAT-LTA-2)*
- 2) Sworn in affidavit per the format given at FORMAT-LTA-1*

*For LTA to ISTS*

- 1) Application for Connectivity to ISTS in the stipulated form (FORMAT-CON-2)*
- 2) Information required to be submitted with the application for connectivity (along with the supporting documents)*
- 3) Sworn in affidavit per the format given at FORMAT-CON-1.*

*We request you to kindly process our applications.”*

**(Emphasis supplied)**

14. Subsequently, in response PGCIL confirmed the same vide letter dated 19.04.2010 stating as under:

*“Dear Sir*

***We write with reference to your application for grant of connectivity and Long term Access dated 25.02.2010 for your MB TPS generation project (1200 MW) in Madhya Pradesh. In this regard, Intimation for grant of Connectivity and Long Term Access (LTA) is enclosed. It is to mention that connectivity and LTA is granted subject to the signing of requisite BPTA and fulfillment of other conditions as mentioned in the enclosed respective intimation format(s).***

***In regard to the above grant of connectivity and LTA, applicant shall abide by all provisions of the CERC (Grant of Connectivity, Long-Term Access and Medium-term Open***

***Access in Inter-State transmission and related matters)  
Regulations, 2009.***

*Thanking you,”*

**(Emphasis supplied)**

15. From, the above, it can be seen that the two agreements have been proposed and accepted through common request letter by the Generator and response letter by PGCIL, thus, need to be read together, the same shall be referred in foregoing paragraphs.

16. In accordance with the above correspondence, the Transmission Agreement was executed on 14.06.2010 and the Bulk Power Transmission Agreement (BPTA), to provide LTA to MBPL, on payment of transmission charges, was signed on 17.06.2010 between the Generator and PGCIL. In compliance to the agreements entered upon, the Generator, on 10.07.2010, furnished the Bank Guarantee of rupees 60 crores for the 1200 MW installed capacity in favor of PGCIL in its capacity as a CTU.

17. Further, the Western Regional Load Despatch Centre (WRLDC), on 13.11.2013, communicated to both PGCIL and MBPL, a Metering Scheme, in accordance with the Clause 6.4.21 of the Indian Electricity Grid Code, 2010 for the subject Transmission Asset for which the Scheduled Date of Commissioning (SCOD) was 19.09.2013. As per the Metering Scheme 07 SEMs were required to be installed.

18. On 18.01.2014, the Generator signed a long-term Power Purchase Agreement (PPA) with Uttar Pradesh for supply of 361 MW from its Generating Station, effective from 30.10.2016 for which Generator vide letter dated 21.01.2014, requested PGCIL to formalize the LTA of 361 MW to UP from the LTA granted quantum of 392 MW, and later on the Generator vide its letter dated 19.12.2014 requested PGCIL to prepone the date of LTA to 01.03.2015. It is noted here that the original agreement provided LTA effective from 01.08.2013 for 392 MW consisting of 200 MW for beneficiaries of WR and 192 MW for the beneficiaries of NR.

19. In accordance with the Metering Scheme as specified by the WRLDC, PGCIL installed 02 nos. of SEMs out of required number of 07 SEMs, and on 31.07.2014, the Chief Electrical Inspector (CEI) issued a certificate for 'Anti-Theft Charging' of the Transmission Asset under Regulation 43 of the CEA Regulations.

20. Immediately, thereafter, the Generator, on 02.08.2014, requested compliance by PGCIL towards the required procedural, statutory and regulatory provisions etc. for declaration of COD of the Transmission Asset, however, only on 04.08.2014, after repeated communications PGCIL realized the shortcomings *inter-alia* installation of 7 nos. of SEMs and accordingly, vide its e-mail, PGCIL, for the first time, raised the demand on the Generator for the cost of 07 SEMs. The request was made for the first time by PGCIL even to the fact that WRLDC informed the Generator and the PGCIL about

the required metering scheme in November, 2013 as noted in the preceding paragraphs.

21. Thereafter, PGCIL vide its letter dated 08.08.2014 declared the Date of Commercial Operation (in short “DOCO” or “COD”) of the Transmission Asset without the installation of required number of SEMs and separately, on 09.08.2014, within 5 days of raising of the demand towards the cost of 07 SEMs, PGCIL vide its e-mails revised the cost of these SEMs, subsequently, on 13.08.2014, on receipt of e-mail dated 09.08.2014, the Generator made entire payment towards the cost of 7 nos. SEMs to PGCIL.

22. On 16.08.2014, PGCIL provided meter readings to WRLDC through the 2 nos. SEM installed, being aggrieved, the Generator, on 13.10.2014, again raised the issue of non-installation of required 07 SEMs before the Central Commission, further, on 01.11.2014, the Generator once again requested PGCIL to install 07 SEMs and only on 07.11.2014, PGCIL installed 7 SEMs as per the WRLDC Metering Scheme and 10.11.2014, upon installation all SEMs, PGCIL provided the information to WRLDC, on the basis of which WRLDC issued a certificate of charging of the Transmission Asset w.e.f. 08.08.2014.

23. It is important to note here that WRLDC issued the certificate of charging of the Transmission Asset retrospectively, for the period for which the meter reading of the 7 nos. SEMs was not available, if the requirement of

installation of 7 nos. of SEMs was not there, the certificate of charging by WRLDC should have been issued earlier i.e. immediately after 08.08.2014, the DOCO declared by PGCIL or by 16.08.2014 when PGCIL provided meter readings to WRLDC through the 2 nos. SEM installed.

24. As already noted, the request of the Generator vide its letter dated 19.12.2014 to prepone the date of LTA to 01.03.2015, PGCIL declined to accept the same as it has failed to commission the necessary Transmission System required for the LTA, as agreed in the BPTA, as per the schedule contained in the agreement wherein the date of LTA was 01.08.2013 and indicated that the expected date of commissioning of the Transmission System as December, 2015, the Generator also informed WRLDC on 31.12.2014 regarding preponement request, however, the request as was declined by PGCIL (now CTU) for preponement of its LTA and informing that the LTA has been granted subject to availability of common Transmission System which, inter alia, includes Gwalior-Jaipur 765 kV S/c (2<sup>nd</sup>) which is facing severe Right of Way (RoW) issues for which the PGCIL is making all out efforts to resolve the same, also informed that its second application for LTA of 200 MW to NR (with UP as beneficiary of 71 MW with target region NR) is under process for which a comprehensive scheme for transfer of power from WR to NR is being evolved. It is important to note here that the PGCIL granted Connectivity and LTA with effect from 01.02.2013 and 01.08.2013 as per the agreement.

25. On 25.02.2015, the Generator started drawing start up power and also injecting infirm power into the grid, resulting into use of the Dedicated Transmission System, subsequently, the first unit of the generating station was commissioned on 20.05.2015.

26. The Gwalior-Jaipur 765 kV S/c line, which is a part of the High Capacity Power Transmission Corridor (HCPTC) corridor for power evacuation from IPP projects in Orissa is commissioned in August, 2015, as required to be used for evacuation of power from the generating station of MBPL against the LTA approved. Accordingly, on 19.8.2015, PGCIL operationalized the subject LTA with the commissioning of the Gwalior-Jaipur 765 kV S/c (2<sup>nd</sup> line) and Jaipur-Bhiwani 765 kV S/c line. PGCIL submitted that expected commissioning date for HCPTC was December, 2015, however, there was no amendment made in the agreement or acceptance of the date by MBPL.

27. Thereafter, the PGCIL filed Petition No.141/TT/2015 before the Central Commission seeking approval of transmission tariff for the connectivity system i.e. "MB TPS (Anuppur)-Jabalpur Pooling Station 400 kV D/c (triple snowbird) line" for tariff block 2014-19 under the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 claiming its Commercial Operation Date (COD) as 8.8.2014, which is one of the issues under dispute in the two captioned Appeals.



28. The Generator, in Appeal no. 73 of 2018, has challenged the decision of the Central Commission vide the Impugned Order-141 on the following issues:

- (i) Declaring the commissioning of the Transmission Asset on 08.08.2014 and DOCO on 25.02.2015, directing the Appellant to pay IDC & IEDC to PGCIL from 08.08.2014 to the DOCO (25.02.2015) of the Transmission Asset.
- (ii) Directing the Generator to pay transmission charges in relation to the Transmission Asset from 25.02.2015 to 19.05.2015.

29. The CTU, in Appeal no. 196 of 2019, has challenged the decision of the Central Commission vide the Impugned Order-96 on the following issues:

- (iii) Directing CTU to pay transmission charges to the Generator from 20.5.2015 till 26.8.2015 for the period for which LTA has been delayed.
- (iv) CTU to return the bank guarantee of Rs.60 crore (subsequently reduced to Rs.30 crores) to the Generator within 15 days of issuance of the Impugned Order.

- (v) CTU to reimburse the bank charges paid by the Generator to the issuing bank towards extension of validity period of the bank guarantee beyond 20.11.2015 till the date of release of the said bank guarantee.

30. The important dates including the effective dates of the Connectivity and the LTA as per the two agreements signed by the Generator and the PGCIL are:

- a. Date of application by the Generator for grant of Connectivity and LTA is 25.02.2010,
- b. Date of confirmation by PGCIL, subject to directions given, is 19.04.2010,
- c. Grant of Connectivity w.e.f. 01.02.2013 as per Transmission Agreement
- d. LTA w.e.f. 01.08.2013 as per the BPTA.

31. However, the Transmission network to be commissioned by PGCIL for connectivity of the Generator to the pooling station (Jabalpur sub-station) and the LTA was delayed, the date of commissioning and DOCO for the Dedicated Transmission System for connectivity as declared by PGCIL or as approved by the Central Commission in under challenge by the Generator, on the other side, the COD of the Generator was also delayed.

### ***Analysis & Observations***

32. It is worth noticing, before proceeding further, that the two agreements have been signed between the identical parties i.e. MBPL, the Generator and the PGCIL, subsequent to single application made by the Generator to PGCIL on 25.02.2010 and confirmed by PGCIL through the single confirmation letter dated 19.04.2010 *inter-alia* directing the Generator to sign the two said agreements. There cannot be any dispute that the purpose of the agreements is to evacuate the power from its generating station to its beneficiaries. **The subject and the purpose of the application of the Generator and confirmation by the PGCIL is “Grant of Connectivity and Long Term Access (LTA) for the 1200 MW generating project being set up by MBPL in Madhya Pradesh”.** The power generated was supposed to be evacuated for supply to Government of Madhya Pradesh (GoMP), the beneficiaries under LTA and sale through short term.

33. The disputes raised by the Generator was regarding the date of commissioning and COD of the Dedicated Transmission Asset, the availability of the LTA and the related charges for the Dedicated Transmission Asset, the LTA, accordingly, it is important to note the contents of the two agreements, the role of the parties under the agreements and the inter-relation/dependence of the said agreements. The Connectivity agreement was signed for the Generating capacity of 1200 MW with effective date from 01.02.2013 (evacuation capacity for 1122 MW, reduced due to auxiliary consumption) against the scheduled date of commissioning of Unit-1 of the Generating Station as on 01.08.2013 and on 01.12.2013 for Unit-2, through 400 kV transmission system to be built by PGCIL whereas the BPTA was signed for supply of power to the tune of 392 MW for 25 years starting from

01.08.2013 with target beneficiaries as Western Region (WR) and Northern Region (NR).

34. Additionally, the Generator brought our attention to the relevant provisions of the 2014 Tariff Regulations, whereby, a transmission asset can be declared operational / commissioned, if the following is accomplished:

- i. The transmission asset is in 'regular service';
- ii. The transmission asset has achieved 'successful trial-run operation';
- iii. Successful charging of the transmission asset for 24 hours at continuous flow of power, with requisite metering system along with protection system in service; and
- iv. Concerned Regional Load Despatch Centre ("RLDC") has issued certificate endorsing 'successful trail-run operation'.

35. The Generator, further, submitted that in addition to the aforementioned mandatory compliances under 2014 Tariff Regulations, the Central Electricity Authority ("**CEA**"), which has been statutorily vested with *inter alia* powers and functions to specify technical standards and safety requirements and conditions for installation of meters *vide* its Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 ("**CEA Metering Regulations**") has laid down that:

- a) Installation of Meters by transmission licensee / generating company is mandatory;
- b) Number of Meters to be installed will be governed by Regulation 7, which in the present case has been notified as 07 SEMs as per the scheme notified by WRLDC.

36. Also added that CEA (Measures relating to Safety and Electric Supply) Regulations, 2010 (“**CEA Safety Regulations**”) mandates that prior to commencement of supply of power, a certificate under Section 43 of the CEA Safety Regulations will be obtained, the Respondent – PGCIL has failed to comply with the aforementioned statutory and regulatory mandates and the Central Commission, has regardless allowed COD and tariff for the transmission asset in utter disregard to the settled law.

37. The relevant Regulation of 2014 Tariff Regulations is quoted as under:

## **“CHAPTER – 2**

### **GENERAL**

**4. Date of Commercial Operation:** *The date of commercial operation of a generating station or unit or block thereof or a transmission system or element thereof shall be determined as under:*

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**(3) Date of commercial operation in relation to a transmission system shall mean the date declared by the transmission licensee from 0000 hour of which an element of the transmission system is in regular service after successful trial operation for**

***transmitting electricity and communication signal from sending end to receiving end:***

*Provided that:*

26. *where the transmission line or substation is dedicated for evacuation of power from a particular generating station, the generating company and transmission licensee shall endeavour to commission the generating station and the transmission system simultaneously as far as practicable and shall ensure the same through appropriate Implementation Agreement in accordance with Regulation 12(2) of these Regulations:*

***(ii) in case a transmission system or an element thereof is prevented from regular service for reasons not attributable to the transmission licensee or its supplier or its contractors but is on account of the delay in commissioning of the concerned generating station or in commissioning of the upstream or downstream transmission system, the transmission licensee shall approach the Commission through an appropriate application for approval of the date of commercial operation of such transmission system or an element thereof.”***

**(Emphasis supplied)**

38. However, it is important to take cognizance of the Proviso (clause (ii)) to Regulation 4 of the Tariff Regulation 2014 as placed before us by the Generator, as per the Proviso, in addition to the provisions as submitted by the Generator, if the Transmission Licensee is prevented from regular service

on account of the delay in commissioning of the generating station, the Transmission Licensee shall approach the Commission (the Central Commission in the instant case) for approval of the date of commercial operation of such transmission system or an element thereof. Accordingly, PGCIL approached the Central Commission seeking relief in the matter as there was a delay on the part of Generator to commission the Generating Station.

39. However, the Generator also argued regarding the applicability of the Certificate issued by the Chief Electrical Inspector (CEI), it was submitted that the CEI issued the certificate for anti-theft charging only under Regulation 43 of the Safety Regulations and not for commencement of supply of electricity as specified for supply of electricity, on being asked none of the contesting parties could produce the Certificate for commencement of Supply, even the start up power drawn by the Generator is based on this certificate only.

40. Therefore, at this stage we are refraining ourselves from commenting on the Certificate of commencement of Supply, considering that the Transmission Asset is in operation since 2015.

41. The WRLDC, as per the statutory provisions, also granted the certificate of charging from 08.08.2014, however, retrospectively through an order dated 18.11.2014 stating that the trial run on no-load conditions is completed on 07.08.2014. As already pointed out earlier, whether, the asset can be considered to be fully commissioned without installation of requisite number

of meters is one of the disputes raised before us. The Central Commission vide the Impugned Order-141 has held that:

*“25. The petitioner has prayed for approval of COD of assets covered in instant petition from 8.8.2014 under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations, since the instant asset could not be put into regular service because of non-readiness on the part of MBPL. CEA vide its certificate dated 31.7.2014 has granted approval for antitheft charging of the line. It is indicated in CEA certificate dated 31.7.2014 that generator end switchyard was not ready as on 31.7.2014. **Further, RLDC has issued trial run certificate dated 18.11.2014 indicating that the trial run was completed on 7.8.2014 on “no load” due to non-availability of bays at MBPL end. This implies that the petitioner was ready on 8.8.2014 but could not declare commercial operation of the line due to non-availability of bays at MBPL end.***

*26. The petitioner has been relying on the trial run certificate issued by RLDC showing that the trial run was completed on 7.8.2014 on “no load condition” due to non-availability of bays at MBPL end. In other words, the assets have not been put to use. Therefore, we are not inclined to consider COD of the assets with effect from 8.8.2014 under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations as the asset was not put into regular service on that date. It is further noticed that neither the petitioner*



*nor the respondent has submitted documents as regards date on which switchyard at MBPL end was ready for use. **However, on perusal of the DSM accounts available on the website of WRPC, we notice from the account for the week 23.2.2015 to 1.3.2015 issued by WRPC vide letter dated 18.7.2016, that the MBPL started drawing start up power with effect from 25.2.2015 which is possible when the switchyard at MBPL end was ready. Accordingly, we hold that the asset was put to regular service on 25.2.2015 i.e. date of drawl of start-up power by MBPL and the COD of the instant transmission line is approved as 25.2.2015. The IDC and IEDC for the period from 8.8.2014 to 24.2.2015 shall be borne by MBPL since the line despite being ready from 8.8.2014 could not be put to commercial operation due to non-availability of bays at MBPL end.***

42. From the said order, it cannot be denied that the Dedicated Transmission System to be commissioned by the PGCIL was ready except the installation of the requisite number of SEMs on the part of the PGCIL, whereas, the Generating Station (the switchyard) was not ready on the part of the Generator as certified by the Central Electricity Authority (CEA), a statutory body under the Electricity Act 2003 vested with the statutory function of Electrical Inspection.

43. Also, the Central Commission has observed that “*Therefore, we are not inclined to consider COD of the assets with effect from 8.8.2014 under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations as the asset was*

*not put into regular service on that date*”, as such the COD can be declared only once the Transmission Asset is put to regular service i.e. achieved its intended purpose of supplying power to the beneficiaries.

44. We are inclined to accept the COD as declared by the Central Commission for the Dedicated Transmission System on 25.02.2015, as the purpose of the said System is not only to evacuate power under the LTA but to service the electricity supply to GoMP and for short term sale, which could have been achieved if the Generating Station was ready, therefore the default on the part of Generator cannot be attributed to the PGCIL for the equivalent quantum as envisaged under the agreement(s).

45. At the same time, it is necessary to decide, whether the start up power or injection of infirm power in the grid can be called as equivalent to “regular service”. The two agreements signed between the contesting parties provides that the purpose of the two agreements signed in conjunction by the Generator and PGCIL is to evacuate the power generated from the Generating Station of MBPL and supplying it to the beneficiaries i.e. 392 MW under LTA (200 MW to WR and 192 MW to NR), 393 MW reserved for Govt of Madhya Pradesh and 392 MW for short term sale. If the two agreements are read together, the “*regular service*” for the Dedicated Transmission Asset is to evacuate power from the Generating Station to the pooling point and the “*regular service*” of the BPTA is to arrange transfer of the 392 MW generated from the generating station, quantum as specified under the LTA. Therefore, the purpose of the Transmission Asset is not limited to evacuation of power only for LTA beneficiaries, major share is to be evacuated for supply to GoMP and short term sale.

46. It is also important to note the essence of the role of the PGCIL *inter-alia* the CTU under the provisions of the Electricity Act, 2003 (the “Act”). Undisputedly, CTU, the statutory body, constituted under section 38 of the Act has been vested with the responsibility of discharging all functions of planning and co-ordination relating to inter-state transmission system in addition to undertake transmission of electricity through inter-State transmission system. Accordingly, the PGCIL cannot evade its responsibility from coordinating and developing a Transmission Asset so as to achieve a target which is conducive to all including the generators and the consumers/ distribution licensees or any other beneficiary of its transmission asset.

47. Undisputedly, PGCIL/ CTU is bound by the statutory duty under section 38 of the Act to develop a most efficient, coordinated and economical system enjoying the powers vested with for undertaking not only transmission of electricity through inter-state transmission systems but also towards ‘planning and coordination’ in relation thereto, taking along the State Transmission Utilities (STUs), Central and State Governments, generating companies, Regional Power Committees (RPCs), Central Electricity Authority and other licensees (transmission, distribution licensees, *etc*). However, in the present case, PGCIL/CTU has not scrupulously planned and coordinated its own activities for developing the Dedicated Transmission Asset and the HCPTC required for the LTA which subsequently, resulted into the dispute in hand and financial loss to the Generator as well as to the PGCIL itself.

48. On the other side the argument of PGCIL/CTU, citing the two agreements as independent agreements even to the fact that the two have

been signed for the reasons as quoted in the application of the MBPL and the response thereof by the PGCIL, is not convincing. We are not inclined to accept the same.

49. Once the two agreements have been signed against the same application of the Generator and confirmed by PGCIL vide single letter, there cannot be any argument that the purpose of seeking connectivity and the LTA by the Generator is to supply power to its beneficiaries and any delay in any component of the two shall result into failure of supply of power by the Generator to its beneficiary, therefore, PGCIL cannot deny the fact that the Generator signed the agreement for the sole purpose of supplying power to its beneficiaries. Therefore, the two agreements have to be read together, as by providing mere connectivity, the power generated cannot be evacuated and supplied to the beneficiaries under the LTA, however, any quantum of power evacuated through the Dedicated Transmission System shall attract the appropriate transmission charges limited to such an extent.

50. Also, the “regular service” shall mean availability of the transmission system for evacuation and supply of power to the beneficiaries including the beneficiaries supplied power through the LTA, simple connectivity cannot serve the purpose of “regular service” if no power is evacuated and supplied to the beneficiaries.

51. Regarding the issue of readiness of the Dedicated Transmission System, we do not find any fault in the decision of the Central Commission, once certificate of charging even if for the purpose of Anti-Theft Charging has been issued by CEI, except to the fact that whether the transmission asset

should be considered as “ready” from 08.08.2014 or from the date of issuance of certificate of charging by WRLDC on 18.11.2014. The Generator invited our attention to the judgment dated 02.07.2012 passed by this Tribunal in Appeal no. 123 of 2011, as under:

**“20. Summary of our findings:**

*According to Tariff Regulations, the COD of a transmission line shall be achieved when the following conditions are met.*

- i) The line has been charged successfully,*
- ii) its trial operation has been successfully carried out, and*
- iii) it is in regular service.*

***The above conditions in the case of 400 kV Barh-Balia line were not fulfilled on 01.07.2010, the date on which COD was declared by the Respondent no.1. Merely charging of the line from one end without the switchgear, protection and metering arrangements being ready at the other end, even if not in the scope of works of the transmission licensee, would not entitle the line for declaration of commercial operation.***

- 21. In view of the above, the Appeal is allowed, the impugned order is set aside and matter is remanded back to the Central Commission for redetermining the COD and tariff of 400 kV Barh-Balia double circuit line after hearing all concerned within 3 months of the date of this judgment. No order as to costs.”***

52. The Generator, assailing the COD, has also submitted that the Central Commission has failed to appreciate that drawl of start-up power by the Generator does not mean that the subject Transmission Asset was put to “*regular service*”, and declared COD on 25.02.2015 from the date of drawl of startup power, further added that the subject Transmission Asset was put to “*regular service*” only when the power generated from the associated Generating Project of the Generator started getting evacuated and transmitted to its beneficiaries, the Generator in the instant case has simultaneously applied for Connectivity as well as Long-term Open Access (LTA) on 25.02.2010, under the CERC (Grant of Connectivity & Long-Term Access) Regulations 2009, for end to end evacuation and transmission of power from its 1200MW (2X600MW) Anuppur Thermal Power Project, against the Connectivity to the grid along with the LTA, cumulatively, was granted to the Appellant on 19.04.2010, identifying end to end Transmission System for evacuation of power from the Generating Project of the Appellant to the beneficiaries. However, the argument of the Generator needs to be examined in the light of supply of power as anticipated under the agreements, which is as under:

- (i) 392 MW under the LTA for WR and NR,
- (ii) 393 MW for supply to GoMP and
- (iii) 337 MW for short term sale.

53. Contrary to the submission of the Generator, the PGCIL submitted that the Generator on this connectivity line has imported up to about 20 MW of power from Jabalpur (from where it is connected to entire regional grid) and has availed the same for its start-up requirement and has also exported infirm

power up to about 520 MW in to the grid 30tilizing this connectivity line, therefore, the Dedicated Transmission Asset was ready for connecting and supplying power to the beneficiaries other than the beneficiaries under the LTA.

54. The Central Commission vide the Impugned Order-141 has held that:

*“30. We have considered submissions of petitioner and MBPL. We are not in agreement with MBPL that no liability towards payment of transmission charge should be levied on MBPL till August, 2015 as Annupur-Jabalpur D/C line could not have achieved the intended purpose for which it was constructed. We are of the view that the line under instant petition is dedicated line meant for evaluation of power from the generating station of MBPL for which PGCIL has granted Connectivity vide letter dated 19.4.2010 with the indicative date of operationalisation of connectivity as 1.2.2013. The said line is also indicated as connectivity line in Agreement dated 17.6.2011 between the petitioner and MBPL. Operationalisation of LTA depends on the availability of system strengthening in addition to the connectivity line included in the LTA Agreement. Only because some of the transmission lines covered under the System Strengthening have not been commissioned will not prevent the use of the connectivity line. In fact the connectivity line has been used to the extent of LTA operationalised with effect from 25.5.2015. Regulation 8(6) of the Sharing Regulations provides as under:-*

*“(6) For Long Term Transmission Customers availing power supply from inter-State generating stations, the charges attributable to such generation for long term supply shall be calculated directly at drawal nodes as per methodology given in the Annexure-I. Such mechanism shall be effective only after commercial operation of the generator. Till then it shall be the responsibility of the generator to pay transmission charges.”*

***In terms of the above provision, the transmission charges for the connectivity lines from 25.2.2015 (date approved as COD of the transmission lines in this order) till the COD of the first unit of generating station of MBPL shall be borne by MBPL.”***

55. It is clear that the Central Commission has held that the COD was achieved on 25.02.2015, date on which the Dedicated Transmission System was put to use due to drawl of startup power and injection of infirm power as the SCOD of the Generating Station was delayed, we are inclined to accept the said decision as the Dedicated Transmission System was ready to provide “*Regular Service*” of supplying the power to GoMP and for short term sale, as already observed that the purpose of the Dedicated Transmission System is not limited to the power evacuated under the LTA for 392 MW only, therefore, it cannot be construed that the “*Regular Service*” shall be achieved only when the power under the said LTA is supplied to the beneficiaries. On the other side, in the light of the judgment, it can also be construed that the asset was ready only on the date the requisite meters (SEMs) were installed by PGCIL and WRLDC issued the certificate of charging i.e. 18.11.2014.



Therefore, the Central Commission is bound to pass the order accordingly, thereby making a balance against the regular service provided by the Transmission Licensee for evacuation and supply of power from the Generator for the purpose as specified in the Agreement.

56. Therefore, the contention of the Generator cannot be accepted, as held in the preceding paragraphs to the extent that the subject Transmission System has not achieved the “Regular Service” as it cannot be used for supplying power under the LTA, contrary to it, the Dedicated Transmission System is used for drawl of startup power and injection into the grid for supply to GoMP and for short term sale of power, if required.

57. We are satisfied that the Dedicated Transmission Asset has become operational, and is used for injection of power into the grid or for drawl of startup power required for commissioning of the Generating Station, therefore, the Transmission Licensee cannot be penalized for the delay on the part of the Generator in commissioning its project and achieving the COD.

58. Also, no asset can be used as freebees, therefore, appropriate charges are bound to be paid by the Generator, the issue is remitted to the Central Commission for review/ re-examination and decide in accordance with law to the extent that the Dedicated Transmission Asset was ready to the extent of evacuating the power generated to the pooling point but limited to the extent of supplying power to other beneficiaries except the beneficiaries under the LTA.

59. Regarding the issue of reverse transmission charges levied on PGCIL, it is observed that CTU/ PGCIL has failed in its statutory duty by not ensuring proper coordination and construction of the two assets in synchronism and also failed to inform and take necessary action in matching with the commissioning of the Generating Station, as also observed by the Central Commission in its various orders including its order dated 13.12.2011 in Petition No. 154/MP/2011 and IA No. 17/2011 wherein it has repeatedly emphasized that in order to ensure optimum utilization of both generation and transmission capacities and to avoid stranded transmission assets, it is imperative for the transmission licensee to take up implementation of associated transmission system matching with the commercial operations of the Generation Project, so as not to burden the consumers with the transmission charges without getting benefit of the extra power.

60. We are inclined to take cognizance of the above as it is the statutory duty of the PGCIL/ CTU for exercising due diligence, proper coordination and planning in the implementation of transmission systems, therefore, it is the responsibility of PGCIL vested with the powers of the CTU to coordinate and implement the Transmission Systems under the two agreements.

61. On the other hand, PGCIL raised the issue of levying of reverse transmission charges by the Central Commission as the transmission system required for evacuating the power under the LTA was delayed on account of events due to *force majeure*.

62. It is noted in the foregoing paragraphs that the Connectivity of the Dedicated Transmission Asset cannot be treated as a separate and distinct

activity from the grant of LTA for providing end to end connectivity for supplying power to the beneficiaries under the LTA also, therefore, the “regular service” could not have been achieved without first operationalizing the LTA by PGCIL thereby stranding transmission of electricity to the extent of 392 MW from the Generating Project of the Appellant.

63. The Central Commission vide Impugned Order-96 has held as under:

*21. We have considered the submissions of the Petitioner and PGCIL. It is noticed that as per the LTA grant letter dated 19.4.2010, the start date for LTA was given as 1.8.2013. Further, the Annexure-1 of the LTA Agreement dated 17.6.2011 provides for commencement of 392 MW LTA from August 2013. Since in the instant case, LTA was granted with the system strengthening, PGCIL should have planned the commissioning schedule of system strengthening line as per the LTA commencement date granted to the Petitioner as per the LTA Agreement. Therefore, we are not inclined to accept the contentions of PGCIL.*

*22. Further, with regard to the scheduled commissioning of the transmission system associated with LTA granted by PGCIL to the Petitioner, we observe that Gwalior-Jaipur 765 kV S/c transmission line (G-J Line) is a part of downstream transmission system for operationalization of LTA granted to the Petitioner. We further observe that the Commission, in its order dated 25.4.2016 in*

*Petition No. 422/TT/2014, determined the tariff for the Gwalior-Jaipur 765 kV transmission line and recorded the Schedule commissioning date of the line as 1.4.2014 and not December 2015 as contended by PGCIL, against the scheduled commissioning date of 1.4.2014, the line was commissioned only on 13.8.2015, with a time-overrun of 16 months and 12 days. The relevant portion of the order dated 25.4.2016 is extracted as under:*

*“Time Over-run*

*16. As per the investment approval dated 17.3.2011, the project was scheduled to be commissioned within 36 months from the date of investment approval. Hence, the assets were to be commissioned progressively upto 1.4.2014. The details of the actual date of commercial operation and time over-run in case of the instant assets is given below:-*

<i>Assets Name</i>	<i>SCOD as per IA dtd 17.3.2011</i>	<i>Actual date of commercial operation</i>	<i>Delay in months</i>
<i>Asset-I</i>	<i>1.4.2014</i>	<i>1.4.2015</i>	<i>12 months</i>
<i>Asset-II</i>		<i>2.8.2014</i>	<i>4 months</i>
<i>Asset-III</i>		<i>24.11.2014</i>	<i>7 months and 23 days</i>
<i>Asset-IV</i>		<i>13.8.2015</i>	<i>16 months and 12 days</i>
<i>Asset-V</i>		<i>7.5.2014</i>	<i>1 month and 6 days</i>

23. *From the above, it can be seen that Asset-IV (765 kV S/C Gwalior-Jaipur 2<sup>nd</sup> circuit transmission line and bay extension of 765/400 kV Phagi (RVPN-Jaipur) Substation) was commissioned on 13.8.2015 with a delay of 16 months and 12 days. We observe that PGCIL signed revised BPTA with revised schedule of commissioning with IPPs of Odisha only when such system was linked with other generators. PGCIL should have signed the revised schedule with the Petitioner or such other generators who have been granted access through the said system, in terms of the agreement entered between them. PGCIL cannot unilaterally revise the date when the Petitioner has been granted LTA from the above transmission line.*

24. *In view of the above, we observe that PGCIL was required to commission the downstream transmission system associated with LTA granted to the Petitioner not later than 1.4.2014 and that there has been delay by PGCIL in commissioning of the transmission system from which the LTA was granted by PGCIL to the Petitioner.*

25. *We have perused the LTA Agreement dated 17.6.2011 signed between PGCIL and the Petitioner. Annexure-I of this LTA Agreement provides the quantum of LTA and date of Commencement of the LTA as under:*

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26. We have also perused the LTA intimation for grant of LTA FORMAT-LTA-5. The relevant extract is extracted as under:

“9 Transmission System for LTA Details of transmission system enclosed at Annexure-1.

9a Date from which LTA is granted 01.08.2013\*

9b Date upto which LTA is granted 31.07.2038

9c Implementing Agency for transmission system required for LTA CTU i.e. POWERGRID

27. We observe that under the LTA Agreement and LTA intimation letter, commencement date of LTA of 392 MW by PGCIL was August 2013. However, PGCIL was obliged to operationalize this 392 MW LTA not later than 1.4.2014 i.e. scheduled commissioning date of Gwalior-Jaipur 765 kV transmission line. In view of the above and also in accordance with our conclusions in the Issue No. 1 and Issue No 2 above, we observe that there has been delay in operationalization of LTA of 392 MW granted by PGCIL to the Petitioner.

28. Having observed that there had been a delay by PGCIL in operationalization of 392 MW LTA granted to the Petitioner, we now proceed to decide whether PGCIL is obliged to pay any

*charges to the Petitioner for such delay in operationalization of LTA of 392 MW granted to the Petitioner.*

*29. The Commission in Para 33 of the Order dated 15.12.2017 in Petition No. 141/TT/2015 has dealt with this issue as under:*

*“33. In terms of Clause 6(d) of the LTA Agreement dated 17.6.2011 and Annexure-4, the petitioner is required to make alternative arrangement for despatch of power from the generating station and in the event of delay in commissioning of the concerned transmission system from its schedule, transmission charges proportionate to the concerned LTA shall be paid by the petitioner. It is accordingly, directed that the petitioner and MBPL shall settle the issue of delay in operationalisation of LTA on account of delay in COD of the transmission lines covered under Annexure 4 of the LTA in terms of the LTA Agreement.”*

*30. Clause 6(d) of the LTA Agreement dated 17.6.2011 provides as under:*

*“6(d) In the event of delay in commissioning of the concerned transmission system from its schedule, as indicated in the Annexure-4 POWERGRID shall pay proportionate transmission charges to the concerned Long Term*

*Transmission Customer proportionate to its commissioned capacity (which otherwise would have been paid by the concerned Long Term Transmission Customer to POWERGRID) provided generation is ready and POWERGRID fails to make alternate arrangement for dispatch of power”*

*31. According to the Petitioner, as per the Commission’s directions in 141/TT/2015, it has raised a claim of 25,10,43,783/- against PGCIL. However, PGCIL refused to pay the amount and comply with the directions of the Commission.*

*32. We notice that the Unit-1 (600 MW) of the Petitioner’s Generation Project was ready as on 20.5.2015. However, PGCIL operationalized the LTA of 392 MW only on 26.8.2015. Thus, there has been a delay on the part of PGCIL from 20.5.2015 to 26.8.2015. Accordingly, we direct PGCIL to pay the applicable transmission charges for LTA of 392 MW from 20.5.2015 to 26.8.2015 to the Petitioner in terms of the Clause 6(d) of the LTA Agreement as directed by the Commission in its order dated 15.12.2017 in Petition No. 141/TT/2015. This Order not having been challenged by PGCIL has attained finality. We direct PGCIL to make payments within 15 days of issue of this Order.”*



64. As noted in the preceding paragraphs, it is noted that the date of LTA was 01.08.2013 as agreed between PGCIL and the Generator, the Central Commission is right in acknowledging that PGCIL is bound to provide the LTA from the agreed date and in case it was linked to system strengthening under HCPTC, the commissioning of system strengthening should have coincided with the LTA commencement date granted to the Petitioner as per the LTA Agreement.

65. We do not agree with the submission of PGCIL that as per the commissioning schedule the system strengthening was scheduled to be completed by December, 2015, the Central Commission in the above said quoted order has confirmed the date of commissioning as 01.04.2015 and not December, 2015, also noted that it was commissioned on 13.08.2015 with a time over-run of 16 months and 12 days.

66. It was also brought to our notice that the revised BPTA with revised commissioning schedule was signed with the IPPs of Orissa and other generators, however no such revised agreement was signed with MBPL, therefore, PGCIL is bound to comply with the original agreement and is liable to pay penalty in the form of compensation to MBPL for delay in grant of LTA.

67. Therefore, as per Clause 6(d) of the LTA Agreement dated 17.6.2011, PGCIL is bound to pay the proportionate transmission charges to MBPL. The relevant provisions for the sake of clarity is quoted as under:

*“6(d) In the event of delay in commissioning of the concerned transmission system from its schedule, as indicated in the Annexure-4 POWERGRID shall pay proportionate transmission charges to the concerned Long Term Transmission Customer proportionate to its commissioned capacity (which otherwise would have been paid by the concerned Long Term Transmission Customer to POWERGRID) provided generation is ready and POWERGRID fails to make alternate arrangement for dispatch of power”*

68. We agree with the decision of the Central Commission to direct PGCIL to pay to the Generator (MBPL) applicable transmission charges for LTA of 392 MW from 20.5.2015 to 26.8.2015 in terms of the Clause 6(d) of the LTA.

69. The second issue raised by the PGCIL/CTU is regarding the direction of the Central Commission to CTU to return the bank guarantee of Rs.60 crore (subsequently reduced to Rs.30 crores) to the Generator within 15 days of issuance of the Impugned Order.

70. The Bank Guarantee was furnished by the Generator in compliance with clause 5(b) and 5(c) of the Transmission Agreement.

*“5---*

*(b) In case MBPMPL fails / delays to utilize the connectivity provided or makes an exit or abandon its project. POWERGRID shall have the right to collect the transmission*

*charges and/ or damages as the case may be in accordance with the notification/regulation issued by CERC from time to time. MBPMPL shall furnish a Bank guarantee from a nationalized bank for an amount which shall be equivalent to Rs.5 (five) Lakhs/MW as mentioned in the Detailed Procedure approved by the Commission, to partly compensate such damages. The bank guarantee format is enclosed as per FORMAT CON-7. The details and categories of bank would be in accordance with clause 2 (f) above. The Bank guarantee would be furnished in favour of POWERGRID within 1 (one) month of signing of this Agreement.*

*©This bank guarantee would be initially valid for a period upto six months of the scheduled date of commissioning of the Transmission system indicated at Annexure-2. The bank guarantee would be encashed by POWERGRID in case of adverse progress assessed during coordination meeting as per para 6 below. However, the validity should be extended by MBPMPL as per the requirement to be indicated during coordination meeting.”*

71. As per the above quoted clauses, the Bank Guarantee is furnished against the default committed by the Generator by exiting or abandoning its project resulting into financial loss to PGCIL/ CTU, and extending right to PGCIL/CTU to collect charges or damages, as the case may be, against such default.

72. Once the Generating Plant is commissioned and the associated transmission system become operationalized, the transmission charges are recovered through Letter of Credit (LC) in case of default for payment of transmission charges by the generator. The clause 6(b) provides that:

*“(b) This bank guarantee would be initially valid for a period up to six months after the expected date of commissioning schedule of generating unit(s) mentioned at Annexure-1 (however, for existing commissioned units, the validity shall be the same as applicable to the earliest validity applicable to the generator in the group mentioned at Annexure-1). The bank guarantee would be encashed by POWERGRID in case of adverse progress of individual generating unit(s) assessed during coordination meeting as per para 7 below. However, the validity should be extended by concerned Long Term transmission customer(s) as per the requirement to be indicated during co-ordination meeting.”*

73. The PGCIL/CTU was bound to return the Bank Guarantee once the Generating Project is commissioned, the Transmission System is put to use by the Generator and Transmission charges are paid by the Generator against the LC. In the instant case, the Transmission System achieved COD on 25.02.2015, and put to use from such date by the Generator which achieved COD on 20.05.2015. The Central Commissioned vide the Impugned Order-96 has observed that:

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41. *From the above, it can be seen that the Commission had held that once the LC has been opened for the LTA granted, then the Bank Guarantee shall be returned. The applicant is not required to furnish Bank Guarantee and open LC for the same LTA quantum at the same time. Once the LTA is operationalized and LC is opened, the Bank Guarantee is required to be returned to the applicant.*

42. *We note that in Petition No.141/TT/2015 filed by PGCIL (the Respondent herein), the Commission vide its Order dated 15.12.2017 has held that the IDC and IEDC for the period from 8.8.2014 to 24.2.2015 shall be borne by MBPMPL, since the line despite being ready from 8.8.2014, could not be put to commercial operation due to non-availability of bays at MBPMPL end. In the same Order, the Commission has further held that the transmission charges for the period 25.2.2015 to 19.5.2015 shall be borne by MBPMPL. MBPMPL has stated that the decision of the Commission that MBPMPL would bear IDC and IEDC for the period from 8.8.2014 to 24.2.2015 and transmission charges for the period 25.2.2015 to 19.5.2015 has been appealed before the APTEL and the same is pending decision.*

43. *The Respondent, PGCIL has stated that it has retained the BG due to nonpayment of these charges by the Petitioner amounting to about Rs. 30 crore and that if the Petitioner provides the payment security for this amount, PGCIL would release the BG of Rs. 60 crore after following the due process.*

44. *We have already observed above that PGCIL should have returned the BG latest by six months after commissioning of associated generation project i.e. by 20.11.2015. We note that the Order in Petition No.141/TT/2015 where the Commission has held that the IDC and IEDC for the period from 8.8.2014 to 24.2.2015 and transmission charges for the period 25.2.2015 to 19.5.2015 shall be borne by the Petitioner, has been issued only on 15.12.2017. In view of this, we do not find any merit in the contention of PGCIL that it has held the BG that was to be released by 20.11.2015 in view of an Order of the Commission which came more than two years later on 15.12.2017.*

45. *We, therefore, reject the contention of PGCIL and direct PGCIL to return the Bank Guarantee to the Petitioner within 15 days of issue of this order.*

46. *With regard to PGCIL's contention that the Petitioner is liable to pay it around Rs. 30 crore on account of IDC, IEDC and Transmission Charges for the period 8.8.2014 to 19.5.2015 as decided by the Commission in its order dated 15.12.2017 in Petition No. 141/TT/2015, it is noted that the Petitioner has challenged the above order before the Appellate Tribunal vide Appeal No. 73 of 2018, which is pending for adjudication. Further, the Appellate Tribunal, by way of its interim order dated 17.8.2018 has issued the following order :*

***“Order***

*In the meanwhile, both the parties are directed not to precipitate in the matter till the next day of hearing i.e.03.12.2018.”*

47. *In view of the above, we are not inclined to issue any direction with regard to the Petitioner's liability of Rs. 30 crore on account of IDC, IEDC and Transmission Charges for the period 8.8.2014 to 19.5.2015.”*

74. The observations of CERC are just and reasonable, we are obliged to accept the same, as such the order has merit on the issue of issuance of direction to PGCIL/CTU to return the Bank Guarantee.

75. The third grievance raised before us in Appeal no. 196 of 2019 filed by CTU is the decision of the Central Commission directing CTU to reimburse the bank charges paid by the Generator to the issuing bank towards extension of validity period of the bank guarantee beyond 20.11.2015 till the date of release of the said bank guarantee.

76. The Central Commission vide the Impugned Order-96 adjudicated as under:

*“We have considered the submission of the Petitioner and PGCIL. The Petitioner has submitted that insistence of PGCIL to keep extending BGs is illegal whereas PGCIL has contended that BG needs to be kept alive in view of various liabilities of the Petitioner towards grant of connectivity and LTA. We have already concluded that PGCIL should have returned the BG latest by 20.11.2015. We have held that such demand of PGCIL was against the provisions of the Connectivity Regulations and the Detailed Procedure framed thereunder. The Petitioner had to pay bank charges in keeping the BG alive only because of insistence of PGCIL to extend the BGs. Having declared that the BGs should have been returned by 20.11.2015 by PGCIL, we find merit in contention of the Petitioner that the charges*



*borne by it for extension of the BGs should be reimbursed by PGCIL. Hence, PGCIL is directed to reimburse bank charges towards extension of validity period of the Bank Guarantee kept with the bank for issuance of the Bank Guarantee paid by the Petitioner beyond 20.11.2015 till the date of release of BG. The Petitioner, MBPMPL may claim the payment from PGCIL upon furnishing of documentary proof in this regard to PGCIL. PGCIL shall make payment within one month of receipt of claim.”*

77. Once it is decided that the Bank Guarantee should have been returned by CTU / PGCIL, however, the non-compliance of the directions of the Central Commission regarding returning the Bank Guarantee is bad in law, as such decision of the Central Commission has merit in compensating the Generator against the bank charges incurred by the Generator in keeping the Bank Guarantee alive.

### **ORDER**

For the foregoing reasons as stated supra, we are of the considered view that the first Captioned appeal filed by the Generator, (MBPL) i.e. Appeal no. 73 Of 2018 has merit and thus allowed.

The Appeal No. 196 of 2019 is devoid of merit and is disposed of as dismissed.

The Impugned Order passed by Central Electricity Regulatory Commission on 15.12.2017 in Petition 141/TT/2015 is *set aside* to the extent as observed in the foregoing paragraphs.

The Central Commission is directed to pass necessary consequential orders in light of the observations and conclusions recorded by us.

**PRONOUNCED IN THE OPEN COURT ON THIS 6<sup>th</sup> DAY OF OCTOBER, 2022.**

**(Sandesh Kumar Sharma)  
Technical Member**

**(Justice R.K. Gauba)  
Officiating Chairperson**

**REPORTABLE / ~~NON-REPORTABLE~~**

pr/mkj