

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

**APL No. 328 OF 2024 & IA No. 1174 OF 2024 & IA No. 1851 OF
2024 & IA No. 1852 OF 2024**

Dated: **19.12.2024**

Present: **Hon'ble Mr. Justice Ramesh Ranganathan, Chairperson
 Hon'ble Smt. Seema Gupta, Technical Member (Electricity)**

In the matter of:

1. SEI Sunshine Power Pvt. Ltd.

(Through its Executive Director)

Plot No. 13, sy.no. 64 Part,
Block-D, Second Floor,
Hitech City Layout,
Madhapur Village,
Hyderabad – 500 081

... Appellant No.1

2. SEI Ravikiran Energy Pvt. Ltd.

(Through its Executive Director)

Plot no.13, sy.no, 64 Part,
Block-D, Second Floor,
Hitech City Layout,
Madhapur Village,
Hyderabad – 500 081

... Appellant No.2

3. SEI Jyotiswaroop Power Pvt. Ltd.

(Through its Executive Director)

Plot no. 13, sy.no. 64 Part,
Block-D, Second Floor,
Hitech City Layout,
Madhapur village,
Hyderabad 500081

... Appellant No.3

4. SEI Renewable Energy Power Pvt. Ltd.

(Through its Executive Director)

Plot no. 13, sy.no. 64 Part,
Block-D, Second Floor,

Hitech City Layout,
Madhapur village,
Hyderabad 500081

... Appellant No.4

VERSUS

1. **CENTRAL ELECTRICITY REGULATORY COMMISSION**
Through its Secretary,
6th, 7th & 8th Floors, Tower B, World Trade Centre,
Nauroji Nagar, New Delhi- 110029 ...Respondent No.1
2. **CENTRAL TRANSMISSION UTILITY OF INDIA LIMITED**
Through its Director,
Having its Registered office at
Saudamini, Plot No. – 2, Sector – 29
Near IFFCO Chowk Metro Station
Gurgaon, Haryana– 122 001 ...Respondent No.2
3. **GRID CONTROLLER OF INDIA LIMITED**
Through its Chairman & Managing Director,
Having its Registered office at
Saudamini, Plot No. 2, Sector- 29,
Gurugram, Haryana- 492001 ...Respondent No.3
4. **WESTERN REGIONAL LOAD DESPATCH CENTRE**
Through its Executive Director
Having its Registered office at
F-3, M.I.D.C. Area, Marol
Andheri (East), Mumbai-400093 ...Respondent No.4
5. **POWER GRID CORPORATION OF INDIA LIMITED**
Through its Director,
B-9, Qutab Institutional Area,
Katwaria Sarai, New Delhi-110016 ...Respondent No.5

Counsel on record for the Appellant(s) : Hemant Singh
Biju Mattam
Sourav Roy
Lakshyajit Singh Bagdwal
Supriya Rastogi Agarwal
Ankita Bafna
Nehul Sharma
Chetan Kumar Garg
Robin Kumar
Harshit Singh
Lavanya Panwar
Alchi Thapliyal
Sanjeev Singh Thakur for App. 1
Hemant Singh
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Lakshyajit Singh Bagdwal
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Robin Kumar
Harshit Singh
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Sanjeev Singh Thakur for App. 2
Hemant Singh
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Sanjeev Singh Thakur for App. 3
Hemant Singh
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Lakshyajit Singh Bagdwal
Supriya Rastogi Agarwal

Ankita Bafna
Nehul Sharma
Chetan Kumar Garg
Robin Kumar
Harshit Singh
Lavanya Panwar
Alchi Thapliyal
Sanjeev Singh Thakur for App. 4

Counsel on record for the
Respondent(s)

: for Res. 1

Suparna Srivastava for Res. 2

JUDGMENT

PER HON'BLE SMT. SEEMA GUPTA, TECHNICAL MEMBER (ELECTRICITY)

1. The present Appeal is filed by the Appellants challenging the order dated 16.05.2024 ("**Impugned Order**") passed by the Central Electricity Regulatory Commission ("**CERC/ Central Commission**") in Petition No. 68/MP/2023 along with I.A. No. 18/IA/2023, whereby the Respondent Commission has determined the liability of payment of transmission charges for the period of mismatch between generation project and transmission system upon the Appellant No.1.

The facts in brief are stated here-in-below:

2. Appellant No. 1 is a group company and other group companies, namely, Appellant Nos. 2 to 4 having 3 solar power projects viz., SEI Ravikiran Energy Pvt. Ltd. ("**SEI Ravikiran**"), SEI Jyotiswaroop Power Pvt. Ltd. ("**SEI Jyotiswaroop**") and SEI Renewable Energy Pvt. Ltd. ("**SEI Renewable**"), located at District, Shivpuri, Madhya Pradesh, having capacity of 30 MW each ("**collectively referred to as SEI Sunshine Phase-II for the purposes of this appeal**").

3. The Respondent No. 1 is the Central Electricity Regulatory Commission (in short referred as “ **Central Commission/CERC**”) ; Respondent No. 2, is the Central Transmission Utility of India Limited (in short referred as “**CTUIL**”), prior to establishment of CTUIL, it worked under Power Grid Corporation of India Ltd ; The Respondent No. 3 is Grid Control of India Limited (in short referred as “**GCIL**”) , which was earlier known as Power System Operation Corporation, and Respondent No. 4 is Western Regional Load Despatch Centre (in short referred as “**WRLDC**”), performing its functions under Section 28 of the EA, 2003. The Respondent No. 5, Power Grid Corporation of India Limited (in short referred as “**POWERGRID**”), is an Inter-State Transmission Licensee in terms of Section 40 of the Electricity Act, 2003.

4. Pursuant to a competitive bidding process, the Appellant group companies namely, SEI Ravikiran, SEI Jyotiswaroop and SEI Renewable executed PPAs dated 15.07.2015, each for a capacity of 30 MW; the said projects were part of “SEI Sunshine Phase-I”. Apart from the aforesaid three projects of the Appellant group, there were another three projects of capacity 30 MW each by SEI Sunshine Power Pvt. Ltd., SEI Solarvana Power Pvt. Ltd. and SEI Suraj Renewable Energy Pvt. Ltd., under “SEI Sunshine Phase II, for which three separate PPAs were executed with Tata Power Delhi Distribution Limited (“**TPDDL**”). Present Appeal relates to SEI Sunshine Phase-II solar power projects.

5. In order to evacuate 180 MW power from Madhya Pradesh (WR) to Delhi (NR), on 28.07.2015, the Appellant No. 1 applied for LTA with CTUIL/ POWERGRID, which was granted on 29.07.2016, subject to execution of LTA Agreement; the Appellant No. 1 executed LTA Agreement dated 26.08.2016 with POWERGRID/ CTUIL for the

aforementioned purpose. As per the said LTA Agreement, the date from which LTA shall be granted is mentioned as 30.09.2016 or availability of Transmission System, whichever is later. On 26.08.2016, the Appellant No. 1 executed Transmission Service Agreement (TSA) with CTUIL. On 03.08.2018, the Appellant group companies executed Supplementary PPAs with TPDDL, whereby the Scheduled Commissioning Date (SCOD) of the Projects were extended to 18 months from the date of the approval in terms of the Delhi Electricity Regulatory Commission's letter dated 21.05.2018 and the SCOD now stood as 21.11.2019.

6. CTUIL/ POWERGRID vide its letter dated 23.01.2019, informed Appellant No. 1 that from 18.11.2019, 90 MW LTA (with respect to SEI sunshine Phase-I) out the total 180 MW LTA was made effective as informed vide letter dated 14.11.2019 issued by CTUIL/ PGCIL and the remaining 90 MW out of 180 MW LTA shall be made effective from 01.03.2020 with the commissioning of remaining 1500 MW capacity of ± 800 kV, 6000 MW HVDC Bipoles between Champa PS and Kurukshetra PS.

7. On 17.01.2020, the Appellant group companies executed a Second Supplementary PPA with TPDDL, whereby the commissioning of the Project was further extended by 4 (four) months starting from 20.12.2019 leading to revised commissioning date as 20.04.2020.

8. During the months of February-August, 2020, the country saw a massive spread of the COVID-19 pandemic, due to which, on 20.03.2020, the Ministry of New and Renewable Energy ("**MNRE**"), issued an Office Memorandum that delay on account of disruption of supply chain on account of Covid 19 to be treated as *Force Majeure* and implementing agencies shall grant suitable extension of time, based on documentary evidence.

9. On 31.03.2020, CTUIL issued a letter to the Appellant No.1, intimating that the Pole-IV (1500MW) of Champa-Kurukshetra 6000 MW HVDC link has been commissioned and the remaining LTA of 90 MW (with respect to SEI sunshine Phase –I) will be made effective from 01.04.2020 in accordance with applicable Regulations.

10. On 17.04.2020, MNRE issued an Office Memorandum, wherein it extended the SCOD of RE Projects on account of lockdown due to COVID-19, equivalent to the period of lockdown and additional 30 (thirty) days for normalisation after the end of such lockdown. There was a blanket extension and there was no requirement of case-to-case examination. On 17.04.2020, the Appellant issued a letter to CTUIL intimating the occurrence of the Force Majeure Event on account of the Covid-19 pandemic and stating that the same resulted in the delay in development of the 90 MW Solar Power Project of the Appellants.

11. On 04.05.2020, the Respondent Commission notified the CERC Sharing Regulations, 2020, and as per Regulation 13(1)(c) of the said Regulations, the solar power projects, which were awarded through competitive bidding process and declared their COD between 13.02.2018 to 31.12.2022 are exempted from payment of transmission charges and losses for the use of ISTS, which was extended up to 30.06.2023 vide Ministry of Power (“**MOP**”), Government of India, order dated 05.08.2020 and First Amendment of CERC sharing Regulations 2020,

12. On 30.06.2020, MNRE issued an Office Memorandum clarifying that in terms of the Ministry of Home Affairs Orders dated 15.04.2020, 17.04.2020 and 30.05.2020, the period of lockdown is to be treated from 25.03.2020 to 31.05.2020.

13. The Appellants No. 2 to 4 declared their Commercial Operation Date

on 24.10.2020. MoP issued another order dated 15.01.2021 wherein it was inter-alia provided as under:

“

2.0 It has been brought to the notice of the Central Government that there may be renewable power projects which are eligible for waiver of inter-state transmission charges and losses and having their scheduled commissioning date on or before June 2023 which are granted extension of the scheduled commissioning date by the Solar Energy Corporation of India/NTPC Limited or other Project Implementing Agencies on behalf of Government of India for reasons of Force Majeure or delays on the part of the transmission provider or inaction/ delays on the part of Government Agency; and it had been represented that in such cases the eligible renewable power projects should not be deprived of the waiver of inter-state transmission charges and losses. It was also considered that provisions related to applicability of ISTS charges and losses waiver to all obligated entities needs a relook.

.....

Provided also that where a Renewable Energy generation capacity which is eligible for ISTS waiver in terms of the extant orders, is granted extension in COD by the competent authority, the commencement and the period of the LTA shall also get extended accordingly, and it will be deemed that the period of ISTS waiver is extended by the said period.

.....”

14. Pursuant to the above order of MOP dated 15.01.2021, the Appellant group had approached the DERC by filing a Petition No. 34/ 2020 seeking extension of Scheduled Delivery Date (SDD). The DERC, vide its order dated 05.03.2021 in the said petition, had held that on account of the Force majeure event of COVID-19, the SDD/ commissioning date shall be 27.10.2020.

15. CTUIL issued invoice dated 27.04.2022 for the Transmission charges of Rs. 18,24,81,477/- for the period commencing from April 2020 to October 2020 i.e. for the period from operationalisation of LTA and commissioning of projects. Subsequently, GCIL issued the email dated 21.01.2023, wherein it was stated that:

“

*As per the statement available in PRAAPTI portal on 20.01.2023 (Statement for trigger date 21.01.2023 attached), payment against the invoices raised to **SEI Sunshine Power Pvt Ltd** by CTU are due. The statement are available at 'ANNOUNCEMENTS' tab of Praapti Portal (<http://praapti.in/>).*

Accordingly, in compliance of LPSC rule 2022, the short-term open access for sale and purchase of electricity in the STOA collective and STOA bilateral category shall be regulated in full with effect from delivery date 22.01.2023. Also, the already approved Bilateral STOA shall be curtailed from delivery date 22.01.2023 till the status in statement is changed on Praapti Portal.”

GCIL vide its letter dated 17.02.2023, stated that:

“

As per the latest statement uploaded in PRAAPTI portal by CTUIL, (for trigger date 17.02.2023), M/s SEI Sunshine continues to appear in the default category for 28 days. Accordingly, the Long Term/Medium Term Open Access from SEI Sunshine Power Private Limited shall be regulated by 10% w.e.f. 20th February 2023 in addition to regulation on the short-term open access.

Accordingly, the reduction in LTA by 10% will reflect in the Web Based Energy Scheduling (WBES) Portal of WRLDC w.e.f 20.02.2023 (as per Annexure-1, enclosed herewith).

... ..”

16. Aggrieved by the above letter issued by GCIL regarding curtailment/regulate 10% LTA, the Appellants on 21.02.2023 approached the Central Commission, through Petition No. 68/MP/2023 seeking to quash the

invoice issued by CTUIL and also communications of GCIL along with an interim application. The Central Commission vide interim order, directed the Appellant No. 1 to pay 50% of the alleged outstanding transmission charges within a week, and subject to the fulfilment of the same, it directed that no coercive action would be taken against Appellant No.1. Challenging the said interim order, the Appellants preferred an appeal before this Tribunal in Appeal No. 255 of 2023 along with I.A. No. 398 of 2023 seeking stay of the aforesaid interim order dated 22.02.2023. This Tribunal, vide its order dated 02.03.2023, directed the Appellants to pay 50% of the transmission charges (i.e., Rs. 9.12 Crores) in three equal monthly instalments; which was deposited by the Appellants. Thereafter, the Central Commission heard all the parties in the main Petition No. 68/MP/2023 and passed an order on 16.05.2024 and dismissed the Petition of the Appellants, which resulted in the liability upon the Appellants for payment of the bilateral transmission charges for the months of April 2020 to October 2020 to CTUIL. Aggrieved by the said order, Appellants have preferred present appeal. This Tribunal heard the parties and subsequent to reserving of the judgement on 19.11.2024, the Appellant vide IA 1989 of 2024 dated 04.12.2024 submitted that they have received an email dated 03.12.2024 from GCIL stating that they are allegedly liable to make a payment of Rs 9.13 crores as per statement on PRAAPTI portal and as per LPS (amendment) Rules 2024, their power shall be regulated from 00.00 hrs of 05.12.2024 by 10 % till the status is changed on Prapti Portal and therefore, the Appellants prayed for urgent immediate relief. This Tribunal vide its order dated granted interim stay on the recovery of balance amount till pronouncement of judgement.

Appellants submissions

17. Shri Sitesh Mukharjee, learned senior counsel for the Appellants submitted that the present dispute concerns the imposition of Bilateral Transmission Charges amounting to ₹18,24,81,477/-, levied by CTUIL through an invoice dated 27.04.2022, for the period from April 2020 to October 2020. Under the PPAs with Tata Power Delhi Distribution Limited (TPDDL), generation projects were originally scheduled to achieve the SCOD/SDD on 15.07.2015, which was subsequently revised to 18 months from 21.05.2018 and further revised to 20.04.2020 through execution of Supplementary PPAs. Appellants solar projects were commissioned on 24.10.2020. Delhi Electricity Regulatory Commission ("**State commission/ DERC**"), vide its order dated 05.03.2021, approved the extension of the SCOD of the generation projects to 27.10.2020. For the supply of power under the PPAs, learned senior counsel contended that the Appellant No. 1 applied for long-term access (LTA) with CTUIL for 180 MW, of which 90 MW pertained to Appellants Nos. 2-4 under the present appeal. Pursuant thereto, the Appellants executed an LTA Agreement dated 26.08.2016 and a Transmission Service Agreement (TSA) dated 26.08.2016 with CTUIL.

18. Learned senior counsel for the Appellants contended that in light of the onset of the COVID-19 pandemic, the MNRE issued Notifications dated 20.03.2020, 17.04.2020, 27.07.2020, and 13.08.2020, pursuant to which solar power generators were granted extensions of their respective SCOD/SDD. Consequently, Appellant No. 1 issued a Force Majeure Notice to CTUIL on 17.04.2020 in reliance on the aforementioned notifications. While originally, the LTA operationalization under the LTA Agreement dated 26.08.2016, was 30.09.2016, however, the same was later revised to 01.03.2020 and LTA of the Appellant No. 1 was

operationalised on 01.04.2020 and CTUIL raised an invoice for the Appellants for the period from 01.04.2020 to 24.10.2020 till commissioning of the project.

19. Learned senior counsel for the Appellants submitted that as per the CTUIL, the bills were raised in accordance with Regulation 8(5) of the CERC sharing Regulations, 2010, which contemplate levy of Bilateral Transmission charges in case the COD of the generating station is 'delayed'. Meaning thereby, the trigger for Regulation 8(5) is 'delay' in achieving COD (*from SCOD*) by the generator. Consequently, in the absence of such delay, Regulation 8(5) would not apply, and no Bilateral Transmission Charges could be levied.

20. Learned senior counsel for the Appellants submitted that a distinction exists between the language of Regulation 8(5) of the CERC Sharing Regulations, 2010, and Regulation 13(3) of the CERC Sharing Regulations, 2020. Under Regulation 13(3), the delay by the generator is linked with the commissioning of transmission system, while there is no such link under Regulation 8(5).

21. Learned senior counsel for the Appellants also contended that the Paragraph 6.4(6) of the Tariff Policy, 2016, issued under Section 3 of the Electricity Act, 2003, constitutes a statutory policy providing for the waiver of all transmission charges and losses for renewable energy sources. The period for such exemption from transmission charges was required to be notified by the Central Government. Pursuant to this provision, the MoP, Government of India, issued notifications granting waivers of transmission charges for renewable energy generators with latest order conferring waiver for projects commissioned up to 30.06.2023, as referenced in the MoP orders dated 05.08.2020 and 15.01.2021.

- i. Order dated 30.09.2016: no transmission charges and losses for solar generation projects commissioned till 31.03.2019;
- ii. Order dated 14.07.2017: no transmission charges and losses for solar generation projects commissioned till 31.12.2019;
- iii. Order dated 13.02.2018: no transmission charges and losses for solar generation projects commissioned till 31.03.2022;
- iv. Order dated 06.11.2019: no transmission charges and losses for solar generation projects commissioned till 31.12.2022;
- v. Order dated 05.08.2020: no transmission charges and losses for solar generation projects commissioned till 30.06.2023.

Since the Appellant commissioned their projects on 24.10.2020, they became eligible for waiver of transmission charges in terms orders issued by the MoP.

22. MoP, through its order dated 15.01.2021, directed that in cases where a RE generator is granted an extension of its COD by the competent authority, the commencement and duration of the LTA shall also be extended accordingly, and it will be deemed that the period of ISTS waiver is extended by the said period. Learned senior counsel for the Appellants submitted that in accordance with paragraph 2.0 of the MoP Notification dated 15.01.2021, the MoP intends to provide the waiver of inter-state transmission charges to Solar Projects which have been previously granted "force majeure" extensions by MNRE/SECI/NTPC/ other project development agencies. This interpretation aligns with paragraph 6.4(6) of the Tariff Policy, which empowers the Central Government to notify the period for the waiver of transmission charges. The "prospectivity"

referenced in paragraph 4.0 of the MoP Notification dated 15.01.2021 is limited to the passing on of the impact of such waiver of transmission charges, specifically with regard to the accounting and allocation of waived transmission charges to pool constituents. Such an interpretation harmonizes paragraph 2.0 with paragraph 4.0 of the notification and aligns with the test of "delay" by a generating company as prescribed in Regulation 8(5) of the Sharing Regulations, 2010. To hold the same as prospective, will create an absurdity and render otiose its entire para 2.0 which speak about cases (*like the Appellant*) which have already been granted "force majeure" extensions by "competent authority". It would also be perverse as it would mean that if the Appellants had further delayed their commissioning beyond 15.01.2021, then they would be granted the benefit of the above notification, and not before. It is well settled that the Courts will avoid any interpretation that leads to absurdity or perversity.

23. Learned senior counsel for the Appellants further submitted that it is a well-established principle that the benefits conferred under a change in policy may operate retrospectively, and such retrospectivity may be implied from the policy's terms. In the instant case, the benefit of waiver flows directly from the Tariff Policy, 2016, and the notification dated 15.01.2021 merely extends this waiver to cover periods affected by *force majeure*. The notification of 15.01.2021, therefore, is merely filling a gap in the period of waiver of transmission charges that had already been granted in terms of the tariff policy and preventing penalizing a solar projects which have genuinely suffered delays due to force majeure and "granted extension by competent authority". In this context, learned counsel for the Appellants placed reliance on the judgment of the Hon'ble Supreme Court in "***State of Jharkhand v. Brahmaputra Metalics***", (2023) 10 SCC 634 wherein benefits under the state's industrial policy

were allowed to be availed by the Hon'ble Apex Court even though the actual "notification" of those benefits (*as envisaged under the policy*) were substantially delayed by the state. In view of these submission, it was prayed to set aside the impugned order and the notice dated 27.04.2022.

Respondent Submissions

24. Ms Suparna Srivastava, learned counsel for the Respondent No.2 submitted that vide letter dated 23.01.2019, LTA for 90 MW out of the total LTA capacity of 180 MW has been made effective from 18.11.2019, and the remaining 90 MW LTA was to be made effective from 01.03.2020, with the commissioning of the associated transmission system and Appellants would be liable to bear all liabilities corresponding to the LTA quantum from the respective start dates of the LTA. The Appellants were also requested to furnish the requisite documents to avail the waiver of transmission charges statutorily applicable to renewable energy (RE) generation projects for their commissioned capacities.

25. Learned counsel for Respondent No.2 contended that upon the commissioning of the associated transmission system, the LTA of 90 MW granted for the Phase-II projects of the Appellants became effective from 01.04.2020, as intimated to the Appellants vide letter dated 31.03.2020 issued by the unified POWERGRID. The Appellants' projects achieved their COD on 24.10.2020, thereby resulting in a mismatch between the commissioning of the generation capacity and the associated transmission system for evacuating the generated power. The mismatch period is from 01.04.2020 to 24.10.2020. In accordance with Regulation 8(5) of the sharing Regulations, 2010, which stipulates that in case the commissioning of a generating station or unit thereof is delayed, the generator shall be liable to pay withdrawal charges corresponding its LTA quantum from the date the LTA granted by the CTU becomes effective,

and the Appellants have, therefore, become liable to pay transmission charges for the aforementioned mismatch period. Accordingly, the Respondent No.2, i.e. CTUIL has issued an invoice dated 27.04.2022 for an amount of ₹18,24,81,477/-, towards the transmission charges payable by the Appellants for the aforementioned mismatch period. In the interim, the LPS Rules, 2022, have been notified, requiring under Regulation 7(2) for regulation of access to the entities defaulting in making payment of dues. As Appellants have failed to discharge their liability under the said invoice, Respondent No. 3 i.e. Grid Controller of India Ltd (GCIL) has issued an email dated 21.01.2023, indicating the initiation of coercive actions in terms of the LPS Rules and letter dated 17.2.2023, thereby intimating to curtail/regulate 10% of the total LTA with effect from 20.2.2023.

26. Learned counsel for the Respondent No.2 asserted that the Appellants subsequently filed Petition No. 68/MP/2023 before Respondent No.1- Central Commission. The Appellants relied on (a) various Office Memorandums (OMs) issued by the Ministry of New and Renewable Energy (MNRE) granting time extension to the Scheduled Commissioning Date (SCD) of RE projects due to disruptions in supply chains caused by the spread of COVID-19 in China, recognized as a force majeure event, and (b) various orders issued by the MoP providing waivers from the payment of transmission charges and losses applicable to RE projects. The Appellants have contended that their projects were similarly affected by the force majeure event of COVID-19 and have accordingly sought an extension of their project SCDs and exemption from payment of transmission charges for the mismatch period.

27. Learned counsel for the Respondent No.2 submitted that there is no infirmity in the impugned order since, the impugned invoice has been

issued in accordance with Regulation 8(5) of the Sharing Regulations, 2010, which is applicable to the case of the Appellants; the provision for waiver of transmission charges was introduced through the Fifth Amendment to the Sharing Regulations, 2010, whereby a new sub clause (y) to clause (1) to Regulation 7 of the principal Regulation has been added as per which, no transmission charges and losses for the use of ISTS are payable for RE projects for a period of 25 years *“from the date of commercial operation of such generation projects”*. As no electricity was generated during the mismatch period, the waiver does not apply to the Appellants; the MNRE OMs granting extension in project SCD to the RE generation projects are applicable only to the extensions provided by the implementing agencies (such as SECI, NTPC) on submission of relevant supporting documents by such projects; they are not applicable for extending any times under the LTA grant. Notwithstanding, in the present case, no documents have been placed on record to show that the Appellants have approached any such implementing agency for grant of any extension for the project SCD; the various orders of Ministry of Power, on which reliance has been placed by the Appellants are dated 05.08.2020, 15.01.2021, 23.11.2021 & 30.11.2021 and were issued after the LTA was operationalized (i.e., from 01.04.2020) and these orders operate prospectively. Hence, they are inapplicable to the Appellants' projects. Furthermore, the waivers or extensions under these Orders is on the "electricity generated," which is not relevant during the mismatch period; the only force majeure event cited by the Appellants is the onset of Covid-19 where the lockdown period has begun from 25.3.2020, merely 7 days before the LTA operationalization, intimation whereof has been given to the Appellants way back under the letter dated 23.1.2019. It cannot be the Appellants' case that it is in these 7 days alone its project commission activities were to take place. The said plea is therefore

inadmissible. Additionally, the LTA Agreement does not contain a force majeure clause, and any such claim must be addressed under the PPA, which is a contractual matter between the generating company and the power purchaser, to which Respondent No. 2 is not a privy; the Hon'ble Supreme Court's Order dated 18.03.2024 in *Civil Appeal No. 3873/2024 (ACME Deoghar Solar Power Pvt. Ltd. v. CERC and Ors.)*, relied upon by the Appellants, is not applicable to the present case. The said judgment pertains to entirely different facts and circumstances, wherein the transmission system was commissioned after the issuance of the MoP orders.

Analysis and Discussion

28. Heard Mr. Sitesh Mukherjee, learned Senior counsel for the Appellants, and Ms. Suparna Srivastava, learned counsel for Respondent No.2. The main contention urged on behalf of the Appellant is that vide various orders issued by the MOP and MNRE, the waiver of Transmission Charges for the solar projects has been extended as well as period of 5 Months has been granted as force Majeure on account of COVID 19; the MOP vide its order dated 15.03.2021 has also extended the LTA period on account of *force majeure* conditions therefore, the Appellants are not liable to pay for bilateral transmission charges for the period of mismatch from 01.04.2020 (LTA operationalisation date) up to 24.10.2020 (the commissioning date of their project). Per Contra learned counsel of Respondent has contended that waiver of inter-State transmission charges is applicable upon commissioning of the generation project and hence Appellant is liable to pay for the transmission charges for the mismatch period i.e. between operationalisation of LTA (on 31.03.2020) and commissioning of generation projects (on 24.10.2020). The

Contentions raised on behalf of the Appellants and Respondent No.2 are deliberated below:

29. Regulation 13 (1) of the Central Electricity Regulatory Commission (sharing of inter-State transmission charges and losses) Regulations, 2020 issued on 04.05.2020 stipulated that:

“(1)No transmission charges and losses for the use of ISTS shall be payable for :

(c) generation based on solar or wind power resources, for a period of 25 years from the date of commercial operation, fulfilling the following conditions:

(i) Such generation capacity has been awarded through competitive bidding process in accordance with the guidelines issued by the Central Government; and

(ii) Such generation capacity has been declared under commercial operation during the period from 13.02.2018 to 31.12.2022; and

(iii) Power Purchase Agreement(s) have been executed for sale of such generation capacity to all entities including Distribution Companies for compliance of their renewable purchase obligations.”

This date of 21.12.2022 was further extended up to 30.06.2023 in terms of *First Amendment of the Sharing Regulations 2020*, dated 07.02.2023.

30. It is noted that POWERGRID/CTUIL, pursuant to an application submitted by the Appellants, granted LTA vide letter dated 29.06.2016, w.e.f 30.09.2016 or availability of transmission system, whichever is later; LTA agreement dated 26.08.2016 and the Transmission Service Agreement dated 26.08.2016 was accordingly signed by the Appellant with CTUIL, committing to abide by the applicable Regulations with regard

to payment of transmission charges, in addition to other provisions. As the Appellants have commissioned their project on 24.10.2020, they are eligible for waiver of inter-State transmission charges and losses upon commissioning of the project from 24.10.2020 for a period of 25 years, in accordance with the relevant regulations.

31. The Appellants have signed PPA with TPDDL on 15.07.2015, stating that it will begin the Commencement of supply (COD) by 30.06.2017, which was subsequently extended to 21.11.2019 through a supplementary PPA dated 03.08.2018 signed by the Appellants' group of companies with TPDDL. Both the Appellants and Respondent CTUIL have admitted that CTUIL, vide letter dated 23.01.2019, informed the parties that the balance 90 MW of LTA shall be made effective from 01.03.2020 with the commissioning of remaining 1500 MW capacity of \pm 800 kV, 6000 MW HVDC Bipoles between Champa PS and Kurushetra PS. Since, the said letter dated 23.01.2019 of CTUIL, also refers that 90 MW LTA had already been made effective from 23.11.2019 (posterior to 23.01.2019) as informed vide letter dated 14.11.2019 (also posterior to 23.01.2019), in our opinion, the said letter could have been dated 23.01.2020 and not 23.01.2019, and which appears to be a typographical error. Nevertheless in spite of knowing that their LTA could be made effective from 01.03.2020, as per the referenced CTUIL letter, the Appellants' group of companies signed another supplementary PPA with TPDDL on 17.01.2020 with revised commissioning schedule of their projects as 20.04.2020.

32. CTUIL, vide their letter dated 31.03.2020, communicated that the LTA would become effective from 01.04.2020, subsequent to the commissioning of remaining 1500 MW (Pole IV) of the \pm 800 kV, 6000 MW HVDC Bipoles from Champa PS to Kurushetra PS. It is surprising to note

that the Appellants only on 17.04.2020, subsequent to operationalisation of its 90 MW LTA (for phase II projects) w.e.f. from 01.04.2020 intimated the occurrence of *Force Majeure* condition on account of Covid-19 Pandemic based on MNRE office memorandum dated 17.04.2020, which provided for an overall extension of SCOD of the RE projects equivalent to the duration of the lockdown, along with an additional 30 days for normalisation.

33. The Appellants have commissioned their project on 24.10.2010 and as submitted by the Appellants, the State Commission i.e. DERC has granted the extension of SCOD of the project until 30.10.2010 on account of *Force Majeure* conditions.

34. The Appellants have contended to differentiate the language/interpretation of Regulation 8(5) of the CERC Sharing Regulations 2010 and Regulation 13 (3) of the CERC Sharing Regulation, 2020. The relevant regulations are extracted below for ready reference:

CERC Sharing Regulations 2010

“8(5) Where the Approved Withdrawal or Approved Injection in case of a DIC is not materializing either partly or fully for any reason whatsoever, the concerned DIC shall be obliged to pay the transmission charges allocated under these regulations:

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

35. As per the Regulation 8(5) of Sharing Regulations, 2010, DIC has to pay the transmission charges, in case the approved withdrawal or approved injection is not materialised for any reasons; however, as per proviso, in case same is on account of delay in commissioning of generation project, then generator shall be liable to pay. In the present case, the Appellants have requested for grant of 90 MW LTA, which was granted and subsequently operationalised w.e.f. 01.04.2020, but the same could not be utilised on account of delay in commissioning of the generation project; therefore, as per these regulations, in our view, the same shall become payable by the Generator; the issue of applicability of waiver of inter-State charges for the solar project during mismatch period will be deliberated separately. We do not find it necessary to deliberate/interpret Regulations 13(3) of the CERC sharing Regulations, 2020, as the invoice for the period under consideration is raised as per Sharing Regulations, 2010.

36. The Sharing Regulations are designed for the apportionment of inter-State transmission charges among various categories of Designated Inter-State Transmission System (ISTS) Customers and there cannot be two opinions that subsequent upon commissioning of a transmission element in line with the Regulations, it is eligible to recover its yearly transmission charges. Agreeing with the contention of the Appellants that they are not liable to pay transmission charges for the mismatch period, in our view, there could be two possibilities that either DIC, which is TPDDL will have to pay the transmission charges or they will have to be paid by all the beneficiaries in the pool. In our view, in the event of non-commissioning of the generator's project upon effectiveness of its LTA, neither TPDDL can be made liable to bear transmission charges, as TPDDL has not even received the power, as well as the Appellant could not draw our attention

to specific clause in their PPA to this effect; nor the beneficiaries can be made liable to pay during this mismatch period as provisions of Sharing Regulations, 2010, grants waiver of transmission charges to solar projects upon commissioning of generation project within a stipulated timeline. It is interesting to note that waiver of transmission charges for Solar projects entail that, while solar projects got the waiver from paying the transmission charges, however said transmission charges are in a way socialised and paid by the beneficiaries in the pool. Thus, the Appellants having sought the LTA cannot be absolved of their liability to pay transmission charges arising in the event of delay in commissioning of their projects.

37. Regarding the other contention of the Appellants that since competent court has approved extension, there is no delay and hence Regulation 8(5) does not get attracted. In our view, though DERC has approved extension of SCOD for the Appellants' solar project, neither the Appellants has specifically sought exemption from payment of inter-State transmission charges from the State Commission nor it can be construed to have been automatically granted alongside the approval of extension of SCOD of the generation projects, as DERC does not exercise its jurisdiction on inter-State transmission charges. We, therefore, do not find merit in the submission of the Appellants on this account.

38. The Appellants have relied upon various orders issued by the MOP, specifically MOP order dated 15.01.2021 and contended that this order intends to provide the waiver of inter-State transmission charges to solar projects which has been previously granted. "*Force Majeure*" extensions by MNRE/SECI/NTPC/other development agencies and such waiver is aligned to Tariff Policy, and prospectively mentioned in the referred notification is for accounting purpose of allocating waived transmission

charges to pool constituents. The MOP order dated 15.01.2021 is extracted as under:

“ No. 23/12/2016-R&R

Government of India

Ministry of Power

*Shram Shakti Bhawan,
Rafi Marg, New Delhi,
15th January, 2021*

ORDER

Subject: Waiver of Inter-State Transmission charges and losses on transmission of electricity generated from solar and wind sources of energy.

Pursuant to the provisions of the Tariff Policy, Government have issued revised orders on the 5th of August 2020 providing that the inter-state transmission charges and losses will not be levied on the transmission of electricity generated from power plants using solar and wind sources of energy including solar-wind hybrid power plant with or without storage which have been commissioned on or before the 30th June 2023, provided that the sale of power is to entities having Renewable Purchase Obligations, irrespective of whether the power is within RPO or not - and provided that in case of distribution licensees, the power has been procured competitively in accordance with the guidelines issued by the Central Government.

2.0 It has been brought to the notice of the Central Government that there may be renewable power projects which are eligible for waiver of inter-state transmission charges and losses and having their scheduled commissioning date on or before the 30 June 2023 which are granted extension of the scheduled commissioning date by the Solar Energy Corporation of India/NTPC Limited or other Project Implementing Agencies on behalf of Government of India for reasons of Force Majeure or delays on the part of the transmission provider or inaction / delays on the part of Government Agency, and it had been represented that in such cases the eligible renewable power projects should not be deprived of the waiver of inter-state transmission charges and losses. It was also considered that provisions related to applicability of ISTS charges and losses waiver to all obligated entities needs a relook.

3.0 Government have examined this issue and have decided that there is merit in the contention Government of India have therefore decided that in supersession of Ministry of Power's earlier order No 23/12/2016-R&R dated 13.2 2018, Order No. 23/12/2016-R&R dated 6 November, 2019 and 5th August 2020 no inter-state transmission charges will be levied on transmission of the electricity generated from following power plants for a period of 25 years from the date of commissioning of the power plants which meet the following criteria:

a) Power plants using solar and wind sources of energy, including solar-wind hybrid power plants with or without storage commissioned upto 30th June, 2023 for sale to distribution licensees, irrespective of whether this power is within RPO or not, provided that the power has been procured competitively under the guidelines issued by the Central Government. Power from such solar and wind plants may also be used for charging of storage including Hydro pumped storage plants:

Provided that where any renewable power project which is eligible for waiver of inter-state transmission charges and is having its scheduled date of commissioning on or before 30 June 2023 is granted extension of time from the commissioning on account of Force Majeure or for delay on the part of the transmission provider in providing the transmission even after having taken the requisite steps in time; or on account of delays on the part of any Government Agency, and the power plant is commissioned before the extended date: it will get benefit of waiver of inter-state transmission charges on the transmission of electricity generated by the power plant as if the said plant had been commissioned on or before 30th June 2023:

Provided also that where a Renewable Energy generation capacity which is eligible for ISTS waiver in terms of the extant orders, is granted extension in COD by the competent authority, the commencement and the period of the LTA shall also get extended accordingly and it will be deemed that the period of ISTS waiver is extended by the said period.

b) Solar PV power plants commissioned under "MNRE's Central Public Sector Undertaking (CPSU) Scheme Phase-II (Government Producer Scheme) dated 5.3 2019", and

c) Solar PV power plants commissioned under SECI Tender for manufacturing linked capacity scheme (RFS No SECI/C&P/R/S/2GW Manufacturing/P-3/R1/062019 dated 25.06.2019) for sale to entities having RPO, irrespective of whether this power is within RPO or not.

4.0 This Order shall be applied prospectively i.e. from the date of issue of Order.

5.0 This issues with the approval of Minister of State (I/C) for Power and NRE.”

(Debranjana Chattopadhyay)

Deputy Secretary to Government of India

Tel: 2373 0265

To Secretary, CERC, New Delhi. “

39. In our view, as per Para 2.0 of referred MOP order dated 15.01.2021, in case some Solar projects are delayed beyond 30.06.2023 and an extension of commissioning date has been granted by SECI, NTPC, or other implementing agencies on behalf of the Government of India, on account of *Force Majeure* or other reasons beyond their control, then they should not be deprived of waiver of transmission charges as in terms of Sharing Regulations, 2020 (First amendment), waiver of inter-State transmission charges is applicable provided projects are commissioned up to 30.06.2023. With this background, provisions of waiver of inter-State transmission charges were formulated in Paragraph 3, which also specifies a waiver for a period of 25 years from the date of commissioning of the project. First Proviso of para 3 (a) above, therefore, stipulates that if the generation project is commissioned within the extended period, it will be considered as if the plant is commissioned on or before 30.06.2023 for the purpose of applicability of waiver of inter-State transmission charges. This referred MOP letter is aligned to Tariff Policy 2016. The waiver of

Inter-state Transmission Charges, as outlined in the sharing Regulations refers to post commissioning of Generation Project. The para 2.0 does not refer to a waiver of inter-State transmission charges before the commissioning of solar project. The Second proviso to para 3.0(a) above refers that in case of extension of SCOD, the commencement and period of LTA shall also get extended, which need detailed deliberation, whether it means the shifting of LTA date, if yes, then what will happen to transmission charges of the transmission element which has been commissioned and not put to use, who shall bear the inter-State transmission charges during this mismatch period. We are saved from undertaking such an exercise in present *lis* as under Paragraph 4.0 of MOP order dated 15.01.2021, it stipulates that this order shall be applied prospectively i.e. from the date of issuance of the order.

40. We do not find merit in the submission of the Appellants that the prospective application of referred order would render otiose its entire para 2.0. In our view, it is settled law that whenever any policy directives, Regulations and Government orders are issued, they are applicable from a prospective date. In the MOP order dated 15.01.2021, it has been specifically mentioned that it would be applicable from the date of this order. For the time being even if we leave aside the issue of interpretation of proviso 2 of para 3.0 (a) whether extension of LTA would mean waiver of inter – State transmission charges, even prior to commissioning of generation project and whose the liability would be to bear the inter-State transmission charges, in our view, if Ministry of Power has the intention of applying this order on all cases prior to 15.01.2021, the para 4.0 restricting its applicability only from the date of the order i.e. 15.01.2021 would not have been mentioned. The Appellants contention that the term “Prospectively” mentioned in Paragraph 4.0 of the MOP order dated

15.01.2021 refers only for accounting purposes of allocation of waived transmission to pool constituents, needs to be rejected as we could not draw such inference from Para 4.0 of the MOP order dated 15.01.2021, as the term “prospectively” applies to the entire content of the order, and not just to specific accounting provisions. The Supreme Court in the Judgment in “***Kusumam Hotels Private Limited vs Kerala SEB***” (2008 13 SCC 213) (on which reliance has been placed by the Appellants) held “*In our constitutional scheme, however, the statute and/or any direction issued thereunder must be presumed to be prospective unless the retrospectivity is indicated either expressly or by necessary implication*” and therefore, the same is not applicable as in the present case, MoP order dated 15.01.2021 expressly mentions prospective application of the order.

41. In the Supreme Court Judgment in “***State of Jharkhand vs. Brahmaputra Metalics***”, (2023 10 SCC 634) (on which reliance has been placed by the Appellant), the Departments were required to issue an exemption notification within one month from the date of notification of the Industrial Policy 2012, for development of economic activities on 16.06.2012, however, the same was issued by the Department on 08.01.2015 to be applied prospectively. In that context, the Supreme Court has allowed the exemption issued vide Government Notification dated 08.01.2015 to be applied retrospectively, as it negated the nature of the representation which was held out in Industrial Policy 2012 as well as there was no justification for making the exemption prospective contrary to the terms of representation held out in the Industrial Policy 2012. The facts in the present case are different as there was no specific timelines, breach of which has been committed, in issuing the said MOP order dated

15.01.2021, hence, the said judgment is not applicable to the present case.

42. In view of the above discussion and deliberation, we do not find any infirmity in the order of the CERC dated 16.05.2024, impugned in this Appeal, and the same is hereby upheld. The Appeal is, accordingly, dismissed and all associated IAs, if any, shall stand disposed of.

Pronounced in open court on this 19TH Day of December, 2024

(Seema Gupta)
Technical Member (Electricity)

(Justice Ramesh Ranganathan)
Chairperson

REPORTABLE/~~NON-REPORTABLE~~

ts/ag