

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY  
(Appellate Jurisdiction)**

**APPEAL NO. 80 OF 2017**

**Dated: 16.12.2024**

**Present: Hon'ble Mr. Sandesh Kumar Sharma, Technical Member  
Hon'ble Mr. Virender Bhat, Judicial Member**

**IN THE MATTER OF:**

**Power Grid Corporation of India Limited**

Saudamini, Plot No. 1,  
Sector-29, Gurgaon- 122001

**...Appellant**

**VERSUS**

1. **Central Electricity Regulatory Commission**  
3<sup>rd</sup> & 4<sup>th</sup> Floor, Chanderlok Building,  
36, Janpath, New Delhi- 110 001
2. **Rajasthan Rajya Vidyut Prasaran Nigam Limited**  
Through its Chief Engineer,  
Vidyut Bhawan, Vidyut Marg,  
Jaipur- 302 005
3. **Ajmer Vidyut Vitran Nigam Limited**  
Through its Chief Engineer,  
400 Kv GSS Building (Ground Floor)  
Ajmer Road, Heerapura, Jaipur – 305 004
4. **Jaipur Vidyut Vitran Nigam Limited**  
Through its Superintending Engineer,  
400 Kv GSS Building (Ground Floor)  
Ajmer Road, Heerapura, Jaipur - 302 005
5. **Jodhpur Vidyut Vitran Nigam Limited**  
Through its Superintending Engineer,  
400 KV GSS Building (Ground Floor),  
Ajmer Road,

Heerapura, Jaipur – 342 003

6. **Himachal Pradesh State Electricity Board**  
Through its Chief Engineer,  
Vidyut Bhawan  
Kumar House Complex  
Building II  
Shimla- 171 004
7. **Punjab State Power Corporation Limited**  
Through its Chief Engineer,  
Thermal Shed Tia,  
Near 22 Phatak  
Patiala- 147 001
8. **Haryana Power Purchase Centre**  
Through its Chief Engineer,  
Shakti Bhawan,  
Sector- 6 Panchkula (Haryana) – 134 109
9. **Power Development Department**  
Government of Jammu and Kashmir  
Through its Chief Engineer (Commercial & Survey Wing),  
Mini Secretariat,  
Jammu – 180 006
10. **Uttar Pradesh Power Corporation Limited**  
(Formerly Uttar Pradesh State Electricity Board)  
Through its Chief Engineer,  
Shakti Bhawan, 14, Ashok Marg  
Lucknow- 226 001
11. **Delhi Transco Limited**  
Through its Chairman,  
Shakti Sadan,  
Kotla Road  
New Delhi- 110 002
12. **BSES Yamuna Power Limited**  
Through its Ch. Manager (Power Purchase),  
BSES Bhawan, Nehru Place,  
New Delhi – 110 014

13. **BSES Rajdhani Power Limited**  
Through its Asst. Vice President (Power Management Group),  
BSES Bhawan,  
Nehru Place New Delhi – 110 019
14. **North Delhi Power Limited**  
Power Trading & Load Dispatch Group  
CENNET Building, Adjacent to 66/11 kV Pitampura-3  
Grid Building Near PP Jewellers,  
Pitampura New Delhi- 110 034
15. **Chandigarh Administration**  
Through its Chief Engineer,  
Sector 9, Chandigarh- 160 009
16. **Uttarakhand Power Corporation Limited**  
Through its Chairman,  
Urja Bhawan, Kanwali Road  
Dehradun- 248 001
17. **Northern Central Railway**  
Through its Chief Electrical Distribution Engineer,  
Allahabad- 211001
18. **New Delhi Municipal Council**  
Palika Kendra, Sansad Marg,  
New Delhi- 110 002

**...Respondents**

Counsel for the Appellant(s)	:	Mr. S.B. Upadhyay, Sr. Advocate Mr. Hemant Singh Ms. Shikha Ohri Mr. Matragupta Mishra
Counsel for the Respondent(s)	:	Mr. Sethu Ramalingam for R-1  Mr. Rajiv Srivastava for R-10  Mr. S.K. Chaturvedi for R-11  Mr. Raj Bahadur Sharma Mr. Mohit K. Mudgal

Mr. Apar Gupta for R-12 -13

## **JUDGEMENT**

### **PER HON'BLE MR. SANDESH KUMAR SHARMA, TECHNICAL MEMBER**

1. The Appeal No. 80 of 2017 has been filed by the Appellant i.e., Power Grid Corporation of India Limited (in short "PGCIL") challenging the order dated 20.05.2015 in Petition No. 109/TT/2013 passed by the Central Electricity Regulatory Commission i.e. the Respondent No.1 (in short "Central Commission" or "CERC" or "Commission").

#### ***Description of the Parties:***

2. The Appellant, Power Grid Corporation of India Limited, designated as the Central Transmission Utility under Section 38(1) of the Electricity Act, 2003, is required to develop, sustain, and manage an effective, coordinated, and cost-efficient Interstate Transmission System (ISTS).

3. Respondent No.1 is the Central Electricity Regulatory Commission, inter-alia vested with the function of regulating the tariff of generating companies, regulating the inter-state transmission of electricity, issuing licence to persons to function as transmission licensees and electricity traders with respect to their Inter-State operations, etc.

4. Respondent Nos. 2 to 14 and 16 are the beneficiaries of the transmission system of the Appellant.

#### ***Factual Matrix of the Case***

5. After various Standing Committee and Regional Power Committee meetings of Northern, Southern, Western, and Eastern Region, a requirement of comprehensive transmission schemes for the import of power from ER to NR, WR, and SR was evolved, inter-alia, the scope of the "North-East - Northern/ Western Interconnector-I" scheme was discussed and agreed in the following RPC's and Standing Committee meetings:

Northern Region

23rd Standing Committee Meeting (Northern Region) on 16.02.2008.

NER

6th TCC & 6th NERPC meeting on 7th & 8th Aug 2008.

6. Following the deliberations held during the 18<sup>th</sup> Standing Committee Meeting on Power System Planning for the Northern Region on 06.06.2005 and the 22<sup>nd</sup> Standing Committee Meeting on 12.03.2007, investment approval was secured on 07.08.2008, for the *"Common Scheme for 765 kV Pooling Stations and Network in the Northern and Western Regions"*, this approval included the current transmission system, specifically the 240 MVAR Bus Reactor and associated bays at the 765/400 kV Agra sub-station.

7. Thereafter, on 29.08.2008, the Memorandum No. C/CP/DVC (in short "MOU") was issued by the Board of Directors of the Appellant according to the Investment Approval for *"Common Scheme for 765 kV pooling stations and network in NR and WR"*.

8. Although investment approval for the Common Scheme of the DVC project was granted, the Appellant opted to acquire land for both the HVAC substation and HVDC substation at Agra, as the investment approval for the

"North-East - Northern/Western Interconnector-I" was still pending, the petitioner initiated the process of obtaining board approval to incur pre-expenditure for the land acquisition at Agra for the HVDC substation.

9. After the issuance of the MOU dated 29.08.2008, the Appellant secured a Pre-Investment Expenditure Approval from its Board of Directors on 18.11.2008, for the HVDC scheme, which was part of the "North East - Northern/Western Interconnector - I Project." This investment approval was sought after obtaining the concurrence and approval of the constituents from the North Eastern Region (NER), Northern Region (NR), and Western Region (WR) during the respective meetings of the Standing Committee on Transmission System Planning for each region.

10. The Investment Approval for the HVDC portion was still pending due to the unresolved Bulk Power Transmission Agreement that needed to be executed with the beneficiaries.

11. Thereafter, the Board approved incurring pre-expenditure towards the land acquisition at Agra under the "North-East-Northern/ Western Interconnector-I" scheme as investment approval for the HVDC system was anticipated on 10.12.2008.

12. Further, a payment of Rs. 13.20 Crores, for incurring Pre-investment expenditure approved by the Board of Directors on 10.12.2008, was approved vide Note No. NR-I/SG/SS.

13. After getting the Board approval for Pre-expenditure under the "North-East - Northern/ Western Interconnector-I" scheme, a Draft of Rs. 13.2 crore was submitted to the ADM (LA) office as demanded for land compensation.

14. In response to the submission of Rs. 13.2 Crores ADM, Agra sent a letter dated 16.02.2009 with an additional demand of Rs. 14.89 Crores against the land compensation as the circle rates at concerned land were revised from Dec'2007 to Dec'2008.

15. The Investment Approval for the "North-East - Northern/ Western Interconnector-I" was accorded to the Appellant and a Memorandum to the said effect was issued on 27.02.2009.

16. The Appellant immediately submitted a Draft of Rs. 14.89 crores to the ADM (LA) office, as such a total payment of Rs. 28.10 crores was deposited by the Appellant as demanded by ADM (LA).

17. Further, a letter dated 06.06.2009 was sent to DM, Agra for the acquisition of land under emergency provisions, and the acquisition proposal was submitted to the Directorate of Land Acquisition Office at Lucknow for Sec-IV notification on 21.08.2009.

18. The Uttar Pradesh Government issued Section IV notifications for land acquisition on 23.11.2009, and 13.05.2010, which were published in local newspapers on 8.10.2009, and 10.06.2010, respectively. Additionally, Section IX notifications and hearings of objections by villagers were conducted from July 12 to July 15, 2010.

19. Thereafter, a meeting was held with affected land owners and the Appellant officers regarding land compensation. The land owners gave their consent on Rs. 580 per square meter on 05.01.2011.

20. ADM (LA) gave the possession certificate of land to the Appellant after disbursement of the land compensation amount to affected land owners on 12.05.2011.

21. The Scheduled Date of Commercial Operation (in short "COD") of the transmission system was 01.09.2012 which is 48 months from the date of issuance of Memorandum No. C/CP/DVC (MOU) dated 29.08.2008 approving the grant of Investment Approval.

22. However, the COD for the transmission system was achieved on 01.01.2013.

23. The Appellant filed Petition No. 109/TT/2013 before the CERC on 13.05.2013 for the determination of transmission tariff from 01.01.2013 to 31.03.2014 for the 240 MVAR Bus Reactor at Agra under the "*Common Scheme for 765 KV pooling stations and Network in NR and WR*" for the 2009-14 tariff period.

24. Respondent Commission passed the Impugned Order in Petition No. 109/TT/2013 on 20.05.2015, being aggrieved by the said order, the Appellant preferred a review petition no. 16/RP/2015 on 17.07.2015 and thereafter filed a written submission in support of its plea for condonation of time over-run of four months and capitalization of Rs. 14.89 Crores incurred as additional compensation towards the land acquisition cost.

25. However, the Review Petition No. 16/RP/2015 was dismissed on 22.08.2016.



26. Aggrieved by the Impugned Order in Petition No. 109/TT/2013 passed on 20.05.2015, the Appellant has preferred the present appeal.

### ***Submissions of the Appellant***

27. The Appellant has filed the captioned appeal on the following two issues:

- i. Disallowance of delay of four (4) months and the consequential disallowance of IDC/IEDC of Rs. 70.67 Lacs; and
- ii. Disallowance of capitalization of Rs. 14.89 Crores incurred additionally on account of the land acquisition at an enhanced circle rate.

28. The Appellant submitted that they are challenging the Commission's decision in Petition No. 109/TT/2013, focusing on two key issues. First, the Commission disallowed a 4-month delay, rejecting claims of an additional Rs. 70.67 lakhs for Interest During Construction (IDC) and Incidental Expenditure During Construction (IEDC) related to the Agra transmission system, Second, it denied capitalizing of Rs. 14.89 crores for transmission charges incurred due to increased land acquisition costs.

29. The Appellant's argument revolves around three main points which are as follows:

- (i) explaining the one-year delay (December 2007 to December 2008) in depositing payment for land acquisition;
- (ii) clarifying the 16-month delay in obtaining possession of the land from the ADM (LA), Agra, which led to a 4-month time overrun; and
- (iii) demonstrating the efficient and optimal use of resources by the Appellant.

30. The Appellant submitted that the transmission system was originally scheduled for progressive commissioning within 48 months from the Investment Approval dated 29.08.2008, with a target completion by 01.09.2012. However, the system was only commissioned on 01.01.2013 after a delay of 4 months. The Commission denied the Appellant's claim for IDC/IEDC costs amounting to Rs. 70.67 lakhs and an additional capital cost of Rs. 14.89 crores. This denial was based on a one-year delay in the Appellant depositing the required amount for land acquisition with the ADM (LA), Agra, which resulted in the time overrun and an increased circle rate, causing the Appellant to pay Rs. 14.89 crores more.

31. The Appellant further argued that the Commission's conclusion attributing the 4-month delay solely to the Appellant is unjustified and lacks factual support. The Commission ignored the evidence and justifications provided. The Appellant explained that it could not fulfill the land acquisition payment demand from the ADM (LA), Agra on 04.12.2007, because it only had pre-investment approval for Rs. 9.97 crores from the PIB, Ministry of Power (MoP). Since the project exceeded INR 500 crores, the Appellant, being a "Mini-Ratna" Central Public Sector Undertaking (CPSE), lacked the financial autonomy to approve the scheme through its Board of Directors and required approval from the Public Investment Board (PIB) of the Ministry of Power.

32. The Appellant argued that the delay was due to factors beyond its control. Key events include discussions of the project in 2007, submission of the Feasibility Report to the Ministry of Power (MoP), and the issuance of a pre-investment expenditure of Rs. 9.97 crores.

33. However, a demand for 80% of the total of Rs. 14.669 crores was raised by ADM (LA), Agra even before the necessary approvals were received by the

Appellant. The Appellant only gained the "Navratna" CPSE status on 01.05.2008, allowing it to accord investment approval through its Board of Directors, which was followed by full investment approval on 29.08.2008 and the eventual deposit of Rs. 13.20 crores in December 2008.

34. The Appellant stated that the delay in receiving investment approval before 01.05.2008, and the absence of the approved pre-investment expenditure, were beyond its control. Therefore, the Appellant should not be held liable for the 4-month time overrun. The Appellant highlighted that the Commission in similar cases has acknowledged that delays due to decision-making by government agencies are uncontrollable and should not result in penalties. As a result, the Appellant submitted that the Commission's findings attributing the delay solely to the Appellant lack merit and should be rejected.

35. The Appellant further argued that the Commission wrongfully attributed the delay solely to the Appellant, while ignoring the undisputed delay caused by ADM (LA), Agra in granting possession of the land. Despite the Appellant making the payment on 23.02.2009, it only obtained possession of the land on 12.05.2011 which is more than 24 months later. Even with this significant delay, the Appellant limited the time overrun to just 4 months. The Commission, however, penalized the Appellant instead of recognizing its efficient use of resources and effective project implementation.

36. The Commission has previously acknowledged that land acquisition typically requires around one year from the date of investment approval. Reliance is to be placed on the Commission's Order dated 21.11.2019 in Petition No. 105/TT/2018, where it condoned delays in land acquisition beyond one year, recognizing such delays as beyond the control of the concerned party. The Appellant argued that this precedent should apply to its case, and

the time overrun attributed to land acquisition delays should not result in penalties. The relevant extract is as follows:

*“45. The Petitioner has attributed the time overrun in case of Asset-I and Asset-II to delay in getting land acquisition for the Daltonganj Substation, delay due to retendering of LOA and delay due to obstruction from JUSNL transmission line. The Petitioner had made application for 40.10 acre of land on 27.5.2009 much before i.e. about one year prior to the Investment Approval of 2.7.2010. Thereafter, the Petitioner vide letter dated 20.3.2010, deposited ₹ 4 crore towards land acquisition. The Petitioner, followed it up with letters dated 14.5.2010, 8.6.2010, 4.8.2010, 19.10.2010, 28.10.2010, 3.11.2010, 14.12.2010, 15.12.2010, 23.3.2011, 18.3.2011, 27.6.2011, 12.9.2011, 9.11.2011, 23.11.2011, 20.1.2012, 19.3.2012 and 10.4.2012. The Petitioner obtained certificate of possession of land on 31.7.2015. The time period prior to Investment Approval date of 2.7.2010 is not condonable as the same is considered under normal scheduled activity. Normal time in land acquisition is about one year from date of IA. However, the time taken for obtaining land was from 2.7.2010 to 31.7.2015 (1855 days). Therefore the time delay of about 1490 days (1855-365) due to acquisition of land is beyond the control of the Petitioner and the same has been condoned.”*

37. The Appellant further contended that the Commission's observations regarding delays before Investment Approval did not consider situations where approval had to be granted by the PIB, Ministry of Power. The Appellant therefore relies on the Commission's own acknowledgment that delays in land

acquisition beyond one year should be condoned. In this case, there was a 16-19-month delay in acquiring land, yet the Appellant limited the overall project delay to just 4 months through efficient project execution. Given the circumstances, the Commission should have condoned the 4-month delay in commissioning.

38. Therefore, the Commission failed to appreciate the full factual context and the interdependencies between these delays. It oversimplified the situation and relied on insufficient justifications to place sole responsibility on the Appellant. Additionally, the Commission failed to adopt a balanced, holistic approach as required by its role under the Electricity Act, 2003.

39. The Appellant submitted that the consolidated land acquisition for both the HVAC and HVDC schemes agreed in 2008 and 2009, led to resource optimization and cost savings for the Respondent beneficiaries. According to the Respondent Commission's reasoning, if the Appellant had followed the old circle rate for acquiring 17.3 acres for HVAC, it would have cost Rs. 2.84 crore. Later, upon receiving investment approval for the HVDC scheme, 96.61 acres would have been acquired at the new circle rate for Rs. 30.40 crore. This would have totaled Rs. 33.24 crore. However, by acquiring land for both schemes together at once, the Appellant spent only Rs. 28.09 crore, saving Rs. 5.15 crore, which directly benefited all the beneficiaries.

40. The Appellant further contended that by consolidating the land acquisition for both HVAC and HVDC substations, they reduced the total land requirement from 113.91 acres to 98.45 acres, resulting in a cost of Rs. 28.09 crore. Despite these efficiencies, the Respondent Commission disallowed Rs. 14.89 crore in land acquisition costs. This consolidation further saved costs related to additional transmission lines, switchgear, land compensation,

infrastructure, and other operational expenses, which would have significantly increased overall costs. Therefore, the disallowance by the Commission is unjustified.

41. Despite complying with procedural requirements to avoid Right of Way (ROW) issues, the Respondent Commission ignored key affidavits dated 23.12.2013 and 19.12.2014 submitted by the Appellant. Under the Electricity Act, 2003, the Appellant, as a Central Transmission Utility (CTU), is responsible for ensuring an efficient and economical Inter-State Transmission System. The Appellant argued that the Respondent Commission, as a sector regulator, must balance consumer interests with the Appellant's right to a reasonable return and should have taken a holistic view when evaluating the implementation of both substations.

42. The Commission, in its Impugned Order dated 20.05.2015, failed to consider key factors such as the time needed for a cost-benefit analysis, Right of Way (ROW) issues, and mandatory statutory compliances under the Land Acquisition Act, 1894.

43. The Appellant submitted that Respondents 12 and 13 argued that the Appellant, in an Inter-Office Memo dated 30.08.2008, acknowledged responsibility for the delay in the project. The relevant extract from the circular reads as under:

*“In view of our inability to submit the required amount in more than 8 months, we are facing difficulty in approaching the authorities for any assistance as we have failed on all our commitments and assurances given to them regarding submission of the dues.”*

44. The Appellant denies that the internal memo from 30.08.2008 constitutes an admission of delay. It clarifies that the memo was intended to seek urgent Board approval for pre-investment expenditure, and the "inability" mentioned refers to factors beyond the Appellant's control. At the time of the demand from ADM (LA), Agra, there was no approval for pre-investment expenditure or the HVDC system, and the Appellant requested this Tribunal to consider the issue based on all the evidence.

### ***Submissions of Respondent No. 1***

45. Respondent No. 1 referred to the Impugned Order dated 20.05.2015, and stated that the order thoroughly addresses the four-month delay in commissioning the assets and provides reasons for not condoning it. The order highlights that the one-year delay in depositing the amount requested by the District Administration is the primary cause of both time and cost overruns. This issue has also been discussed in the Review Petition No. 16/RP/2015 order dated 23.08.2016. The relevant extract from the order dated 23.08.2016 is as follows:

*“14. In the impugned order, the Commission had disallowed the revised land cost on the ground that the petitioner failed to deposit the required money for one year and in the meantime the circle rates were revised. On perusal of the letters dated 5.12.2007 and 16.2.2009 placed on record by the petitioner in the Petition No. 109/TT/2013 vide affidavit dated 19.12.2014, it is revealed that the requirement of land for the HVAC and HVDC system in Agra was already identified as 36.1228 ha in 5.12.2007 itself and the tentative cost of the identified land was*

*Rs. 16,13,66,471/-. The Review Petitioner was directed to deposit of Rs. 2,93,39,358/- in the office of ADM, Agra. It is further observed from the ADM, Agra letter dated 16.2.2009 that the petitioner deposited Rs. 13,20,27,113/- on 22.12.2008 along with fresh proposal after a year. In the mean time, the circle rates of land have been revised. Based on the fresh acquisition proposal for 35.4728 ha of the land identified for HVAC and HVDC systems, the District Administration demanded additional amount of Rs. 14,89,70,745/-. It has been clearly motioned as under:-*

*“It is mentioned that presently, District Magistrate, Agra has amended the circle rate. On that basis compensation was recalculated. Since you have submitted fresh acquisition proposal, calculation of amount of appropriate compensation would be done on the basis of present circle rate.”*

46. Given the circumstances, the Appellant is not entitled to the reliefs sought in the appeal.

47. Further, submitted that a similar issue concerning significant delays due to land acquisition was addressed by CERC in Petition No. 85/TT/2015. In that case, the transmission tariff for eight assets under the Eastern Region Strengthening Scheme – III (ERSS-III) was determined by an order dated 24.02.2017. The commissioning of these assets faced substantial delays, ranging from 16 months and 23 days for Asset-1 to 36 months and 19 days for Asset-7. Multiple factors contributed to these delays, with land acquisition delays being a key cause for most of the assets. CERC’s findings in the order on the condonation of delay are reproduced below:



“27. We have considered the submissions of the petitioner. As regards Assets-1, 2, 3 and 4, there is delay of 16 months 23 days in Asset-1, 18 months and 23 days in Asset2, 21 months and 26 days in Asset-3 and 22 months and 21 days in Asset-4 respectively. The petitioner started the process of land acquisition on 2.11.2009 and the certificate of possession was received on 31.3.2009(sic), however, the actual possession of land was received only in August, 2012. The total time taken for acquisition of land is 33 months. On perusal of information submitted by the petitioner, it is observed that the petitioner approached the District Land Acquisition Officer for acquisition of land on 2.11.2009 that is 9 months before the Investment Approval. The petitioner vide letter dated 4.8.2010 requested Land Acquisition Officer, Lakhisarai for acquisition of land at Lakhisarai for construction of 400 kV Sub-station at Lakhisarai. Thereafter, the petitioner vide letter dated 2.12.2010, after a delay of approximately 4 months, deposited four crore rupees towards land acquisition and requested the DC, Lakhisarai for early issue of Section IV and VI notifications. The petitioner, vide letter dated 24.9.2011, requested DC, Lakhisari for allotment of land and followed it up with letters dated 21.10.2011, 31.10.2011, 15.11.2011, 21.12.2011, 30.12.2011, 23.2.2012 and 31.3.2012 to District Land Acquisition Officer/DM/SDM. The petitioner obtained certificate of possession of land on 31.3.2012. The petitioner also wrote various letters to District Magistrate regarding the land acquisition problems and the last such letter was on 26.9.2013. The time delay from 4.8.2010 to 26.9.2013 is 27 months 22 days. The petitioner has claimed delay of 2 to 3 months (August to October 2012) due to water

*accumulation and heavy rains. Rains during August to October 2012 are a normal phenomenon. Though the petitioner has submitted the images of rain effected area, the petitioner has not submitted any valid documentary evidence to substantiate that rain and water accumulation was abnormal. Hence, the delay due to rain and water accumulation is not condoned. It is observed that the petitioner wrote a letter to the District Land Acquisition Officer on 9.8.2010 and the next letter was written on 2.12.2010 to the District Officer requesting for land for sub-station in Lakhisarai. The details of the period of time overrun condoned and not condoned in the case of Lakhisarai are given below:*

9.8.2010	to	The petitioner wrote a letter to the District Land Acquisition Officer on 9.8.2010 and the next letter was written on 2.12.2010 to the District Officer requesting for land for sub-station in Lakhisarai. The petitioner has not explained intervening period between 9.8.2010 to 2.12.2010. Hence, the time over-run of 3 months 23 days is not condoned.
2.12.2010	to	The petitioner received the certificate of possession of land on 31.3.2012. It took 15 months 29 days to get the letter of possession of land. Normally,
31.3.2012		

	<p><i>land acquisition process involves various steps like social impact assessment, expert group appraisal, preliminary notification, declaration to award, and award to possession of land by collector which the petitioner is expected to factor in the time schedule. The petitioner has not explained the period between 2.12.2010 to 31.3.2012 and it is difficult to assess the time taken at various stages of land acquisition. As such, we are not inclined to condone time overrun of 12 months on this account. Accordingly, out of 15 Months and 29 days period, 3 months 29 days is condoned.</i></p>
<p><i>31.3.2012 to Actual possession of Land i.e. August, 2012</i></p>	<p><i>Though the certificate of possession of land was received on 31.3.2012, the actual possession of the land was received only in August, 2012. It took 4 months to get possession of land. During this period, the petitioner took various steps to get possession of land and we are of the view that the delay in getting actual possession of land is beyond the control of the</i></p>

	<i>petitioner. Accordingly, the time delay of 4 months is condoned.</i>
<i>August, 2012 to 26.9.2013</i>	<p><i>There is time over-run of 13 months 25 days. The petitioner has not submitted any documentary evidence for delay between August, 2012 to 27.5.2013. Hence, the period from August, 2012 to 27.5.2013 is not condonable.</i></p> <p><i>The time period from 28.5.2013 to 26.9.2016 (4 months 28 days):- Regarding this period, the petitioner has submitted two letters dated 28.5.2013 and 26.9.2013 written to District Administration, to establish that it was pursuing the matter. On perusal of the letter dated 26.9.2013 submitted by the petitioner, it is observed that out of 1.5 acres of additional land required, 0.55 acres of land was handed over in May, 2013 and 0.95 acres of land was not handed over to the petitioner. Hence, the time over-run from the period 28.5.2013 to 26.9.2016 (4 months 28 days) is not attributable to the petitioner and is condoned</i></p>

<i>Time overrun condoned</i>	<i>Time over-run of 12 months and 27 days is condoned in case of Assets-1, 2, 3 and 4.</i>

*“28. There is a time over-run of 24 months 26 days in case of Assets-5, 6 and 8. The petitioner has submitted that the process of acquisition of private land started on 31.8.2009. A letter from SDO regarding difficulty in acquisition of land was received on 12.8.2010. Fresh proposal for alternate land was submitted on 19.5.2011 and agreement signed with land owner on 17.7.2012 and possession of land was received on 22.4.2013. The process of acquisition of government land started simultaneously on 31.8.2009 and land was acquired on 18.6.2013. The process of acquisition of alternate land started on 31.8.2009 and acceptance for alternate land was given on 16.9.2010 by the petitioner and rigorous efforts made by the petitioner resulted in getting possession of private alternate land on 22.4.2013. The process took 44 months to acquire the land. On perusal of information submitted by the petitioner, it is observed that the petitioner approached Land Acquisition Officer, Chaibasa for acquisition of land (both private and government land) on 31.8.2009 that is 10 months 6 days before the Investment Approval. Thereafter, the petitioner vide letter dated 7.10.2010 wrote a letter to Chairman, JUSNL with regard to acquisition of land at Chaibasa. The petitioner vide letter dated 19.5.2011 requested DC, Chaibasa for alternate land. The petitioner also wrote various letters dated 31.8.2009, 12.8.2010, 25.6.2010, 23.9.2010, 9.10.2010, 23.10.2010, 8.6.2011, 29.6.2011,*

27.7.2011, 17.8.2011, 9.9.2011, 4.6.2012, 20.4.2013, 19.6.2013 to District Land Acquisition Officer, Chaibasa/Dy. Commissioner, Chaibasa. The petitioner obtained certificate of possession of land on 4.6.2012. The petitioner wrote letter to District Administration on land acquisition and the last letter in this regards was on 31.1.2013. The details of the period of time over condoned and not condoned in the case of Chaibasa are given below:-

7.7.2010 to 19.5.2011 ( 10 months 12 days)	<p>Time period 7.7.2010 to 19.5.2011.</p> <p>The petitioner has submitted the copy of the correspondence made with the Deputy Commissioner, Chaibasa vide letters dated 25.6.2010, 22.10.2010 regarding land acquisition for construction of 400/220 kV sub-station at Chaibasa. Therefore, the time over-run of 3 months 15 days is condoned. However, the petitioner has not explained the period between 22.10.2010 to 19.5.2011 (6 Months 27 days) and hence we are of the view that the delay 6 months 27 days is attributable to the petitioner and hence it is not condoned. Accordingly, out of 10 months and 12 days, 3 months and 15 days is condoned</p>

<p>19.5.2011 to 22.4.2013 (23 months 17 days)</p>	<p><i>Time period – 19.5.2011 to 22.4.2013.</i></p> <p><i>The petitioner has submitted documentary evidence explaining the action taken during the period 19.5.2011 and 20.8.2011 (3 months). Accordingly, the time over-run of 3 months is condoned.</i></p> <p><i>The petitioner has not explained the period from 14.12.2011 to 16.6.2012(6 months 2 days) through any evidence and hence the time over-run of 6 months 2 days is not condoned.</i></p> <p><i>The petitioner has submitted that an agreement was signed with land owners on 17.7.2012. However, the petitioner has not submitted any documentary evidence. The period from 16.6.2012 to 14.2.2013 has not been explained by the petitioner. Hence, we are not inclined to condone time overrun of 7 months 29 days on this account.</i></p> <p><i>The time taken for acquisition of government land i.e. up to 31.1.2013,</i></p>
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	<i>is subsumed in the time taken for acquisition of private land.</i>
<i>Time over-run condoned</i>	<i>The time over-run of 6 months and 15 days is condoned in case of Assets-4, 5 and 8.</i>

29. There is a time over of 36 months and 19 days in case of Asset-7. .... The details of time over-run condoned and not condoned in case of the instant assets are summarized below:-

<i>Assets</i>	<i>Time over-run in Commissioning of asset</i>	<i>Time over-run condoned</i>	<i>Time over-run not condoned</i>
<i>Asset-1</i>	<i>16 months 23 days</i>	<i>12 months 27 days</i>	<i>3 months 26 day</i>
<i>Asset-2</i>	<i>18 months 23 days</i>	<i>12 months 27 days</i>	<i>5 months 26 day</i>
<i>Asset-3</i>	<i>21 months 26 days</i>	<i>12 months 27 days</i>	<i>8 months 29 day</i>
<i>Asset-4</i>	<i>22 months 21 days</i>	<i>12 months 27 days</i>	<i>9 months 24 day</i>
<i>Asset-5</i>	<i>24 months 26 days</i>	<i>6 months 15 days</i>	<i>18 months 11 days</i>
<i>Asset-6</i>	<i>24 months 26 days</i>	<i>6 months 15 days</i>	<i>18 months 11 days</i>
<i>Asset-7</i>	<i>36 months 19 days</i>	<i>20 months 15 days</i>	<i>16 months 04 days</i>



Asset- 8	24 months 26 days	6 months 15 days	18 months 11 days
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48. A summary of similar delay-related cases handled by the Respondent Commission is provided as follows:

A. In Petition No. 203/TT/2012, the Respondent Commission addressed a four-month delay in commissioning transmission assets. The Petitioner attributed the delay to land acquisition and reactor supply issues. Upon detailed review, the Central Commission found that the delay was not caused by land acquisition, as the land was available on time. The Commission determined that the delay was due to the late receipt of the Bus Reactor, which was the result of the Petitioner's prioritization of work. Consequently, IDC (Interest During Construction) and IEDC (Incidental Expenditure During Construction) were disallowed for the four-month delay in the order dated 09.05.2013.

B. In Petition No. 110/TT/2013, there was a 32-month delay in commissioning. The petitioner, through an affidavit dated 20.12.2013, explained that the delay was primarily due to land acquisition issues at Jind Sub-station, with the State Government delaying land possession by 28 months. After a thorough review of the event timeline, the Respondent Commission, in its order dated 29.02.2016, made the following conclusions.

*“We are convinced that Petitioner has diligently pursued with the concerned authorities to expedite the process of land acquisition. However, it is noticed from the documents placed on record that there is a delay in placing the award of supply. The delay in award of supply is consequential to land acquisition, however, it is not*

*clearly explained and quantified by the petitioner that how much delay is attributable to the land acquisition. The delay of 10 months is therefore condoned, subject to sustenance of justifications in support of delay in placing the award of work at the time of truing up. The petitioner is directed to quantify the delay in placing of award for supply in terms of the reasons attributable to the land acquisition at the time of truing up. Subject to above, the time over-run of 10 months is condoned.”*

C. In Petition No. 34/TT/2013, a 3-month delay was due to land acquisition issues with the J&K Government. The Commission analyzed the case and issued its findings in the order dated 09.03.2016.

*“The delay in obtaining permission of land acquisition is controllable in nature, however, it is observed that the delay in this case is on account of processing by Government agencies, which is not directly attributable to the petitioner. It is further observed that disturbance caused due to increased militant activities, curfew situations and severe snowfall and rains during 2012-13 period were the additional factors responsible for the time over-run. We are of the view that the time over-run of 3 months in commissioning of the transmission asset is beyond the control of the petitioner and therefore it is condoned. Accordingly, IDC and IEDC for 3 months are capitalized.”*

49. Further submitted that APTEL's prudence check principles from its judgment dated 27.04.2011 in Appeal No. 72 of 2010, Maharashtra State Power Generation Co Ltd. Vs. Maharashtra State Electricity Regulatory Commission & Ors. are relevant for reviewing time overrun cases.

*“7.4. The delay in execution of a generating project could occur due to following reasons:*

*i) due to factors entirely attributable to the generating company, e.g., imprudence in selecting the contractors/suppliers and in executing contractual agreements including terms and conditions of the contracts, delay in award of contracts, delay in providing inputs like making land available to the contractors, delay in payments to contractors/suppliers as per the terms of contract, mismanagement of finances, slackness in project management like improper co-ordination between the various contractors, etc.*

*ii) due to factors beyond the control of the generating company e.g. delay caused due to force majeure like natural calamity or any other reasons which clearly establish, beyond any doubt, that there has been no imprudence on the part of the generating company in executing the project.*

*iii) situation not covered by (i) & (ii) above.*

*In our opinion in the first case the entire cost due to time over run has to be borne by the generating company. However, the Liquidated Damages (LDs) and insurance proceeds on account of delay, if any, received by the generating company could be retained by the generating company. In the second case the generating company could be given benefit of the additional cost incurred due to time over-run. However, the consumers should get full benefit of the LDs recovered from the*

*contractors/suppliers of the generating company and the insurance proceeds, if any, to reduce the capital cost. In the third case the additional cost due to time overrun including the LDs and insurance proceeds could be shared between the generating company and the consumer. It would also be prudent to consider the delay with respect to some benchmarks rather than depending on the provisions of the contract between the generating company and its contractors/suppliers. If the time schedule is taken as per the terms of the contract, this may result in imprudent time schedule not in accordance with good industry practices. 7.5. In our opinion, the above principles will be in consonance with the provisions of Section 61(d) of the Act, safeguarding the consumers' interest and at the same time, ensuring recovery of cost of electricity in a reasonable manner”*

50. Therefore, the delays in project commissioning are caused by multiple factors, and decisions on condonation depend on individual cases as referred to above, hence, the reasons for disallowing time and cost overruns in the Impugned Order should be considered in the current appeal.

**51. In all the above cases it can be seen that the delays are either because of government authorities or not under the control of the developers, accordingly, the CERC condoned such delays as not attributable to the developer.**

### ***Submissions of Respondent No. 10***

52. Respondent No. 10 submitted that the present appeal challenges the CERC order dated 20.05.2015 in Petition No. 109/TT/2013, but the Appellant

has not contested the subsequent review order dated 22.08.2016, which is a detailed, speaking order and does not merge with the original order. The Appellant raised new grounds in the review petition, which were addressed and rejected by the CERC in the review order. These same grounds have been raised again in the present appeal (No. 80 of 2017) without challenging the review order, which has now attained finality. Hence, the appeal is argued to be not maintainable.

53. In this appeal, the Appellant has sought capitalization of ₹14.89 crores for land acquisition costs. However, the CERC, in its review order dated 22.08.2016, noted that the reasons for the cost variation in the review petition differed from those provided in the original petition. In the original order dated 20.05.2015, the CERC disallowed the revised land cost claim due to the Appellant's failure to deposit the required funds for one year with the ADM, Agra, citing technical reasons as per the Appellant's affidavit dated 23.12.2013. In the review petition, the Appellant provided a new reason, stating that the delay was due to combining resources for consolidated land acquisition for HVAC and HVDC substations. The CERC rejected the new grounds in the review petition, as it is legally impermissible to introduce new reasons in a review, and the claim was disallowed.

54. Further submitted that the Appellant has raised the same grounds in the present appeal that were previously disallowed by the CERC in the review order dated 22.08.2016, specifically concerning the capitalization of ₹14.89 crores for land acquisition costs. These grounds, particularly the consolidated land acquisition argument, were rejected in the review order, which has not been challenged by the Appellant. It is a settled legal principle that new grounds cannot be raised at the appellate stage, and in this case, the Appellant is reintroducing previously rejected grounds without contesting the review

order. Since the review order addressed new issues and did not merge with the original order, it has now attained finality and cannot be disturbed without a specific challenge.

55. In light of the preceding submissions, it is argued that the Appellant is not entitled to the requested reliefs, and the current appeal should be dismissed.

### ***Submissions of Respondent No. 12 and 13***

56. The submissions of Respondent nos. 12 and 13 are identical and, accordingly, considered as one joint submission only.

57. Respondents submitted that CERC disallowed the claim for Interest During Construction (IDC) and Incidental Expenditure During Construction (IEDC) amounting to ₹70,67,000/- due to a four-month delay in the completion of the project. The Commission reasoned that the costs incurred during the delay period were unjustified and should not be passed on as part of the overall project expenditure, as timely completion was essential. Hence, CERC rightly rejected these claims, holding the Appellant accountable for the delay. CERC vide order dated 20.05.2015 has held that:

*“16. As per the Investment Approval dated 29.8.2008, the instant asset was scheduled to be commissioned by 1.9.2012. However, the asset was commissioned on 1.1.2013. Thus, there is time over-run of 4 months. The petitioner submitted that the time over-run is due to delay in acquisition of land for 765 kV sub-station at Agra. The Commission directed the petitioner to submit the following information on affidavit:-*

*i. 2 network chart;*

ii. Detailed reason along with documentary evidences and chronology of events for delay in acquiring the land for Agra Sub-station;

iii. Reason for acquiring 98.45 acre land instead of 17.3 acre envisaged in FR;

17. The petitioner vide affidavit dated 19.12.2014 has submitted the L2 network chart and gave the following justification for time over-run of 4 months:- a) The delay was mainly on account of delay in land acquisition as extra land was acquired at Agra as it is becoming the major pooling station in the region. As per L2 network, the land was supposed to be acquired by June, 2009 and handed over to the contractor by September, 2009. The petitioner approached DM, Agra for acquisition of land under emergency provisions but the possession of land was received progressively from May, 2011 to August, 2011. This caused the delay of two years in getting possession of land but despite there being a significant delay in land possession at Agra, the petitioner prioritized the commissioning of assets at Agra and did its best to complete the work on time. The petitioner commissioned 2 nos. ICTs and 2 nos. bus reactor within the schedule, however, there is a marginal delay of 4 months in commissioning of the subject assets under this petition. The delay is beyond the control of the petitioner and the delay may be condoned. Further, generally the production cycle in a month at the manufacturing units are limited and it is dispatched in accordance with production cycle. The transportation and receipt at site are also linked with the above production. Simultaneous commissioning of more than one asset at a single location also depends upon the availability of skilled



*commissioning experts at site. In addition, to this, more than one set of T&P and manpower for such activities would lead to an extra cost burden on the beneficiaries. The petitioner also submitted the detailed chronology of events for delay in acquiring the land for Agra.*

*b) With regard to reasons for acquiring 98.45 acre land instead of 17.3 acre as envisaged in the FR, the petitioner submitted that total 98.45 acre land at Agra was taken for the construction of 765/400 kV HVAC and 800 kV HVDC substation Agra. As per FR total 113.91 acres land was supposed to be taken for HVAC and HVDC portion (17.3 Acre-HVAC portion & 96.61 Acre-HVDC portion) whereas only 98.45 acre land has actually been acquired*

*18. The issue of time over-run in commissioning of the instant transmission asset and the resultant increase in costs and IDC has been raised by AVVNL and PSPCL. We have also analyzed the documents submitted by the petitioner along with the affidavit dated 19.12.2014. As per the Additional District Magistrate (Land Acquisition)'s letter dated 16.2.2009 there has been a delay of about 1 year in depositing the amount demanded by the petitioner, from the date of issue of the demand letter for acquisition of land. In the mean time, the rate of the land had increased because of which there was re-evaluation of land causing further delay. The initial delay of one year (December, 2007 to December, 2008) caused by the petitioner by not depositing the amount demanded by the Additional District Magistrate (Land Acquisition) has led to the time over-run of 4 months in commissioning of the asset. The petitioner has not submitted any reason for depositing the*



*amount demanded by the State authorities after one 1 year. Hence, we are not inclined to condone the time over-run of 4 months.”*

58. Also, CERC vide order dated 22.08.2016 in the review petition of the Appellant has held as follows:

*“15. The Review Petitioner is seeking to argue the matter on merit by bringing in new facts at the stage of review which is not permissible in a review petition. Had the petitioner deposited the money as per the earlier demand, it would have been required to pay at the old circle rate. On account of the fresh application by the petitioner for 35.4728 ha in place of 36.1228 ha, the District Administration applied for revised circle rates. Payment of additional cost for land is solely attributable to the petitioner for not depositing the amount as per the order of the ADM vide letter dated 5.12.2007. As a proposal for land for HVAC and HVDC system was considered by the ADM, Agra in 2007 itself, we are not able to agree to the petitioner’s contention that the deferment of payment for acquisition of land between December, 2007 to December, 2008 was only for consideration land acquisition for HVDC and HVAC Sub-station to get the technical and commercial benefits. It is further observed that as per the ADM’s letter dated 5.12.2007, the land proposed to be acquired was 36.1228 ha and as per letter dated 16.2.2009 it is 35.4728 ha. Thus, there is only marginal decrease in the land acquired however, the cost of the land acquired increased substantially. Hence, we are not able to agree with the contention of the petitioner that the delay in payment has*

*benefited the project as well as the beneficiaries both technically and commercially. We are of the view that deferment of payment of cost of the land did not accrue any benefit to the beneficiaries contrary to the claims of the petitioner. We are also of the view that the increase in cost of land is due to delay on part of the petitioner in making the payment and hence we are not inclined to allow the increase in the cost of the land. Accordingly, the prayer for review of the disallowance of cost of `1489 lakh on account of additional land compensation for Agra Sub-station is rejected.*

***Disallowance of the interest on tariff for the period between 1.1.2013 and 13.5.2013.***

*16. The third issue is regarding disallowance of interest on account of delay in filing the tariff petition. The instant asset was commissioned on 1.1.2013 and the petition was filed on 13.5.2013. As there was delay in filing the petition, the interest from the actual COD to date of filing the petition was disallowed. The relevant portion of order is as under:-*

*"8. AVVNL in its reply has submitted that the petitioner has filed the instant petition on 13.5.2013 even though the instant asset was commissioned on 1.1.2013 and there has been a delay of more than four months in filing the petition and the petitioner should explain the delay in filing the petition. We have considered the submissions made by AVVNL. Regulation 5(1) of the 2009 Tariff Regulations provides for filing of application for determination of tariff before six months of projected date of commercial operation. Accordingly, the petitioner could have filed the instant application during July, 2012, however, the petition was filed on 13.5.2013. This delay in filing of petition*

*has not been explained by the petitioner. Delay in filing petition would cost the beneficiaries by way of interest for the period of delay. As the petitioner has not filed its comments to the issue raised by the respondent, we feel that the petitioner does not have any justifiable reason for the delay. We are of the view that the beneficiaries should not be burdened with interest for the period of delay and accordingly we direct that the petitioner would not be entitled to charge any interest on tariff from the date of commercial operation till the date of filing of petition (1.1.2013 to 13.5.2013)."*

*17. The instant asset was commissioned on 1.1.2013 and petition was filed on 13.5.2013. This delay in filing of petition has not been explained by the petitioner in the main tariff petition. Therefore, the interest for the period from the date of COD to the date of filing the petition was disallowed. The petitioner as per the Tariff Regulation was required to file the petition six months before the expected date of commercial operation. The same was provided in order to ensure that the petitioner gets a tariff as soon as its assets achieve commercial operation and the respondent beneficiaries are not burdened with interest on account of delay in determination of tariff. Since the petitioner has approached the Commission four months after the date of commercial operation, the Commission disallowed the interest on tariff from the date of commercial operation till the date of filing of the petition. In our view, the beneficiaries cannot be made to pay for the negligence on the part of the Review Petitioner to file the tariff petition in time. We do not find any reason for reviewing our earlier decision and accordingly review on this account is also not allowed."*

59. The Board of Directors of the Appellant approved the project through an investment approval dated 07.08.2008, which required the project to be completed within 48 months. However, due to internal inefficiencies, the project was delayed by four months, being commissioned only on 01.01.2013. This delay, primarily caused by issues in land acquisition, also led to increased capital costs. Specifically, an additional ₹14.89 crore was incurred due to rising circle rates and higher compensation for land acquisition

60. Further submitted that CERC had disallowed capitalization of Rs. 14.89 Crores which was incurred towards the additional compensation for land acquisition due to an increase in circle rate. The relevant paragraph from order dated 20.05.2015 of CERC is as follows:

*“21. The estimated completion cost of the asset is `6152.61 lakh against the apportioned approved FR cost of `5532.52 lakh. Hence, there is cost over-run of `620.09 lakh (11.21%). PSPCL has raised the issue of cost variation and time over-run. The petitioner was directed to give reasons for increase in cost of land, switch gear, compensating equipments, etc*

*22. The petitioner vide affidavit dated 23.12.2013 has submitted the following reasons for variation in land cost and other items:-  
a) Total 98.45 acre land at Agra was acquired for the construction of 765/400 kV HVAC and 800 kV HVDC sub-station. Out of this total, 40% land i.e. 39.18 acre has been considered for construction of 765/400 kV sub-station as against only 17.3 acre envisaged in FR; b) The actual land costs is @ `31.98 lakh per acre (inclusive of payment to State govt., rehabilitation assistance and Annuity to land Owners) against*

*the land cost considered @ `8.90 lakh per acre and `50 lakh for R&R policy in the FR; c) The land cost has been apportioned in different elements of 765/400 kV Agra substation; d) As regards variation in land cost, the cost shown is the apportioned cost. The cost shown in certificate is based on the actual amount paid to State authorities. The land cost has been apportioned in different elements of subject asset; e) The cost variation in case of switch gear and compensating reactor is due to high prices received in bid opening; f) As regards the cost variation in case of Bus bar, conductor and power control cables, in FR lump sum cost of the items has been considered while in actual the cost has been received based on competitive bidding through open tender as per prevailing market conditions, design and site requirement; and g) The completion cost is on the basis of the awarded cost which is received through open tender and with quantities required as per the detailed design and prayed that the completion cost for tariff calculation as submitted be approved.*

*23. We have considered the submissions of the petitioner and have gone through the documents filed by the petitioner. As per Form 5B, the expenditure on land is `391.37 lakh as against `19.25 lakh envisaged in the FR. The land requirement for the 765/400 kV HVAC sub-station has increased from 17.30 acre to 39.18 acre (226.47%). The price of land increased from (`8.9 lakh+`0.44 lakh towards R&R)/acre to `31.98 lakh/acre (342.40%). Thus, after accounting for these increases, the price of the land should have been `149.27 lakh (226.47% $\times$  342.40%=775.44%). However, the apportioned cost for the current asset has increased from `19.25 lakh to `391.37 lakh*

(2033.09%). The petitioner has not submitted the details of land apportioned to the instant asset.

24. As discussed at para 19, there was delay of one year in depositing requisite amount for land acquisition by the petitioner. During this period of one year, the circle rates were revised and as a result the petitioner had to pay additional amount of `1489.90 lakh on account of revaluation of land. The increase in land cost to the tune of `1489.90 lakh is attributable to the petitioner since it has been incurred due to delay in depositing of amount for land by the petitioner. Hence, we are not inclined to allow the additional land compensation of `1489.90 lakh and it is accordingly reduced from the capital cost of the assets involved in this petition and other concerned petitions. The petitioner has not submitted the land actually used for the asset considered in the instant petition, hence it is not possible to apportion the contribution of the instant asset towards the increase of `1489.90 lakh in the land cost. Accordingly, at present, the capital cost is being restricted to the apportioned FR land cost. However, the petitioner is directed to submit actual land usage for the asset in the instant petition and all other assets of the project and the increase in land cost shall be deducted from the respective assets at the time of truing up.”

61. The finding of the CERC on this issue on the review filed by the Appellant vide order dated 22.08.2016 is as follows:

“13. We have considered the submission of the petitioner. According to the review petitioner, 113.91 acres of land was supposed to be acquired for HVAC and HVDC substations,

namely 17.3 acres for the HVAC portion and 96.61 acres for the HVDC portion. However, due to the efforts of the review petitioner in combining the resources and effort for land acquisition, only 98.45 acres of land was acquired for the construction of 765/400 kV HVAC Sub-station and 800 kV HVDC Sub-station. The petitioner had not given these reasons for cost variation on account of land in the main petition. In fact the petitioner had given the following reasons in its affidavit dated 23.12.2013 filed in Petition No.109/TT/2013: -

*“With regard to variation in land cost following is submitted:*

*Total 98.45-acre land at Agra was acquired for the construction of 765/400kV HVAC and 800 kV HVDC substation. Out of the total 98.45-acre land at Agra approximately 40% land i.e. 39.18 acre has been considered for construction of 765/400 kV Sub-station. It is to mentioned that only 17.3-acre land was envisaged in FR for 765/400 kV Sub-station at Agra.*

*The land costs @ `31.98 lakh per acre (cost is inclusive of payment made to State Govt. + Rehabilitation assistance + Annuity to land owners) is as per the actual whereas in FR the land cost is considered @ `8.90 lakh per acre + 50 lakh for R&R policy*

*14. In the impugned order, the Commission had disallowed the revised land cost on the ground that he petitioner failed to deposit the required money for one year and in the meantime the circle rates were revised. On perusal of the letters dated 5.12.2007 and 16.2.2009 placed on record by the petitioner in the Petition No. 109/TT/2013 vide affidavit dated 19.12.2014, it is revealed that the requirement of land for the HVAC and HVDC system in Agra was already identified as 36.1228 ha in*



5.12.2007 itself and the tentative cost of the identified land was `16,13,66,471/-. The Review Petitioner was directed to deposit of `2,93,39,358/- in the office of ADM, Agra. It is further observed from the ADM, Agra letter dated 16.2.2009 that the petitioner deposited `13,20,27,113/- on 22.12.2008 along with fresh proposal after a year. In the mean time, the circle rates of land have been revised. Based on the fresh acquisition proposal for 35.4728 ha of the land identified for HVAC and HVDC systems, the District Administration demanded additional amount of `14,89,70,745/-. It has been clearly motioned as under:-

“It is mentioned that presently, District Magistrate, Agra has amended the circle rate. On that basis compensation was recalculated. Since you have submitted fresh acquisition proposal, calculation of amount of appropriate compensation would be done on the basis of present circle rate.”

15. The Review Petitioner is seeking to argue the matter on merit by bringing in new facts at the stage of review which is not permissible in a review petition. Had the petitioner deposited the money as per the earlier demand, it would have been required to pay at the old circle rate. On account of the fresh application by the petitioner for 35.4728 ha in place of 36.1228 ha, the District Administration applied for revised circle rates. Payment of additional cost for land is solely attributable to the petitioner for not depositing the amount as per the order of the ADM vide letter dated 5.12.2007. As a proposal for land for HVAC and HVDC system was considered by the ADM, Agra in 2007 itself, we are not able to agree to the petitioner’s contention that the deferment of payment for acquisition of land between



December, 2007 to December, 2008 was only for consideration land acquisition for HVDC and HVAC Sub-station to get the technical and commercial benefits. It is further observed that as per the ADM's letter dated 5.12.2007, the land proposed to be acquired was 36.1228 ha and as per letter dated 16.2.2009 it is 35.4728 ha. Thus, there is only marginal decrease in the land acquired however, the cost of the land acquired increased substantially. Hence, we are not able to agree with the contention of the petitioner that the delay in payment has benefited the project as well as the beneficiaries both technically and commercially. We are of the view that deferment of payment of cost of the land did not accrue any benefit to the beneficiaries contrary to the claims of the petitioner. We are also of the view that the increase in cost of land is due to delay on part of the petitioner in making the payment and hence we are not inclined to allow the increase in the cost of the land. Accordingly, the prayer for review of the disallowance of cost of `1489 lakh on account of additional land compensation for Agra Sub-station is rejected.

Disallowance of the interest on tariff for the period between 1.1.2013 and 13.5.2013.

16. The third issue is regarding disallowance of interest on account of delay in filing the tariff petition. The instant asset was commissioned on 1.1.2013 and the petition was filed on 13.5.2013. As there was delay in filing the petition, the interest from the actual COD to date of filing the petition was disallowed. The relevant portion of order is as under:-

"8. AVVNL in its reply has submitted that the petitioner has filed the instant petition on 13.5.2013 even though the instant asset

*was commissioned on 1.1.2013 and there has been a delay of more than four months in filing the petition and the petitioner should explain the delay in filing the petition. We have considered the submissions made by AVVNL. Regulation 5(1) of the 2009 Tariff Regulations provides for filing of application for determination of tariff before six months of projected date of commercial operation. Accordingly, the petitioner could have filed the instant application during July, 2012, however, the petition was filed on 13.5.2013. This delay in filing of petition has not been explained by the petitioner. Delay in filing petition would cost the beneficiaries by way of interest for the period of delay. As the petitioner has not filed its comments to the issue raised by the respondent, we feel that the petitioner does not have any justifiable reason for the delay. We are of the view that the beneficiaries should not be burdened with interest for the period of delay and accordingly we direct that the petitioner would not be entitled to charge any interest on tariff from the date of commercial operation till the date of filing of petition (1.1.2013 to 13.5.2013)."*

*17. The instant asset was commissioned on 1.1.2013 and petition was filed on 13.5.2013. This delay in filing of petition has not been explained by the petitioner in the main tariff petition. Therefore, the interest for the period from the date of COD to the date of filing the petition was disallowed. The petitioner as per the Tariff Regulation was required to file the petition six months before the expected date of commercial operation. The same was provided in order to ensure that the petitioner gets a tariff as soon as its assets achieve commercial operation and the respondent beneficiaries are not burdened*

*with interest on account of delay in determination of tariff. Since the petitioner has approached the Commission four months after the date of commercial operation, the Commission disallowed the interest on tariff from the date of commercial operation till the date of filing of the petition. In our view, the beneficiaries cannot be made to pay for the negligence on the part of the Review Petitioner to file the tariff petition in time. We do not find any reason for reviewing our earlier decision and accordingly review on this account is also not allowed.”*

62. The Respondents further submitted a table of correspondences, with page references to demonstrate the delays attributable to the Appellant.

<b>No</b>	<b>DATES</b>	<b>EVENTS</b>	<b>Page No.</b>
<b>1.</b>	14.11.2007	Appellant moved an Application before ADM LA urgently acquiring 96.6081 acre of land.	
<b>2.</b>	05.12.2007	ADM (LA) issued a demand notice for deposition of acquisition of land at Agra amounting Rs. 13.20 crore.	Page No. 273 of Appeal Volume - 1
<b>3.</b>	07.12.2007	Inter Office memo for sanction of Rs. 13.20 Crores towards acquisition of land measuring 96.6081 acres.	
<b>4.</b>	17.03.2008	The Appellant received a letter from ADM (LA) office stating that the proposal for acquiring land will be	

		returned back if no advance is sent within a week.	
<b>5.</b>	26.03.2008	Inter Office memo to deposit advance for procurement of land for construction of $\pm$ 800kV HVDC and 765 kV AC substation for necessary action.	Page No. 274 of Appeal - Volume - 2
<b>6.</b>	07.04.2008	Inter Office memo on status of acquisition of land for construction of $\pm$ 800kV HVDC and 765 kV AC substation for advice.	Page No. 275 of Appeal - Volume - 2
<b>7.</b>	04.07.2008	Acquisition file returned by the office of ADM (LA)	
<b>8.</b>	30.08.2008	Inter Office memo on status of acquisition of land for construction of $\pm$ 800kV HVDC and 765 kV AC substation indicating the inability in depositing the advance even after 8 months.	Page No. 276 of Appeal - Volume - 2
<b>9.</b>	08.12.2008	Interoffice memo allowing permission to go ahead in acquiring the land and to ensure that there is no delay in the availability of land for construction of $\pm$ 800kV HVDC and 765 kV AC substation.	Page No. 277 of Appeal - Volume - 2
<b>10.</b>	22.12.2008	Resubmission of the proposal for acquisition which was returned to the Appellant by ADM (LA) to start	Page No. 279

		the process of acquisition on urgent basis.	of Appeal - Volume - 2
<b>11.</b>	16.02.2009	Letter from ADM (LA) office informing revision of circle rates resulting in enhanced compensation payable for agriculture land. The amount works out to Rs. 14.89 crore additionally.	Page No. 280 of Appeal - Volume - 2
<b>12.</b>	22.02.2009	Draft amounting to Rs. 14.89 Crore was deposited by the Appellant.	Page No. 282 of Appeal - Volume - 2
<b>13.</b>	27.02.2009	Investment Approval by the Appellant issued in respect of 'North East-Northern/Western interconnector-I'.	
<b>14.</b>	12.05.2011	ADM (LA) gave the possession letter certificate of land to Appellant.	
<b>15.</b>	01.09.2012	Scheduled date of commercial operation.	
<b>16.</b>	01.01.2013	Actual date of commercial operation of 240 MVAR Bus Reactor.	

63. The ADM LA, on 17.03.2008, notified the Appellant of the intent to return the file if necessary formalities were not completed due to the Appellant's delay. The Appellant, in an internal office letter dated 07.04.2008, acknowledged this warning. Although a meeting with the DM was scheduled for 09.04.2008, the Appellant neither submitted minutes of the meeting nor clarified participation.

Consequently, on 04.07.2008, the ADM LA returned the Appellant's application due to its failure to complete the required formalities.

64. It is submitted that the Appellant failed to deposit the required amount with the ADM LA, causing a four-month delay in the Project's completion. The Appellant admitted its negligence in a memo dated 30.08.2008 regarding the land procurement process.

*... "6. In view of our inability to submit the required amount on more than 8 months, we are facing difficulty in approaching the authorities for any assistance as we have failed in all our commitments and assurance given to them regarding submission of the dues" ...*

65. Despite being aware of the delay, the Appellant took three months after the investment approval on 07.08.2008 to resubmit its land procurement application to the ADM LA on 22.12.2008.

66. Beyond the delay in land procurement, the Appellant raised three additional grounds in its various submissions:

- a) Efficiency by combining HVDC and HVAC: The Appellant claimed that the delay in land acquisition benefited the project technically and commercially. However, the ADM's records show a marginal reduction in land acquired and a substantial increase in costs, making the Appellant's claim incorrect.
- b) Transition from Mini-ratna to Navratna: The Appellant argued that its Navratna status delayed project approval. However, this reasoning is irrelevant as the Navratna status was attained before

the investment approval dated 07.08.2008, which required project completion within 48 months.

- c) Land acquisition issues: The Appellant cited land disputes and delays in compliance with the Land Acquisition Act, contributing to a 22-month delay. However, the Appellant's slow action on each step, despite the project's urgency, demonstrates internal inefficiencies.

67. Also submitted that previously CERC and this Tribunal had given their observation on similar issues.

68. This Tribunal in Maharashtra State Power Generation Co. Ltd. vs. Maharashtra Electricity Regulatory Commission 2011 SCC Online APTEL 65 ruled that any time overrun caused by the generating company must be borne by the company. This principle equally applies to delays in the commercial operation of transmission assets by transmission licensees. The relevant paragraph is as follows:

*“7.4. The delay in execution of a generating project could occur due to following reasons:*

*i) due to factors entirely attributable to the generating company, e.g., imprudence in selecting the contractors/suppliers and in executing contractual agreements including terms and conditions of the contracts, delay in award of contracts, delay in providing inputs like making land available to the contractors, delay in payments to contractors/suppliers as per the terms of contract, mismanagement of finances, slackness in project management like improper co-ordination between the various contractors, etc.*

*ii) due to factors beyond the control of the generating company e.g. delay caused due to force majeure like natural calamity or any other reasons which clearly establish, beyond any doubt, that there has been no imprudence on the part of the generating company in executing the project.*

*iii) situation not covered by (i) & (ii) above. In our opinion in the first case the entire cost due to time over run has to be borne by the generating company. However, the Liquidated Damages (LDs) and insurance proceeds on account of delay, if any, received by the generating company could be retained by the generating company. In the second case the generating company could be given benefit of the additional cost incurred due to time over-run. However, the consumers should get full benefit of the LDs recovered from the contractors/suppliers of the generating company and the insurance proceeds, if any, to reduce the capital cost. In the third case the additional cost due to time overrun including the LDs and insurance proceeds could be shared between the generating company and the consumer. It would also be prudent to consider the delay with respect to some benchmarks rather than depending on the provisions of the contract between the generating company and its contractors/suppliers. If the time schedule is taken as per the terms of the contract, this may result in an imprudent time schedule not in accordance with good industry practices.”*

69. In Power Grid Corporation of India Ltd. vs. Central Electricity Regulatory Commission 2017 SCC OnLine APTEL 69, this Tribunal held that the Appellant is liable for delays if it fails to seek necessary approvals from the relevant



authorities in a timely manner, which are crucial for project completion. The relevant paragraph is as follows:

*“h) Based on the discussions as above, the submissions made by the Appellant, the Central Commission's query to Railway/Forest clearance we conclude as below:*

*i. Railway Clearances (Final clearances granted by Railway authorities on 24.12.2012): From the perusal of the Impugned Order, it is clear that the Central Commission has taken 34 months from 6.5.2009 (actual date) and not from 6.8.2009 while seeking explanation for not submitting reasons for filing the application for Railway clearance after 34 months of IA date i.e. 24.7.2006. We observe that the Appellant has not explained the delay of said 34 months in making the application before Railway authorities as sought by the Central Commission. The Appellant rather submitted that there was delay in grant of clearance by Railways. Accordingly, the Appellant has lost the opportunity for explanation of specific reasons (if any) beyond its control before the Central Commission for carrying out prudence checks. From the above discussions, it emerges that the activity on the critical path was Railway crossing. Railway clearance was granted to the Appellant on 24.12.2012. Forest clearance/ permission for felling of trees in the State of Maharashtra was granted to the Appellant on 30.11.2012. The Appellant has submitted that based on a delay of 53.5 months on account of permission of felling of trees in the State of Maharashtra the said delay of 7 months needs to be condoned. We observe that though the Appellant has made its first communication with forest authorities in the State of*

*Maharashtra in August, 2007 but the activity on critical path was Railway crossing clearance for which it has applied at a very later stage in May, 2009 and has also failed to submit the reasoning/ supporting documents for prudence check as called for by the Central Commission vide letter dated 18.2.2013. Accordingly, this contention of the Appellant is also not sustainable.*

*m) In view of the foregoing discussions, we are of the considered opinion that it is the responsibility of the Appellant to provide all the relevant details available with it as sought by the Central Commission during the hearing of the tariff petition before the Central Commission. The Appellant has failed to do the same before the Central Commission rather it focussed only on how the delays were caused by the Railway/ Forest authorities in granting the clearances. Had the Appellant acted in time for making various applications to get the clearances further delay of 7 months would have been avoided. Accordingly, we are of the considered opinion that the Central Commission has rightly held that the said time over-run of 7 months is attributable to the Appellant and not due to delay in getting forest and railway clearance.”*

70. In Power Grid Corporation of India Ltd. vs. Central Electricity Regulatory Commission 2014 SCC OnLine APTEL 141, this Tribunal ruled that if delays are caused by factors beyond the Appellant's control, such as reliance on another organization, IDC and IEDC should be allowed. However, in the present case, the delay was due to the Appellant's failure to complete formalities on time, making this judgment inapplicable. The relevant paragraph is as follows:

*“11. We find that in the Tribunal's Judgment in Appeal No. 72 of 2010, the second condition for prudence check is due to factors beyond the control of the Company e.g., delay caused due to force majeure like natural calamity or any other reasons which clearly establish, beyond any doubt, that there has been no imprudence on the part of the company in executing the project. In the present case, the Central Commission has held that the period of 8 months delay in conducting the Short Circuit Test due to non-availability of test bed was beyond the control of Power Grid or its supplier. However, the Central Commission still decided that the impact of delay in conducting the Short Circuit Test should be shared equally by Power Grid and the beneficiaries. In our opinion, the present situation of non-availability of test bed for Short Circuit Test will fall under the second Category as it has been established beyond any doubt, that there was no imprudence on the part of the generating company or its supplier in executing the project and the delay of 8 months was due to factors beyond the control of Power Grid or its supplier. It is not necessary that the factors beyond the control of the generating or transmission company are only due to force majeure like natural calamity. The example given under the second category in the judgment of the Tribunal relied by the Central Commission is not exhaustive. If it is clearly established, beyond any doubt, that the delay in execution of the project is due to factors beyond the control of the company and there is no imprudence on the part of the company in executing the project, then the delay would be covered under*

*the second category i.e. due to factors beyond the control of the company.*

*15. Summary of our findings*

*(i) The delay of 8 months in conducting Short Circuit Test due to non-availability of test bed was beyond the control of Power Grid or its supplier. The Central Commission has also given clear finding that this delay was beyond the control of Power Grid and its supplier as they had to depend on other Organization outside India as the Short Circuit Testing facilities were not available in the country. Accordingly, IDC and IEDC for delay of 8 months in getting the Short Circuit Test due to non-availability of test bed should be allowed to Power Grid.”*

71. Further, submitted that during the on-going hearing on 14.03.2024, the Appellant was directed by this Tribunal to submit cases where delay had been permitted under similar circumstances. Instead of complying, the Appellant cited Sheo Raj Singh & Ors. v. Union of India & Anr. (2023) 10 SCC 531, a general condonation of delay case that was irrelevant, as it dealt with distinct principles under the Limitation Act. Additionally, on 10.04.2024, the Appellant referenced an order from Petition No. 67/TT/2015, which was also misplaced, as the facts differed; specifically, the Appellant had not completed the necessary land allocation process, undermining their argument about land possession delays.

72. Further, the Appellant is responsible for internal delays, and therefore, the IDC and IEDC charges for the four-month delay, amounting to ₹70,67,000/, should not be allowed for capitalization by the Central Commission. The Appellant's claims lack merit and should be rejected by this Tribunal.

73. The Respondents in conclusion relied on the following judgements and the relevant paragraphs are as follows:

No.	Judgements	Relevant Para.
1.	<p><i>Maharashtra State Power Generation Co. Ltd. vs. Maharashtra Electricity Regulatory Commission, 2011 SCC OnLine APTEL 65</i></p>	<p><i>“7.4. The delay in execution of a generating project could occur due to following reasons:</i></p> <p><i>i) due to factors entirely attributable to the generating company, e.g., imprudence in selecting the contractors/suppliers and in executing contractual agreements including terms and conditions of the contracts, delay in award of contracts, delay in providing inputs like making land available to the contractors, delay in payments to contractors/suppliers as per the terms of contract, mismanagement of finances, slackness in project management like improper co-ordination between the various contractors, etc.</i></p>

		<p><i>ii) due to factors beyond the control of the generating company e.g. delay caused due to force majeure like natural calamity or any other reasons which clearly establish, beyond any doubt, that there has been no imprudence on the part of the generating company in executing the project.</i></p> <p><i>iii) situation not covered by (i) &amp; (ii) above. In our opinion in the first case the entire cost due to time over run has to be borne by the generating company. However, the Liquidated Damages (LDs) and insurance proceeds on account of delay, if any, received by the generating company could be retained by the generating company. In the second case the generating company could be given benefit of the additional cost incurred due to time over-run. However, the consumers should get full benefit of the LDs recovered from the contractors/suppliers of the</i></p>
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		<p>generating company and the insurance proceeds, if any, to reduce the capital cost. In the third case the additional cost due to time overrun including the LDs and insurance proceeds could be shared between the generating company and the consumer. It would also be prudent to consider the delay with respect to some benchmarks rather than depending on the provisions of the contract between the generating company and its contractors/suppliers. If the time schedule is taken as per the terms of the contract, this may result in an imprudent time schedule not in accordance with good industry practices.”</p>
2.	<p><i>Power Grid Corporation of India Ltd. vs. Central Electricity Regulatory Commission, 2017 SCC OnLine APTEL 69</i></p>	<p>“h) Based on the discussions as above, the submissions made by the Appellant, the Central Commission's query to Railway/Forest clearance we conclude as below:</p>

		<p><i>i. Railway Clearances (Final clearances granted by Railway authorities on 24.12.2012): From the perusal of the Impugned Order, it is clear that the Central Commission has taken 34 months from 6.5.2009 (actual date) and not from 6.8.2009 while seeking explanation for not submitting reasons for filing the application for Railway clearance after 34 months of IA date i.e. 24.7.2006. We observe that the Appellant has not explained the delay of said 34 months in making the application before Railway authorities as sought by the Central Commission. The Appellant rather submitted that there was delay in grant of clearance by Railways. Accordingly, the Appellant has lost the opportunity for explanation of specific reasons (if any) beyond its control before the Central Commission for carrying out prudence checks. From the above discussions, it emerges</i></p>
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	<p><i>that the activity on the critical path was Railway crossing. Railway clearance was granted to the Appellant on 24.12.2012. Forest clearance/permission for felling of trees in the State of Maharashtra was granted to the Appellant on 30.11.2012. The Appellant has submitted that based on a delay of 53.5 months on account of permission of felling of trees in the State of Maharashtra the said delay of 7 months needs to be condoned. We observe that though the Appellant has made its first communication with forest authorities in the State of Maharashtra in August, 2007 but the activity on critical path was Railway crossing clearance for which it has applied at a very later stage in May, 2009 and has also failed to submit the reasoning/supporting documents for prudence check as called for by the Central Commission vide letter dated 18.2.2013.</i></p>
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		<p>Accordingly, this contention of the Appellant is also not sustainable.</p> <p>m) In view of the foregoing discussions, we are of the considered opinion that it is the responsibility of the Appellant to provide all the relevant details available with it as sought by the Central Commission during the hearing of the tariff petition before the Central Commission. The Appellant has failed to do the same before the Central Commission rather it focussed only on how the delays were caused by the Railway/ Forest authorities in granting the clearances. <b><u>Had the Appellant acted in time for making various applications to get the clearances further delay of 7 months would have been avoided. Accordingly, we are of the considered opinion that the Central Commission has rightly held that the said time over-run of 7 months is attributable to</u></b></p>
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		<b><u>the Appellant and not due to delay in getting forest and railway clearance.”</u></b>
3.	<i>Power Grid Corporation of India Ltd. vs. Central Electricity Regulatory Commission, 2014 SCC OnLine APTEL 141</i>	11. We find that in the Tribunal's Judgment in Appeal No. 72 of 2010, the second condition for prudence check is due to factors beyond the control of the Company e.g., delay caused due to force majeure like natural calamity or any other reasons which clearly establish, beyond any doubt, that there has been no imprudence on the part of the company in executing the project. In the present case, the Central Commission has held that the period of 8 months delay in conducting the Short Circuit Test due to non-availability of test bed was beyond the control of Power Grid or its supplier. However, the Central Commission still decided that the impact of delay in conducting the Short Circuit Test should be shared equally by

		<p><i>Power Grid and the beneficiaries. In our opinion, the present situation of non-availability of test bed for Short Circuit Test will fall under the second Category as it has been established beyond any doubt, that there was no imprudence on the part of the generating company or its supplier in executing the project and the delay of 8 months was due to factors beyond the control of Power Grid or its supplier. It is not necessary that the factors beyond the control of the generating or transmission company are only due to force majeure like natural calamity. The example given under the second category in the judgment of the Tribunal relied by the Central Commission is not exhaustive. If it is clearly established, beyond any doubt, that the delay in execution of the project is due to factors beyond the control of the company and there is no imprudence on the part of the</i></p>
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		<p><i>company in executing the project, then the delay would be covered under the second category i.e. due to factors beyond the control of the company.</i></p> <p><i>15. <u>Summary of our findings</u></i></p> <p><i>(i) The delay of 8 months in conducting Short Circuit Test due to non-availability of test bed was beyond the control of Power Grid or its supplier. The Central Commission has also given clear finding that this delay was beyond the control of Power Grid and its supplier as they had to depend on other Organization outside India as the Short Circuit Testing facilities were not available in the country. Accordingly, IDC and IEDC for delay of 8 months in getting the Short Circuit Test due to non-availability of test bed should be allowed to Power Grid.</i></p>
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### ***Analysis and Conclusion***

74. After hearing all the parties at length, the following question needs to be answered through this Appeal:

*Whether the Respondent Commission was justified in disallowing the capitalization of ₹70.67 lakhs due to a four-month time overrun and ₹14.89 crores towards additional land acquisition costs as claimed by the Appellant?*

75. The two issues pertain to the pre- and post-construction period, as the compensation amount of Rs. 14.89 crores for land acquisition is paid before the start of the construction activities whereas the claim of IDC/IEDC is for the extended construction period due to delay in achieving the COD.

76. Accordingly, both issues are dealt with separately.

77. The Appellant has submitted that the transmission system, scheduled to be commissioned within 48 months from the investment approval on 29.08.2008, was delayed and commissioned on 01.01.2013, four months beyond the original deadline of 01.09.2012.

78. The Respondent Commission disallowed ₹70.67 lakhs in IDC/IEDC and ₹14.89 crores in capital costs, attributing the delay to a one-year gap in the Appellant's payment to the Additional District Magistrate (Land Acquisition), Agra, which led to a four-month time overrun and increased land acquisition costs.

79. The Central Commission in the Impugned Order has held as under:

*“16. As per the Investment Approval dated 29.8.2008, the instant asset was scheduled to be commissioned by 1.9.2012. However, the asset was commissioned on 1.1.2013. Thus, there is time over-run of 4 months. The petitioner submitted that the time over-run is due to delay in acquisition of land for 765 kV sub-station at Agra. The Commission directed the petitioner to submit the following information on affidavit:-*

- i. L2 network chart;*
- ii. Detailed reason along with documentary evidences and chronology of events for delay in acquiring the land for Agra Sub-station;*
- iii. Reason for acquiring 98.45 acre land instead of 17.3 acre envisaged in FR;*

*17. The petitioner vide affidavit dated 19.12.2014 has submitted the L2 network chart and gave the following justification for time over-run of 4 months:-*

- a) The delay was mainly on account of delay in land acquisition as extra land was acquired at Agra as it is becoming the major pooling station in the region. As per L2 network, the land was supposed to be acquired by June, 2009 and handed over to the contractor by September, 2009. The petitioner approached DM, Agra for acquisition of land under emergency provisions but the possession of land was received progressively from May, 2011 to August, 2011. This caused the delay of two years in getting possession of land but despite there being a significant delay in land possession at Agra, the petitioner prioritized the commissioning of assets at Agra and did its best to complete the work on time. The petitioner commissioned 2*

*nos. ICTs and 2 nos. bus reactor within the schedule, however, there is a marginal delay of 4 months in commissioning of the subject assets under this petition. The delay is beyond the control of the petitioner and the delay may be condoned. Further, generally the production cycle in a month at the manufacturing units are limited and it is dispatched in accordance with production cycle. The transportation and receipt at site are also linked with the above production. Simultaneous commissioning of more than one asset at a single location also depends upon the availability of skilled commissioning experts at site. In addition, to this, more than one set of T&P and manpower for such activities would lead to an extra cost burden on the beneficiaries. The petitioner also submitted the detailed chronology of events for delay in acquiring the land for Agra.*

*b) With regard to reasons for acquiring 98.45 acre land instead of 17.3 acre as envisaged in the FR, the petitioner submitted that total 98.45 acre land at Agra was taken for the construction of 765/400 kV HVAC and 800 kV HVDC substation Agra. As per FR total 113.91 acres land was supposed to be taken for HVAC and HVDC portion (17.3 Acre-HVAC portion & 96.61 Acre-HVDC portion) whereas only 98.45 acre land has actually been acquired*

**18. The issue of time over-run in commissioning of the instant transmission asset and the resultant increase in costs and IDC has been raised by AVVNL and PSPCL. We have also analyzed the documents submitted by the petitioner along with the affidavit dated 19.12.2014. As per the Additional District Magistrate Land**



***Acquisition's letter dated 16.2.2009 there has been a delay of about 1 year in depositing the amount demanded by the petitioner, from the date of issue of the demand letter for acquisition of land. In the mean time, the rate of the land had increased because of which there was re-evaluation of land causing further delay. The initial delay of one year (December, 2007 to December, 2008) caused by the petitioner by not depositing the amount demanded by the Additional District Magistrate (Land Acquisition) has led to the time over-run of 4 months in commissioning of the asset. The petitioner has not submitted any reason for depositing the amount demanded by the State authorities after one 1 year. Hence, we are not inclined to condone the time over-run of 4 months."***

80. From the above, the disallowance on both counts is because of a delay of one year in depositing the amount demanded by the State Authorities i.e. amount deposited in December 2008 against the original demand letter issued by ADM(LA) in December 2007.

81. This delay, however, in depositing the compensation amount cannot be linked to the delay in handing over the possession of land by the District Authorities as any delay from the date of deposit of the complete land compensation amount to the actual handing over of the land cannot be attributed to the Appellant as such it needs to be examined whether the delay in handing over of land is because of reasons attributable to the District Authorities or the Appellant.

82. Therefore, it is important to note certain dates/events and reasons for obtaining the investment approval as cited by the Appellant as the reason for

the delay in paying the compensation because any expenditure could have been made only after obtaining the investment approval.

83. Important dates:

Date	Event
12.03.2007	The scheme was agreed in the Standing Committee Meeting of --Northern (22 <sup>nd</sup> SCM)
05.05.2007	--Eastern Regions
30.07.2007	--Western (27 <sup>th</sup> SCM)
24.09.2007	Feasibility Report cum Detailed Project Report (FR & DPR) submitted to MoP
14.11.2007	The proposal moved to ADM (LA), Agra for land acquisition
04.12.2007	Pre-investment approval given by MoP limited to Rs.9.97 Crs. Only
05.12.2007	ADM (LA), Agra raised the demand for a deposit of 80% of the total demand.
24.01.2008	Observations of the Central Electricity Authority received qua the subject scheme
01.05.2008	Appellant acquired the status of Navratna CPSE Status, empowered to grant Investment Approval through its Board
29.08.2008	Investment approval was granted by the Appellant qua the subject scheme
18.11.2008	The Appellant in its 215 <sup>th</sup> Meeting approved a pre-investment expenditure of Rs. 31.02 Crores

	in addition to the pre-investment expenditure of 10 Crores
20.12.2008	The Appellant submitted a demand draft of Rs. 13.20 Crores to ADM(LA).

84. From the above, it can be seen that the scheme was agreed upon in the various Standing Committees, immediately, thereafter, the Appellant submitted the FR & DPR to MoP for approval of the scheme inter-alia PIB's investment approval.

85. Thereafter, the Appellant approached the ADM(LA) for the acquisition of land followed by pre-investment approval obtained from MoP, however, limited to Rs. 10 Crs. only, as against the demand notice of 80% of Rs. 14.669 Crs., i.e. exceeding Rs. 10 Crs., accordingly, the Appellant could not comply with the demand notice.

86. Before obtaining the Navratna status, the Appellant, holding "Mini-Ratna" status as a Central Public Sector Enterprise (CPSE), lacked financial autonomy to approve projects over ₹500 crores, requiring approval from the Public Investment Board (PIB), the scheme was first discussed in regional Standing Committee Meetings in 2007. The Feasibility Report and Detailed Project Report (DPR) were submitted to the Ministry of Power (MoP) on 24.09.2007 for PIB's approval. MoP raised queries on 05.02.2008, and the Appellant responded by 13.02.2008, also, on 02.04.2008, the Appellant requested a meeting to expedite the project's approval.

87. Separately, the Appellant was granted the Navratna status on 01.05.2008 enabling its Board of Directors to approve the project and as such exempted from obtaining the investment approval from the PIB.

88. As such, there was no delay attributable to the Appellant till such time, it has been accorded the status of Navratna company on 01.05.2008, as the delay is in the grant of approval from PIB.

89. Consequently attaining the Navratna status the revised DPR was placed before the Board, and approval was granted on 06.08.2008 additionally, the Appellant highlighted that obtaining PIB approval generally takes 12 to 18 months and cited another project (NRSS-IX) where approval took nearly two years since the Appellant only gained "Navratna" status in May 2008, it became eligible to approve the project then and secured approval within three months and therefore the delay beyond this period was not within the Appellant's control.

90. It is important to note the date on which the Appellant obtained the pre-investment approval, and the reasons for limited approval of less than Rs. 10 crores, when the compensation amount for the land was more than 14 crores.

91. Any failure to ascertain the compensatory amount and obtaining insufficient pre-investment approval, shall be attributable to the Appellant, however, in case there is no failure on the part of the Appellant then the Appellant cannot be held responsible for any delay till 01.05.2008.

92. On being asked, the Appellant informed that the enhancement of the circle rate happened during the period between December 2007 and

February 2008 (the notification of Govt of UP for an increase of the circle rate is not available on records).

93. However, neither the Central Commission nor the contesting parties could provide such details.

94. Considering that the circle rates were revised before 01.05.2008, i.e. date on which the Appellant received the Navratna status, it is important that the pre-investment approval by the MoP should have been the amount as per the new circle rates or as demanded by the ADM(LA).

95. However, it was submitted by the Appellant that by Government notification dated 23.09.2002 (Expenditure on Pre-Investment activities/ preparation of DFR), certain limits have been prescribed wherein the powers of pre-investment approvals limited to Rs. 10 crores only, were vested with the MoP.

96. Accordingly, till 01.05.2008, the pre-investment approval was limited to less than Rs. 10 crores, which is beyond the control of the Appellant till it got the Navratna status.

97. As the revision in circle rates happened before 01.05.2008, the Appellant cannot be held responsible for the delay in making the payment due to the paucity of funds before 01.05.2008.

98. Considering the process of the Board's approval and the time taken therein, the Appellant got Memorandum No. C/CP/DVC issued by Directors of the Board on 29.08.2008 and expenditure approval of Rs. 31 Crs. on 18.11.2008.

99. The bank draft, thereafter, was submitted to ADM(LA) on 20.12.2008.

100. In view of the above the Appellant may not be faulted for not making the payment to ADM(LA) before 01.05.2008 due to limited pre-expenditure approval and non-approval of the scheme by the government inter-alia the investment approval from MoP, PIB.

101. The Appellant submitted that time and again the Commission has itself reiterated that delay on account of decision-making by government agencies is not a controllable factor and no liability can be fasted on that account.

102. It is a settled principle that delays on the part of Government authorities cannot be attributed to the applicant.

103. It cannot be disputed from the facts noted above that the Appellant could not meet the demand raised by ADM (LA), Agra on 04.12.2007 due to limited financial autonomy, as it only had pre-investment approval of ₹9.97 crores and required full investment approval from the Ministry of Power (MoP)/ PIB, given the project's size exceeded ₹500 crores.

104. We agree that the delays in securing investment approval were beyond its control, as it lacked financial autonomy before the grant of the Navratna CPSE status on 01.05.2008.

105. Despite discussions in 2007 and a pre-investment expenditure approval of ₹9.97 crores on 04.12.2007, complete investment approval for the project, which exceeded ₹500 crores, was only granted on 29.08.2008.

106. The Appellant subsequently paid ₹13.20 crores on 20.12.2008.

107. We, therefore, agree with the Appellant's submissions that these delays were caused by the need for government approvals, the Appellant cannot be held liable, even though such delays have previously been recognized by the Commission also as uncontrollable.

108. The Respondents herein have submitted that the Appellant has not given any solid reasons to not deposit the amount as demanded by the State authorities after one year.

109. The CERC, in its review order dated 22.08.2016, rejected the Appellant's review petition, noting that the delay in land acquisition and payment led to increased costs, the Appellant had failed to pay the original land acquisition demand, resulting in the application of higher circle rates.

110. As already concluded above we are not inclined to accept the observation of the Commission, as there is a delay in the payment of demand for land acquisition not attributable to the Appellant due to the increase in the circle rate before 01.05.2008 vis-à-vis ceiling of Rs. 10 crores for pre-investment approvals.

111. Additionally, the Appellant claimed that the delay in the acquisition of land has resulted in a net benefit to the beneficiaries as two schemes clubbed together resulting in reduced land requirement.

112. However, the Commission held the Appellant responsible for the delay, dismissing the claim that it benefited the project. Additionally, the Commission disallowed interest on the tariff for the period between the

project's commissioning on 01.01.2013 and the petition filing on 13.05.2013, citing the Appellant's unexplained delay in filing. The delay in commissioning, largely due to land acquisition issues, also contributed to the increased capitalization of ₹14.89 crores.

113. The Respondent Commission attributed the delay of 4 months to a one-year lapse by the Appellant in depositing payment for land acquisition, resulting in disallowance of Interest During Construction (IDC) and Incidental Expenditure During Construction (IEDC) costs of ₹70.67 lakhs, the Commission has stated that the Appellant's failure to deposit the required amount from December 2007 to December 2008 caused a further delay in land acquisition and led to a time overrun.

114. It is noted from the records that the land acquisition process extended significantly, and the land was handed over to the Appellant only in May 2011, despite this, the Appellant completed the project with a minimal four-month delay.

115. The delay in handing over the possession of the land by the District Authorities after a gap of more than two years from the date of payment of the compensation amount cannot be attributed to the Appellant.

116. The Respondents argued that the Appellant has not diligently pursued the matter with the District Authorities for expediting the possession and handover of the land, however, we could not find any reason in support of it.

117. It is also placed before us that the consolidated land acquisition for both HVAC and HVDC systems optimized land use and reduced costs associated with separate acquisitions, infrastructure, and additional assets, the



Appellant submitted that the Commission has only focused on the delayed payment as the sole cause of the time overrun while ignoring other significant delays and benefits from consolidated land acquisition.

118. The Central Commission disallowed capitalization of Rs. 14.89 crore, attributing the additional cost to the Appellant's delay in depositing the required land acquisition amount, the Commission said that the cost overrun arose due to an increase in the circle rate during this delay and held the Appellant responsible for the higher expense, rejecting its request for inclusion of this sum in the capital cost.

119. Per contra, the Appellant submitted that the additional sum of ₹14.89 crores (₹28.10 crores in total), was made promptly after a revision in circle rates, yet possession of the land was delayed until 12.05.2011, which was beyond the Appellant's control.

120. Further, from the facts placed before us, the Commission erred in placing the liability on the Appellant by ignoring the undisputed delay attributable to ADM (LA), Agra in granting possession of the land required for the development of the scheme, even after payment of requisite amount vide cheque dated 23.02.2009, the actual possession of the land was obtained handed over to the Appellant only on 12.05.2011 (more than 24 months), despite this, the Appellant was able to limit the time overrun to a marginal 4 months.

121. Placing reliance on an earlier order dated 21.11.2019 of the Commission in Petition No. 105/TT/2018, the Appellant submitted that the Commission has itself acknowledged that a timeline of tentatively one year is usually required for the acquisition of land from the date of investment

approval inter-alia condoned the time overrun with respect to the acquisition of land beyond a year declaring it to be beyond control, the relevant extract is reproduced below:

*“45. The Petitioner has attributed the time overrun in case of Asset-I and Asset-II to delay in getting land acquisition for the Daltonganj Substation, delay due to retendering of LOA and delay due to obstruction from JUSNL transmission line. The Petitioner had made application for 40.10 acre of land on 27.5.2009 much before i.e. about one year prior to the Investment Approval of 2.7.2010. Thereafter, the Petitioner vide letter dated 20.3.2010, deposited ₹ 4 crore towards land acquisition. The Petitioner, followed it up with letters dated 14.5.2010, 8.6.2010, 4.8.2010, 19.10.2010, 28.10.2010, 3.11.2010, 14.12.2010, 15.12.2010, 23.3.2011, 18.3.2011, 27.6.2011, 12.9.2011, 9.11.2011, 23.11.2011, 20.1.2012, 19.3.2012 and 10.4.2012. The Petitioner obtained certificate of possession of land on 31.7.2015. The time period prior to Investment Approval date of 2.7.2010 is not condonable as the same is considered under normal scheduled activity. **Normal time in land acquisition is about one year from date of IA. However, the time taken for obtaining land was from 2.7.2010 to 31.7.2015 (1855 days). Therefore the time delay of about 1490 days (1855-365) due to acquisition of land is beyond the control of the Petitioner and the same has been condoned.**”*

122. We are, at this stage, not looking at an order from the Commission in another case as the merit of each case may be different.

123. However, we are satisfied that the delay from December 2007 to December 2008 cannot be attributed to the Appellant on two counts:

- i. Investment Approval from MoP/ PIB was mandatory for the Appellant and in the absence of such approval it could not release the payment as demanded by ADM(LA) vide notice dated 05.12.2007, and any delay on account of government authorities cannot be fastened on the Appellant, and
- ii. From the dates as placed before us, the Appellant after obtaining the Navratna status has made the payment within a reasonable time as such there is no delay on its count as already observed in the foregoing paragraphs.

124. Accordingly, the decision of the Central Commission attributing the delay in complying with the demand notice of the ADM(LA) is set aside.

125. Additionally, Respondents nos. 12 and 13 argued that the Appellant, vide its Inter-Office Memo dated 30.08.2008, has acknowledged responsibility for the delay, the pertinent excerpt from the circular reads as under:

*“In view of our inability to submit the required amount in more than 8 months, we are facing difficulty in approaching the authorities for any assistance as we have failed on all our commitments and assurances given to them regarding submission of the dues.”*

126. The Appellant denied that the same constitutes an admission of delay since the same is an internal office memo seeking urgent action from the

Board to approve the pre-investment expenditure, and also prayed that the tone and tenure have to be given the context and background it deserves.

127. It cannot be denied that the abovementioned “inability” only refers to the reasons beyond the control of the Appellant failing to secure the demand as raised by ADM (LA), Agra.

128. As already noted, and concluded earlier, the Appellant could not meet the demand due to the paucity of budget as approved by the MoP and the full approval was pending before the MoP for PIB approval, in fact, at the time of issuance of the demand, the Appellant did not have the pre-investment expenditure approval for meeting the demand raised by ADM (LA), Agra, also, there was no approval qua HVDC system.

129. Keeping the above in view, the argument of Respondents nos. 12 and 13 is rejected.

130. Respondent no. 10 argued that the CERC in the review order dated 22.08.2016 disallowed the claims made by the Appellant, it is pertinent to note that these grounds, raised for the very first time in the review petition by the Appellant and disallowed by the CERC vide order dated 22.08.2016, have been re-agitated by the Appellant in the present Appeal No.80 of 2017 without ever having challenged the review order dated 22.08.2016, consequently, the review order dated 22.08.2016 has now attained finality.

131. We find the argument without merit, the Review Petition was dismissed by the Commission, and the Appellant is only challenging the issue raised in the main petition which is appealable before this Tribunal, no additional

grounds are considered by this Tribunal in deciding the issue on merit based on submissions made in the main petition and/ or before us.

132. The Respondents invited our attention to the Appellant's internal office letter dated 07.04.2008 wherein the Appellant itself referring to the letter dated 17.03.2008 issued by the ADM (L.A.) acknowledged as under:

*“4. We have received another letter dated 17-03-08 from the ADM (L.A.) office on 26-03-08 stating that our proposal for acquiring land will be returned if we do not submit the said advance within a week.*

*4. After that we have received intimation from DM office that meeting will held with POWERGRID on 09-04-2008 at 6:00 PM at DM office.....”*

133. Also argued that the Appellant has not attached any minutes for the meeting dated 09.04.2008 with DM regarding the acquisition of land or to show whether the Appellant participated in that meeting or not and discussion taken place in that meeting. Further, after not receiving any response on 04.07.2008 the ADM LA returned the application of the Appellant to procure the land due to the inability of the Appellant to complete all the formalities as conveyed by the ADM LA.

134. As already concluded, the delay in making the payment cannot be attributed to the Appellant without examining the case on merit, such inter-department letters are addressed for expediting the process only.

135. We are satisfied that the instant Appeal No. 80 of 2017 filed by Power Grid Corporation of India Ltd. has merit and deserves to be allowed in respect

of the additional claim of Rs. 14.89 crores, and the IDC/IEDC for the extended period due to delay on account of the handing over the possession of the land.

**ORDER**

For the foregoing reasons as stated above, we are of the considered view that the captioned Appeal No. 80 of 2017 has merit and is allowed.

The additional land acquisition cost of Rs. 14.89 crores is allowed.

The delay of four months is condoned and a consequential IDC/IEDC of Rs. 70.67 lacs is allowed.

The Impugned Order dated 20.05.2015 in Petition No. 109/TT/2013 passed by the Central Electricity Regulatory Commission is set aside to the limited extent as concluded herein above.

The Captioned Appeal and IAs, if any, are disposed of in above terms.

**PRONOUNCED IN THE OPEN COURT ON THIS 16<sup>TH</sup> DAY OF  
DECEMBER, 2024.**

**(Virender Bhat)  
Judicial Member**

**(Sandesh Kumar Sharma)  
Technical Member**

pr/mkj