

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)
APPEAL NO. 51 OF 2018,
APPEAL NO. 159 OF 2018 & IA Nos. 743 of 2019 & 761 of 2018,
APPEAL NO. 160 OF 2018 & IA Nos. 753 of 2018, 1664 of 2019, & 765
of 2018
APPEAL NO. 275 OF 2018 & IA No. 1106 of 2018,
APPEAL NO. 52 OF 2018,
APPEAL NO. 53 OF 2018,
AND
APPEAL NO. 57 OF 2018

Dated: 01st September, 2020

Present: Hon'ble Mrs. Justice Manjula Chellur, Chairperson
Hon'ble Mr. S.D. Dubey, Technical Member

APPEAL NO. 51 OF 2018

IN THE MATTER OF :

Jindal India Thermal Power Limited
Plot No. 12, Local Shopping Complex,
Sector B-1, Vasant Kunj,
New Delhi-110 070
Through its Director

...Appellant

versus

1. Central Electricity Regulatory Commission
3rd & 4th Floor, Chanderlok Building,
36, Janpath, New Delhi- 110001
Through its Secretary

2. Powergrid Corporation of India
B-9, Qutab Institutional Area,
Katwaria Sarai, New Delhi-110016
Through its Managing Director
3. Monnet Power Company Limited,
Monnet Marg, Mandir Hasaud, Raipur,
Chhattisgarh- 492-101
Through its Director
4. IND Barath Energy (Utkal) Limited,
Plot No. 30-A, Road No.1, Film Nagar, Jubilee Hills,
Hyderabad, Andhra Pradesh-500 003
Through its Director
5. Lanco Babandh Power Limited,
Plot No. 397, Phase III, 2nd Floor, Udyog Vihar,
Gurgaon Haryana- 120 016
Through its Director
6. Navbharat Power Private Limited,
Navbharat Chambers, 6-3-1109/1, 3rd Floor, Left Wing,
Rajbhawan Road, Somajiguda, Hyderabad,
Andhra Pradesh-500-082
Through its Director
7. M/s Vedanta Limited
(Erstwhile Sterlite Energy Limited)
1st Floor Module C/2, Fortune Towers,
Chandrashekharpur, Bhubaneswar, Odisha-751023
Through its Director
8. The Director,
GMR Kamalanga Energy Limited
Kamalanga, Dhenkanal,
Odisha- 759121
9. Bihar State Electricity Board
Vidyut Bhawan, Bailey Road,
Patna-800-001
Through its Director

10. West Bengal State Electricity
Distribution Company Limited,
Bidyut Bhawan, Bidhan Nagar,
Block DJ, Sector -II, Salt lake City,
Kolkata-700-091
Through its Director
11. Grid Corporation Of Orissa Limited,
Shahid Nagar,
Bhubaneswar- 751-007
Through its Director
12. The Chairman,
Damodar Valley Corporation
DVC Tower, Maniktala
Civil Centre, VIP Road,
Kolkata-700-054
13. The Secretary,
Power Department,
Govt. of Sikkim, Gangtok-737-101
14. The Chairman,
Jharkhand State Electricity Board,
In front of Main Secretariat,
Doranda, Ranchi-834-00

...Respondent(s)

APPEAL NO. 159 OF 2018 & IA Nos. 743 of 2019 & 761 of 2018,

IN THE MATTER OF :

Jindal India Thermal Power Limited

Plot No. 12, Local Shopping Complex,
Sector B-1, Vasant Kunj,
New Delhi-110 070

Through its Director

...Appellant

versus

1. The Secretary,
Central Electricity Regulatory Commission
3rd & 4th Floor, Chanderlok Building,
36, Janpath, New Delhi- 11000.

2. The Director,
Power Grid Corporation of India Limited,
"Saudamini", Plot No.2,
Sector-29, Gurgaon -122 001
3. The Director,
Monnet Power Company Limited,
Monnet Marg, Mandir Hasaud,
Raipur, Chattisgarh-492 101
4. The Director,
IND Barath Energy (Utkal) Limited,
Plot No. 30-A, Road No. 1, Film Nagar, Jubilee Hills,
Hyderabad, Andhra Pradesh-500 033
5. The Managing Director,
Lanco Babandh Power Limited,
Plot No. 397, Phase-III, 2nd Floor, Udyog Vihar,
Gurgaon, Haryana-120 016 4
6. The Managing Director,
Navbharat Power Private Limited,
Navbharat Chambers, 6-3-1109/1, 3 rd Floor,
Left Wing, Rajbhawan Road, Somajiguda,
Hyderabad, Andhra Pradesh-500 082
7. The Director,
GMR Kamalanga Energy Limited,
Skip House, 25/1, Museum Road,
Bangalore, Karnataka-560 025
8. The Director,
Sterlite Energy Limited,
Sipcot Industrial Complex,
Tuticorin, Tamil Nadu-628 002
9. The Managing Director,
Bihar State Electricity Board,
Vidyut Bhawan, Bailey Road,
Patna-800 001
10. The Managing Director,
West Bengal State Electricity Distribution Company Limited,

Bidyut Bhawan, Bidhan Nagar,
Block DJ, Sector-II, Salt Lake City,
Kolkata-700 091

11. The Director,
Grid Corporation of Orissa Limited,
Shahid Nagar, Bhubaneswar-751 007
12. The Chairman,
Damodar Valley Corporation,
DVC Tower, Maniktala Civil Centre,
VIP Road, Kolkata-700 054
13. The Secretary,
Power Department,
Govt. of Sikkim, Gangtok-737 101
14. The Chairman,
Jharkhand State Electricity Board,
In front of Main Secretariat,
Doranda, Ranchi-834 002...**Respondent(s)**

Counsel for the Appellant : Mr. Matrugupta Mishra
Ms. Shikha Ohri
Mr. Shourya Malhotra

Counsel for the Respondent(s) : Mr. Anand K. Ganesan
Ms. Swapna Seshadri for R-2
Mr. Raj Bahadur Sharma for R-9
Mr. Arijit Maitra for R-11

**APPEAL NO. 160 OF 2018 & IA Nos. 753 of 2018, 1664 of 2019, & 765
of 2018**

GMR Kamalanga Energy Limited,
Skip House, 25/1, Museum Road,
Bangalore, Karnataka-560 025

And
GMR Kamalanga Energy Limited,
Kamalanga, Dhenkanal,

Odisha – 759121

...Appellant

versus

1. The Secretary,
Central Electricity Regulatory Commission
3rd& 4th Floor, Chanderlok Building,
36, Janpath, New Delhi- 11000.
2. The Director,
Power Grid Corporation of India Limited,
"Saudamini", Plot No.2,
Sector-29, Gurgaon -122 001
3. The Director,
Monnet Power Company Limited,
Monnet Marg, Mandir Hasaud,
Raipur, Chattisgarh-492 101
4. The Director,
GMR Kamalanga Energy Limited,
Skip House, 25/1, Museum Road,
Bangalore, Karnataka-560 025
5. The Managing Director,
Lanco Babandh Power Limited,
Plot No. 397, Phase-III, 2nd Floor, Udyog Vihar,
Gurgaon, Haryana-120 016 4
6. The Managing Director,
Navbharat Power Private Limited,
Navbharat Chambers, 6-3-1109/1, 3 rd Floor,
Left Wing, Rajbhawan Road, Somajiguda,
Hyderabad, Andhra Pradesh-500 082
7. The Director,
Jindal India Thermal Power Limited,
Plot No. 12 , Sector-B, Pocket-1
Local Shopping Complex, Vasant
Kunj, New Delhi-110-070
8. The Director,
Sterlite Energy Limited,
Sipcot Industrial Complex,

Tuticorin, Tamil Nadu-628 002

9. The Managing Director,
Bihar State Electricity Board,
Vidyut Bhawan, Bailey Road,
Patna-800 001
10. The Managing Director,
West Bengal State Electricity Distribution Company Limited,
Bidyut Bhawan, Bidhan Nagar,
Block DJ, Sector-II, Salt Lake City,
Kolkata-700 091
11. The Director,
Grid Corporation of Orissa Limited,
Shahid Nagar, Bhubaneswar-751 007
12. The Chairman,
Damodar Valley Corporation,
DVC Tower, Maniktala Civil Centre,
VIP Road, Kolkata-700 054
13. The Secretary,
Power Department,
Govt. of Sikkim, Gangtok-737 101
14. The Chairman,
Jharkhand State Electricity Board,
In front of Main Secretariat,
Doranda, Ranchi-834 002...**Respondent(s)**

APPEAL NO. 275 OF 2018 & IA No. 1106 of 2018 AND

APPEAL NO. 52 OF 2018

M/s Vedanta Limited
3rd &4th Floor,Vipul
Plaza, Suncity Road,
Suncity, Sector 54,
Gurugram, Haryana 122011

...Appellant

versus

1. The Secretary,
Central Electricity Regulatory Commission
3rd& 4th Floor, Chanderlok Building,
36, Janpath, New Delhi- 11000.
2. The Director,
Power Grid Corporation of India Limited,
"Saudamini", Plot No.2,
Sector-29, Gurgaon -122 001
3. The Director,
Monnet Power Company Limited,
Monnet Marg, Mandir Hasaud,
Raipur, Chattisgarh-492 101
4. The Director,
IND Barath Energy (Utkal) Limited,
Plot No. 30-A, Road No. 1, Film Nagar, Jubilee Hills,
Hyderabad, Andhra Pradesh-500 033
5. The Managing Director,
Lanco Babandh Power Limited,
Plot No. 397, Phase-III, 2nd Floor, Udyog Vihar,
Gurgaon, Haryana-120 016 4
6. The Managing Director,
Navbharat Power Private Limited,
Navbharat Chambers, 6-3-1109/1, 3 rd Floor,
Left Wing, Rajbhawan Road, Somajiguda,
Hyderabad, Andhra Pradesh-500 082
7. The Director,
GMR Kamalanga Energy Limited,
Skip House, 25/1, Museum Road,
Bangalore, Karnataka-560 025
8. The Director,
Sterlite Energy Limited,
Sipcot Industrial Complex,
Tuticorin, Tamil Nadu-628 002
9. The Managing Director,
Bihar State Electricity Board,

Vidyut Bhawan, Bailey Road,
Patna-800 001

10. The Managing Director,
West Bengal State Electricity Distribution Company Limited,
Bidyut Bhawan, Bidhan Nagar,
Block DJ, Sector-II, Salt Lake City,
Kolkata-700 091
11. The Director,
Grid Corporation of Orissa Limited,
Shahid Nagar, Bhubaneswar-751 007
12. The Chairman,
Damodar Valley Corporation,
DVC Tower, Maniktala Civil Centre,
VIP Road, Kolkata-700 054
13. The Secretary,
Power Department,
Govt. of Sikkim, Gangtok-737 101
14. The Chairman,
Jharkhand State Electricity Board,
In front of Main Secretariat,
Doranda, Ranchi-834 002...**Respondent(s)**

APPEAL NO. 53 OF 2018

IND Barath Energy (Utkal) Limited,
Plot No. 30-A, Road No.1, Film
Nagar, Jubilee Hills, Hyderabad,
Andhra Pradesh-500 003
ThroughitsDirector

...Appellant

versus

1. The Secretary,
Central Electricity Regulatory Commission
3rd& 4th Floor, Chanderlok Building,

36, Janpath, New Delhi- 110001.

2. The Director,
Power Grid Corporation of India Limited,
"Saudamini", Plot No.2,
Sector-29, Gurgaon -122 001
3. The Director,
Monnet Power Company Limited,
Monnet Marg, Mandir Hasaud,
Raipur, Chattisgarh-492 101
4. The Director,
IND Barath Energy (Utkal) Limited,
Plot No. 30-A, Road No. 1, Film Nagar, Jubilee Hills,
Hyderabad, Andhra Pradesh-500 033
5. The Managing Director,
Lanco Babandh Power Limited,
Plot No. 397, Phase-III, 2nd Floor, Udyog Vihar,
Gurgaon, Haryana-120 016 4
6. The Managing Director,
Navbharat Power Private Limited,
Navbharat Chambers, 6-3-1109/1, 3 rd Floor,
Left Wing, Rajbhawan Road, Somajiguda,
Hyderabad, Andhra Pradesh-500 082
7. The Director,
GMR Kamalanga Energy Limited,
Skip House, 25/1, Museum Road,
Bangalore, Karnataka-560 025
8. The Director,
Sterlite Energy Limited,
Sipcot Industrial Complex,
Tuticorin, Tamil Nadu-628 002
9. The Managing Director,
Bihar State Electricity Board,
Vidyut Bhawan, Bailey Road,
Patna-800 001

10. The Managing Director,
West Bengal State Electricity Distribution Company Limited,
Bidyut Bhawan, Bidhan Nagar,
Block DJ, Sector-II, Salt Lake City,
Kolkata-700 091
11. The Director,
Grid Corporation of Orissa Limited,
Shahid Nagar, Bhubaneswar-751 007
12. The Chairman,
Damodar Valley Corporation,
DVC Tower, Maniktala Civil Centre,
VIP Road, Kolkata-700 054
13. The Secretary,
Power Department,
Govt. of Sikkim, Gangtok-737 101
14. The Chairman,
Jharkhand State Electricity Board,
In front of Main Secretariat,
Doranda, Ranchi-834 002...**Respondent(s)**

APPEAL NO. 57 OF 2018

GMR Kamalanga Energy Limited,
Kamalanga, Dhenkanal,
Odisha – 759121

...Appellant

versus

1. The Secretary,
Central Electricity Regulatory Commission
3rd& 4th Floor, Chanderlok Building,
36, Janpath, New Delhi- 11000.
2. The Director,
Power Grid Corporation of India Limited,
"Saudamini", Plot No.2,
Sector-29, Gurgaon -122 001

3. The Director,
Monnet Power Company Limited,
Monnet Marg, Mandir Hasaud,
Raipur, Chattisgarh-492 101
4. The Director,
IND Barath Energy (Utkal) Limited,
Plot No.30-ASkip House, 25/1, Museum Road,
Bangalore, Karnataka-560 025
5. The Managing Director,
Lanco Babandh Power Limited,
Plot No. 397, Phase-III, 2nd Floor, Udyog Vihar,
Gurgaon, Haryana-120 016 4
6. The Managing Director,
Navbharat Power Private Limited,
Navbharat Chambers, 6-3-1109/1, 3rd Floor,
Left Wing, Rajbhawan Road, Somajiguda,
Hyderabad, Andhra Pradesh-500 082
7. The Director,
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Plot No. 12 , Sector-B, Pocket-1
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Sipcot Industrial Complex,
Tuticorin, Tamil Nadu-628 002
9. The Managing Director,
Bihar State Electricity Board,
Vidyut Bhawan, Bailey Road,
Patna-800 001
10. The Managing Director,
West Bengal State Electricity Distribution Company Limited,
Bidyut Bhawan, Bidhan Nagar,
Block DJ, Sector-II, Salt Lake City,
Kolkata-700 091

11. The Director,
Grid Corporation of Orissa Limited,
Shahid Nagar, Bhubaneswar-751 007
12. The Chairman,
Damodar Valley Corporation,
DVC Tower, Maniktala Civil Centre,
VIP Road, Kolkata-700 054
13. The Secretary,
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Govt. of Sikkim, Gangtok-737 101
14. The Chairman,
Jharkhand State Electricity Board,
In front of Main Secretariat,
Doranda, Ranchi-834 002...**Respondent(s)**

Counsel for the Appellant : Mr. Hemant Singh
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Counsel for the Respondent (s) : Mr. Anand K. Ganesan
Ms. Swapna Seshadri for R-2

Mr. Arijit Maitra for R-11

JUDGMENT

PER HON'BLE MR. S. D. DUBEY, TECHNICAL MEMBER

1. The present Appeals have been filed by the thermal power generators (hereinafter referred to as the “Appellants”) under Section 111 of the Electricity Act, 2003 impugning the various Impugned Orders passed by the Central Electricity Regulatory Commission (**Central Commission**) as under:-

Sl.No.	Appeal No.	Impugned Order in Petition No.	Passed on
1.	51 of 2018	112/TT/2013 & Review Order in RP No.24/RP/2015	07.10.2015 16.02.2017
2.	52 of 2018	112/TT/2013 & Review Order in RP No.24/RP/2015	07.10.2015 16.02.2017
3.	53 of 2018	112/TT/2013 & Review Order in RP No.24/RP/2015	07.10.2015 16.02.2017
4.	57 of 2018	112/TT/2013 & Review Order in RP No.24/RP/2015	07.10.2015 16.02.2017
5.	159 of 2018	73/MP/2017	21.02.2017
6.	160 of 2018	73/MP/2017	21.02.2017
7.	275 of 2018	73/MP/2017	21.02.2017

2. Description of the parties:-

- 2.1 The Appellants are Generating Companies in terms of Section 2(28) of the Electricity Act, 2003 (Electricity Act) as incorporated under the Companies Act, 1956.
- 2.2 The Respondent No.1 is the Central Electricity Regulatory Commission (hereinafter referred to as “Respondent Commission”).

2.3 The Respondent No. 2, Power Grid Corporation of India (PGCIL), is a Government of India Enterprise, notified as the Central Transmission Utility (CTU) under Section 38 of the Electricity Act, 2003 and discharges its functions of coordination & planning for the Inter-State transmission of electricity.

2.4 Other Respondents are distribution companies in the State of Bihar and Odisha.

3. Facts of the Case(s):-

3.1 The facts and circumstances leading to the filing of these Appeals are enumerated hereinbelow:

- In Appeal Nos. 51 of 2018 & 159 of 2018, the Appellant has set up a power plant of 1200 MW (2x600 MW) at Derang in District Angul, Odisha.
- In Appeal Nos. 52 of 2018 & 275 of 2018, the Appellant has set up a coal based thermal power plant of 2400 MW (4x600 MW) at BrundamalJharsuguda, Odisha.
- In Appeal No. 53 of 2018, the Appellant has set up a coal based thermal power plant of 700 MW (2x350 MW) at BrundamalJharsuguda, Odisha.
- In Appeal Nos. 57 & 160 of 2018, the Appellant has set up a power plant of 1050 MW (3x350 MW) at Village Kamalanga in Dhenkanal District, Odisha.

3.2 For the purpose of evacuating power from the power plant,

- the petitioner(s)(Appeal Nos. 51 of 2018 & 159 of 2018), entered into a Bulk Power Transmission Agreement (BPTA)

dated 13.05.2010 for evacuation of power from its 2x600 MW power plant at Angul, Odisha on long term basis.

- the petitioner(s) (Appeal Nos. 52 of 2018 & 275 of 2018), entered into a BPTA dated 05.07.2010 and 05.01.2011 for evacuation of power from its 400 MW & 1000 MW of power from its 4 X 600 MW power plant at Jharsguda, Odisha on long term basis.
- the petitioner(s) (Appeal No. 53 of 2018) entered into a BPTA dated 24.02.2010 for evacuation of power from its 700 MW of power from its 2 X 350 MW power plant at Jharsguda, Odisha on long term basis.
- the petitioner(s) (Appeal Nos. 57 of 2018 & 160 of 2018) entered into a BPTA dated 24.02.2010 for evacuation of power from its 800 MW of power from its 3 X 350 MW power plant at Kamalanga in Dhenkanal District, Odisha on long term basis.
- the petitioner (Appeal No. 159 of 2018) entered into a Bulk Power Transmission Agreement (BPTA) dated 13.05.2010 for evacuation of power from its 2x600 MW power plant at Angul, Odisha on long term basis.

PGCIL agreed to provide the said Access to the Appellants in accordance with the Connectivity Regulations. The said BPTA lays down the respective obligation of parties, which *inter alia* provides:

- (i) construction of the power plant and dedicated transmission line by the Petitioner; and
- (ii) augmentation of the transmission system by PGCIL.

- 3.3** The Appellants in the batch of appeals have filed in Appeal Nos. 51 of 2018 & 159 of 2018 - Petition No. 55/MP/2015, in Appeal Nos. 52 of 2018 & 275 of 2018 - Petition Nos. 303/MP/2015 and 03/MP/2016, in Appeal No. 57 of 2018 Petition Nos. 41/MP/2015 and 92/MP/2015 respectively before the Respondent Commission for relinquishment of entire original LTA quantum of 1044 MW, 1400 MW, 647 MW (387 MW for NR & 260 MW for ER) which was allowed by the Central Commission vide its order dated 16.12.2015 in 55/MP/2015. Thereafter the Respondent Commission has disposed off the aforesaid petitions on 20.09.2017 subject to the payment of relinquishment charges to be decided in terms of the outcome in Petition No. 92/MP/2015.
- 3.4** The Appellant(s) under the BPTA were under obligation to implement dedicated transmission line as detailed in the preceding paras.
- 3.5** It was contemplated and decided between the parties under the BPTA that an interim arrangement through LILO of existing lines shall be provided by the Respondent No.2, PGCIL only as a contingency arrangement since the transmission system as envisaged in the BPTA is not as per the commissioning schedule of the Appellant's units. The interim LILO arrangement was to be removed, once the said transmission system (as envisaged in BPTA) was declared for commercial operation. The LILO was initially planned as temporary arrangement for evacuation of power from pooling station till the main 765 Kv transmission corridor gets commissioned (to be constructed and implemented by Respondent No.2/PGCIL).

3.6 In furtherance to above, out of 4 LILOs, 2 LILOs each at Angul and Jharsuguda pooling station (including the LILO meant for the Appellant) though planned as interim arrangement, the following was decided in the 17th Standing Committee Meeting of ER, held on 25.05.2015, on the request of Respondent No. 2:

“28.0 Bypassing arrangement of LILO of 400kV lines at Angul – agenda by POWERGRID

28.1 AGM, POWERGRID stated that LILO of Meramundali – Bolangir / Jeypore 400 kV S/c line at Angul pooling station and LILO of one ckt of Talcher - Meramundali 400 kV D/c line at Angul pooling station has been implemented along with Orissa Phase-I transmission system. While agreeing with these LILOs, it was decided that the LILOs would be disconnected after commissioning of 765 kV Angul pooling station. Now, 765 kV Angul s/s and one ckt of Angul-Jharsuguda 765 kV line has been commissioned and the 2nd circuit of Angul-Jharsuguda line would be commissioned shortly. Further, under Orissa Ph-I generation projects, 5 generation projects are to be connected at Angul. Till date, only GMR and JITPL have been commissioned.

28.2 He added that the 400 kV LILO lines are feeding the load centres of Orissa at Meramundali and Mendasal. It is proposed that the above LILOs at Angul pooling station may not be disconnected. Instead, switching arrangements may be made at Angul substation such that above 400 kV LILOs may be operated either by-passing Angul substation or terminating at Angul substation as and when required, depending upon the power flow condition.

28.3 After, discussion Members agreed to the proposal as a part of Easter Region strengthening scheme-17 (ERSS-17).”

3.7 Further, in the 18th Standing Committee Meeting held on 13.06.2016 and 33rd ERPC Meeting held on 24-25.06.2016, it was decided that the said LILOs may not be disconnected as these were regarded as assets which help to cater load centres of Odisha at Meramundali and Mendhasal. Further, it was decided to use the LILOs as an alternative arrangement for bypassing Angul Sub-station and/or terminating at Angul Sub-station as and when required, depending

upon the power flow condition, since Respondent No. 2/CTU finds it useful to the grid reliability and stability of the system. It is again stated that from the day one of DOCO the said assets have helped in improving the reliability and stability of the system and support the grid. In view of this, even though the LILOs were made as temporary arrangements, however, the same has been converted into transmission asset which are utilized in aid and assistance of the associated transmission system.

3.8 As per the BPTA, PGCIL was under an obligation for establishment of 765/400 kV Pooling Station at Angul for evacuation of entire power from the Appellant's power plant.

3.9 The Appellant has achieved COD of its one unit out of two on 06.06.2014. The Appellant was using LILOs for commissioning of the unit till the commissioning of the dedicated transmission line in June, 2014. Thereafter, the energy units from the project of the Appellant were evacuated through the dedicated transmission line connecting the power plant of the Appellant to Angul Pooling Station of PGCIL.

4. Facts in Issue in the batch of Appeals:-

4.1 The Respondent No. 2, being the CTU, had filed a tariff petition, being Petition No. 112/TT/2013 for approval of 9 Nos. of assets under Transmission System for Phase-I Generation Projects in Orissa-Part-A in Eastern Region for tariff block 2009-14. It is submitted that transmission charges for LILO under different Assets of the transmission asset built by PGCIL qua the evacuation of power for the Appellant, have been shared by the Appellant with

others. Tariff for Asset V which happens to be LILO of Talchar-Meramundali 400 kV D/C line at Angul substation was not considered in the said tariff petition, since the said Asset was commissioned on 01.04.2014 i.e. during the tariff period of 2014-19, hence it was dealt under a separate petition.

4.2 The Respondent Commission after conducting hearing passed the impugned order, whereby the Respondent Commission has made the following observations under para 60 to 66:

“60. We have gone through the abovementioned provisions of the BPTA and the generators and the 2010 Sharing Regulations. As per the provisions of BPTA, a long term transmission customer shall share and pay the transmission charges fixed as per the Regulations specified by this Commission from the date of commissioning of the transmission system. The BPTA provides for preponement of the commissioning of the transmission system only with the mutual consent of the concerned parties. Further as per the BPTA, if there is any delay in commissioning of the transmission system, the petitioner shall pay the proportionate transmission charges to the LTA customer and similarly if the generator fails to construct the generating station or makes an exit or abandons its project, the petitioner shall be eligible to collect the transmission charges from the generator. In the instant case, the petitioner has commissioned the transmission system and the generator has not performed its part of the BPTA and hence the generator has to bear the transmission charges as provided in clause 2.0(a) and 2.0 (c) of the BPTA. Further, as per Regulation 8(5) and 8(6) of the 2010 Sharing Regulations, the generators having long term access are liable to bear the charges for the transmission system till they achieve "commercial operation". However, the generators under the instant petition do not have an arrangement with identified beneficiaries for long term supply of power. Taking into consideration the provisions of the BPTA signed by generators and the 2010 Sharing Regulations, we are of the considered view that the generators are liable to bear the Yearly Transmission Charges (YTC) of transmission system till the date their LTA is operationalised post which generators shall be charged as per prevailing Regulations. The tariff for such lines shall be excluded from PoC, till LTA for the generators are operationalised. However, the transmission assets shall be considered in base case for calculation of PoC rates at "Zero Cost". On operationalisation of LTA for the generators covered under the instant petition, the transmission assets covered under the petition shall be considered under PoC pool. We also direct the petitioner to take necessary action to

operationalise LTA for the projects as per the capacity available as provided in Regulation 8(5) of the 2010 Sharing Regulations.

61. Thereafter, the transmission charges will be shared by the long term customers/beneficiaries in accordance with the 2010 Sharing Regulations.

62. It is observed that in the Standing Committee meeting on Power System Planning in Eastern Region held on 14.9.2009, it was decided that the associated transmission systems upto the pooling stations of Jharsuguda and Angul would be under the scope of the generation developers as per the details given below:-

- (a) Sterlite: Sterlite-Jharsuguda pool 400 kV D/C line with associated bays.
- (b) Ind-Bharat: Ind Bharat-Jharsuguda Pool 400 kV D/C line with associated line bays.
- (c) GMR: GMR-Angul Pool 400 kV D/C line along with 3X1500 MVA 765/400 kV ICTs.
- (d) Jindal: Jindal-Angul Pool 400 kV D/C line with associated bays.

63. Further, in the said meeting Member (PS), CEA observed as under:-

“M (PS) stated that in view of the possibility of the IPP generations being stranded on account of delay in implementation of ATS, LILO of one circuit of 400 kV Rourkella-Raigarh D/C line at Sterlite and LILO of the other circuit at Ind-Bharath would be made as temporary arrangement to avoid such situation. These LILO would be removed when the project specific transmission system as decided would be in place.”

64. In the meeting of the Standing Committee on Power System Planning in Eastern Region held on 20.9.2010, the temporary interim arrangements under the scope of the respective generation developer for evacuation of power from Sterlite, Ind-Bharat, GMR and Jindal IPPs were decided with the concurrence of all constituents of the Eastern Region as under:-

Sterlite	LILO of one ckt of Rourkela-Raigarh 400 kV D/C line
Ind Bharat	LILO of other ckt of Rourkela-Raigarh 400 kV D/C line
GMR	LILO of one ckt of Talcher-Meramundali 400 kV D/C line
Jindal	LILO of Meramundali-Jeypore 400 kV S/C line

65. The associated transmission lines were to be constructed by the generation developer matching with the transmission system to be developed by the petitioner and the LILOs constructed by generation developers which were temporary arrangement were to be replaced by the associated transmission system. It is noticed that some of the generation developers have not commissioned the dedicated lines

and are continuing to evacuate power through the temporary LILO arrangements. We direct the petitioner to discuss the issue in the Standing Committee Meeting on Transmission and finalize the timeline for replacement of the LILOs of generation developer by dedicated transmission lines within a period of six months from the date of connection of LILO of the petitioner.

66. Since the generation developers have failed to construct the dedicated transmission lines due to which assets created by the petitioner covered under the present petition are not serving the intended purpose, we are of the view, that the tariff for these assets shall be borne by the generators till operationalisation of their LTA as required under Regulation 8(5) of the 2010 Sharing Regulations as stated in para 60 herein. Till such time, the tariff for the assets shall be excluded from PoC pool.”

4.3 PGCIL, the Respondent No. 2, being aggrieved by the above observations made by the Respondent Commission, preferred a review petition being Review Petition No. 24/RP/2015, wherein PGCIL has raised the following objections in support of its limited review petition filed for removal of the error apparent in the impugned order:

- (a) When the asset achieves COD and tariff is allowed, then the asset has to be included in the POC;
- (b) PGCIL will have to recover the cost from generators without the asset being included in POC. PGCIL will recover transmission charges from generators but the asset cannot be withheld from becoming part of PoC as on approval of tariff, it automatically becomes part of PoC. Further, many generators are surrendering LTA and the matter is under adjudication and PGCIL will be unable to recover transmission charges if the assets are not included in the POC mechanism;
- (c) Regulation 8(5) and 8(6) of the Sharing Regulations are not applicable in the instant case; and

(d) There cannot be any charges other than through POC mechanism; otherwise a separate mechanism has to be devised for recovery of charges.

Therefore, PGCIL sought review on the finding of recovery and sharing of transmission charges from the generators until operationalization of LTA under non-PoC regime and partial/proportional inclusion of tariff in the PoC mechanism on the contingency of commissioning of the respective dedicated transmission lines as the same is beyond the purview of the CERC (Terms and Conditions of Tariff) Regulations, 2014 (hereinafter referred to as “Tariff Regulations, 2014”) and Sharing Regulations.

4.4 The above review petition was dismissed by the Respondent Commission vide Impugned Review Order dated 16.02.2017 passed in Petition No. 24/RP/2015. Since, the Respondent Commission has made certain observations in the said order dismissing the review petition, the review order stands merged with the impugned order, hence, the review order is also under challenge on grounds detailed hereinafter.

4.5 The Appellant, even though was aggrieved by the impugned findings of the Respondent Commission, could not challenge the same before this Tribunal, since, PGCIL had preferred a review petition before the Respondent Commission and the very same issues were pending adjudication before the Respondent Commission. However, upon dismissal of the review petition, the Respondent No. 2 has filed a Petition being Petition No. 73/MP/2017 to supply the information relating to the status of construction of dedicated transmission lines by different generators

as sought by the Respondent Commission in the impugned review order. Though the Appellant is a party to the above Petition No. 73/MP/2017 filed by PGCIL, however, the Appellant is apprehensive of the legality of the modus through which the issue raised herein is dealt or to be dealt by the Respondent Commission, which has kept the issue open but to an extent restricted the scope under the impugned review order. Going by the principle of the law of procedure, the issue should have been dealt under the review petition itself. However, the Respondent Commission has on the contrary dismissed the review petition and directed PGCIL to file a separate application. In such scenario, the Appellant is constrained to file an appeal against both the impugned order and the impugned review order, so that the legal right to appeal available to the Appellant, so far as the issues raised herein are concerned, do not get forfeited or waived off, on the pretext of implied or expressed acquiescence, or otherwise.

- 4.6** Pursuant to the dismissal of the review petition and in the light of the impugned order, PGCIL has raised a bill on the Appellant for recovery of transmission charges on 22.08.2017 (hereinafter referred to as “Impugned Letter”) towards debit on account of transmission charges for the period April 2013 to December 2015 payable in respect of different Assets.

5. Questions of Law:-

The Appellants have raised following questions of law:-

- A. Whether the Respondent Commission has acted contrary to the provisions of Sharing Regulations?

- B. Whether the Respondent Commission has devised a mechanism for imposition of transmission charges which is not contemplated under the Sharing Regulations and the Tariff Regulations, 2014?
- C. Whether after the advent of the Sharing Regulations, transmission charges for any asset can be recovered by PGCIL/ CTU through non-POC bills, beyond the purview of the Sharing Regulations?
- D. Whether the Respondent Commission has erred in excluding the assets of the Appellant from PoC mechanism when the asset has already achieved the commercial operation?
- E. Whether the Respondent Commission has erred in premising its order on the sole reason that default in securing the firm long term Power Purchase Agreement (PPA), the reason which is governed by market forces and beyond the control of generator developers would lead to non-inclusion of transmission charges in the PoC mechanism?
- F. Whether the impugned findings in the impugned order amount to supplementing or reading into, new provisions in the Sharing Regulations?
- G. Whether the Respondent Commission has erred in disregarding the failure of Respondent No. 2 to construct requisite transmission system and thereafter directing to raise non PoC bills (when POC sharing regulations are in force) irrespective of the fact whether generator developers have built the dedicated transmission line or not?

- H. Whether the Respondent Commission has failed to appreciate that non-inclusion of the Appellant in PoC mechanism would be prejudicial not only to the Appellant but also to the users of the transmission assets and to the ultimate consumers as well?
- I. Whether the Respondent Commission has failed to note that impugned findings of directing the CTU to charge under non-PoC mechanism are posing an antithesis to the very objective behind the coming into effect of the Sharing Regulations?
- J. Whether the impugned order is paving the way towards bringing a regulatory uncertainty so far as the implementation of the Sharing Regulations vis-à-vis imposition of transmission charges by PGCIL is concerned?
- K. Whether under the impugned review order, the Respondent Commission has on one hand attributed all reasons for time overrun to the generators and on the other hand recorded that it shall deal with generator wise timeline of commissioning of the respective transmission assets, for ascertaining individual liability of the generators, thereby leading to an anomaly and uncertainty?
- L. Whether the Respondent Commission rightly discharged its function by dismissing the review petition filed by PGCIL without finally adjudicating upon the issue raised by virtue of such review petition and further directing PGCIL to file a separate application along with certain information to be supplied by the latter?
- M. Whether the Respondent Commission has erred in directing PGCIL to file a separate application without adjudicating upon the issues raised under the review petition, being de hors the procedural jurisprudence evolved with practice and precedence.

The issues involved in all these appeals are common in nature, therefore, we decide to adjudicate the batch of appeals by this common judgment.

6. Learned senior counsel, Mr. Sajan Poovayya appearing for the Appellants has filed common comprehensive written submissions in the batch of Appeals for our consideration as follows :-

6.1 The Appellants filed one set of Appeals against the impugned order dated 21.02.2018 passed by the Respondent Commission in Petition No. 73/MP/2017 (Appeal No. 159 of 2018, 160 of 2018 and 275 of 2018). The second set of Appeals have been filed by the Appellants against the impugned orders dated 07.10.2015 and 16.02.2017 passed by the Respondent Commission in Petition No. 112/TT/2013 and Review Petition No. 24/RP/2015 (Appeal No. 51 of 2018, 52 of 2018, 53 of 2018 and 57 of 2018). Since, the issues involved in the aforesaid appeals are similar in nature, the Appellants are considering Appeal No. 159 of 2018 as the lead matter for ease of reference. The said appeal no. 159 of 2018 was also referred as the lead matter throughout the oral submissions made by the counsel appearing for the parties.

6.2 Vide the impugned orders in both the above set of appeals, the Respondent Commission arbitrarily and without keeping in mind the CERC (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 (herein after referred to as the "Sharing Regulations") devised a methodology for recovery of transmission charges, wherein the Appellants have been subjected to bear the complete cost of certain assets at Angul substation of Respondent

No. 2/ PGCIL, under the Non-Point of Connection (Non-PoC)/ Non-sharing mechanism which itself is contrary to the provisions of the above Regulations.

6.3 The present written submission is being made under the following broad heads, summarising the arguments advanced by the Appellants during the hearing conducted before this Tribunal:

- a. Interpretation of CERC Sharing Regulations, 2010;
- b. Stand of the Respondent No. 2/ PGCIL before this Tribunal and the Respondent Commission; and
- c. Respondent Distribution Licensees are relying upon judgments which are not applicable in the present case.

A. *Interpretation of CERC Sharing Regulations, 2010*

6.4 The issue pertains to the payment of transmission charges for utilisation of the transmission system of PGCIL for the period from the commissioning of the LILO lines till commissioning of the dedicated transmission line of the Appellant. After the advent of the Sharing Regulations 2010, the transmission charges payable for availing Long Term Access (LTA), by “using” the transmission network of PGCIL, is computed as per Point of Connection mechanism (PoC) / sharing mechanism as mandated in the CERC (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010.

6.5 PoC mechanism means that the cost of the transmission network of PGCIL is “shared” amongst all the entities who avail the said

network through LTA, MTOA or STOA as provided under Sharing Regulations.

- 6.6 The Respondent Commission in the impugned orders directed PGCIL to impose transmission charges only upon the Appellants, under non-sharing/ non-PoC mechanism, till the said Appellants constructed their dedicated transmission lines for connecting with the network of PGCIL.
- 6.7 As per the CERC Sharing Regulations, the philosophy and methodology of determining the transmission charges as per the PoC/ Sharing Mechanism is provided in Annexure -1, of the said Regulations. The relevant extract of the said philosophy is reproduced hereinbelow:

“I. PHILOSOPHY OF POINT OF CONNECTION BASED TRANSMISSION PRICING MECHANISM AND SELECTION OF THE HYBRID METHOD

Efficient pricing of a commodity of service needs to reflect the marginal cost of utilization of the underlying resources that are used in the provision of that commodity or service. The ‘Operational’ term here is ‘utilization’. The pricing mechanism must therefore be able to capture the utilization, and charge for the resources being utilized.

Utilization of the network is generally determined in terms of either average utilization or marginal utilization of the transmission assets. Pricing of transmission services based on average or marginal utilization of the network branches is known as Average Participation or Marginal Participation method respectively. These two methods have been compared and contrasted in detail in the literature. These methods are discussed in details below.”

(underline supplied)

From the above, it becomes apparent that the trigger event for determining transmission charges under the POC Mechanism is when the transmission system is “utilized” by the beneficiaries.

- 6.8** The Respondent Commission failed to consider the primary issue involved that when the transmission system constructed by the Respondent No. 2 is “utilized” by the DICs, then the transmission charges can only be recovered under the POC mechanism provided under the CERC Sharing Regulations. In other words, the transmission charges payable by the DICs for the utilisation of the transmission network cannot be conceived outside the purview of the Sharing Regulations 2010. It is important to note that the Sharing Regulations 2010 is notified by the Respondent Commission in exercise of its power under section 178 of the Electricity Act, 2003. Hence, the power to frame regulations pertaining to computation and other nuances of transmission charges, has been exhausted by the Respondent Commission and there is no ability neither on the part of the Respondent Commission nor on any other stake holder to impose transmission charges or introduce a concept, which is alien to the Sharing Regulations 2010.
- 6.9** In the present case, the Appellants entered into Bulk Power Transmission Agreements (BPTAs) with the Respondent No. 2, for the purpose of grant of long-term access (LTA). Accordingly, the Respondent No. 2 was required to develop transmission network for the purpose of enabling the Appellants to evacuate power from their respective power plants by utilizing the inter-State transmission grid. For the purpose of such utilization, the Appellants were required to construct their “dedicated transmission lines” for connecting their

power plants to the nearest pooling/ substation of the Respondent No. 2.

6.10 However, till the time the dedicated transmission lines were to be commissioned by the Appellants, the Respondent No. 2 provided an “alternative arrangement” by constructing a loop-in loop-out (LILO) circuit for enabling evacuation of power. The details of the same are provided in the below table:

S.No.	Generator	LILO	COD of LILO	Removal of LILO
1.	Jindal India Thermal Power Limited (2X600 MW)	LILO of Meramundali-Angul-Bolangir at JITPL Generation Switchyard	01.04.2013	June 2014
2.	GMR Kamalanga Energy Limited (3X350 MW)	LILO of one Ckt. Talcher-Meramundali 400 kV D/C line at GMR TPS)	01.04.2014	December, 2014
3.	M/s Vedanta Limited (erstwhile Sterlite Energy Ltd.) (4x 600 MW)	LILO of one ckt of Rourkela-Raigarh 400 kV D/C line at Sterlite Generation Switchyard	01.06.2013	07.11.2017

6.11 It is evident from the above table, that as a result of the temporary alternate arrangement of LILO provided by the Respondent No. 2/PGCIL, the transmission system developed by the said Respondent No. 2 was being fully “utilized” by the DICs. The CERC Sharing Regulations, 2010, nowhere provide/ envisage that the utilization of the network of the Respondent No. 2 has to be done through a temporary or a permanent arrangement. The point for consideration is that the moment the transmission system of the Respondent No. 2 is being utilized by the beneficiaries, the transmission charges can only be computed under the POC/

Sharing Mechanism as envisaged under the Sharing Regulations, 2010.

6.12 For the purpose of adjudication of the present appeals, reference be made to the following definitions provided under the CERC Sharing Regulations, 2010:

“2. Definitions

(1) *In these Regulations, unless the context otherwise requires:-*

....

(j) ‘Bulk Power Transmission Agreement (BPTA)’ means the agreements between the ISTS licensees and the Designated ISTS Customers of the ISTS under the pre-existing arrangements for ISTS development and operations.

....

(l) ‘Designated ISTS Customer or DIC’ means the user of any segment(s) or element(s) of the ISTS and shall include generator, State Transmission Utility, State Electricity Board or load serving entity including Bulk Consumer and any other entity or person directly connected to the ISTS and shall further include any intra-State entity who has obtained Medium Term Open Access or Long Term Access to ISTS.

Provided that where the ISTS charges were being billed to the distribution companies or any designated agency in the State for purchasing power before implementation of these regulations, the distribution companies or the designated agency, as the case may be, shall be treated as Designated ISTS Customer in that State for the purpose of preparation of Regional Transmission Account (RTA) by Regional Power Committees and for the purpose of billing and collection by the CTU:

Provided further that after implementation these regulations, the States may designate any agency as Designated ISTS Customer for the above purpose.

....

p) ‘Monthly Transmission Charge’ Means the transmission charges (inclusive of incentives) payable for each calendar month as given in the Terms and Conditions of Tariff Regulations in force;

...

*(r) **‘Point of Connection (PoC) Charging Method’ shall mean the methodology of computation of sharing of ISTS charges and losses amongst Designated ISTS Customers, which depends on the location of the node in the grid and is calculated in accordance with Regulation 7(1)(q) and 8(1(s) of chapter 4 of these regulations.***

*(s) **‘Point of Connection (PoC) transmission charges’ are the modal/ zonal charges determined using the Point of Connection charging method.***

....

*(y) **‘Yearly Transmission Charge (YTC)’ means the Annual Transmission Charges for the existing and new transmission assets of the inter-State transmission licensees, deemed ISTS Licensees, owners of inter-State transmission lines connecting two States and owners of non-ISTS lines certified by Reginal Power Committees for inter-State transmission of power, determined by the Appropriate Commission under Section 62 of the Act or adopted by the Appropriate Commission under Section 63 of the Act or as otherwise provided in these Regulations.***

Provided that in case of non-ISTS lines, the asset-wise tariff determined by the respective State Commissions or approved by the Central Commission based on the approved Annual Revenue Requirement of STU, shall be used.

Provided under that transmission charges received by the STU under these regulations shall be adjusted in the Annual Revenue Requirement of the concerned STU approved by the respective State Commission.”

From the above definitions, the following can be concluded:

- a) BPTA means the agreements executed between the Respondent No. 2, which is an inter-state transmission licensee, and the Designated Inter State Transmission System (ISTS) Customers (DICs) of the ISTS (which include the Appellants herein) for ISTS development and operations;

- b) Designated ISTS Customer (DIC) means the “user” of any segment(s) or element(s) of the ISTS, which also includes the distribution licensees;
- c) Point of Connection (PoC) Charging Method means the methodology of computation of sharing of ISTS charges and losses amongst the DICs, which depends on the location of the “node” in the grid and is calculated in accordance with Regulations 7(1)(q) of the Sharing Regulations;
- d) Yearly Transmission Charge (YTC) means the Annual Transmission Charges for the existing and new transmission assets of the inter-State transmission licensees, determined by the Appropriate Commission under Section 62 of the Electricity Act, 2003, or adopted under Section 63.

6.13 Further reference be made to Regulations 3, 4 and 7 of the CERC Sharing Regulations, 2010. The said Regulations are set out herein below:

“3. Yearly Transmission Charges, revenue requirement on account of foreign exchange rate variation, changes in interest rates etc. as approved by the Commission and Losses shall be shared amongst the following categories of Designated ISTS Customers who use the ISTS:-

(a) Generating Stations (i) which are regional entities as defined in the Indian Electricity Grid Code (IEGC) or (ii) are having LTA or MTOA to ISTS and are connected either to STU or ISTA or both;

(b) State Electricity Boards / State Transmission Utilities connected with ISTS or designated agency in the State (on behalf of distribution companies, generators and other bulk customers connected to the transmission system owned by the SEB/STU/intra-state transmission licensee) ;

(c) Any bulk consumer directly connected with the ISTS, and

(d) Any designated entity representing a physically connected entity as per clauses (a), (b) and (c) above.”

“4. Principles for sharing ISTS charges and losses.

(1) Based on the Yearly Transmission Charges of ISTS Transmission Licensees and transmission losses in the ISTS network, the Implementing Agency shall compute the Point of Connection charges and Loss Allocation Factors for all DICs:-

(a) Using load-flow based methods; and

(b) based on the Point of Connection Charging method.

(2) A detailed explanation of the Hybrid methodology to be applied for sharing the ISTS charges and losses amongst the Designated ISTS Customers is set out in Annexure - I to these regulations, which may be reviewed by the Commission from time to time either upon an application by any interested party or otherwise.”

...

“PROCESS FOR SHARING OF TRANSMISSION CHARGES AND LOSSES

7. Process to determine Point of Connection Transmission Charges and Losses allocations

....

(i) Overall charges to be shared among the modes shall be computed based on the Yearly Transmission Charges apportioned to each of the lines of the ISTS Licensees. The Yearly Transmission Charges, computed for the assets for each voltage level and conductor configuration shall be provided by the respective ISTS transmission licensees. The ISTS Licensees, deemed ISTS Licensees and owners of the non-ISTS Lines certified by the Regional Power Committees shall give the total yearly Transmission Charges of their transmission assets, whose charges are to be recovered through the PoC mechanism in the application period along with circuit kilometres at each voltage level and for each conductor configuration. The total Yearly Transmission Charges shall be apportioned for each voltage level and conductor configuration based on the ratio of the indicative cost levels furnished by CTU at the beginning of each year or application period and approved by the Commission:

Provided that the YTC shall be revised on a six monthly basis i.e. on 1st April and 1st October in the first full year and subsequently on quarterly basis, i.e. on 1st April, 1st July, 1st October and 1st December.

Provided further that there shall be nine slab rates for PoC charges. The slab rates shall be computed by the Implementing Agency based on the methodology given in Annexure-I to these regulations. The slab rates shall be approved by the Commission for each Application Period. The number of slabs shall be reviewed by the Commission after two years.

....

(o) The participation factors, and the Point of Connection nodal and zonal rates thus determined, shall be computed for each Application Period. Detailed methodology for preparing the Base Case shall be in accordance with the methodology given in Annexure-I to these regulations.

Provided that the load flow studies shall be carried out by the Implementing Agency for each Application Period.”

(underline supplied)

As per the above-said regulations, the following can be concluded:

- a) Yearly transmission charges are to be shared amongst other entities specified under Regulation 3;
- b) As per Regulation 4, the yearly transmission charges of the Respondent No. 2 shall be used to compute the POC charges for all the DICs;
- c) The POC charges have to be determined as per the protocol/ methodology set out in Annexure - I, of the Sharing Regulations;
- d) As per Regulation 7(I), the Respondent No. 2 has to give the total yearly Transmission Charges of its transmission assets, whose charges are to be recovered through the “PoC mechanism” in the application period along with circuit kilometres at each voltage level and for each conductor configuration;

- e) The 2nd proviso of Regulation 7(l) provides that there shall be nine slab rates for PoC charges. The slab rates shall be computed on the basis of methodology given in Annexure-I to the sharing regulations; and
- f) As per Regulation 7(o), the Point of Connection “nodal” and “zonal” rates shall be computed based on the methodology given in Annexure-I of the Sharing Regulations.

6.14 Hence, from the above, it can be concluded that the yearly transmission charges of the Respondent No. 2 are used to compute POC charges, as per the methodology provided under “Annexure-I” of the CERC Sharing Regulations.

As already submitted hereinabove, as per “Annexure-I” of the CERC Sharing Regulations, POC Mechanism becomes applicable when the transmission system is “utilized” by the beneficiaries. In the present case, as per the table provided hereinbefore, the transmission system developed by the Respondent No. 2, was being “utilized” through the temporary LILO arrangement provided by the said Respondent by the Appellants to supply/ evacuate power to various consumers/ DISCOMs including the Respondent No. 9 and Respondent No. 11.

6.15 The Appellants scheduled power through the LILO arrangement provided by the Respondent No. 2. The Respondent No. 2 has also submitted before this Tribunal that its “system” was being utilized by the Appellants for supplying power to their beneficiaries from the date the LILO arrangement was provided. Thereafter, the usage of

the said system continued after the dedicated lines were also commissioned by the Appellants.

6.16 In view of the above, the Respondent Commission committed a grave error by misinterpreting and applying Regulation 8(6) of the Sharing Regulations to the present case. The Regulation 8(6) is set out herein below:

“8. Determination of specific transmission charges applicable for a Designated ISTS Customer.

....

(6) For Long Term 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.”

(underline supplied)

In the above context, reference may be made to para 19 of the impugned order dated 21.02.2018 passed in Petition No. 73/MP/2017. The aforesaid Regulation applies to entities, i.e. “Long-Term Customers” who “avail” power supply from “inter-state generating stations”. The term “Long-Term Customer” is defined under Regulation 2(1)(m) of the CERC Connectivity Regulations. The said definition is set out herein below:

“2.(1)(m) “Long-customer” means a person who has been granted long-term access and includes a person who has been allocated central sector generation that is electricity supply from a generating station owned or controlled by the Central Government”

Therefore, “Long-Term Customer” means an entity which has been granted Long-Term Access (LTA). Even though the Appellants herein are long term customers, however, as per the language of

Regulation 8(6) of the CERC Sharing Regulations, the “Long-Term Customers” have to avail power from “inter-state generating stations”. In the present case, the “Long-Term Customers” are the Appellants, which are themselves generators of electricity. Hence, being generators, they cannot avail power from other “inter-state generating stations”.

This categorically demonstrates that Regulation 8(6) is not at all applicable to the present case, as the said Regulation only applies whenever “Long-Term Customer” is an entity “other than a generator”. This aspect was completely ignored by the Respondent Commission in passing the impugned orders.

6.17 CERC Sharing Regulations-2010 mandate strict adherence to the principle of sharing/ PoC mechanism for imposition of transmission charges, once the transmission system is under “utilization” as per the philosophy provided under Annexure-1 to the said Regulations. It has been already detailed hereinbefore that the system of the Respondent No. 2 was under “utilization” by the Appellants, initially, through the LILO arrangement, and thereafter, through the dedicated transmission lines. Nowhere the CERC Sharing Regulations provide a distinction as to the non-applicability of the said Regulations in the event connectivity is provided through the LILO mechanism. Neither the said Regulations contain a stipulation that POC mechanism shall only be applicable upon construction of dedicated transmission lines.

The moment the transmission system of the Respondent No. 2 is “utilized” or it is “put to use”, the transmission charges can only be

recovered under the POC mechanism provided in the CERC Sharing Regulations.

6.18 Further, it is a settled principle of interpretation of statutes that each and every provision of a fiscal statute has to be strictly interpreted and implemented, and the courts implementing such statute shall have to adhere utmost caution so that even with the widest interpretation of the order, the implication of the order would not traverse beyond the strict peripheral limits of the statute. In this context, reference be made to the following judgments of the Hon'ble Supreme Court:

District Registrar and Collector, Hyderabad & Anr. vs. Canara Bank & Ors., reported in (2005) 1 SCC 496 (please see para 10);

Ranbaxy Laboratories Ltd. Vs. UOI & Ors., reported in (2011) 10 SCC 292 (please see para 14).

6.19 The Respondents, other than the Respondent No. 2, have argued that being distribution licensees, they should not be burdened with transmission charges under POC mechanism, as the dedicated lines were not constructed by the Appellants. The said stand of the Respondents is fundamentally flawed on account of the following:

a) The Respondent distribution licensees (Odisha and Bihar) are presently paying transmission charges through the POC mechanism. As a matter of fact, these Respondents have neither participated during the tariff proceedings nor the review filed by PGCIL. The Respondents also did not participate when the substantive petition being Petition No. 73/MP/ 2017 filed by PGCIL pursuant to the directions made by

the Respondent Commission in its order dated 16.02.2017 passed in Review Petition No, 24/ RP/ 2015;

- b) As per the CERC Sharing Regulations, the entire inter-State grid across the length and breadth of the Country, which is operated by the Respondent No. 2, and has been put to use, the transmission charges for the same is determined under the POC mechanism, i.e. the said charges are being shared by all the transmission system users, including generating companies, distribution licensees and the end consumers;
- c) After the notification of the CERC Sharing Regulations, the Respondent distribution licensees cannot at all argue that, apart from their own regions, they will not pay transmission charges of the transmission system built by the Respondent No. 2 in other regions. This stand of the DISCOMs is fundamentally against the very ethos of “one grid one nation” and the methodology of POC mechanism envisaged under the regulation. This is because the transmission charges for inter-state grid maintained by the Respondent No. 2 is computed and levied under the sharing/ POC Mechanism and that there is no ability for the Respondent distribution licensees to thereafter re-determine transmission charges by excluding the shared transmission charges of the transmission system of other regions;
- d) In the regime which existed before the CERC Sharing Regulations, the transmission charges were determined region-wise. However, after the Sharing Regulations, the transmission charges are shared across the Country, so that there should not be a situation where the burden of

transmission charges is more in a particular region, and less in another region. Therefore, working towards the concept of *one grid-one nation*, the Respondent Commission socialized the transmission charges across the country through sharing regulations; and

- e) In view of the above, no entity has the ability to maintain a stand that it will not share the transmission charges for the asset/ system constructed by the Respondent No. 2 and the same is put to use, or being “utilized”.

6.20 That further, during the course of the arguments GRIDCO had raised issues with regard to the respective commissioning dates of the Units of the Appellants for the very purpose of this the parties have handed over the commissioning dates of the plants as well as the dedicated transmission lines, in a tabular form. In the light of the above it was argued that the issues in hand have no nexus, whatsoever with the commissioning of the plants. The question in hand is as to whether the transmission charges for the period starting from the commissioning of LILOs till commissioning of the dedicated transmission lines, would be recovered under the POC regime as envisaged under the Sharing Regulations 2010 or a non-POC regime. Therefore, the issues as raised by GRIDCO during the arguments, with regard to the COD of the Units are completely extraneous to the lis in hand.

6.21 Without prejudice to the above, it is further submitted that one of the Appellants being Jindal India Thermal Power Ltd. (herein “JITPL”) has indicated its COD of the units to be 06.06.2014 for Unit I of 600 MW and 12.02.2015 for Unit II of 600 MW as certified by CEA. This position is corroborating with the data handed over by Respondent

No. 2/ PGCIL. However, GRIDCO on the contrary has suggested that the COD of the JITPL Unit 1 as 19.04.2015. In respect of such submission of GRIDCO, it is further clarified that JITPL declared COD of Unit 1 as 06.06.2014 and thereafter started injecting commercial power in the grid and supplying power to GRIDCO as per PPA with them and also selling power in IEX / Short term. At that point of time JITPL had only one PPA with GRIDCO. However, the COD date for Unit 1 i.e 06.06.2014 was disputed by GRIDCO due to various issues and finally COD of unit 1 was re-established for the purpose of GRIDCO PPA as 19.04.2015.

B. Stand of the Respondent No. 2/ PGCIL before this Tribunal and the Respondent Commission

- 6.22** In the present appeals, the Respondent No. 2/ PGCIL has supported the stand of the Appellants, that once the system constructed by the said Respondent is “utilized”, either through LILO or through dedicated transmission lines, the transmission charges can only be levied and recovered by the said Respondent through the sharing/ POC mechanism.
- 6.23** The above stand of the Respondent No. 2 is in line with its stand before the Respondent Commission as well.
- 6.24** The Respondent Commission, in the impugned order dated 07.10.2015 passed in Petition No. 112/TT/2013, directed PGCIL to impose transmission charges upon the Appellants under non-PoC/ non-sharing mechanism. Thereafter, PGCIL itself filed a review petition against the said order, being R.P. No. 24/RP/2015, thereby seeking a specific prayer that transmission charges can only be imposed under PoC/ sharing mechanism. The Respondent

Commission vide the impugned order dated 16.02.2017 in the above review, rejected the prayer of PGCIL.

6.25 Thereafter, PGCIL filed a fresh Petition, being Petition No. 73/MP/2017 wherein again a prayer was made that transmission charges can only be imposed under PoC/ sharing mechanism. In the said petition, the impugned order dated 21.02.2018 was passed, whereby the Respondent Commission, for the third time, reiterated that transmission charges in the present case have to be raised under non-PoC/ non-sharing mechanism.

C. *Respondent Distribution Licensees are relying upon judgments which are not applicable in the present case*

6.26 The Respondent Distribution Licensees are relying upon the judgments of this Tribunal in *Appeal No. 390 of 2017*, titled as *Punjab State Power Corporation Limited (PSPCL) vs. Patran Transmission Company Limited & Ors.* and *Appeal No. 332 of 2016*, titled as *Nuclear Power Corporation of India Limited vs. Central Electricity Regulatory Commission & Ors.* The said reliance is entirely misplaced. The said judgments are not applicable to the present case on account of the fact that in the present case, the transmission system of the Respondent No. 2 was not stranded. The transmission system was being “utilized” by the Appellants under LILO, from the date of commissioning of the respective plants till the commissioning of the dedicated transmission line.

6.27 Further, the reliance of the Respondent distribution licensees upon the judgment of the Hon’ble Supreme Court in *Power Grid Corporation of India Ltd. vs. Punjab State Power Corporation Ltd. and Ors.*, reported in (2016) 4 SCC 797, is also entirely misplaced

for the reason that the said judgment did not concern the applicability of Sharing Regulations

7. Learned counsel appearing for the Respondent No.2/PGCIL has filed his common written submissions in the batch of Appeals for our consideration as follows :-

7.1 Appeals No. 159, 160 and 275 arise out of the Order dated 21.02.2018 passed by the Central Commission in Petition No. 73/MP/2017. Appeals No. 51, 52, 53 and 57 arise out of Order dated 07.05.2015 in Petition No. 112/TT/2013. Both Orders were passed in the petition filed by Respondent No. 2 – Power Grid seeking recovery of transmission charges for the following assets: -

Asset-I: LILO of Meramundali-Jeypore 400 kV S/C line at Angul Sub-station,

Asset-II: one no. of 125 MVAR Reactor (1st) and associated bays at Angul Sub-station,

Asset-III: one no. of 125 MVAR Reactor (2nd) and associated bays at Angul Sub-station,

Asset-IV: one no. of 125 MVAR Reactor (3rd) and associated bays at Angul Sub-station,

Asset-V: LILO of one Ckt. Talcher-Meramundali 400 kV D/C line at Angul Sub-station,

Asset-VI: LILO-I (Ckt.-III) of Rourkela-Raigarh 400 kV D/C line at Jharsuguda Sub-station,

Asset-VII: LILO-II (Ckt.-I) of Rourkela-Raigarh 400 kV D/C line at Jharsuguda Sub-station,

Asset-VIII: one no. of 125 MVAR Reactor (1st) and associated bays at Jharsuguda Sub-station and

Asset-IX: one no. of 125 MVAR Reactor (2nd) and associated bays at Jharsuguda Sub-station

(hereinafter referred to as “**subject transmission assets**”).

7.2 The challenge to both Orders is by the generating companies who have been granted long term open access by PGCIL and who have established generating stations in the state of Orissa. In fact the

transmission assets for which the tariff had been sought are being used since the date of their respective commercial operation (COD).

7.3 Interim Connectivity through LILO arrangement was given to the Appellant Generators as agreed in various LTA committee meetings so as to facilitate their evacuation of power till commissioning of their dedicated lines. The details of the generators commissioning dates and the interim connectivity given to them are as below:-

	Generation Project	Commissioning date	Interim Connectivity	Timeline for replacement of LILO
1	Vedanta (Sterlite Energy Ltd.) (4x600 MW)	Unit-1: 10.11.2010, Unit-2:13.3.2011 Unit-3:19.8.2011 Unit-4: 25.04.2012	LILO of one circuit of Rourkela - Raigarh 400kV D/c line at Sterlite Generation Switchyard	Dedicated line Commissioned on 06.11.2017. LILO removed
2	Ind Barath Energy (Utkal) Ltd. (2x600 MW)	25.02.2016	LILO of one circuit of Jharsuguda - Raigarh 400kV D/c line at Ind-Barath Generation Switchyard	Status as per 20 th JCC held on 25.03.2019 - The dedicated line i.e. 400kV Ind Barath-Jharsuguda Pool D/c line: Completed
3	GMR Kamalanga Energy Ltd (3x350 MW)	Unit-1: 29.03.2013 Unit-2: 28.09.2013 Unit-3: March, 2014	LILO of one circuit of 400 kV Talcher – Meramundali at GMR TPS	Dedicated line Commissioned on 21.12.2014. LILO removed in Dec'14
4	Jindal India Thermal Power Ltd (2x600 MW)	06.06.2014 24.01.2015	LILO Meramundali-Angul-Bolangir at JITPL Generation Switchyard	LILO removed in Jun'14 after commissioning of dedicated line

7.4 In so far as PGCIL is concerned, the subject transmission assets were ready and commissioned on 01.04.2013 onwards and the recovery of transmission charges needs to be given to it from 01.04.2013 itself.

7.5 At the time of giving regulatory approval to the construction of the subject transmission assets, the Central Commission vide Order dated 31.05.2010 in Petition No. 233 of 2009 held as under -

“
.....
The petitioner, Power Grid Corporation of India Limited (PGCIL) has filed this petition seeking regulatory approval for development and execution of certain identified transmission systems for evacuation of power from various generation projects planned to be promoted by the Independent Power Producers (IPPs). The petitioner has made the following prayers in the petition:

Quote

- a) Grant Regulatory approval for taking identified transmission system for evacuation of power from the first phase priority generation projects.
- b) Direct LTOA applicants for firming up the beneficiaries immediately before POWERGRID takes up the investment
- c) Utilise the appropriate platform like Forum of Regulators for early finalization of source of power requirement for States through Case-I bidding as this shall help in firming up the beneficiary States by the LTOA applicants.
- d) Ensure recovery of the capital investment of the POWERGRID (in the event of not taking of some of the above generating projects) by way of evolving alternate methodology.**
- e) To pass such order as deemed fit in the interest of justice and equity.

Unquote

.....
9. We have examined in detail the proposal of the Petitioner with regard to the 9 HCPTCs along with the tentative cost estimates and the milestones achieved by the generation projects which are the prospective beneficiaries of these corridors. The details of the transmission systems as submitted by the Petitioner are enclosed as **Annexures I to IX** of this order. The progress of the corridor-wise generation projects (HCPTCs I to VIII) with respect to certain milestones, including land acquisition, fuel, MOE and Forest clearances, awarding of EPC Contracts, signing of BPTA and submission of Bank Guarantees are enclosed at **Exhibits I to VIII** to this order. The HCPTC-IX corridor is a grid strengthening Scheme from

Southern Region to Western Region/Northern Region. Our observations on the HCPTCs from the point of view of regulatory approval are discussed in the succeeding paragraphs.

A. HCPTC-I : Corridor for Orissa IPPs

10. With regard to HCPTC – I, the Petitioner has submitted as under:

“This corridor has been proposed for transfer of power from 7 nos of IPPs in the State of Orissa seeking LTOA for about 6080 MW. Based on the present exercise, it has been observed that about 3000 MW power injection from projects, where there is good physical progress (viz. GMR-800 MW, Monnet- 900 MW, Sterlite-400 MW & Ind-Barath-616 MW), is likely to materialize with good level of certainty. As regards, the utilization of proposed HCPTC-I, it is pertinent to mention the proposed corridor envisages only skeleton transmission system which in any case shall be required even if 50% of the LTOA quantum (6000 MW) is materialised. In view of the above, it is proposed that HCPTC-I may be taken up for implementation, however, the commissioning of the elements shall be phased out keeping in view the progress of the generating units.”

11. After examination of the submissions made by CTU, we are of the view that out of the seven IPPs, four developers have signed the BPTA and submitted the Bank Guarantee. The report of physical progress shows that work is in progress in all these projects. The remaining three projects viz. Sterlite (Long-term access (LTA) sought for 400 MW), Jindal India Thermal Power (LTA for 1044 MW) and Navbharat Power Pvt. Ltd. (LTA for 720 MW) have submitted the Bank Guarantee, though they have not signed the BPTA as yet. However, out of these, both Sterlite and Jindal India Thermal Power have fulfilled all the milestones shown in Annexure-I. In the case of Sterlite, commissioning of Unit no. 1 is also under progress. All these plants have also awarded the EPC contract. We fully agree with the suggestion of the CTU that HCPTC-I be taken up for implementation. However, the commissioning of the projects shall be phased out in keeping with the progress of the generating units.

.....
28. **From the foregoing discussion, we are satisfied that there is a pressing need for developing the nine HCPTC in order to harness the generation projects and bring the power to the load centres.** Next we consider the prayer of the Petitioner for regulatory approval to these transmission corridors. The Petitioner has approached the Commission under Regulations 24, 111 and 113 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations,

1999 (hereinafter "Conduct of Business Regulations"). The regulations are extracted hereunder:

.....
33. Considered against the backdrop of the judicial authority as discussed above, the Commission, which has been entrusted with the functions to regulate inter-State transmission of electricity, has got the plenary power over inter-State transmission including the power to accord approval for regulated development of the inter-State transmission system. Regulation 113 of the Conduct of Business Regulations empowers the Commission to deal with any matter or exercise any power under the Act for which no regulation has been framed in any manner that the Commission thinks fit. The Commission is yet to finalise and notify the regulations dealing with the procedure for regulatory approval. However, pending notification of regulations, the Commission has the power to accord regulatory approval if it is in accordance with the provisions of the Act and National Electricity Policy and Tariff Policy. Thus, the present petition is maintainable under Regulation 24 and 113 of the Conduct of Business Regulations and the Commission has the power under Section 79(1)(c) of the Act to accord regulatory approval for execution and implementation of the inter- State transmission system.

.....
41. Based on the affidavits submitted by the project developers of IPPs and on the spot assessment by CTU, the progress of IPPs at different stages of implementation is satisfactory and utilization level of proposed HCPTC at the time of their progressive commissioning is expected to be sufficient. Moreover, the project developers of IPPs have signed and submitted Bank guarantee in many cases. Hence, we accord regulatory approval for execution of the nine nos. of HCPTCs proposed by CTU as per the project scope as mentioned in Annexures -I to IX of this order. As for HCPTC-VIII for IPPs in Srikakulam area, we direct that the work on the corridor may be initiated only after signing the BPTA and submission of BG by the IPPs."

.....
....."

- 7.6** Therefore, when PGCIL had filed the tariff petition namely 112/TT/2013 it had sought recovery of tariff under the Sharing Regulations namely through POC mechanism.
- 7.7** Vide Order dated 07.10.2015 in aforementioned petition, the Central Commission held that since the generators/Appellants had not commissioned the dedicated transmission lines the tariff for these

assets was to be borne by the generators. PGCIL filed 24/RP/2015 seeking review of the Order dated 07.10.2015. The Central Commission had disposed of 24/RP/2015 vide Order dated 16.02.2017 holding as under -

“.....
.....

14. In the impugned order, it was observed that since the generators connected to the Angul and Jharsuguda Pooling Stations have not commissioned dedicated lines due to which assets created by the petitioner are not serving their intended purpose and hence the transmission charges would be borne by the generators. From the review petition, it is observed that as on the date of issue of the impugned order, dedicated lines of some of the generators have been commissioned during the course of hearing of the main petition and the information in this regard was not made available to the Commission. This is an important factor affecting the liability of the parties for payment of transmission charges. Accordingly, we direct the review petitioner to file an application within one month from the date of issue of this order giving the following information:- Order in Review Petition No. 24/RP/2015 in Petition No.112/TT/2013 Page 16 of 16 a. Details of the generators whose dedicated transmission lines in the corridor have been commissioned. b. Details of the generators whose dedicated transmission lines have not been commissioned and the timeline for commissioning of the same. c. Details of the generators whose LTA has been operationalised. d. Whether all LILOs by the generators have been replaced as per the directions in order dated 7.10.2015 in Petition No.112/TT/2013 and if so, the details and if not, the timeline finalized for replacement of these LILOs. e. The supporting documents in the form of minutes of Standing Committee Meetings and RPC meetings. The review petitioner shall implead all the concerned generators and the constituents of the Eastern Region as the parties to the application/petition.

.....
.....”

7.8 In terms of the liberty granted above, Petition No. 73/MP/2017 was filed by PGCIL which has been disposed off vide Order dated 21.02.2017.

7.9 Due to the long pending litigation PGCIL has neither been able to recover its transmission charges through the POC mechanism nor through the generators/Appellants.

7.10 The other Respondents, i.e. the distribution companies from Bihar and Orissa who are opposing the present Appeals have not appeared at any stage before the Central Commission and therefore there was no opportunity for PGCIL to deal with the contentions being now raised by them before this Tribunal in the present Appeals. However, the Respondents/distribution companies have relied on certain judgements of the Hon'ble Supreme Court and this Tribunal which PGCIL would like to deal with –

A. *Power Grid Corporation of India Limited &Ors. [(2016) 4 SCC 797.*

This judgment was under the Central Commission tariff regulations, 2009 and the issue being considered was whether a transmission line which has been idle charged and does not have power flow due to non-availability of the switchyard at the generating end can be considered to have achieved COD. The cited judgement has no similarity with the present case. In the present appeals, both the Angul-Jharsuguda substations as well as the 400 kv DC line connecting the two sub-station has been declared under commercial operation from 1.04.2013 to 01.11.2013 after both the end bays were available and power was flowing through them from the date of commercial operation. The Respondents/ distribution companies have not challenged the declaration of COD during the petitions filed in the Central Commission nor have they filed any appeal contesting the same. Therefore, it is not the case of idle charging of the transmission line and the Barh-Balia judgement has no application whatsoever in this case.

B. *PSPCL vs Patran Transmission Company Ltd – Judgement dated 27.03.2018 in Appeal No. 390 of 2017.*

In the above judgement this Tribunal has held that the provisions of the sharing regulations 2010 which provides for pooling of transmission charges and recovery through the POC pool are not applicable to the situation when the transmission assets is not in use due to unavailability of downstream system. In that case also, there was no flow of

power in transformer and 220 kV bays. Therefore, this Tribunal has laid down that till the downstream system of transmission system achieves COD, the upstream transmission system cannot be said to be in use. Unlike the Patran case, the subject transmission assets were in use from day of achieving COD and there was power flow in each component of the subject transmission system. Therefore, the Patran Judgement has no application whatsoever in this case.

7.11 There is also some confusion being created due to the use of the word LILO. There are certain LILO's among the subject transmission assets Asset-I: LILO of Meramundali-Jeypore 400 kV S/C line at Angul Sub-station, Asset-V: LILO of one Ckt. Talcher-Meramundali 400 kV D/C line at Angul Sub-station, Asset-VI: LILO-I (Ckt.-III) of Rourkela-Raigarh 400 kV D/C line at Jharsuguda Sub-station, Asset-VII: LILO-II (Ckt.-I) of Rourkela-Raigarh 400 kV D/C line at Jharsuguda Sub-station, these LILO's are permanent transmission assets and are part of establishing the subject transmission system by PGCIL. The generating companies have implemented interim arrangement of LILO's at their end at their own cost and the same were removed after the commissioning of the respective dedicated transmission line by them. PGCIL is seeking the transmission charges only for its LILOs and other assets covered under 112/TT/2013 which are permanent and part of the transmission scheme of Orissa Part A transmission system in eastern region.

7.12 It is pertinent to mention here that PGCIL assets, since commissioning, were being utilised for transfer of power in Eastern Region. However, PGCIL has not recovered any transmission charges corresponding to the disputed period despite providing the assets providing intended services.

7.13 In conclusion, PGCIL respectfully prays to this Tribunal that it may expeditiously dispose off the Appeals and give clear directions on the recovery of transmission charges of PGCIL in a time bound manner.

8. Learned counsel, Mr. R.B. Sharma appearing for the Respondent No.9 has filed his common written note of arguments in A.nos.159 of 2018& 160 of 2018 for our consideration as follows :-

8.1 The Appellantsthrough these appeals haveprayed for setting aside the Order dated 21.02.2018 passed by the Central Electricity Regulatory Commission in Petition 73/MP/2017 by raising question that the transmission charges can be raised only under the mechanism provided in the Central Electricity Regulatory Commission (Sharing of Transmission Charges) Regulations, 2010. It is noted that the grievance of the Appellants travels beyond the impugned Order dated 21.2.2018. The Appellants have also stated that the appeals are primarily on the question of law which may also be dealt herein. The reply on the above issues raised in the Appeal is submitted in the following paragraphs.

8.2 The Appellants have vigorously argued the concept of 'Socialization of transmission tariff but the same has not been pleaded in the Appeals. The concept of 'Socialization' is misconceived as there is nothing in the Sharing Regulations, 2010 but in fact the 'Statement of Reasons' dated 11th June, 2010 (SOR) while drafting the Regulations would clearly show that the said regulation is against any cross subsidization or Socialization and the relevant portion of the SOR is quoted as under;

“STATEMENT OF REASONS

1. Introduction:

1.1 Section 61 of the Electricity Act, 2003 (hereinafter referred to as “the Act”) provides as under: “ The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, namely:-

- (a) the principles and methodologies specified by the Central Commission for determination of the tariff applicable to generating companies and transmission licensees;
- (b) the generation, transmission, distribution and supply of electricity are conducted on commercial principles;
- (c) the factors which would encourage competition, efficiency, economical use of the resources, good performance and optimum investments;
- (d) safeguarding of consumers' interest and at the same time, recovery of the cost of electricity in a reasonable manner;
- (e) the principles rewarding efficiency in performance;
- (f) multi-year tariff principles;
- (g) that the tariff progressively reflects the cost of supply of electricity and also, reduces and eliminates cross-subsidies within the period to be specified by the Appropriate Commission;**
- (h) the promotion of co-generation and generation of electricity from renewable sources of energy; (i)the National Electricity Policy and tariff policy.”

Para 5.3.4 of the National Electricity Policy notified by the Central Government under Section 3 of the Act vide Resolution No.23/40/2004-R&R(Vol. II) dated 12.1.2005 provides as under:

“To facilitate cost effective transmission of power across the region, a national transmission tariff framework needs to be implemented by CERC. The tariff mechanism would be sensitive to distance, direction and related to quantum of flow.”

Further, Para 7.2(1) Tariff Policy notified vide Govt. of India Ministry of Power Resolution No. No.23/2/2005-R&R (Vol.III) dated 6.1.2006 provides as under:

“Transactions should be charged on the basis of average losses arrived at after appropriately considering the distance and directional sensitivity, as applicable to relevant voltage level, on the transmission system.”

It may be noted that the transmission of electricity is conducted on commercial principles and the tariff reflects the cost of supply of electricity besides the other factors mentioned above. The concept of ‘Socialization’ cannot be brought by misinterpreting some of the provisions of the Sharing Regulations, 2010 and therefore the contention of Socialization is misleading, misconceived and denied and thus liable to be rejected by the Tribunal.

- 8.3** All the assets covered under the Appeal are under Transmission System for Phase-I Generation Projects in Orissa-Part-A in Eastern Region. The Commission after the assurance from the CTU on the progress of IPPs at different stages of implementation and satisfactory utilization level of proposed assets granted regulatory approval vide order dated 31.5.2010 in Petition No. 233/2009. It was also noted that the generators do not have any identified beneficiaries for long term supply of power which can be in any region of the Country. It may, thus, be noted that the assets so created were exclusively for use by the generators till such time the generators are not in a position to utilize these assets, they will be stranded assets. Under this situation who may pay for these assets?

Sharing Regulations, 2010 & Duties of the Generating Companies:

8.4 The Appellants in his Appeal have contended that the Commission has devised a methodology for recovery of transmission charges under non point of connection which is contrary to its the Sharing Regulations, 2010. It is also stated that the mechanism is expressly against Regulation 13 related to the 'Transmission Service Agreement (TSA) & Regulation 14 related to the amendment of existing contracts of the Sharing Regulations, 2010. On this issue, it is mentioned that the Central Commission in para 60 of its order dated 7.10.2015 in Petition No. 112/TT/2013 which is also quoted in the impugned order, clarified the issue, and the relevant portion of para 60 is quoted as under;

".....In the instant case, the petitioner has commissioned the transmission system and the generator has not performed its part of the BPTA and hence the generator has to bear the transmission charges as provided in clause 2.0(a) and 2.0 (c) of the BPTA. Further, as per Regulation 8(5) and 8(6) of the 2010 Sharing Regulations, the generators having long term access are liable to bear the charges for the transmission system till they achieve 'commercial operation'"

The order of the Commission on the issue is evidently very clear. However, certain grounds of Appeal on misinterpretation of the Regulation 8(6) of the Sharing Regulations, 2010 which is also crux of the matter is quoted below;

"E. For that, while arriving at the above finding, the Respondent Commission also misinterpreted Regulation 8(6) of the sharing Regulations. In this context, reference may be made to Para 19 of the impugned order. The said interpretation of the of the Respondent Commission is wrong since the above Regulation only says that in the event the generating station has not achieved commercial operation, then it is said generator who would bear the transmission charges instead of the beneficiary with whom the said generator had a long term agreement. Regulation 8(6) of the Sharing Regulations, 2010 that the charges are leviable even if the system is not ready to commence the LTA but it reiterates to a case when LTA is ready and generator is not ready. It is fundamental that any transmission charges are payable only if the LTA is in a position to be

commenced and operationalised notwithstanding the readiness of the generating station.....”

8.5 The Appellants have downplayed their own roles in the Appeals related to delay in construction of the dedicated transmission lines from the generating station to the Pooling station of the Respondent-PGCIL at Angul where the power from the generating station is required to be delivered. However, the issue here is whosoever has delayed the operationalisation of the Long Term Access (LTA), the part assets even when completed cannot be brought under the Point of Connection (PoC) mechanism. The aspect related to the completion of the generating station is required to be viewed in the context of the duties of generating companies which have been detailed out in the Electricity Act, 2003 and the same is reproduced below;

“10. Duties of generating companies.-

- 1. Subject to the provisions of this Act, the duties of generating company shall be to establish, operate and maintain generating stations, tie-lines, sub-stations and dedicated transmission lines connected therewith in accordance with the provisions of this Act or the rules or regulations made there under.*
- 2. A generating company may supply electricity to any licensee in accordance with this Act and the rules and regulations made there under and may, subject to the regulations made under sub-section (2) of section 42, supply electricity to any consumer.*
- 3. Every generating company shall--*
 - a. submit technical details regarding its generating stations to the Appropriate Commission and the Authority;*
 - b. co-ordinate with the Central Transmission Utility or the State Transmission Utility, as the case may be, for transmission of the electricity generated by it.”*

8.6 The question of the Appellants related to the alleged misinterpretation of Regulation 8(6) of the Sharing Regulations,

2010 may be viewed in the in the light of the above provision related to duties of the generating company as quoted above. The duties of the generating companies is not only to complete the work related to the generating station but also to complete the work related to the dedicated transmission line if the same is within the scope of the generating company. In the instant Appeal, the dedicated transmission line was in the scope of the Appellant in accordance with Bulk Power Transmission Agreement (BPTA) and this dedicated transmission line was incomplete as per their own admission. Thus, the Appellants have failed to complete the entire work related to the instant generating stations. The absence of the dedicated transmission lines means generation available is bottled up in the generating station for evacuation for which entire fault rests with the Appellant.

- 8.7** It is noted that the COD of the first Unit of 600 MW of JITPL achieved its Commercial operation Date (COD) on 06.06.2014 against its scheduled operation date of March, 2012 and the commissioning of the dedicated line is 01.06.2014. ICT-I 765/400, 1500 MVA out of the 4 ICTs at this sub-station was expected to be commissioned by December, 2014. The Commission in the impugned order had mentioned that the commissioning of the 765 kV Angul-Jharsuguda line has been achieved on 4.4.2015 and with this commissioning Assets I, II, III and IV can be put to use. On the other hand operationalization of the LTA granted as per BPTA as per Appellant is July, 2016. This is debatable and the same is required to be examined in accordance with the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014. However, the main question is how to extricate

the bottled up power at the generating station owing to the fault of the Appellant & Respondent-2 an interim Loop in and Loop out (LILO) of the existing nearby line till the generation developer completes the dedicated transmission line. This dedicated transmission line was completed on 1.6.2014. The contingency arrangement of LILO would last till the completion of the dedicated transmission line by the Appellant and thereafter it will be removed. The role of the Standing Committee and its meeting on the Power System Planning in Eastern Region may be noted in the context of the dedicated transmission line, in case the same are not completed by the Power Developer which have been detailed out in the order dated 07.10.2015 in Petition No. 112/TT/2013 enclosed with the Appeal, as under:

“64. In the meeting of the Standing Committee on Power System Planning in Eastern Region held on 20.9.2010, the temporary interim arrangements under the scope of the respective generation developer for evacuation of power from Sterlite, Ind-Bharat, GMR and Jindal IPPs were decided with the concurrence of all constituents of the Eastern Region as under:-

<i>Sterlite</i>	<i>LILO of one ckt of Rourkela-Raigarh 400 kV D/C line</i>
<i>Ind Bharat</i>	<i>LILO of other ckt of Rourkela-Raigarh 400 kV D/C line</i>
<i>GMR</i>	<i>LILO of one ckt of Talcher-Meramundali 400 kV D/C line</i>
<i>Jindal</i>	<i>LILO of Meramundali-Jeypore 400 kV S/C line</i>

65. The associated transmission lines wereto be constructed by the generation developer matching with the transmission system to be developed by the petitioner and the LILOs constructed by generation developers which were temporary arrangement were to be replaced by the associated transmission system. It is noticed that some of the generation developers have not commissioned the dedicated lines and are continuing to evacuate power through the temporary LILO arrangements.....”

It may be noted that the that the Appellant has not appreciated in the appeal the gesture of the Eastern Region Constituents who

have concurred for the interim arrangement failing which the Appellant must have lost huge money in the bottled up power owing to the fault on his part in not completing the dedicated transmission line.

- 8.8** The Commission has devised hybrid methodology mechanism for efficient pricing of the transmission service under the Sharing Regulations, 2010. The hybrid methodology has been explained under Regulation 2(m) of the said Regulation which is reproduced as under;

“(m) Hybrid Methodology shall mean the hybrid of the Marginal Participation Method and the Average Participation method detailed in Chapter-3 of these regulations and in Annexure - I hereto.”

Annexure-I details out the ‘Philosophy of Point of Connection based Transmission pricing Mechanism and Selection of the Hybrid Method’ and the relevant para is also reproduced as under;

“ANNEXURE-I

1. PHILOSOPHY OF POINT OF CONNECTION BASED TRANSMISSION PRICING MECHANISM AND SELECTION OF THE HYBRID METHOD

Efficient pricing of a commodity or service needs to reflect the marginal cost of utilization of the underlying resources that are used in the provision of that commodity or service. The ‘operational’ term here is ‘utilization’. The pricing mechanism must therefore be able to capture the utilization, and charge for the resources being utilized.

Utilization of the network is generally determined in terms of either average utilization or marginal utilization of the transmission assets. Pricing of transmission services based on average or marginal utilization of the network branches is known as Average Participation or Marginal Participation method respectively. These two methods have been compared and contrasted in detail in the literature. These two methods have been compared and contrasted in detail in the literature. These methods are discussed in detail below.”

- 8.9** As can be noted from the above philosophy, the operation term is utilization. The pricing mechanism must therefore be able to capture the utilization and charge for the resources being utilized. This shows that the utilization of the assets is the essence to bring the assets under the PoC mechanism and the Appellant has disclosed that neither the assets of the Appellant nor the assets of Respondent-PGCIL were completed on scheduled date for being used. Thus, the whole contention of the Appellant that the Commission has devised a methodology for recovery of transmission charges under non-point of connection (non-PoC) mechanism which is contrary to the Sharing Regulations, 2010 is misleading, misconceived and without any basis. Thus, the transmission assets of Respondent-2 can only be brought under the scope of the Sharing Regulations, 2010 when they are in use.
- 8.10** Further, it is also noted from the Appeals that the Respondent-PGCIL filed a review bearing No. 24/RP/2016 contending that the transmission charges may be allowed by including the same under the PoC mechanism. Commission after hearing the parties in detail dismissed the contention of the Respondent-PGCIL vide its order dated 16.02.2017. It is most surprising as to why the Respondent-PGCIL filed this review for which neither he was aggrieved nor there was any error apparent on the face of the record. It may also be noted that the Discoms in this case did not participate in the adjudication of the proceedings in all the three Petition bearing Nos. 112/TT/2013 and its review in Petition No. 24/RP/2016 as well as the Petition No. 73/MP/2017 which is impugned in the Appeal. The Commission, however, consistently reiterated its legal view in all the petitions. Respondent-BSP(H)CL agrees with the logic and the legal

interpretation of the Central Commission on the issue related to the Sharing Regulations, 2010.

8.11 The Appellant has also contended that this appeal is primarily on the question of law and stated that the assets completed by the Respondent-PGCIL although the LTA needed for transfer of power from the generating station could be operationalised only in July, 2016. However, the Central Commission in the impugned order has stated and the relevant portion of the order is quoted as under;

“.....We also observe that once the connecting transmission system i.e. 765 kV Angul-Jharsuguda line is commissioned, Asset-I, II, III and IV would be utilized in the system. Further, 2x765 kV Angul-Jharsuguda S/C line was commissioned on 4.4.2015. Since, JITPL commissioned its dedicated 400 kV Jindal-Angul D/C line on 1.6.2014, it shall bear transmission charges pro-rata to its LTA only till 1.6.2014 post which its share of charges shall be considered under PoC pool. We also observe that once the connecting transmission system i.e. 765 kV Angul-Jharsuguda line is commissioned, Asset-I, II, III and IV would be utilized in the system. Further, 2x765 kV Angul-Jharsuguda S/C line was commissioned on 4.4.2015. Since, JITPL commissioned its dedicated 400 kV Jindal-Angul D/C line on 1.6.2014, it shall bear transmission charges pro-rata to its LTA only till 1.6.2014 post which its share of charges shall be considered under PoC pool. Further, GMRKEL commissioned its dedicated 400 kV GMR-Angul D/C line on 21.12.2014, it shall bear transmission charges pro-rata to its LTA only till 21.12.2014 post which its share of charges shall be considered under PoC pool.

(c) We are of the view that the transmission tariff in respect of Asset-I, II, III and IV shall be borne by JITPL and GMRKEL till 1.6.2014 and 21.12.2014 in the ratio of their operationalised LTA post which their share of transmission charges for Asset-I, II, III and IV shall be completely included in PoC mechanism for sharing of transmission charges.

8.12 It may be noted from the impugned order that the Commission has held that the LTA in respect of the Appellant dependent on the commissioning of the 765 kV Angul-Jharsuguda line and this line has been commissioned on 4.4.2015 whereas the Appellant claims

that the operationalisation of the transmission system for LTA as contained in BPTA is July, 2016. There is some substance in the arguments of the Appellant vis a vis what is held by the Commission in the impugned order. It may be stated here that the tariff of Respondent-PGCIL was determined by the Commission in accordance with of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 for all the assets except asset-V whose COD was 1.4.2014 mentioned in Petition No. 112/TT/2013. It is also noted from the Order dated 0710.2015 in Petition No. 112/TT/2013. The balance assets which could not be completed during the tariff period 2009-14 would be determined under the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (hereinafter referred to as the 'Tariff Regulations, 2014'). The execution of all these assets for the transmission system for LTA was required to be executed by PGCIL. The legal issue here is;

- (i) Whether the claim of tariff by the Respondent-PGCIL on completion of part assets of the transmission system executed for LTA is justified?
- (ii) Whether the determination of tariff for 8 Nos. of assets by the Commission was in accordance with the Provisions of the Tariff Regulations, 2009?

Both the above issues are required to be dealt in accordance with the Tariff Regulations, 2009. Regulation 4(1) deals on this issue which is reproduced below;

"4. Tariff determination

- (1) *Tariff in respect of a generating station may be determined for the whole of the generating station or a stage or unit or block of the generating station, and tariff for the transmission system may be*

determined for the whole of the transmission system or the transmission line or sub-station.”

- 8.13** It may, thus, be noted that the Commission can determine the transmission tariff either whole of the transmission system or the transmission line or sub-station under the above regulation. This option for Commission whether to determine the transmission tariff either whole of the transmission system or the transmission line or sub-station is to be viewed what are the requirements of the parties concerned which obviously is provided in the BPTA. The Appellant has clearly claimed that their requirement for LTA is the transmission system contained in BPTA. Thus, it may be noted that the Commission has erred in determining the tariff on the basis of the part assets and not for the transmission system which is a clear violation of Regulation 4 (1) of the Tariff Regulations, 2009. The tariff of the transmission assets in this case can only be determined when the whole transmission system is ready and attained the Commercial operation which in this case is June, 2016 contended by the Appellant. Thus, the Commission is required to undertake the determination of tariff of the transmission system in accordance with Tariff Regulations, 2014 applicable for tariff period 2014-19. It may also be noted that the Commission while determining the tariff of Respondent-PGCIL has not even examined the provision of Regulation 4(1) of the Tariff Regulations, 2009 while directing the Appellant to bear the cost of transmission tariff of Assets I, II, III and IV which is the main grievance in this Appeal.
- 8.14** It may be stated that after the determination of the tariff by the Commission determines the YTC under the Tariff Regulations. The

details of YTC are provided to the Implementation Agency for further computation and allocation of transmission charges etc. which is a basic input for PoC mechanism. It may, thus, be noted that the Ld Commission erred in the determination of tariff for 8 Nos. of assets during the tariff period 2009-14 and ask the Appellant to bear the entire tariff of Assets I, II, III and IV. The Commission also erred in the impugned order to conclude that PoC mechanism will be applicable with effect from the date 2x765 kV Angul-Jharsuguda S/C line was commissioned on 4.4.2015 even when the entire transmission system required for LTA was not commissioned by the Respondent-2. The Appellant has stated that Respondent-2 operationalised the LTA granted as per BPTA only in July, 2016, the tariff of the transmission system is required to be determined in accordance with the Tariff Regulations, 2014 where under Regulation 6(1) provision akin to the provision 4(1) of the Tariff Regulations, 2009 already exists. In the light the above, the Appellant is only liable to pay tariff under the PoC mechanism with effect from July, 2016.

8.15It may be stated that the Electricity Act, 2003 envisages large numbers of players to operate in this sector. To coordinate the efforts of various players, the Act also envisages coordination agencies namely the State Transmission Utility (STU) at State level and the Central Transmission Utility' (CTU) for the inter-state. PGCIL as Respondent-2 under Section 38(1) has been notified as the CTU by the Central Government. The statutory role of the Respondent-PGCIL as 'Central Transmission Utility' (CTU) is contained in Section 38 of the Electricity Act, 2003.

8.16 In its capacity as CTU, it is required to discharge all functions of planning and coordination relating to inter-State transmission system with eight agencies stated in the Electricity Act, 2003. The Appellant in its capacity as CTU is required to plan and coordinate the function related to the construction of the transmission system to match their completion with the objects set in the Investment approval in the fields, as its offices is located almost everywhere in the Country. The non-performance of statutory functions of planning and coordination of the construction of the transmission system vested in Appellant, if not performed efficiently, can create mess resulting into mismatch of various components of the transmission system. This mess ultimately results into inefficiency which is passed on to the Discoms through tariff. The pains of inefficiencies passed on ultimately to the electricity consumer through tariff are becoming unbearable with the rising cost of Electricity. However, in the instant Appeal the Respondent-PGCIL as CTU himself is guilty of delaying the various elements of the transmission system under his control and thus performing the statutory role especially in this case is unthinkable.

8.17 In the facts and circumstances as aforesaid, it is respectfully submitted that the Tribunal;

- (i) Reject the contention of the Appellant on the issue related to the Sharing Regulations, 2010 as mentioned above;
- (ii) May examine the legal issue related to the Regulation 4(1) of the Tariff Regulations, 2009 as mentioned above;
- (iii) Pass such other Order as the Tribunal deems fit and proper under the circumstances of the case and in the interest of justice.

9. Learned counsel, Mr. Arijit Maitra appearing for the Respondent No.11/GRIDCO has filed his common written note of arguments in the batch of Appeals for our consideration as follows :-

9.1 The Appellants have challenged orders passed by the CERC dated 07.10.2015, 16.02.2017 and 21.02.2018. The main ground of challenge is that the impugned orders are contrary to the CERC (Sharing of Inter State Transmission Charges & Losses) Regulations, 2010 (“2010 Regulations”). More specifically, the controversy revolves around the scope and interpretation of Regulation 8(5) and Regulation 8(6) of the 2010 Regulations. According to the Appellants, the CERC, by the impugned orders, could not have imposed transmission charges on the Appellants for the transmission system Phase-I Generation Projects in Odisha Part-A in Eastern Region (“Transmission Assets”). According to the Appellants, the 2010 Regulations do not allow imposition of any transmission charges other than by the mechanism of Point of Connection (POC) Methodology. According to the Appellants, the POC Methodology only contemplates sharing of the transmission charges amongst all the beneficiaries by way of the concept of ‘Socialization’ of costs.

9.2 The order dated 07.10.2015 emanates from a Petition filed by Power Grid (Respondent No.2) for determination of transmission tariff/charges of the Transmission Assets for the Tariff Block 2009-14, *inter alia*, under the CERC (Terms & Conditions) Regulations 2009 (“2009 Regulations”). While deciding the issue of sharing of the transmission charges, the CERC noted that the actual COD of the Transmission Assets (8 in no.) were on 01.04.2013, 01.11.2013,

01.06.2013, 01.05.2013, 01.04.2013, 01.06.2013, 01.05.2013 and 01.06.2013, respectively.

- 9.3** The CERC also noted the dates of commissioning of the Generating Projects of the Appellants being delayed beyond their schedule commissioning dates and beyond the actual COD of the Transmission Assets as aforementioned. The CERC noted that the Standing Committee on Power System Planning in Eastern Region had decided that the Associated Transmission Systems (ATS) up to the pooling system of Jharsuguda and Angul would be under the scope of the Generation Developers. Accordingly, it had been mandated that the Appellants would be establishing and implementing the Jharsuguda Pool 400 kV D/C line with associated base (Associated Line Base) and Angul Pool 400 kV D/C line with associated base.
- 9.4** The CERC noted that in the said Standing Committee Meeting, Member (PS) CEA had observed that the Appellants had delayed the implementation of the aforesaid ATS and the generated capacity would, therefore, be stranded. To bail out the Appellants from being stranded, LILO (Loop-in-Loop-out) would be made as temporary arrangement and that these LILO would be removed when the ATS is in place.
- 9.5** The CERC held in its order dated 07.10.2015, that the Appellants are liable to bear the transmission charges till they had achieved "Commercial Operation", as per Regulation 8(5) and Regulation 8(6) of the 2010 Regulations. The CERC held that the Appellants had not performed their obligations under the Bulk Power Transmission Agreement (BPTA) executed with Power Grid. The Appellants had

failed to construct the dedicated transmission lines due to which the transmission assets created by the Power Grid Corporation of India (Respondent No.2) did not serve the intended purpose. Hence, it was held by the CERC that the tariff for the said transmission asset shall be borne by the Appellants till operationalization of their Long Term Access (LTA) as under the 2010 Regulations. The CERC has held till such time, the tariff for the transmission assets shall be excluded from the POC pool. The CERC held that thereafter, i.e., till the date of the operationalisation of the LTA of the Appellants, the transmission charges will be shared by the Long Term Customers and beneficiaries in terms of the 2010 Regulations.

- 9.6** The CERC has held in the impugned order dated 07.10.2015 that the Bulk Power Transmission Agreement executed between the Appellants and Power Grid (Respondent No.2) mandates the Appellants (Long Term Transmission Customer) to pay “Transmission Charges” in accordance with the Regulation/Tariff Order issued by the CERC from time to time.
- 9.7** Power Grid (Respondent No.2) filed a Petition, seeking review of the aforesaid order dated 07.10.2015 on the grounds: (a) that Regulation 8(5) of 2010 Regulations had come into effect after the subject ‘transmission system’ were commissioned; (b) that recovery of the transmission charges till the operationalization of the LTA of the Appellants were not as per the 2010 Regulations as the transmission system were ready and commissioned; and (c) that some of the Appellants were in advance stages of implementation, while some of the Appellants were already commissioned (achieved commercial operation) and hence, Regulation 8(6) was not applicable. The CERC rejected these grounds of review for reasons

deliberated in the said order. As far as the ground relating to the commissioning of the Appellants, the CERC observed that as on the date of issuance of the order dated 07.10.2015, dedicated lines of some of the Appellants have been commissioned during the course of hearing, and as such, the information in that regard was not available with the CERC. Accordingly, the CERC directed Power Grid to submit information/details in regard to the date of commissioning of the Appellants.

9.8 The CERC passed order dated 21.02.2018 to examine the aforesaid information/details submitted by Power Grid. The status of implementation of the dedicated transmission lines by the Appellants would show that Vedanta was expected to be commissioned by 15.04.2017 and LILO not removed. GMR was commissioned in December, 2014 and LILO removed in December, 2014. Jindal was commissioned in June, 2014 and LILO removed in June, 2014 and Ind Bharat had put into commercial operation its dedicated transmission lines in May, 2017. The CERC, inter alia, noted the submission of the Appellants that LILOs were used as an alternative arrangement for bypassing Angul substation as and when required depending upon the power flow condition.

9.9 The CERC essentially reiterated its decision rendered in its main order dated 07.10.2015 insofar as the legality of the imposition of the transmission charges for the default on the part of the Appellants and relied upon its similar decisions vide its earlier orders dated 02.06.2011, 29.04.2015, 05.08.2015, 29.07.2016, 27.06.2016 and held that in a number of cases, the CERC has decided that the transmission charges shall be directly recovered from the Generators or the Developers from upstream or

downstream of the transmission system of the ISTS which had achieved COD but is prevented from being put into service on account of the non readiness of the generating stations or their dedicated transmission lines of the upstream or the downstream lines of transmission.

9.10 Based on the data submitted by the Power Grid, the CERC noted that the dedicated transmission lines of Jindal was commissioned on 01.06.2014; GMR on 21.12.2014, Ind Bharat on 12.05.2017 and Vedanta on 06.11.2017. CERC held that the Appellants shall bear the transmission charges pro-rata to their LTA till the aforesaid dates of their commissioning post which its share of charges shall be under the POC Pool/POC mechanism for sharing of transmission charges.

(A) THE ISSUE IS NO MORE RES INTEGRA AND IS COVERED BY JUDGMENT OF THE APEX COURT AND JUDGMENTS OF THIS TRIBUNAL

(a). Power Grid Corporation of India Ltd. Vs. Punjab State Power Corporation Ltd. & Ors. (2016)4 SCC 797;

(i) Hon'ble Supreme Court held that the beneficiary cannot be made liable to pay for the delay in the operation of the transmission lines for the applicability of the transmission tariff, as the delay was on account of the generating station. Supreme Court held that the beneficiaries cannot be made liable to pay tariff before the transmission line was operational. Supreme Court also acknowledged the right of Power Grid against the Generator.

(ii) Hon'ble Supreme Court noted that the 400 kV BARH-BALIA double circuit transmission system by Power Grid was being

constructed for evacuation of power from the generating station of NTPC. The construction of sub station including the switch gear and the protection system, was within the scope of the work of the generator.

(iii) The facts arising in the present batch of Appeals is also quite similar to the facts arising in the aforesaid case. The subject transmission assets have been commissioned by Power Grid for evacuation of power from the generating stations of the Appellants. Due to the delay on the part of the Appellants to commission their dedicated transmission lines, the subject transmission assets of Power Grid have not been used by the beneficiaries.

(iv) The ratio laid down by the Hon'ble Supreme Court in the aforesaid judgment squarely applies to the case in hand. Accordingly, the impugned orders are justified in view of the law laid down by the Hon'ble Supreme Court.

(b) Nuclear Power Corporation of India Ltd. Vs. CERC & Anr. 2019 SCC online Aptel 83/Appeal No.332 of 2006 Judgment dated 18.01.2019;

(i) This Tribunal upheld the order of the CERC dated 21.09.2016 in the matter of **RAPP Transmission Co. Ltd.** that the Generator is liable to bear the transmission charges of the Transmission Assets commissioned from Scheduled Commercial Operation Date (SCOD) till commissioning of the downstream system. The CERC order was passed in exercise of powers under the 2010 Regulations. The CERC had held that non commissioning of the bays had rendered the transmission lines un-utilized which was developed as inter connection line between the Northern and Western Regions. The

CERC held that the Generator was liable to pay the transmission charges from the SCOD of the transmission line till the bays are commissioned by the Generator. The CERC held that after commissioning of the bays by the Generator, the transmission line would be included in POC calculation and the transmission charges shall be payable as per the 2010 Regulations.

(ii) This Tribunal, while upholding the CERC order, relied upon the Hon'ble Supreme Court's judgment in **Power Grid Vs. Punjab State Power Corporation** (supra). This Tribunal held that "the Central Commission has also relied upon the said judgment while formulating principles of payment of transmission charges by the entities before the transmission system/asset is made operational/put to use." This Tribunal, inter alia, held that as per the Standing Committee on Power System Planning it was only the Generator who was responsible to arrange the downstream for connection to transmission system by SCOD so that it could be put to use. This Tribunal relied upon the Hon'ble Supreme Court judgment in *Power Grid Vs. Punjab State Power* (supra), wherein the Supreme Court has held that the beneficiaries cannot be made liable to pay for the delay in any transmission element which in turn prevents the entire system to be put to use. Hence, the transmission licensee cannot be paid under POC mechanism and the transmission charges had to be paid by the defaulting party, i.e., the Generator.

(iii) This Tribunal's judgment in *Nuclear Power* (supra) upholds CERC's order passed in exercise of the 2010 Regulations. Hence, even on this basis, the impugned order in the present batch of appeals which were also passed in exercise of the 2010

Regulations, are covered by the ratio laid down in Nuclear Power (supra).

(B) THE IMPUGNED ORDERS HAVE BEEN PASSED BY CERC IN ACCORDANCE WITH 2010 REGULATIONS

- (a)** The 2010 Regulations have been made in exercise of powers under Section 179 of the Electricity Act, 2003 (“2003 Act”). The contentions of the Appellants that the transmission charges must be shared with the beneficiaries even though the transmission system was not put to use for the delay and default on the part of the Generator is in the teeth of the 2010 Regulations.
- (b)** In the Constitution Bench Judgment in **PTC India Ltd. Vs. CERC** (2010)4 SCC 603, the Supreme Court has, inter alia, held that this Tribunal cannot go into the validity of regulations.
- (c)** The impugned orders are completely in accordance with the provisions contained in the 2010 Regulations which reads as follows:-

“8. Determination of specific transmission charges applicable for a Designated ISTS Customer

....

[(5) Where the Approved Withdrawal or Approved Injections in case of a DIC is not materializing either partly or fully for any reason whatsoever, the concerned DIC shall be obliged to pay the transmission charges allocated under these regulations:

Provided that in case the commissioning of a generating station or unit thereof is delayed the generator shall be liable to pay Withdrawal Charges corresponding to its Long term Access from the date the Long Term Access granted by CTU becomes effective. The Withdrawal Charges shall be at the average withdrawal rate of the target region:

Provided further that where the operationalization of LTA is contingent upon commissioning of several transmission lines or elements and only some of the transmission lines or elements have been declared commercial, the generator shall pay the transmission charges for LTA operationalised corresponding to the transmission system commissioned.

Provided also that where the construction of dedicated transmission line has been taken up by the CTU or the transmission licensee, the transmission charges for such dedicated transmission line shall be payable by the generator as provided in the Regulation 8(8) of the Connectivity Regulations:

Provided also that during the period when a generating station draws start-up power or injects infirm power before commencement of LTA, withdrawal or injection charges corresponding to the actual injection or withdrawal shall be payable by the generating station and such amount shall be adjusted in the next quarter, from the ISTS transmission charges to be recovered through PoC mechanism from all DICs:

Provided also that CTU shall maintain a separate account for the above amount received in a quarter and deduct the same from the transmission charges of ISTS considered in PoC calculation for the next application period.” _

*(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.***

(Emphasis supplied)

- (d) The 2010 Regulations define the term “monthly transmission charge” meaning the transmission charges (inclusive of incentives) payable for each calendar month as given in the terms and conditions of Tariff Regulations in force. The term “yearly transmission charge” (YTC) is defined to mean the Annual Transmission Charges of the Inter State Transmission Licensees, determined or adopted under Section 62 or 63 or as otherwise provided in these Regulations. Hence, the term “transmission charges” employed in Regulation 8(5) and (6) derive their meaning from the aforesaid definitions.
- (e) The 2010 Regulations define the terms “point of connection” (POC) charging method to mean the methodology of computation of

sharing of ISTS charges or losses amongst designated ISTS customers which depends upon the location of the node of the grid and is calculated in accordance with Regulation 7(1)(q) and (s). The term “point of connection” (POC) transmission are the nodal/zonal charges determined using the point of connection charging methods. Hence, Regulation 8(6) makes a clear distinction between “the transmission charges” to be borne by the Generator and the point of connection method under Annexure-I of the 2010 Regulations. Accordingly, the Appellants’ contention that the 2010 Regulations do not provide for levy of “transmission charges” is totally unfounded and contrary to the 2010 Regulations.

- (f) Regulations 8(5) and (6) clearly provide for the liability on the generator to pay the transmission charges till the “commercial operation” of the generator.
- (g) Hon’ble Supreme Court has upheld Regulation 3(2) of 2012 Regulations which defines “date of commercial operation” (COD) as under:-

“3.(2) “date of commercial operation” or “COD” means-

- (a) *In relation to a unit or block of the thermal generating station, the date declared by the generating company after demonstrating the maximum continuous rating (MCR) or the installed capacity (IC) through a successful trial run after notice to the beneficiaries, from 0000 hour of which scheduling process as per the Indian Electricity Grid Code (IEGC) is fully implemented, and in relation to the generating station as a whole, the date of commercial operation of the last unit or block of the generating station;”*

Accordingly, it is necessary that there must be “successful trial run”, after notice to the beneficiaries, to demonstrate the maximum continuous rating (MCR) or the installed capacity (IC), for declaring the COD by the generating company. The appellants have on various dates fulfilled the criteria for declaration of COD by signing

minutes of meetings with the respondent no.2 GRIDCO Ltd..
Accordingly, the various CODs are as follows:-

No.	SI.	Generating Unit	CoD date	Date of Commercial Supply
1.		Vedanta#2	10.11.2010	10.11.2010
2.		Vedanta#1	30.03.2011	Power not availed
3.		Vedanta#3	19.08.2011	Power not availed
4.		Vedanta#4	26.04.2012	Power not availed
5.		IBEUL#1	20.07.2016	Power not availed
6.		GMR#1	30.04.2013	30.04.2013
7.		GMR#2	12.11.2013	12.11.2013
8.		GMR#3	25.03.2014	25.03.2014
9.		JITPL#1	19.04.2015	19.04.2015
10.		JITPL#2	12.02.2015	12.02.2015

The appellants as well as Power Grid (Respondent No.2) had handed over a tabulated chart containing the COD of the generating stations, during the course of the hearing. However, in view of the aforesaid minutes of meeting signed by the appellants, there is a discrepancy in the commissioning dates furnished by the appellants. Accordingly, the commissioning date of 06.06.2014 of Unit No.1 of the Generating Station of Jindal India is not correct and it should be 19.04.2015. Similarly, 24.01.2015 is not correct and should be 12.02.2015. The commissioning date of Unit 1 of GMR Energy has been incorrectly shown 29.03.2013 and it should be 30.04.2013, the commissioning date of Unit 2 is incorrectly shown as 28.09.2013 and should be 12.11.2013. The commissioning date of unit 4 of Sterlite is incorrectly shown as 25.04.2012 and should be 26.04.2012. The commissioning date of Ind Bharat is incorrectly shown as 25.02.2016 and it should be 20.07.2016.

- (h) The 2009 Regulations define the term “infirm power” as “3.(20) “infirm power” means electricity **injected into the grid prior to the commercial operation** of the unit or block of the generating station.” (emphasis supplied)
- (i) Hence, electricity that may have been injected into the grid by way of LILO arrangement may have been infirm power as it has been injected prior to the commercial operation of the generator. The aspect of LILO arrangement is entirely irrelevant to the question of levy of transmission charges on the generators for their default and delay in commissioning. The LILO is nothing but a temporary connectivity of nearby transmission lines so as to enable the generation projects to connect with the grid. The temporary connectivity through the LILO is withdrawn after commissioning of the associated transmission system.
- (j) The 2009 Regulations also define the term “maximum continuous rating” as follows:-

*“(25) ‘maximum continuous rating’ or ‘MCR’ in relation to a unit of the thermal generating station means the **maximum continuous output at the generator terminals**, guaranteed by the manufacturer at rated parameters, and in relation to a block of a combined cycle thermal generating station means the maximum continuous output at the generator terminals, guaranteed by the manufacturer with water or steam injection (if applicable) and corrected to 50 Hz grid frequency and specified site conditions;*

Accordingly, it may be submitted that the maximum continuous output at the generating terminals cannot be reached based on a LILO connectivity.

- (k). Section 2(30) of the 2003 Act defines the term “generating stations” as follows:-

“(16) “dedicated transmission lines” means any electric supply-line for point to point transmission which are required for the purpose of connecting electric lines or electric plants of a captive generating plant referred to in section 9 or generating station referred to in section 10 to any transmission lines or sub-stations or generating stations, or the load centre, as the case may be;” (30) “generating station” or “station” means any station for generating electricity, including any building and plant with step-

up transformer, switchgear, switch yard, cables or other appurtenant equipment, if any, used for that purpose and the site thereof; a site intended to be used for a generating station, and any building used for housing the operating staff of a generating station, and where electricity is generated by water-power, includes penstocks, head and tail works, main and regulating reservoirs, dams and other hydraulic works, but does not in any case include any sub-station;"

(Emphasis supplied)

In accordance with Section 2(30), "plant", "switch yard", "cables or other appurtant equipment" is included in the definition of generating station. Accordingly, dedicated transmission lines which are meant to connect the generation station to the sub station (the pooling sub station of the power grid in the present case) are entirely necessary for the operation of the transmission system of power grid which has been commissioned only to evacuate power from the generating station from the appellants.

- (I) The LILO to connect the generating station was de-commissioned and removed prior to the date of commercial supply to the respondent no.13 beneficiary. Hence, no commercial supply of power had commenced to the beneficiary during the existence of the LILO. The LILO was a temporary arrangement and there cannot be an argument that because of the LILO all the beneficiaries were supplied with power. It was mentioned during the hearing that the appellants were using the LILO facility to inject power for short term transactions to others, but not the long term commercial supply to the beneficiaries.
- (C) **THE APPELLANTS HAVE MISINTERPRETATED THE BULK POWER TRANSMISSION AGREEMENT**
 - (i) The appellants are described as "lone term transmission customer in the BPTA".

- (ii) Clause 2.0(A) of the BPTA mandates the appellants to pay the transmission charges in accordance with “the Regulation/Tariff order issued by Central Electricity Regulatory Commission from time to time...” Accordingly, the appellants are mandated to pay transmission charges in accordance with Regulation 8(5) and Regulation 8(6) of the 2010 Regulations. This is no inconsistency between the BPTA and the Regulations.

- (iii) Clause 2.0(C) of the BPTA mandates that the appellants “shall pay the applicable transmission charges from the date of commissioning of the respective transmission system which would not be prior to the schedule commissioning date of generating unit as indicated by the respective developer as per Annexure-I.” The appellants are trying to misread and misinterpret this clause. However, this clause simply indicates the liability of the appellants to pay the transmission charges from the date of commissioning of the transmission system of the Power Grid and further states that the transmission system of the Power Grid would not be commissioned prior to the schedule commissioning date of the generating units as indicated in Annexure-I of the BPTA. Accordingly, in Annexure-I the time frame of establishing Unit 1 of the generating station of Jindal is March, 2011, unit 2 is June, 2012, Unit 1 of Ind Bharat is December, 2011, Unit 2 of Ind Bharat is February, 2012, Unit 1 of GMR is November, 2011, Unit 2 is Jan. 2012, Unit 3 is March, 2012. Hence, on facts, the commissioning of the instant transmission assets were not prior to the schedule commissioning date of the generating units as aforesaid, as all the 8 number of transmission assets attained actual COD in the years 2013-14. Hence, there is no inconsistency

between the BPTA and the 2010 Regulations, as sought to be contended by the appellants.

- (iv) Clause 6.0(A) of the BPTA provides that in case the developer fails to construct the generating system/dedicated transmission system, power grid shall have the right to collect the transmission charges and/or damages as the case may be in accordance with the regulations issued by the CERC. Hence, the impugned orders as well as 2010 regulations are not inconsistent with the BPTA.

In view of the above submissions, the appeals are entirely devoid of any merit and are liable to be dismissed.

9. **We have heard learned senior counsel appearing for the Appellants and the learned counsel appearing for the Respondents at considerable length of time and gone through their written submissions carefully and after thorough critical evaluation of the relevant material available on records, the issue that arises for our consideration is as follows:-**

- Whether in the facts and circumstances of the matter, the Central Commission was justified in passing the impugned order holding that the generators would have to bear the transmission charges till their dedicated transmission lines are commissioned, under the non-poc mechanism?

Our Analysis & Findings:-

10. Learned senior counsel for the Appellants at the outset submitted that the Central Commission arbitrarily and without keeping in mind the CERC Sharing Regulations, 2010 has devised a methodology for recovery of transmission charges under which the Appellants have been subjected to bear the complete cost of certain assets at Angul Sub-station of the Second Respondent/PGCIL under the Non-

point of Connection (non- POC) mechanism which itself is contrary to the provisions of the above regulations. Learned counsel vehemently submitted that the Respondent Commission in fact failed to consider the primary issue involved that when the transmission system constructed by the Second Respondent is utilised by the DICs then the transmission charges can only be recovered under the POC mechanism provided under the CERC Sharing Regulations. He was quick to point out that the transmission charges payable by the DICs for the utilization of the transmission network cannot be conceived outside the purview of the Sharing Regulations 2010 which is notified by the Central Commission in exercise of its powers under Section 178 of the Electricity Act, 2003.

- 10.1** Learned counsel for the Appellants further submitted that the Appellants entered into BPTA with the Second Respondent for the purpose of grant of LTA. Accordingly, the second Respondent was required to develop transmission network to enable the Appellants to evacuate their generated power from the respective power plants by utilizing the inter-stare transmission grid. Further, for the purpose of such utilizaiton, the Appellants were required to construct their dedication transmission lines for connecting their power plant tothe nearest pooling sub-station of the second Respondent. Learned counsel contended that till the time the dedicated transmission lines were to be commissioned by the Appellants, the second Respondent /PGCIL provided an alternative arrangement by constructing loop-in loop-out (LILO) for enabling evacuation of power. In this regard, it was envisaged that the aforesaid temporary alternate arrangement could be removed

immediately after the commissioning of dedicated transmission lines.

10.2 Learned senior counsel for the Appellants further submitted that as a result of the temporary alternate arrangement of LILO provided by second Respondent, the transmission system developed by Powergrid was being fully utilized by the DICs. He pointed out that the CERC Sharing Regulations, 2010 nowhere provide that the utilization of the network of the second Respondent has to be done on a temporary or a permanent arrangement. In fact, the point for consideration is that if the transmission system developed by second Respondent is being utilized by the beneficiaries, the transmission charges can only be computed under the POC / Sharing Mechanism, as envisaged under the said Regulations. Learned senior counsel, for the purpose of laying emphasis on his contentions, referred to relevant Regulations and various definitions under these Regulations. After elucidating various provisions under the Regulations, learned counsel concluded that the yearly transmission charges of the second Respondent are required to be computed under POC charges as per the methodology provided under Annexure I of the CERC Regulations. He further reiterated that the Appellants scheduled power through the LILO arrangement provided by the Powergrid and the power was consumed by the beneficiaries /DICs. In addition to this, the second Respondent has also submitted that its transmission system was being utilised by the Appellants for supplying power to their beneficiaries from the date the LILO arrangement was provided.

10.3 Learned senior counsel advancing his arguments further submitted that the CERC Sharing Regulations 2010 mandate strict adherence

to the principle of sharing /POC mechanism for imposition of transmission charges once the transmission system is under utilization provided under the philosophy under Annexure -I to the said Regulations. He stated that as already detailed hereinabove, the system of the second respondent was under utilization by the Appellants initially through LILO arrangement and thereafter through the dedicated transmission lines. Further, nowhere the Sharing Regulations provide a distinction as to the non-applicability of the said regulations in the event connectivity is provided through the LILO mechanism or through the permanent arrangement. Furthermore, the said Regulations neither contain a stipulation that POC mechanism can only be applicable upon construction of the dedicated transmission line. Learned counsel contended that it is a settled principle of interpretation of statutes that each and every provision of a financial statute has to be strictly interpreted and implemented and the courts dealing with the statute shall have to adhere utmost caution so that even the widest interpretation of the order the implication of the order would not traverse beyond the strictperiphery of the statute. To substantiate his contentions, learned counsel made reference to following judgments of the Hon'ble Supreme Court :-

- (i) *District Registrar and Collector, Hyderabad & Anr. vs. Canara & Ors., reported in (2005) 1 SCC 496 (please see para 10);*
- (iii) *Ranbaxy Laboratories Ltd. Vs. UOI & Ors., reported in (2011) 10 SCC 292 (please see para 14).*

10.4 Learned senior counsel for the Appellants indicated that the Respondents other than the second Respondent have argued that being distributionlicensees, they should not be burdened with the transmission charges under POC mechanism as the dedicated

transmission lines were not constructed by the Appellants. He pointed out that these Respondents distribution licenses of Odisha & Bihar are presently paying transmission charges under the POC mechanism. Further as a matter of fact, these respondents have neither participated during the tariff proceedings nor the review filed by the second Respondent / Powergrid. He further brought out that as per the Sharing Regulations of CERC, the entire inter-state grid across the length and breadth of the country, which is operated by the second Respondent and has been put to use, the transmission charges for the same is determined under the POC mechanism. In other words, the said charges are being shared by all the transmission system users including generating companies, distribution licensees and the end consumers. Keeping these aspects in view, the Respondent distribution licensees cannot at all argue that apart from their own regions, they will not pay transmission charges of the transmission system built by the second respondent in other regions. This stand of the Discoms is fundamentally against the very ethics of one grid one nation and the methodology of the POC mechanism envisaged under the Sharing Regulations.

10.5 Learned senior counsel further contended that in the present appeals, the second Respondent/ Powergrid has in fact supported the stand of the Appellants that once the transmission system constructed by the Powergrid is utilized either through LILO or through dedicated lines, the transmission charges can only be levied and recovered under the Sharing / POC mechanism. In fact, the impugned orders are outcome of the petitions / review petition filed by the second respondent which among others, prayed for

recovery of its transmission charges through POC mechanism. Learned senior counsel pointed out that Respondent distribution licensees are relying upon the judgments which are not applicable in the present case. He contended that the said judgments are not applicable to the present case on account of the fact that in the present case, the transmission system of the second respondent was not stranded and was being utilised by the Appellant as well as beneficiaries / Discoms.

10.6 Learned counsel for the second Respondent/PGCIL submitted that in view of the delay in construction of dedicated transmission lines by the Appellants, the interim connectivity through LILO arrangement was given to Appellants as agreed in various LTA meetings to facilitate evacuation of power till commissioning of their dedicated lines. In so far as PGCIL is concerned, the subject transmission assets, were ready for construction on 01.04 2013 onwards and the recovery of transmission charges is to be given to it from 01.04.2013 itself.

10.7 Learned counsel for the Second Respondent further submitted that at the time of giving regulatory approval to the construction of the subject transmission assets, the Central Commission vide its order dtd 31.05.2010 in Petition no. 233 of 2009, among others, held that *“Ensure recovery of the capital investment of the powergrid (in the event of non-taking of some of the above generating projects) by way evolving alternate methodology”*. Therefore, when PGCIL filed the tariff petition, it had sought recovery of tariff under the Sharing Regulations namely through POC mechanism. However, the Central Commission vide its order dtd. 07.10.2015 held that till the Appellant generators had not commissioned their

dedicated transmission lines, the tariff shall be borne by the Appellants. Even, the review petition filed by the PGCIL seeking review of the order dtd 07.10.2015, the Central Commission did not allow the recovery of tariff under POC mechanism.

10.8 Learned counsel for the second Respondent vehemently submitted that due to the long pending litigation, PGCIL has neither been able to recover its transmission charges through the POC mechanism nor through the generators/ Appellants. The other respondents i.e the distribution companies from Bihar & Odisha were opposing the present appeals had not appeared on any day before the Central Commission and there was no opportunity for PGCIL to deal with the contentions being now raised by them before this Tribunal in the present Appeals. However, the Respondent discoms have relied on following judgements of the apex court and this Tribunal.

i) Powergrid Corpn. of India Ltd. & Ors. (2016) 4 SCC 797

ii) PSPCL vs. Patran Transmission Co. Ltd. , APTEL Judgment dtd.27.03.2018 in Appeal No. 390 of 2017

Learned counsel submitted that these judgments are distinguished from the case in hand as it is neither the case of idle charges as in Powergrid case nor non-utilisation of assets as in Patran case.

10.9 Learned counsel pointed out that there is also some confusion due to the use of word LILO. There are certain LILOs among the subject transmission assets, which are permanent transmission assets and are part of the establishing the subject transmission system by PGCIL. In fact, the generating companies have implemented interim arrangement of LILOs at their end at their own cost and the same were removed after commissioning of the dedicated transmission

lines by them. It is clarified that PGCIL is seeking the transmission charges only for its LILOs and other assets which are permanent and part of the transmissionschemes in Odisha Part A Transmission system in eastern region. Learned counsel emphasised that the subject PGCIL assets since commissioning were being utilised for transfer of power in eastern region. However, PGCIL has not recovered any transmission charges to the disputed period despite providing the assets and intended services.

10.10 *Per contra*, learned counsel for the Respondent Nos. 9 &11 submitted that the Appellants have misconceived the concept of socialisation as there is nothing like this in the Sharing Regulations, 2010 but in fact, the Statement of Reasons dtd. 11.6.2010 would clearly show that the said regulation is against any cross subsidization or socialisation. They further submitted that the transmission of electricity is conducted on commercial principles and the tariff reflect the cost of supply of electricity besides the other associated factors.As such, the concept of socialisation cannot be brought by misinterpreting some of the provisions of the Sharing Regulations, 2010. Learned counsel further submitted that the Central Commission after assurance from the CTU on the progress of IPPs at different stages of implementation and satisfactory utilization level of the proposed assets granted regulatory approval for the subject transmission system vide order dtd. 31.05.2010 in Petition no. 233 of 2009. It was also noted by the Central Commission that the Appellant Generators do not have any identified beneficiaries or long term supply of power which can be in any region of the country.

10.11 Learned counsel for the Respondents vehemently submitted that the Appellants herein have contended that the Central Commission has devised a methodology for recovery of transmission charges under non-point of connection (non-POC) which is contrary to its Sharing Regulation, 2010. It has also been stated that the mechanism is expressly against Regulation 13 related to the Transmission Service Agreement (TSA) and Regulation 14 related to the Amendment of the Sharing Regulation, 2010. On this issue, learned counsel pointed out that the Central Commission has duly clarified the issue in Para 60 of its order dtd. 07.10.2015 in Petition no. 112/TT/2013.

10.12 Learned counsel was quick to point out that the Appellants have downplayed their own roles relating to delay in construction of the dedicated transmission lines from the generating stations to the pooling station of the Respondent/PGCIL at ANGUL, Odisha. However, the issue here is whosoever has delayed the operationalization of the LTA, the part assets even when completed cannot be brought under the POC mechanism. Moreover, the aspect related to the completion of the generating station and duties of generating companies are required to be viewed from the provisions detailed out in the Electricity Act, 2003.

10.13 Learned counsel for the Respondents further submitted that the duties of the generating companies is not only to complete the works related to the generating units but also related the dedicated transmission lines if the same is within the scope of the generating company. In the instant case, the dedicated transmission lines were in the scope of the Appellants in accordance with BPTA and these

dedicated lines were not completed as per their own admissions by the Appellants. Thus, the Appellants have failed to complete the entire work related to the instant generating stations and in the absence of dedicated transmission lines, the power generated is bottled up in the generating station of which the entire fault rests with the Appellants. In fact, the Commission has devised hybrid methodology mechanism for efficient pricing of transmission service under the Sharing Regulations 2010. The hybrid methodology has been explained under Regulation 2(m) of the said regulations. Further, Annexure-I of the Sharing Regulation talks about the philosophy of POC based transmission pricing mechanism.

10.14 Learned counsel further contended that as noted from the above philosophy, the operating term is utilisation. The pricing mechanism must therefore be able to capture the utilisation charges for the resources being utilised. It is crystal clear that utilisation of the assets is the essence to bring the assets under POC mechanism and the Appellants have disclosed that neither the assets of the Appellants nor the Assets of the second Respondent were completed on scheduled date. In view of this, the whole contentions of the Appellants that the Central Commission has devised a methodology/mechanism for recovery of transmission charges under non-POC mechanism which is contrary to Sharing Regulations, 2010 is beyond comprehension.

10.15 Learned counsel for the Respondents also contended that the Electricity Act, 2003 envisages large number of players to operate in this sector. To coordinate the efforts of various players, the Act also envisages coordinated agencies namely STU at state level and CTU for the inter-state level. PGCIL, the second Respondent under

Section 38 (1) has been notified as the CTU by the Central Govt. and the statutory role of CTU is detailed in Section 38 of the Electricity Act. As such, the PGCIL as CTU is required to plan and coordinate the functions related to the construction of the investment approval in the transmission sector of the country. It would thus appear that the non-performance of statutory functions by CTU can create mess relating to mismatch of the components of the transmission system which is ultimately passed on to discoms through tariff and in turn to the consumers. Learned counsel was quick to submit that in the instant case, the second respondent being CTU is guilty of creating the mess among the various stakeholders.

10.16 Learned counsel for the Respondents further contended that the issue involved in the present appeal is no more *res intigra* and is covered by judgment of apex court and this Tribunal namely, PGCIL vs. PSPCL & Others and PPCL vs. CERC &Ors. In the first judgment, Hon'ble Supreme Court has held that the beneficiaries cannot be made liable to pay for the delay of the operation of the transmission lines for the applicability of the tariff as the delay was on account of the generating companies. The ratio laid down by the Hon'ble Supreme Court in the aforesaid judgment squarely appliesto the case in hand. In the second judgment dtd. 18.01.2018, this Tribunal upheld the order of the CERC holding that non-commissioning of the bays had rendered the transmission lines unutilized which was to be developed as the inter-connection lines between the northern and western regions. Central Commission has held that the generator was liable to pay the transmission

charges from the SCOD of the transmission lines till the bays are commissioned by the generator.

10.17 Learned counsel further submitted that the Regulations 8(5) & 8(6) of the Sharing Regulations clearly provide for the liability on the generators to pay the transmission charges till the commercial operation of the generating station which by definition include the dedicated transmission lines. Hence, the electricity that may have been injected into the grid by the way of temporary LILO arrangement may have been infirmed power as it has been injected prior to the commercial operation of the generating station. In fact, the aspect of LILO arrangement is entirely irrelevant to the question of levy of transmissions charges on the generators for their default and delay in commissioning of the entire scope of works. The LILO to connect the generating stations were decommissioned and removed prior to the date of commercial supply to the Respondent discoms, hence no commercial supply of power had commenced to the beneficiary discoms during the existence of the LILO. In fact, the LILO was admittedly a temporary arrangement for the sole benefit of the generators and there cannot be any argument that because of the LILO all the beneficiaries were supplied the powers.

10.18 Further, Clause 2.0 (a) of the BPTA mandates the Appellants to pay the transmission charges in accordance with the Regulation /Tariff order issued by CERC from time to time. Accordingly, the Appellants are liable to pay transmission charges in accordance with the Regulation 8(5) & 8(6) of the Sharing Regulations. There is no inconsistency between the BPTA and the Sharing Regulations. Further, Clause 6.0 (A) of the BPTA provides that in case, the

developer fails to construct the generating system / dedicated transmission system, PGCIL shall have the right to collect the transmission charges and / or damages as the case may be in accordance with the Regulations issued by CERC. Hence, the impugned order as well as Regulations, 2010 are not inconsistent to BPTA.

Our Findings :-

10.19 We have carefully considered the submissions and arguments of the learned senior counsel for the Appellants and learned counsel for the second Respondent, as well as the learned counsel for the Respondent discoms and also taken note of the various judgments relied upon by the parties along with the provisions contained in the relevant regulations and also the Electricity Act, 2003. It is not in dispute that the scope of works of the Appellants herein was commission of their generating stations along with dedicated transmission lines for evacuation of their generated power to the nearest pooling sub-station of PGCIL. The responsibilities entrusted to second respondent/PGCIL were to commission all the assets stipulated under the transmission system for evacuation of power from the generating stations of various DICs (the Appellants herein). It is noticed that all the Appellants entered into respective BPTA as per which the respective obligation of parties was laid down as construction of the power plant / dedicated transmission lines by the Appellants and augmentation of transmission system by PGCIL. It was contemplated and decided between the parties under the BPTA that an interim arrangement through LILO by second Respondent/PGCIL would be provided only as a contingency arrangement since the transmission system as envisaged in the BPTA was not as per

the commissioning scheduled of the Appellants units. Further, the interim arrangement of LILO was to be removed once the said transmission system as envisaged in the BPTA was declared for commercial operation. Accordingly, the LILO was initially planned purely as temporary arrangement for evacuation of power from pooling station till the main 765 KV transmission corridor gets commissioned by the second Respondent/PGCIL. Before, we consider and analyse the issue in dispute, relevant provisions / definitions under various Regulations of CERC are referred to as under:-

“2. Definitions

(2) *In these Regulations, unless the context otherwise requires:-*

....

*(j) **‘Bulk Power Transmission Agreement (BPTA)’** means the agreements between the ISTS licensees and the Designated ISTS Customers of the ISTS under the pre-existing arrangements for ISTS development and operations.*

....

*(l) **‘Designated ISTS Customer or DIC’** means the user of any segment(s) or element(s) of the ISTS and shall include generator, State Transmission Utility, State Electricity Board or load serving entity including Bulk Consumer and any other entity or person directly connected to the ISTS and shall further include any intra-State entity who has obtained Medium Term Open Access or Long Term Access to ISTS.*

Provided that where the ISTS charges were being billed to the distribution companies or any designated agency in the State for purchasing power before implementation of these regulations, the distribution companies or the designated agency, as the case may be, shall be treated as Designated ISTS Customer in that State for the purpose of preparation of Regional Transmission Account (RTA) by Regional Power Committees and for the purpose of billing and collection by the CTU:

Provided further that after implementation these regulations, the States may designate any agency as Designated ISTS Customer for the above purpose.

....

p) **'Monthly Transmission Charge'** Means the transmission charges (inclusive of incentives) payable for each calendar month as given in the Terms and Conditions of Tariff Regulations in force;

...

(r) **'Point of Connection (PoC) Charging Method'**shall mean the methodology of computation of sharing of ISTS charges and losses amongst Designated ISTS Customers, which depends on the location of the node in the grid and is calculated in accordance with Regulation 7(1)(q) and 8(1(s) of chapter 4 of these regulations.

(s) **'Point of Connection (PoC) transmission charges'** are the modal/ zonal charges determined using the Point of Connection charging method.

....

(y) **'Yearly Transmission Charge (YTC)'**means the Annual Transmission Charges for the existing and new transmission assets of the inter-State transmission licensees, deemed ISTS Licensees, owners of inter-State transmission lines connecting two States and owners of non-ISTS lines certified by Regional Power Committees for inter-State transmission of power, determined by the Appropriate Commission under Section 62 of the Act or adopted by the Appropriate Commission under Section 63 of the Act or as otherwise provided in these Regulations.

Provided that in case of non-ISTS lines, the asset-wise tariff determined by the respective State Commissions or approved by the Central Commission based on the approved Annual Revenue Requirement of STU, shall be used.

Provided under that transmission charges received by the STU under these regulations shall be adjusted in the Annual Revenue Requirement of the concerned STU approved by the respective State Commission.”

Further, the Regulation 8(6) of CERC Sharing Regulations, 2010 is set out herein below:-

“8. Determination of specific transmission charges applicable for a Designated ISTS Customer.

....

(6) For Long Term 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.”

(underline supplied)

The term “Long-Term Customer” is defined under Regulation 2(1)(m) of the CERC Connectivity Regulations as under :-

“2.(1)(m) “Long-customer” means a person who has been granted long-term access and includes a person who has been allocated central sector generation that is electricity supply from a generating station owned or controlled by the Central Government”

10.20The Appellants herein are primarily aggrieved mainly due to the fact that the Central Commission has decided that the Appellants would bear the transmission charges arising out of cost of certain assets at Angul substation of Respondent No. 2/ PGCIL, under the Non-Point of Connection (Non-PoC) mechanism and in terms of the Appellants, the said mechanism is contrary to the provisions of the Sharing Regulations, 2010. It is the contention of the Appellants that when the transmission system constructed by the Respondent No. 2 is “utilized” by the DICs, then the transmission charges can only be recovered under the POC mechanism provided under the CERC Sharing Regulations, 2010. In other words, the transmission charges payable by the DICs for the utilisation of the transmission network cannot be conceived outside the purview of the Sharing Regulations 2010 which has been notified by the Respondent Commission in exercise of its power under section 178 of the Electricity Act, 2003.

10.21Learned senior Counsel for the Appellants has emphasised that the Sharing Regulations nowhere provide that the utilization of the

transmission network of the second Respondent has to be done through temporary or through permanent arrangement. In fact, the POC mechanism starts the moment of transmission system of the Respondent No. 2 gets utilized by the beneficiaries. The Appellants also contend that the power from the generating stations got scheduled through the LILO arrangement provided by the second Respondent which has also been affirmed by the second Respondent. The second Respondent had also affirmed that its system was being utilised by the Appellants for supplying power to their beneficiaries from the date, the LILO arrangement was provided and thereafter the usage of the said system continued after the dedicated transmission lines were commissioned by the Appellants. Learned senior counsel for the Appellants referred following two judgments of the Hon'ble Supreme Court to contend that the courts implementing such statute shall have to adhere utmost caution so that even with the widest interpretation of the order, the implication of the order would not traverse beyond the strict peripheral limits of the statute:-

- (i) *District Registrar and Collector, Hyderabad & Anr. vs. Canara Bank & Ors., reported in (2005) 1 SCC 496 (please see para 10);*
- (ii) *Ranbaxy Laboratories Ltd. Vs. UOI & Ors., reported in (2011) 10 SCC 292 (please see para 14).*

10.22 Learned counsel for the second Respondent/PGCIL has in fact supported the contentions of the Appellants and has submitted that the interim connectivity through LILO arrangement was provided to the Appellant generators as agreed in various LTA meeting so as to facilitate their evacuation of power till commissioning of their

dedicated transmission lines. It was also indicated by the second Respondent that at the time of granting Regulatory approval to the construction of the subject transmission assets, the Central Commission vide Order dated 31.05.2010, among others, held that the recovery of the capital investment of the Powergrid in the event of not taking of some of the above generating projects would need to be ensured by way of evolving alternate methodology. The second Respondent is also aggrieved due to the fact that pending litigation, PGCIL has neither been able to recover its transmission charges through the POC mechanism nor through the Appellants/generators.

10.23 Learned counsel for the Appellants and learned counsel for the second Respondent alleged that the Respondent Discoms from Bihar and Orissa who are now opposing the Appeals had not appeared at any stage before the Central Commission and therefore there was no opportunity for PGCIL to deal with the contentions being raised by them before this Tribunal. Learned counsel for the Appellants as well as second Respondent were quick to point out that the judgments of the Hon'ble Supreme Court and this Tribunal relied upon by the Respondent Discoms are not applicable to the case in hand because of their distinct factual matrix.

10.24 On the other hand, learned counsel for the Respondent Discoms of Orissa & Bihar have mainly relied upon the Regulation 8(5) and 8(6) of the Sharing Regulations, 2010 which is relevant regulation for determination of the specific transmission charges applicable for a designated ISTS customer. The Respondent Discoms have categorically referred to the Regulation 8(6) which reads thus:-

“.....In the instant case, the petitioner has commissioned the transmission system and the generator has not performed its part of the BPTA and hence the generator has to bear the transmission charges as provided in clause 2.0(a) and 2.0 (c) of the BPTA. Further, as per Regulation 8(5) and 8(6) of the 2010 Sharing Regulations, the generators having long term access are liable to bear the charges for the transmission system till they achieve ‘commercial operation’”

To further firm up our views in the matter, we have perused the judgments relied upon by the parties and also the impugned orders passed by the Central Commission. What thus transpires is that the generating stations of the Appellants which also include dedicated transmission lines from generating stations to nearest pooling station of the second Respondent were not completed as per schedule mainly because of delay in completion of dedicated transmission lines. Pending completion of the dedicated transmission lines of the Appellants, to enable evacuation of generated power, an interim LILO arrangement was provided by the second Respondent/PGCIL. This is not in dispute that the power was scheduled through these LILO arrangements by the Appellant generators to the beneficiary discoms of Orissa & Bihar but the fact remains that the generating stations of the Appellants were not commissioned in their entirety because of non-completion of dedicated transmission lines which were integral part of the generating stations. The Sharing Regulations, 2010 are crystal clear that the sharing mechanism as per Annexure I of the Regulation shall be effective only after commercial operation of the generator and till then it shall be responsibility of the generator to pay the transmission charges. Further, as per Section 2(30) of the Electricity Act, the term generating stations are defined as under:-

(30) "generating station" or "station" means any station for generating electricity, including any building and plant with step-up transformer, switchgear, switch yard, cables or other appurtenant equipment, if any, used for that purpose and the site thereof; a site intended to be used for a generating station, and any building used for housing the operating staff of a generating station, and where electricity is generated

by water-power, includes penstocks, head and tail works, main and regulating reservoirs, dams and other hydraulic works, but does not in any case include any sub-station;”

Additionally Section 2(16) is defined as under:-

“(16) “dedicated transmission lines” means any electric supply-line for point to point transmission which are required for the purpose of connecting electric lines or electric plants of a captive generating plant referred to in section 9 or generating station referred to in section 10 to any transmission lines or sub-stations or generating stations, or the load centre, as the case may be;”

10.25 Having regard to the provision of the Regulations notified by the Central Commission and various provisions contained in the Electricity Act, 2003, we are of the view that the Central Commission has analysed the various factors associated with the disputes raised in respective petitions and passed the impugned order rendering cogent reasoning and sufficient rationale. The Central Commission while passing the impugned order has made elucidated observations under Para 60 to 66 which leaves no further scope for any ambiguity or perversity. It is relevant to note that though power has flown through interim LILO arrangement but this has enabled sole benefit to the Appellant generators who have recovered their generation tariff even without completing the dedicated transmission lines. We are, therefore, inclined to accept the contentions of the Respondent Discoms that without completion of all assets of the generators as well as the second Respondent, they should not be burdened with transmission charges under POC mechanism which in turn will affect the end consumers.

10.26 In view of the above, we are of the considered opinion that pending COD of their entire generating stations (generating units & dedicated transmission lines), the Appellant generators are liable to bear the transmission charges for the completed assets of the

second Respondent till the commissioning of their dedicated transmission lines. Hence, the appeals are liable to be dismissed.

ORDER

In light of the above, we are of the considered view that the issues raised in the instant appeals being Appeal Nos. 51 of 2018, 159 of 2018, 160 of 2018, 275 of 2018, 52 of 2018, 53 of 2018 and 57 of 2018 are devoid of merits. Hence, appeals are dismissed.

The impugned orders dated 07.10.2015, 21.02.2017 and the review order dated 16.02.2017 passed by Central Electricity Regulatory Commission are hereby upheld.

In view of the disposal of the batch of Appeals, the reliefs sought in the IAsdo not survive for consideration and accordingly stand disposed of.

No order as to costs.

Pronounced in the Virtual Court on this **01st day of September, 2020.**

(S.D. Dubey)
Technical Member

(Justice ManjulaChellur)
Chairperson

REPORTABLE / ~~NON-REPORTABLE~~

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