

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

(APPELLATE JURISDICTION)

APPEAL NO. 87 OF 2014

Dated: 30th January, 2015

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

IN THE MATTER OF

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

.... Appellant/Petitioner

VERSUS

1. Central Electricity Regulatory Commission
3rd and 4th Floor, Chanderlok Building,
6, Janpath, New Delhi – 110001
2. Madhya Pradesh Power Trading Co Ltd
Shakti Bhawan, Rampur,
Jabalpur – 482008
3. Maharashtra State Electricity Distribution Co Ltd
Prakashgad, 4th Floor, Andheri (East),
Mumbai – 400052
4. Gujarat Urja Vikas Nigam Ltd
Sardar Patel Vidyut Bhawan, Race Course Road,
Vadodra – 390007
5. Electricity Department, Government of Goa
Vidyut Bhawan, NER Mandvi Hotel,
Panaji – 403001
6. Electricity Department,
Administration of Daman & Diu
Daman – 396210

7. Electricity Department,
Administration of Dadra Nagar Haveli
UT Silvassa – 396230
 8. Chhattisgarh State Electricity Board
PO Sundernagar, Dangania,
Raipur – 492013
 9. Madhya Pradesh Audyogik Kendra
Vikas Nigam (Indore) Ltd.
3/54, Press Complex,
Agra-Bombay Road,
Indore – 452008
- Respondents

Counsel for the Appellant ... Mr. M.G. Ramachandran
Ms. Swagatika Sahoo
Ms. Poorva Saigal
Ms. Anushree Bardhan

Counsel for the Respondent(s)... Mr. Manoj Kr. Dubey
Mr. Rishabh D Singh for R-2

J U D G M E N T

PER HON'BLE JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER

1. The instant Appeal under Section 111 of the Electricity Act, 2003, has been preferred by Power Grid Corporation of India Ltd. (in short, the '**Appellant**'), against the impugned order, dated 27.1.2014, passed by the Central Electricity Regulatory Commission (in short, the '**Central Commission**') in Petition No. 97 of 2011, whereby the learned Central Commission has determined the tariff for the Assets in Western Region, constructed under the Western Region System Strengthening Scheme-II (WRSSS-II), Set A for the tariff period 1.4.2009 to 31.3.2014.

2. The Central Commission while dealing with the aspect of Interest During Construction (IDC) and Incidental Expenses During Construction (IEDC) has disallowed the claim of the Appellant amounting to Rs.251.50

lakhs on an assumption that 12 to 14 weeks time as against 10 months claimed by the Appellant is a reasonable time for completion of the works after the forest clearance was granted. The matter in issue in the instant Appeal is disallowance of the interest during construction (IDC) and IEDC by the Central Commission amounting to Rs.251.50 lakhs in respect of time over-run of six months out of 10 months claimed by the Power Grid Corporation of India Ltd. (PGCIL), the Appellant herein. The Central Commission, keeping these facts in view, has condoned/allowed delay of 4 months against the total delay of 10 months as claimed by the Appellant/Petitioner in commissioning of Asset-II.

3. The relevant facts giving rise to the instant Appeal are as under:

- (a) that the Appellant herein, Power Grid Corporation of India Ltd, is a Government Company and is engaged in the transmission of electricity and discharges the functions of the Central Transmission Utility (CTU) under the Electricity Act, 2003.
- (b) that the Respondent No.1 is the Central Electricity Regulatory Commission authorized to determine the tariff for the Appellant and to perform other functions provided under the Electricity Act, 2003.
- (c) that on 24.07.2006, the Investment Approval for WRSS-II was accorded by the Ministry of Power, Government India for the Transmission project at an estimated cost of Rs. 5221.23 crores including Interest During Construction (IDC) of Rs. 380.42 crores based on 4th quarter 2005 price level consisting of (i) Rs 358140 lakh (including IDC of Rs 25062 lakh) for the Appellant's portion and (ii) Rs163983 lakh (including IDC of Rs12980 lakh) for IPTC portion. As per the Investment Approval, dated 24.7.2006, the project was scheduled to be commissioned within a period of 48 months from the date of investment approval namely by 23.7.2010.

- (d) that the Bhadrawati – Parli transmission line (Asset II) of the above Transmission Project was passing through a stretch of 0.80. KM of the forest area in the State of Maharashtra and a tower for such transmission line was to be erected within such forest area. For such activities, forest clearance was required to be obtained from the Ministry of Environment and Forest.
- (e) that the Appellant on 1.12.2006 submitted its proposal to the Deputy Conservator of Forest for approval of forest clearance. Due to the inaction of the concerned authority, the Appellant could obtain the approval of forest clearance after a period of more than three years i.e. on 20.7.2010 and in such circumstances it was not possible on the part of the Appellant to complete the project work within the stipulated time period.
- (f) that the Appellant immediately after obtaining the forest clearance on 20.7.2010, started the construction work which involved the activities such as tree cutting, site clearance, foundation casting, tower erection etc. Such activities were to be carried out in seriatim. However due to heavy rain during July, August and October 2010, no work could be done. The unprecedented rain attributed to a further delay in commissioning of the above mentioned Bhadrawati - Parli Transmission line (Asset II). In other words, the Appellant could not carry out the work during the month of July, August and October 2010 due to unprecedented rain and, further, there were no road facilities in the forest area which was difficult for mobilization of man and materials and, further, the project site was in a hilly area and all the activities of foundation, casting of footing & legs, backfilling to final backfilling were time consuming. The construction and commissioning of the project was also affected by the reason of bad site condition and non-availability of bays on the

transmission network of Maharashtra State Electricity Transmission Corporation Ltd. (MSETCL).

- (g) that 2 nos. line reactors for Bhadrawati-Parli Transmission Line (Asset-II) and 1 nos. Bus reactor could get charged on 31.3.2011, however, due to non-availability of bays at Girwali (Parli) Sub-Station of MSETCL, the system could not be declared under Commercial operation till May'2011 and July'2011 for Bhadrawati-Parli (Asset-II) & Parli-Parli Transmission Line and Wardha-Parli Transmission Line respectively. The Central Commission ought to have considered delay after 31.3.2011 as the transmission lines were ready for commercial operation.
- (h) that Bhadrawati-Parli Transmission Line (Asset-II) was commissioned on 1.6.2011 after a delay of 10 months.
- (i) that on 30.3.2011, the Appellant filed a petition, being Petition No. 97 of 2011, before the Central Commission for the approval of the transmission tariff for the transmission project from the anticipated date of commercial operation of respective assets till 31.03.2014.
- (j) that in the petition, the Appellant pointed out the following four reasons for time over-run:
 - (i) Delay in grant of forest clearance by the Ministry of Environment and Forest.
 - (ii) Unprecedented rain during July, 2010 to October, 2010.
 - (iii) Bad site condition.
 - (iv) Non-availability of bays of Maharashtra State Electricity Transmission Corporation Limited (MSETCL)

- (k) that the learned Central Commission, vide impugned order, dated 27.1.2014, has decided the transmission tariff for the project of the Appellant. The learned Central Commission has not allowed the Interest During Construction (IDC) and Incidental Expenses During Construction (IEDC) as claimed by the Appellant. The relevant part of the impugned order, dated 27.1.2014, is being reproduced for ready reference, which is as under:

"400 kV Bhadrawati – Parli D/C transmission line

13. The petitioner has submitted that the Stage-II Forest Clearance for 0.80 km stretch of Bhadrawati-Parli transmission line, passing through the forest area was granted by Ministry of Environment and Forests on 20.7.2010. The petitioner has submitted that the "Tree cutting & Site clearance", "Foundation casting" "Erection of tower" took 12-14 weeks, as no road is located in the hilly forest area. The petitioner has further submitted that delay was on account of heavy rains.

14. It is observed that one tower was to be constructed on 0.80 km stretch falling in the forest area for which environment clearance was given on 20.7.2010. For want of environment clearance, the work on construction of tower could not be started by the petitioner. It is reasonable to allow 12-14 weeks time 'tree cutting and site clearance', foundation casting and erection of tower after the forest clearance was granted by Ministry of Environment and Forests. It also bears notice that because of heavy rains in the area in the month of October 2010, for which evidence in the form of newspaper cuttings has been produced; the work of construction of towers could not be taken up by the petitioner in right earnest. Keeping these factors in view, delay of 4 months against the total delay of 10 months in commissioning of Asset II is condoned."

4. The only issue which arises for our consideration is **whether the Central Commission is right in proceeding on the assumptions that after the forest clearance all the activities could have been completed by the Appellant within a period of 12 to 14 weeks and disallowing the delay of the remaining six months?**

5. We have heard Mr. M.G. Ramachandran, the learned counsel for the Appellant and Mr. Rishabh Donnel Singh & Mr. Manoj Kumar Dubey, the

learned counsel for Respondent No. 2. We have deeply gone through the evidence and other material available on record including the impugned order passed by the Central Commission and written submissions filed by the rival parties.

6. The following submissions have been made by the Appellant/Petitioner on this issue:

- a. that in the impugned order, the Central Commission without considering the reasons for delay which are beyond the control of the Appellant, has proceeded on the assumption that 12 to 14 weeks time is reasonable time for completion of erection of tower and related work after the forest clearance and, accordingly, allowed three months.
- b. that the Central Commission has also condoned only one month for the delay due to rain without taking into consideration that due to heavy rain no work could be carried out after getting the Forest clearance on 20.7.2010 to October, 2010.
- c. that the Appellant in its affidavit, dated 21.10.2011, had provided the details of each activities for erection of tower and time required for such activities. The activity-wise time schedule mentioned in the affidavit is as under:
 - (i) For tree cutting and site clearance and handing over the site to the Appellant by the Forest Department : **5 to 6 weeks.**
 - (ii) Foundation casting including mobilization, shifting of material, marking, excavation, casting of footing and legs, curing, back filling to final backfilling : **5 weeks.**
 - (iii) Erection of tower : **2 to 3 weeks.**
 - (iv) Mobilization of T&P and stringing of complete section: **3 weeks.**
- d. that more importantly all these works were to be carried out in seriatim and could not be done simultaneously.

- e. that the Central Commission has failed to deal with the specific aspects of the difficulties experienced by the Appellant in completing the said activities. There are no road facilities in the forest area, therefore, it was difficult for mobilization of man and material at the project site. Further, the project site being in hilly area, all the activities for foundation casting, namely excavation, casting of footing and legs, curing, backfilling to final back filling were time consuming. Without considering the site condition prevailing at the relevant time, the Central Commission has wrongly held that 12 to 14 weeks time is reasonable for completion of all such activities.
- f. that, further, the Appellant could not carry out any of the work during the months of July to October, 2010 due to unprecedented rain. The Appellant by affidavit, dated 21.10.2011, had filed the newspaper cutting, dated 18.10.2010 (Lokmat), in respect of heavy rain fall during that season. However, the Central Commission has proceeded on the basis that the newspaper cutting was produced showing the heavy rains in the month of October, 2010. In the above newspaper, it was clearly mentioned that in the district in this season a total rain fall of 850.6 mm was recorded whereas it was 665.2 mm in the last year.
- g. that the time overrun was also due to non-availability of bays at Girwali substation of Maharashtra State Electricity Transmission Corporation Ltd (MSETCL). In its affidavit, dated 9.5.2012, the Appellant had clearly stated that 2 nos. of line reactors for Bhadrawati-Parli Transmission Line and 1 no. Bus Reactor could be charges on 31.3.2011, however, due to non-availability of bays at Girwali (Parli) sub-station of MSETCL, the system could not be declared under commercial operation till May, 2011 and July, 2011 for Bhadrawati – Parli (Asset II) and Parli-Parli Transmission Line and Wardha Parli Transmission Line respectively. The Central Commission ought to have

considered delay after 31.3.2011 as the Transmission lines were ready for commercial operation.

- h. that the Central Commission has failed to appreciate that the construction line of transmission was ready on 31.3.2011, but bays were available in May and July, 2011 as both the bays were necessarily required.
- i. that the Appellant had duly placed the relevant material on affidavit regarding the reason for delay in execution of the project, which could not be favorably considered by the Central Commission. It was then for the respondent beneficiaries to produce material to establish that the claim made by the Appellant was wrong.
- j. that the tariff determination process cannot be on assumption and surmises and should be based on reasoning. The Central Commission ought to have considered the relevant material placed with reference to the issues and passed the order after verification of such facts instead of proceeding on assumption. This Appellate Tribunal while dealing with such aspect, in its judgment, dated 13.12.2006, in Appeal No. 77, 78 and 79 of 2006 (North Eastern Electricity Supply Co. of Orissa Ltd. vs. Orissa Electricity Regulatory Commission) held that much reliance is placed on the status report submitted during the pendency of the appeal by the Special Officers appointed by this Appellate Tribunal. It is for the Regulatory Commission to take a relook of the entire matter, while undertaking truing up exercise. Immediately then the Commission hasten to add that the Commission need not stick to its earlier view, but it shall have a re-look in this respect by taking a practical view of the ground realities instead of proceeding on assumption and surmises.
- k. that, lastly, the Central Commission has failed to appreciate the situation that the Appellant could get the forest clearance after

a period of more than three years from the date of the investment approval and in such circumstances, it was not possible on the part of the Appellant to complete the work within the time limit or within 12 weeks of extended time.

7. Mr. Rishabh Donnel Singh appearing for the Respondent No.2 before us, has submitted that the reply filed by the Respondent No.1 be treated as written submission.

8. We have gone through the contents of the reply filed on behalf of the Respondent No.2, which we deal with as under:

(a) that the Appellant has filed impugned petition being Petition No. 97 of 2011, before the Central Commission for approval of tariff of the transmission asset from its commercial operation date (COD) till 31.3.2014. The investment approval was accorded on 24.7.2006 and the COD was due (within 48 months) on 24.7.2010. However, the COD was delayed by 10 months. The learned Central Commission condoned the delay of 4 months in COD and disallowed the delay for remaining six months. Consequently, disallowed the IDC and IEDC amounting to Rs.251.50 lakh in respect of time overrun on the assumption that 12 to 14 weeks time is reasonable for tree cutting and clearance of site, foundation casting and erection of tower, after the forest clearance was granted.

(b) that the Appellate had to erect only one tower in a small stretch of 0.8 Km in forest. The Appellant itself, vide its affidavit, dated 21.10.2011, before the Central Commission has submitted that a minimum five to six weeks time was taken by the Forest Department in tree cutting and site clearance, foundation casting with allied works takes five weeks, erecting of tower takes two weeks and stringing takes three weeks. Therefore, in

all, the learned Central Commission has rightly condoned the delay of 4 months on this count and disallowed the same for remaining 6 months.

- (c) that the Appellant has not been able to substantiate its stand that heavy rain-fall delayed the commissioning. The Appellant has not been able to bring on record any reliable report from Meteorological Department but has relied upon the newspaper cutting. It is settled law that news reflected in the newspapers is not reliable evidence. Therefore, in absence of an authentic report from Meteorological Department, the learned Central Commission has rightly not condoned the delay of remaining 6 months out of total 10 months.
- (d) that, lastly, even otherwise, in totality of the facts and circumstances of the case, the impugned order does not suffer from any illegality or infirmity. The Appeal merit dismissal.

9. **Our consideration and conclusion:**

9.1 In the instant Appeal, the Appellant/Petitioner (PGCIL), is aggrieved against the impugned order on the disallowance of the claim of the Appellant amounting to Rs. 251.50 lakhs on the ground that 12 to 14 weeks time as against the 10 months, as claimed by the Appellant, is reasonable time for completion of the work after the forest clearance was granted. The matter in issue in the instant Appeal is disallowance of the Interest During Construction (IDC) and Incidental Expenses During Construction (IEDC) by the Central Commission amounting to Rs.251.50 lakhs in respect of time over run of six months out of the 10 months claimed by the Appellant. The Central Commission, considering all the facts and circumstances of the case in the impugned order, has condoned/allowed the delay of 4 months against the claimed delay of 10 months in commissioning of Asset-II by the Appellant. The Central Commission passed the impugned order relying on the relevant facts given in the affidavit of the Appellant, dated 21.10.2011, filed before the Central Commission.

9.2 As per the Investment Approval (IA), dated 24.7.2006, the assets were scheduled to be commissioned within 48 months from the date of approval, that is, by July, 2010. **The Assets-I & II have been commissioned on 1.6.2011 and Asset III has been commissioned on 1.8.2011. Thus, there is delay in commissioning of Assets I and II by 10 months and the delay is 12 months in case of Asset-III.** It is established from the record that forest clearance was granted to the Appellant by the Ministry of Environment and Forest on 20.7.2010.

9.3 The Central Commission put a query to the Appellant/Petitioner as to how many towers were to be erected in the forest stretch of 0.8 km and ideally how much time should be taken for the same. The Appellant replied to the said query indicating that only one number tower was to be erected in forest stretch, however, each activity like tree cutting & site clearance, foundation casting, tower erection and stringing to be performed sequentially which takes a lot of time for completion. In the reply of the Appellant, activity time schedule was given. It is evident there-from that tree cutting, site clearance was done by the forest department and minimum 5 to 6 weeks time including award of tree cutting and clearance of trees and handling over site to Power grid was taken. In foundation casting activities, 5 weeks time was taken. For erection of tower, 2 to 3 weeks time was taken and 3 weeks time for mobilization of T&P and manpower including stringing of complete section was taken. If the schedule time is calculated at the maximum, it comes to around 16 weeks. These facts and time schedule were given by the Appellant in its affidavit, dated 21.10.2011 filed before the Central Commission.

9.4 The Central Commission again put a query to the Appellant asking for submitting documentary evidence from Indian Meteorological Department (IMD) for unprecedented rainfall in July and August, 2010. The Appellant has submitted a reply to the Central Commission on the same affidavit, dated 21.10.2011, that the data asked from Meteorological Department is not available with the Appellant/PGCIL.

9.5 Regarding availability of Bays extension in 400kV Girwali substation (Parli substation MSETCL), the Central Commission has put a query to the Appellant asking that when was the proposal for finalization of levels and providing work clearance form MSETCL first taken up and when was issuance of drawing by MSETCL first taken up with MSETCL and documentary evidence, if any, for it. The reply as given by the Appellant in the same affidavit is as under:

“... .. The issue regarding finalization of levels was settled on 01.04.2010, the site leveling was completed in 13.06.2010 and the same was handed over to the contractor on 25.06.2010 for construction of bays. a lot of time was consumed in site leveling and other activities of MSETCL S/S which led the considerable delay.

... .. that the Girwali is existing substation of MSETCL and the new bay work was to be done matching to existing substation layout and drawings. However, final drawings were collected in person from MSETCL at the end of May 2010. drawings furnished by MSETCL did not have the shop floor drawings and POWERGRID had to arrange preparation of shop floor drawings and fabrication of structures through their contractors M/s Siemens. This has resulted in delay of supply of structures.”

9.6 The Appellant has indicated four reasons for time overrun. We have considered the delay in grant of forest clearance by the Ministry of Environment and Forest, so called unprecedented rain during July to October, 2010, bad site condition and also non-availability of bays of MSETCL. The learned Central Commission, in the impugned order, has discussed the contents of the affidavits, dated 21.10.2011 and 9.5.2012, filed by the Appellant before the Central Commission and after making a detailed and deep analysis of the relevant contents of the affidavits, the Central Commission has passed the impugned order.

9.7 According to the learned counsel for the Appellant, 2 nos. of line reactors for Bhadrawati-Parli Transmission Line and 1 no. Bus Reactor could be charged on 31.3.2011, but due to non-availability of bays at Girwali (Parli) substation of MSETCL, the system could not be declared under commercial operation till May, 2011.

9.8 We have perused the impugned order cautiously and carefully. The learned Central Commission, while dealing with the 400 kV Parli Switching

Station and considering the delay of 10 months, has condoned the delay of 10 months holding that the said delay cannot be attributed to the Appellant-petitioner. The learned Central Commission, has in the impugned order, while dealing with bay extension in 400 kV Girwali (Parli) Sub-station of MSETCL (Asset III), has condoned the delay of 12 months holding the said delay not attributable to the Appellant-petitioner. Thus, the delay of 10 months in commissioning/completion of 400 kV Parli Switching Station as well as the delay of 12 months in commissioning/completion of bay extension in 400 kV Girwali (Parli) Sub-station of MSETCL (Asset III), has been condoned. It is evident from the impugned order itself that the bays at Girwali (Parli) Sub-station of MSETCL (Asset III) came into commissioning only in July, 2011, which delay, as stated above, has been condoned by the learned Central Commission in the impugned order. Thus, the bays at sub-station were commissioned after the completion of 400 kV Bhadrawati – Parli transmission line of the Appellant on 31.3.2011. We find force in the contention that 2 nos. line reactors for Bhadrawati-Parli Transmission Line (Asset-II) and 1 no. Bus reactor could get charged on 31.3.2011 but, due to non-availability of bays at Girwali (Parli) Sub-Station of MSETCL, the system could not be declared under Commercial operation till May'2011 for Bhadrawati-Parli (Asset-II). There appears to be no valid or convincing reason warranting the Central Commission to disallow the IDC and IEDC from 1.4.2011 to the actual commissioning/ completion of the 2 bays at Girwali (Parli) Sub-station of MSETCL and this much of delay should, in our view, be condoned. The Appellant has successfully contended for the condonation of delay from 1.4.2011 to the actual commissioning/completion of 2 bays at Girwali (Parli) Sub-station of MSETCL because due to non-availability of the said bays at sub-station of MSETCL, inspite of completion of the said transmission line of the Appellant, the transmission line could not be connected to the said sub-station of MSETCL, which could be connected only on the completion/ commissioning of the 2 bays at Girwali (Parli) Sub-station of MSETCL in May, 2011. We hold that the Appellant is entitled to IDC and IEDC for the period from 1.4.2011 till the actual

completion/commissioning of the said bay at the sub-station of MSETCL namely May, 2011.

9.9 The law propounded by this Appellate Tribunal in its judgment, dated 13.12.2006, in Appeal Nos. 77, 78 and 79 of 2006, holding that the Commission should relook in to the matter by taking a practical view of the ground realities instead of proceeding on assumption and surmises is not applicable to the instant Appeal because the learned Central Commission, after discussing the whole material including facts and circumstances of the matter, passed the impugned order.

9.10 The Appellant, inspite of furnishing documentary evidence called for by the Central Commission, did not furnish any documentary evidence except the affidavits regarding Meteorological Report simply saying that the said data are not available with the Appellant. The Newspaper cutting has no evidential value though the Central Commission has considered this aspect also while passing the impugned order. Since, no report from the Indian Meteorological Department (IMD) in documentary proof has been filed by the Appellant before the Central Commission to substantiate its claim of unprecedented rain fall during July, August and October, 2010, the learned Central Commission has rightly not relied upon the newspaper report because any event or fact reflected in the newspapers is not reliable evidence.

9.11 In view of the above discussions, we find that the impugned order of the learned Central Commission suffers from illegality and perversity so far as it disallowed the IDC and IEDC to the Appellant from April, 2011 to May, 2011 to the tune of Rs.63.04 lakh and 68.33 lakh respectively. The Appellant is entitled to the IDC and IEDC for the period from April, 2011 to May, 2011 when the bays at sub-station of MSETCL became ready because the transmission line of the Appellant was ready on 31.3.2011 but due to non-availability of bays at sub-station of MSETCL, the transmission system of the Appellant could not be declared under commercial operation till May, 2011.

9.12 The instant Appeal being Appeal No. 87 of 2014 deserves to be partly allowed.

10. **SUMMARY OF OUR FINDINGS:**

10.1 In the matter in question, investment approval for WRSSS-II was accorded on 24.7.2006, by the Ministry of Power, Government India for the Transmission project at an estimated cost mentioned in the Investment Approval. As per the investment approval, the said Transmission project was scheduled to be commissioned within a period of 48 months from the date of investment approval i.e. 23.7.2010. Forest clearance was applied by the Appellant on 1.12.2006 and the said forest approval was granted to the Appellant after a period of more than 3 years i.e. on 20.7.2010. According to the Appellant, the said project could be commissioned on 1.6.2011, after a delay of 10 months. The reasons for the time over run/delay of 10 months in the commissioning of the said transmission asset were delay in grant of forest clearance, unprecedented rain during July, August and October 2010, bad site condition and non-availability of bays at sub-station of Maharashtra State Electricity Transmission Corporation Ltd. (MSETCL).

10.2 The learned Central Commission, while dealing with the 400 kV Parli Switching Station and considering the delay of 10 months, has condoned the delay of 10 months holding that the said delay cannot be attributed to the Appellant-petitioner. Further, the Central Commission, has in the impugned order, while dealing with bay extension in 400 kV Girwali (Parli) Sub-station of MSETCL (Asset III), has condoned the delay of 12 months holding the said delay not attributable to the Appellant-petitioner. Thus, the Central Commission has condoned the delay of Asset-III of the Appellant in the same impugned order. The transmission line/Asset-II of the Appellant which is in question before us namely, Bhadrawati-Parli transmission line could be charged on 31.3.2011 because due to non-availability of bays at Girwali (Parli) Sub-Station of MSETCL, the transmission system of the Appellant could not be declared under

commercial operation till May'2011. The learned Central Commission has committed gross illegality and has taken erroneous view in disallowing the IDC and IEDC for the Asset-II of the Appellant for the period 1.4.2011 to May, 2011. This delay of two months namely, April & May, 2011, should have been condoned by the Central Commission in the impugned order because the transmission line of the Appellant (Asset-II) was ready in March, 2011 but could not be declared under commercial operation till May, 2011 due to non-availability of bays at Girwali (Parli) Sub-Station of MSETCL. When the long delay in Asset-III had been condoned by the Central Commission in the impugned order, this two months delay i.e. April & May, 2011 should have been condoned.

11. In view of the above discussions, the Appeal being Appeal No. 87 of 2014 is partly allowed and the impugned order, dated 27.1.2014, passed by the Central Commission in Petition No. 97 of 2011, is modified to the extent as observed above by us. We may further clarify that the learned Central Commission shall allow IDC and IEDC for the transmission line/Asset-II of the Appellant for the period from April, 2011 to May, 2011 and pass a consequential order within two months from the date of receipt of this order. No order as to costs.

PRONOUNCED IN THE OPEN COURT ON THIS 30TH DAY OF JANUARY, 2015.

**(T. Munikrishnaiah)
Technical Member**

**(Justice Surendra Kumar)
Judicial Member**

√ **REPORTABLE/NON-REPORTABLE**

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