

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY  
AT NEW DELHI**

**(APPELLATE JURISDICTION)**

**APPEAL NO. 281 OF 2014**

**Dated: 13<sup>th</sup> August, 2015**

**Present: Hon'ble Mr. Justice Surendra Kumar, Judicial Member  
Hon'ble Mr. T. Munikrishnaiah, Technical Member**

**IN THE MATTER OF**

Power Grid Corporation of India Ltd  
Saudamini, Plot No. 2, Sector 29,  
Gurgaon – 122001 Haryana

.... **Appellant/Petitioner**

***VERSUS***

1. Central Electricity Regulatory Commission  
3<sup>rd</sup> and 4<sup>th</sup> Floor, Chanderlok Building  
36, Janpath, New Delhi – 110001
2. Rajasthan Rajya Vidyut Prasaran Nigam Limited,  
Vidyut Bhawan, Vidyut Marg, Jaipur-302005
3. Ajmer Vidyut Vitaran Nigam Ltd.,  
Old Power House, Hathi Bhata,  
Jaipur Road, Ajmer – 305001
4. Jaipur Vidyut Vitaran Nigam Ltd,  
Vidyut Bhawan, Janpath, Jaipur - 302005
5. Jodhpur Vidyut Vitaran Nigam Ltd,  
New Power House, Industrial Area,  
Jodhpur - 342001, Rajasthan
6. Himachal Pradesh State Electricity Board,  
Kumar House, Vidyut Bhawan, Shimla – 171004
7. Punjab State Power Corporation Limited  
(Erstwhile PSEB), The Mall,  
Patiala – 147 001 Punjab
8. Haryana Power Purchase Centre,  
Shakti Bhawan, Sector – 6,  
Panchkula- 134109

9. Power Development Department,  
Through its Commissioner,  
Government of Jammu & Kashmir,  
Mini Secretariat, Jammu - 180001
10. Uttar Pradesh Power Corporation Ltd,  
Shakti Bhawan, 14 Ashoka Marg  
Lucknow - 226001
11. Delhi Transco Ltd,  
Shakti Sadan, Kotla Road,  
New Delhi - 110002
12. BSES Yamuna Power Ltd.,  
Shakti Kiran Building,  
Karkardooma, Delhi - 110092
13. BSES Rajdhani Power Ltd.,  
BSES Bhawan, Nehru Place,  
New Delhi - 110 019
14. North Delhi Power Ltd.,  
Grid Sub Station Building,  
Hudson Lines, Kingsway Camp,  
Delhi - 110 009
15. Chief Engineer, Engineering Department,  
Chandigarh Administration, Sector 9,  
Chandigarh - 160009
16. Uttarakhand Power Corporation Ltd,  
Urja Bhawan, Kanwali Road,  
Dehradun - 248001, Uttaranchal
17. North Central Railway, Allahabad
18. New Delhi Municipal Council,  
Palika Kendra, Sansad Marg,  
New Delhi-110001

..... **Respondents**

Counsel for the Appellant ... Mr. Anand K. Ganesan  
Mr. Swapna Seshadri  
Ms. Mandakini Ghosh

Counsel for the Respondent(s)... Mr. Pradeep Misra for R-3 to 5  
Mr. R.B. Sharma for R-13

## J U D G M E N T

### PER HON'BLE JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER

1. The instant Appeal under Section 111 of the Electricity Act, 2003, has been preferred by Power Grid Corporation of India Ltd. (in short, the '**Appellant/Petitioner**'), against the Order, dated 28.2.2014, passed by the Central Electricity Regulatory Commission (in short, the '**Central Commission**)/Respondent No.1 herein, in Petition No. 101/TT/2012, whereby, the Central Commission has disallowed the Interest During Construction (**IDC**) of Rs.332.19 lakhs and the Incidental Expenses During Construction (**IEDC**) of Rs.121.59 lakhs for the period of delay of 3 months & 6 months in Assets-I and Asset-IV respectively under the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (in short the '**Tariff Regulations, 2009**').

2. The relevant part of the impugned order, dated 28.2.2014, passed by the Central Commission, is as under:

*"14. We now examine the reasons for delay explained by the petitioner. Main reasons for delay in the commissioning are heavy rains, fog and non-availability of shut-down for transportation of ICT at Sasaram sub-station which hampered the movement of huge consignments like reactors and transformers through a very busy railway route/crossing. Heavy rains and fog are normal seasonal variations. There is nothing abnormal in these events and must have been foreseen at the planning stage. The petitioner has not submitted any evidence to suggest that there was any extraordinary rain or fog causing disruption in construction activities. In case of Asset-I, two additional reasons, which are said to have contributed to the delay in commissioning, have been given. These are unavailability of shut down at tapping point and dead end tower of 400 kV Patna- Barh and Patna- Balia transmission line and change of route alignment. No documentary evidence has been provided by the petitioner. Whatever documents the petitioner has submitted only reveal that the petitioner has claimed liquidated damages amounting to `12.83 lakh from the vendor for delay in commissioning of the asset by five months. Thus delay is on account of the contractor hired by the petitioner. The beneficiaries cannot be saddled with cost as result of the default of the contractor. Similarly, the petitioner has not placed on record a shred of evidence that there was any delay in obtaining shut-down on railway crossing/route needed for transportation of ICT at the sub-station site or abnormally long time was taken in getting the permission for tree-cutting in case of Asset-IV. Therefore, delay of three months in case of Asset-I and of six months in case of Asset-IV is not being condoned. Details of IDC and IEDC disallowed are as follows:-*

(₹ in lakh)		
Asset-I		
Details of IDC and IEDC as per Management Certificate dated 18.11.2013		
	IDC	IEDC
Up to March 2012	220.71	57.66
April 2012 to Nov 2012	141.54	79.68
Total IDC and IEDC claimed	<b>362.25</b>	<b>137.34</b>
Details of IDC and IEDC disallowed for 3 months		
September 2012 to November 2012 (computed on <i>pro rata</i> basis from IDC and IEDC of April 2012 to November 2012)	35.39	29.88
Total IDC and IEDC disallowed	<b>35.39</b>	<b>29.88</b>

Asset-IV		
Details of IDC and IEDC as per Management Certificate		
	IDC	IEDC
Up to March 2012	701.66	180.19
April 2012 to February 2013	544.14	168.13
Total IDC and IEDC claimed	<b>1245.80</b>	<b>348.32</b>
Details of IDC and IEDC disallowed for 6 months		
September 2012 to February 2013 (computed on <i>pro rata</i> basis from IDC and IEDC of September 2012 to February 2013)	296.80	91.71
Total IDC and IEDC disallowed	<b>296.80</b>	<b>91.71</b>

3. The Appellant/petitioner is a Government Company within the meaning of Companies Act, 1956, and is undertaking Inter State Transmission of Electricity in India. The Appellant/petitioner also discharges the functions of the Central Transmission Utility as provided under the Electricity Act, 2003. Respondent No.1 is the Central Electricity Regulatory Commission, which is empowered to discharge its duty under the provisions of Electricity Act, 2003. Respondents No. 2 to 18 are mostly the Distribution Licensees in various parts of the country.

4. The brief facts of the case are as under:

- (a) that the Damodar Valley Corporation (DVC) Transmission Scheme is a detailed project being executed by the Appellant in various phases. The investment approval for the project is dated 29.8.2008, and the project was to be commissioned progressively within 48 months from the date of investment approval. Therefore, the project was to be implemented/commissioned by 1.9.2012. Asset-I has been put to commercial operation on 1.12.2012 i.e. with the delay of 3 months and

Asset-IV has been commissioned on 1.3.2013 i.e. with the delay of 6 months.

- (b) that the petition was filed by the Appellant/petitioner before the Central Commission for determination of tariff of the following 4 Assets:

**Asset-I:** 400 kV D/C (Quad) LILO of Barh-Balia Line at Patna along with associated bays at Patna S/S (*Anticipated DOCO: 1.7.2012*);

**Asset-II:** 765/415 kV, 3x500 MVA ICT-I Ranchi along with associated bays at 765 kV Ranchi S/S (*Anticipated DOCO: 1.9.2012*);

**Asset-III:** Combined Assets of 400 kV D/C (Quad) Ranchi (New) – Ranchi (Old) – I T/L and associated 400 kV Line bays at Ranchi (New) S/S & Ranchi(old) S/S; and 400 kV D/C (Quad) Ranchi (New)- Ranchi (Old) -II T/L and associated 400 kV line bays at Ranchi(New) S/S & Ranchi (Old) S/S; and 765/415 kV, 3x500 MVA ICT II at Ranchi along with associated bays at 765 kV Ranchi S/S (*Anticipated DOCO: 1.9.2012*);

**Asset-IV:** 765/415 kV, 3x500 MVA ICT at Sasaram along with associated bays (*Anticipated DOCO: 1.9.2012*) under Common Scheme for 765 kV Pooling Stations and Network for NR, Import by NR from ER and from NER/SR/WR via ER and Common Scheme for Network for WR and Import by WR from ER and from NER/SR/WR via ER in Eastern Region for Tariff Block 2009-14 of the Appellant.

- (c) that the Central Commission has only determined the tariff for Asset-I and Asset-IV only and has, further, directed the Appellant to file a separate petition for determination of tariff of the remaining Assets as and when the same are commissioned.
- (d) that the reasons for delay in commissioning of Asset-I and Asset-IV were beyond the control of the Appellant, which have

not been considered in the proper perspective by the Central Commission while passing the impugned order.

- (e) that the reasoning given by the Central Commission to disallow the IDC and IEDC is that no documentary evidence was produced by the Appellant to prove that the rain/fog was unexpected or that the shutdown at the tapping point and dead-end tower of 400 kV Patna-Barh & Patna-Balia transmission lines and change of route alignment whereas, the Appellant had specifically filed the additional affidavit on 19.11.2013 before the Central Commission giving the detailed reasons for the delay which occurred in the commissioning of Asset-I and Asset-IV.
- (f) that for Asset-I, the Appellant had produced before the Central Commission the letters, dated 27.6.2011 and 23.8.2011, which were written by the sub-contractor of the Appellant regarding the delay which occurred due to the severe Right of Way (ROW) problems being faced in the execution of the project (Asset-I).
- (g) that M/s KEC International Ltd, vide its letter, dated 20.3.2013, had requested to extend the time of completion for balance work up to 31.5.2013 including waiver of Liquidated Damage (LD) explaining the various reason of delay. For the delay due to survey in route alignment and tower of multi ckt, it was found that there was a stiff ROW problem in the east side due to falling of many houses in the line corridor and it was not possible to construct line from east side of switchyard. Hence, both LILO (In) & LILO (Out) lines were taken from west side. Also, due to narrow corridor near sub-station 5 nos. of multi circuit towers had been placed near the sub-station and approval regarding the above was accorded on 22.9.2011, hence, delay of 50 days on account of Powergrid. Due to heavy rain in the month of September, 2012, working areas were fully flooded and construction activities were fully stopped from

24.9.2012 to 23.10.2012. Further, construction activities were also fully stopped near Mohanpur Mauza due to water logging of Punpun river from 24.9.2011 to 16.11.2011 due to heavy rain. Total delay on this account comes to 30 days. The delay due to finalization of multi ckt. tower had not been on account of agency. Further, the delay due to providing shut down at tapping point & dead end of 400 kv Patna Barh and Patna-Balia line is almost one month. Further, the delay in granting shut down of 400 kv Barh-Balia T/L at tapping point the erection/stringing work in between 1/0 and 9/0 of LILO T/L is almost one month. Further, the delay in granting shut down of 400 kv Patna-Balia and Patna-Barh T/L, the erection/stringing work of MC-1 and dead-end (AP-1&2) tower is almost one month. The total delay on account of Powergrid regarding shut down comes to 20 days. The office note to this effect is a kind of evidence that should have been relied upon by the Central Commission.

- (h) that the office note makes it evident that the sub-contractor of the Appellant was praying for extension of time till end of May, 2013 that is almost 8 months beyond the expected date of commercial operation. However, by pursuing with the contractor as well as giving all assistance possible, the Appellant brought down the delay to the maximum extent possible and put the Asset-I under commercial operation on 1.12.2012, which shows the bonafide of the Appellant.
- (i) that the reasons for the delay as non-availability of shut down and heavy rains and fog were completely beyond the control of the Appellant and these facts were clearly recorded in the correspondence with the sub-contractor and the Management Note on the aspect of levy of Liquidated Damages (LD).
- (j) that the contract with the sub-contractor was implemented and as per the provisions of the contract (WPPP, Volume-II), the

Appellant could levy only to the extent of 10%, which worked out to Rs.12,82,721/-.

- (k) that regarding the Asset-IV, the Central Commission cursorily rejected the certain reasons cited by the Appellant to justify the delay in commissioning of the Asset-IV by observing that the Appellant had not placed on record a shred of evidence that there was any delay in obtaining shut-down on railway crossing/route needed for transportation of ICT at the sub-station site or abnormally long time was taken in getting the permission for tree-cutting in case of Asset-IV.
- (l) that the Appellant had produced the photographs of the actual site condition, which were flooded and no work could take place on the site for the said reason along with its affidavit, dated 19.11.2013, before the Central Commission. The photographs showed that there were sudden pre-monsoon showers, which started in June, 2011 itself, and continued till September, 2011. The photographs clearly showed the severe water logging, which hindered the progress of the work.
- (m) that there was a delay in obtaining the permission for tree-cutting from the Forest Department of Bhabhua. The permission sought on 14.9.2011, was granted only on 11.10.2011. Till the trees were within the sub-station premises, which were necessarily had to be cut, the work of construction could not be started.

5. We have heard Mr. Anand K. Ganesan, the learned Counsel for the Appellant and Mr. Pradeep Misra, the learned counsel for the Respondents No. 3 to 5 and Mr. R.B. Sharma, the learned counsel for the Respondent No. 13, and gone through the written submissions filed by the rival parties. We have deeply gone through the evidence and other material available on record including the impugned order passed by the Central Commission.



6. The only issue involved in this Appeal is ***whether The Central Commission is justified in disallowance of Interest During Construction (IDC) and Incidental Expenses During Construction (IEDC) with regard to Asset-I and Asset-IV, which are part of the above transmission scheme, for the period of 3 months (1.9.2012 to 1.12.2012) and 6 months (1.9.2012 to 1.3.2013) respectively?***

7. The following contentions have been made on behalf of the Appellant on this issue:

- (a) that huge consignments of reactor and transformers had to reach the site only through the very busy Delhi-Howrah network. In order that such large consignments could be transported, there is a need to get a complete shutdown of the railway crossing for a few hours, which is extremely difficult to obtain. For this, permission has to be obtained which took 15 to 30 days more than the expected schedule.
- (b) that one of the ICTs got delayed by 6 weeks since the shutdown of the railways crossing near the sub-station for the lorry carrying the ICT could not be obtained for 2 - 3 weeks.
- (c) that there were heavy rains in the area, which delayed the foundation work by approximately 8 weeks.
- (d) that tariff fixation cannot proceed in a manner that there is a demand for evidence for each and every reason cited by the Appellant when the reasons have been clearly recorded in the Revised Management Certificates and Notes. The Appellant, being a public sector undertaking and the CTU, is undertaking its projects in the best possible manner and ensuring the best practices and most safe techniques.
- (e) that the reasons explained for the delay in the affidavit of the Appellant in commissioning of Asset-I and Asset-IV were beyond the control of the Appellant and the same has not been

considered in the proper perspective by the Central Commission.

- (f) that the Central Commission has erred in disallowing the IDC and IEDC on the ground that no documentary evidence was produced by the Appellant to prove that the rain/fog was unexpected or that there was unreasonable delay in obtaining shut-down at the tapping point and dead-end tower of 400 kV Patna-Barh & Patna-Balia transmission lines and change of route alignment.
- (g) that the Central Commission has erred in not relying upon the facts assertion made in the affidavit, dated 19.11.2013, filed before the Central Commission, which contained detailed reasons for the delay occurred in the commissioning of the Asset-I.
- (h) that the Central Commission has erred in not relying upon the letters filed by the Appellant, which were written by the sub-contractor of the Appellant regarding the delay, which occurred due to the severe Right of Way (ROW) problems being faced in the execution of the transmission project (Asset-I).
- (i) that the contract with the subcontractor was implemented and as per the provisions of the contract (WPPP, Volume II), the Appellant could levy the Liquidated Damages (LD) only to the extent of 10%, which worked out to Rs.12,82,721/-.
- (j) that the Central Commission has erred in cursorily rejecting the reasons cited by the Appellant to justify the delay in Asset-IV by observing that the Appellant had not placed on record any evidence to show that there was any delay in obtaining shut-down on railway crossing/route needed for transportation of ICT at the sub-station site or abnormally long time was taken in getting the permission for tree-cutting in case of Asset-IV.

- (k) that the Central Commission has, further, erred in ignoring the photographs filed by the Appellant before the Central Commission showing the flooded area and water logging, which hindered the progress of the work.
- (l) that there is no merit in the contention of the Respondent No.13/BSES Rajdhani Power Limited (BRPL) that the Appellant did not intentionally give the date of completion of works, which prevented the Central Commission to properly assess the time over-run because some details and dates were left-out while filing the tariff petition by the Appellant, which have subsequently, been furnished to the Central Commission.
- (m) that, further, there is no merit in the contention of the Respondent No.13 that investment approval was obtained on 29.8.2008, and the contract was awarded after one year i.e. on 27.8.2009, the said delay is attributable to the Appellant because after obtaining the investment approval in August, 2008, for a project of this size, the total value of the contract awarded was Rs. 6000 crores and the project consisted of several elements. For Asset-I, the total work was broken up into 7 contracts. While 3 awarded by Global Invitation for Bids, 4 of them were awarded by Domestic Competitive Bidding. Out of the above 4 contracts, 3 bids were received, which had to be scrutinised and the contractor was to be selected and for the balance 3 contractors, 5 bids were received which were scrutinized to select the contractor. This process takes a lot of time to conduct a global/domestic competitive bidding process and the same cannot be done within one month.
- (n) that it is also incorrect to say that there was any lack of planning or improper planning by the Appellant. The judgement, dated 27.4.2011, of this Appellate Tribunal in Appeal No. 72 of 2010, MSPGCL vs MERC & Ors wherein this Appellate Tribunal has broadly categorised the delay in

execution of projects into three categories i.e. (a) factors that are attributable entirely to the executing agency; (b) factors beyond the control of the executing agencies and; (c) miscellaneous situations not covered by either of the above, is not applicable in the present case. The case of the Appellant is covered by the third scenario. In the third case, the additional cost due to time overrun including the liquidated damages and insurance proceeds could be shared between the generating company and the consumer. It would also be prudent to consider the delay with respect to some benchmarks rather than depending on the provisions of the contract between the generating company and its contractors/suppliers. If the time schedule is taken as per the terms of the contract, this may result in imprudent time schedule not in accordance with good industry practices.

8. **Per contra**, Mr. Pradeep Misra, the learned counsel for the Respondent No.3 to 5 and Mr. R.B. Sharma, learned counsel for the Respondent No.13 have made the following contentions on this issue:

- (a) that the Appellant has failed to furnish sufficient reasons to show that delay caused was beyond the control of the Appellant. The Respondents, on the one hand, could not get the benefit of the project due to delay, and on the other hand, penalize with IDC and IEDC for no fault on their behalf. Section 61 dealing with Tariff Regulations of the Electricity Act, 2003 specifies the terms and conditions for the determination of tariff, and in doing so, the appropriate commission should be guided by the guidelines provided therein. Clause (d) thereof provides for safeguarding of consumers' interest and at the same time, recovery of the cost of electricity in a reasonable manner.
- (b) that the aim and spirit of Electricity Act, 2003 is that the tariff should be cheapest at the hands of the consumers and if the

Appellant's contention is accepted, the tariff will be higher at the hands of consumers.

- (c) that the Appellant was granted administrative approval on 29.8.2008. The Appellant has not stated why it had waited for rainy season and did not complete the work before that. Regarding shut-down also, there is no evidence on record that the Appellant had asked for shut-down and how much time was taken in granting the shut-down. The Central Commission has exercised the jurisdiction vested in it judiciously, which does not warrant any interference by this Appellate Tribunal.
- (d) that this Appellate Tribunal, in its judgment, dated 10.2.2015, in Appeal No. 13 of 2014 in the matter of PGCIL vs CERC & Ors, has declined to interfere with the order of the Central Commission not condoning the delay in commissioning the asset on the ground that the tariff should be cheapest at the end of the consumer and refuse to interfere with the discretion exercised by the Central Commission in not condoning the delay and, thereby, disallowing IDC and IEDC during the period of delay.

## 9. **OUR DISCUSSION AND CONCLUSION:**

- 9.1 We have deeply considered the facts and circumstances of the matter before us and rival contentions made by the contesting parties. We have cautiously gone through the reasons which are said to be responsible for the delayed commissioning of Asset-I and Asset-IV. We do not want to repeat the same facts and rival contentions at this place. The DVC Transmission Scheme is a detailed project being executed by the Appellant in various phases. The investment approval for the project was granted on 29.8.2008, and the project was to be commissioned progressively within 48

months of the date of investment approval. Therefore, the project was to be implemented/ commissioned by 1.9.2012.

9.2 There were originally four Assets, the Petition was filed for determination of tariff of all the four Assets but, the Central Commission has only determined the tariff for Asset-I and Asset-IV, as they were commissioned on 1.12.2012 and 1.3.2013 respectively. The Central Commission has directed the Appellant to file a separate petition for determination of tariff of the remaining Assets as and when the same are commissioned. We do not find any kind of illegality in the said action of the Central Commission.

9.3 The complete project, consisting of four assets, was to be commissioned progressively within 48 months from the date of investment approval. In spite of granting 48 months for commissioning of the project, the Appellant commissioned the Asset-I with the delay of 3 months and Asset-IV with the delay of 6 months. The learned Central Commission carefully considered the reasons for the said delay in commissioning of Asset-I and Asset-IV. According to the Appellant, the main reasons for delay in commissioning of the Assets-I & IV are heavy rains, fog and non-availability of shut-down for transportation of ICT at Sasaram sub-station, which hampered the movement of huge consignments like reactors and transformers through a very busy railway route/crossing. The Central Commission has recorded a finding in the impugned order that during the said periods, heavy rains and fog are normal seasonal variations and there is nothing abnormal in these events and such events must have been foreseen at the planning stage. Further, the Appellant/petitioner has failed to file any cogent and solid documentary evidence to show that there was any extraordinary rain or fog causing disruption in construction activities. For Asset-I, two additional reasons, which are said to

have contributed to the delay in commissioning, are unavailability of shut down at tapping point and dead end tower and change of route alignment. We have also gone through this aspect of the matter and we do not find any documentary evidence to support the said contention of the Appellant resulting in delay in commissioning of Assets-I & IV. The documents provided by the Appellant only reveal that the Appellant/petitioner has claimed liquidated damages amounting to Rs. 12.83 lakhs for delay in commissioning of the asset by five months. Thus, the delay is on account of the contractor hired by the Appellant/petitioner. We further approve the view adopted by the Central Commission that the beneficiaries cannot be saddled with cost as result of the default of the contractor. There is no reliable documentary evidence to show that there was any delay in obtaining shut-down on railway crossing/route needed for transportation of ICT at the sub-station site or abnormally long time was taken in getting the permission for tree-cutting in case of Asset-IV. The permission for tree cutting was granted by the competent authority within a month from the date the application was made. One month period for granting permission for tree cutting, by any stretch of imagination cannot be said to be abnormal or unusual time because before granting such kind of permission, every aspect has to be considered by the competent authority, considering the environmental impact thereof. Except the contents of the affidavit filed before the Central Commission in support of the contentions of the Appellant, there is no other cogent or reliable evidence to show that the said reasons which allegedly delayed the commissioning of Assets I & IV for 3 and 6 months respectively were beyond the control of the Appellant. It appears to be a case of improper planning and improper management and timely progress at different stages of the Assets on the part of the Appellant/petitioner. The said notes filed by the Appellant before the Central Commission are internal matters of the Appellant with

regard to its contractor or sub-contractors, etc. They could not take a place of any kind of evidence to help the Appellant. It was for the Appellant to select a contractor or sub-contractor, who could complete the stage-wise part of each Asset within the time frame allowed. If the 48 months period for completion or commissioning of the assets/project was not sufficient, it could have been considered at the time of granting investment approval. So far as, the values of the photographs are concerned, they cannot be a legal proof of the fact unless proved as required by the Evidence Act. Simply, filing of any photograph does not, by itself, lead to the proof of the facts shown in the photograph. More clarity cannot be expected from the photographs showing any water logging or the extent of the water logging unless the photographer or the person preparing the photograph files his or her affidavit or proves the photograph in the manner as required under the Indian Evidence Act.

- 9.4 In view of the above discussions, we do not find any merit in the contentions of the Appellant and we agree to the findings recorded by the Central Commission in the impugned order. None of the reasons, cited above, cannot be said to be beyond the control of the Appellant. There was a period of 48 months for commissioning of the whole project and the said period could have been usefully and constructively utilized by the Appellant without waiting for any rainy or foggy season. If any shut-down was required, that could have been planned in advance considering every aspect of the problem but the same does not appear to have been made on behalf of the Appellant. There is no cogent reason to deviate from any of the findings/ observation recorded by the Central Commission in the impugned order. **Consequently, the issue is decided against the Appellant and the Appeal is liable to be dismissed.**



**ORDER**

The instant Appeal, being Appeal No. 281 of 2014, is hereby dismissed and the impugned Order, dated 28.2.2014, passed by the Central Electricity Regulatory Commission, is hereby affirmed. There shall be no order as to costs.

**PRONOUNCED IN THE OPEN COURT ON THIS 13<sup>TH</sup> DAY OF AUGUST, 2015.**

**(T. Munikrishnaiah)  
Technical Member**

**(Justice Surendra Kumar)  
Judicial Member**

**√ REPORTABLE/NON-REPORTABLE**

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