APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI
(APPELLATE JURISDICTION)

APPEAL NO. 128 OF 2015
APPEAL NO. 171 OF 2015
APPEAL NO. 60 OF 2017

Dated: 27.05.2025

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

APPEAL NO. 128 OF 2015

IN THE MATTER OF :

Samalkot Power Ltd.,
1st Floor, H Block, North Wing,
Dhirubhai Ambani Knowledge City,
Mumbai – 400 710 **…… Appellant**

Vs.

1. Central Electricity Regulatory Commission
   3rd and 4th Floor, Chanderlok Building,
   36, Janpath, New Delhi – 110001.

2. Power Grid Corporation of India Ltd.,
   B-9, Qutab Institutional Area,
   Katwaria Sarai, New Delhi – 110016.

3. REC Transmission Projects Co. Ltd.
   Core – 4, SCOPE Complex,
   7 Lodhi Road, New Delhi 110001. **…….Respondents**

Counsel for the Appellant (s) : Ms. Shally Bhasin
Mr. Matrugupta Mishra
Ms. Sadapurna Mukherjee

Counsel for the Respondent(s) : Mr. Sethu Ramalingam for R-1

M. G. Ramachandran, Sr. Adv.
Mr. Poorva Saigal

Mr. Tanya Sareen
Mr. Shubham Arya for R-2

Mr. Hemant Sahai
Mr. Nitish Gupta
Ms. Molshree Bhatnagar
Ms. Shubhi Sharma
Mr. Nimesh Jha
Mr. Nipun Sharma
Ms. Parichita Chowdhury
Mr. Rishabh Sehgal
Mr. Deepak Thakur
Mr. Adarsh Kumar Bhardwaj
Mr. Shubham Singh
Ms. Varnika Tyagi
Ms. Kamya Sharma
Mr. Divyansh Kasana
Ms. Samprati Singh for R- 3

APPEAL NO. 171 OF 2015

IN THE MATTER OF :

Spectrum Power Generation Ltd.
D No. 8-2-293/A/231, Plot No. 231
3rd Floor, Road No. 36, Jubilee Hills
Hyderabad-500033. **…….Appellant**

VERSUS

1. Central Electricity Regulatory Commission,
   3rd and 4th Floors, Chandralok Building,
   Janpath, New Delhi -110001

2. Powergrid Corporation India Limited (PGCIL)
   Saudmini, Plot No. 2, Sec-29
   Gurgaon-122001

3. Vemagiri Transmission System Ltd.
   (A 100% wholly owned subsidiary of PGCIL)
   Regd. Off. B-9, Qutab Institutional Area,
   Katwaria Sarai, New Delhi-110 016

4. REC Transmission Projects Co. Ltd.
   Core-4, Scope Complex,
   7-Lodhi Road, New Delhi-110001

5. Samalkot Power Limited
   Through its Directors
   Dhirubhai Ambani Knowledge City,
   I Block-1st Floor- North Wing,
   Thane-Belapur Road,
   Koparkhairne, Navi Mumbai-400 710 **…….Respondents**

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Mr. Hemant Sahai
Mr. Nitish Gupta
Ms. Molshree Bhatnagar
Ms. Shubhi Sharma
Mr. Nimesh Jha
Mr. Nipun Sharma
Ms. Parichita Chowdhury
Mr. Rishabh Sehgal
Mr. Deepak Thakur
Mr. Adarsh Kumar Bhardwaj
Mr. Shubham Singh
Ms. Varnika Tyagi
Ms. Kamya Sharma
Mr. Divyansh Kasana
Ms. Samprati Singh for R-4

APPEAL NO. 60 OF 2017

IN THE MATTER OF :

Powergrid Corporation of India Limited,

D-9, Kutub Institutional Area,
Katwaria Sarai, New Delhi – 110 016 **…Appellant**

Versus

1. Central Electricity Regulatory Commission,
   3rd & 4th Floor, Chandralok Building,
   36, Janpath, New Delhi – 110 001.

2. REC Transmission Project Company Ltd,
   Core-4, SCOPE Complex,
   7, Lodhi Road, New Delhi – 110 003.

3. Samalkot Power Limited,
   Dhirubai Ambani Knowledge City,
   Mumbai – 400 710.

4. Spectrum Power Generation Limited,
   D-8-2-293/A/231, 3rd Floor,
   Road No. 36, Jubilee Hills,
   Hyderabad – 500 003. **…….Respondents**

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Mr. Rishabh Sehgal
Mr. Deepak Thakur
Mr. Adarsh Kumar Bhardwaj
Mr. Shubham Singh
Ms. Varnika Tyagi
Ms. Kamya Sharma
Mr. Divyansh Kasana

Ms. Samprati Singh for R-2

Ms. Shally Bhasin
Mr. Matrugupt Misra for R-3

Mr. Hemant Singh
Ms. Shikha Ohri
Mr. Matrugupta Mishra
Ms. Shourya Malhotra
Ms. Parichita Chowdhury
Mr. Nishant Kumar
Ms. Ankita Bafna
Ms. Ananya Mohan for R-4

J U D G M E N T

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

1. Appeal Nos. 128 of 2015 and 171 of 2015 have been filed by two Gas based Thermal Generators, namely, M/s Samalkot Power Ltd. (in short "SPL") and M/s Spectrum Power Generation Ltd. (in short "SPGL") assailing the Order dated 06.04.2015 (in short "Impugned Order-1") passed by the Central Electricity Regulatory Commission (in short "Central Commission" or "CERC") in Petition 127 of 2012 and Petition No. 156/MP/2012, respectively, in which CERC has held that the Appellant shall reimburse 80% of the acquisition price incurred by Power Grid Corporation of India Limited (in short "PGCIL" or "Respondent No. 2") for the Vemagiri Transmission System Limited (in short "VTSL") to PGCIL, in proportion to the Long Term Access granted to them.

2. M/s Powergrid Corporation of India Limited has filed the Appeal No. 60 of 2017 against the Impugned Order dated 20.10.2016 passed by the Central Electricity Regulatory Commission in Review Petition No.

10/RP/2015, whereby the Central Commission has partly allowed the Review Petition filed by the PGCIL herein against the Order dated 06.04.2015.

Description of Parties

3. M/s Samalkot Power Limited and M/s Spectrum Power Generation Ltd. are companies incorporated under the Companies Act, 1956, and were setting up a gas-fired combined cycle power plant in Andhra Pradesh.

4. CERC is the appropriate authority having been vested with the powers under the Electricity Act, 2003, to adjudicate the matter in dispute.

5. PGCIL is the Transmission Licensee, a Government Company, and REC Transmission Project Company Ltd (in short “RECTPCL”) is a subsidiary of REC Limited.

Submissions of the Appellant

6. The Appellant submitted that PGCIL and VTSL filed petitions before the Central Electricity Regulatory Commission (CERC) under Section 63 and Section 14 of the Electricity Act, 2003, seeking adoption of a tariff and grant of a transmission licence, respectively. However, the jurisdiction under these provisions is limited to tariff adoption and licence issuance and does not extend to ordering payments such as reimbursement of acquisition costs. PGCIL claimed that the interim relief sought (refund of a bank guarantee) was a consequence of the main proceedings under Sections 14 and 63. However, the Commission dismissed the main petitions (Nos. 127/2012 and 128/2012)

as infructuous due to subsequent developments, yet granted relief in an interim application that went beyond the scope of the original petitions.

7. Specifically, the Commission entertained PGCIL's request to reimburse VTSL's acquisition costs, which was not part of the primary prayers under the petitions. This action was challenged on the grounds that the Commission overstepped its jurisdiction and granted restitution relief outside the framework of Sections 14 and 63. The relief also contradicted principles established in case laws, including:

1. Kalani Industries Pvt. Ltd. v. Rajasthan Electricity Regulatory Commission (Appeal No. 185 of 2015, Order dated 25.10.2018, Paras 60-62) – which emphasizes adherence to the scope of jurisdiction.
2. Manohar Lal (D) By Lrs v. Ugrasen (D) [(2010) 11 SCC 557, Para 34] and Trojan & Co. Ltd. v. RM. N. N. Nagappa Chettiar [1953 AIR 235, Para 22] – which underscore the prohibition against granting relief outside the original scope of proceedings. The claim is that the Commission, by granting relief via an interim application in proceedings deemed infructuous, violated established legal principles and acted beyond its powers.

8. Bulk Power Transmission Agreement (BPTA) dated 24.12.2010 required: SPL and SPGL to establish generation projects totaling 3550 MW. PGCIL/VTSL to set up the corresponding transmission system. SPL fulfilled its obligations by investing approximately ₹8,900 Crores and commissioning 4 of 6 gas turbines, while PGCIL/VTSL failed to construct the transmission system, breaching their reciprocal obligations.

9. SPL remained ready and willing to pay transmission charges per the Point of Connection (PoC) Regulations. However, PGCIL's failure to construct the transmission system rendered compliance impossible. The Commission, in its orders dated 09.05.2013 and 27.09.2013, acknowledged PGCIL's lack of investment and progress in the transmission system. The infeasibility of executing the Vemagiri Transmission System in its current form, and further, these orders directed the return of Bank Guarantees to the Long-Term Transmission Customers (LTTCs), including SPL.

10. It is further submitted that PGCIL did not appeal the Commission's orders dated 09.05.2013 and 27.09.2013, reinforcing SPL's position that PGCIL failed to meet its obligations.

11. The Commission failed to consider that SPL (the Appellant) should not bear the consequences of PGCIL's default in fulfilling its reciprocal obligations under the Bulk Power Transmission Agreement (BPTA) dated 24.12.2010. SPL incurred approximately ₹8,900 crores to fulfill its commitments, including commissioning 4 out of 6 gas turbines and a 400 kV Gas Insulated Switchyard. However, PGCIL/VTSL did not construct the required transmission system, compelling SPL to seek alternative connectivity with the Andhra Pradesh State Grid at additional cost. Test synchronization of SPL's gas turbines occurred on 13.04.2012, 11.04.2012, and 28.12.2012. PGCIL later withdrew the connectivity and annulled the Long-Term Access (LTA) Agreement through letters dated 10.10.2013 and 02.12.2013.

12. Further, contested that their argument that they should not bear project losses is untenable, as SPL's inability to pay transmission charges resulted directly from PGCIL's failure to fulfil its obligations. PGCIL's non-performance

rendered the contract impossible under Section 56 of the Indian Contract Act, 1872, which addresses frustration of contract. Hon'ble Supreme Court has consistently ruled that performance becomes impossible if supervening events strike at the root of the contract or render its purpose impractical or futile. Relevant precedents include:

1. Smt. Sushila Devi v. Hari Singh (1971) 2 SCC 288 – Impossibility applies when events undermine the contract's purpose.
2. Govindbhai Gordhanbhai Patel v. Gulam Abbas Mulla Allibhai (1977) 3 SCC 179 – Performance becomes impossible if the basis of the contract is obliterated. In this case, PGCIL's non-performance created such a supervening event, absolving SPL from liability for VTSL acquisition costs or related obligations.

13. Further, the Impugned Order by the Commission is akin to an order of restitution, requiring the Appellant (SPL) to restore PGCIL to its pre-BPTA and TSA position. However, restitution principles do not apply since:

- SPL did not benefit from PGCIL's actions but incurred substantial costs (~₹8,900 Crores).
- PGCIL failed in its reciprocal obligation to establish the transmission system.
- SPL has not been unjustly enriched, nor has PGCIL suffered losses attributable to SPL.

14. The Impugned Order lacked a rational basis or reasoning to justify imposing liability on SPL and SPGL. Paragraph 25 of the order, which imposes liability, fails to substantiate the rationale behind the conclusion. The BPTA and TSA were effectively terminated following the Commission's orders for the return of Bank Guarantees due to the impracticality of

executing the Vemagiri Transmission System in its present form. PGCIL's conduct, representations, and submissions repudiated the agreements, rendering their performance impossible. The Appellant was only required to perform its obligations under the TSA upon PGCIL completing the transmission system. PGCIL's failure to fulfil its obligations made SPL's performance impossible, including the payment of transmission charges. The unavailability of gas caused a fundamental change in the project's economics, making the performance of the TSA impractical and beyond SPL's control. In such circumstances, the Appellant cannot be burdened with the costs of VTSL acquisition incurred by PGCIL.

15. Further submitted that the Ministry of Power (MoP) issued a circular dated 19.03.2012, advising developers not to base projects on domestic gas until 2015-16, with an assurance that project developers would be informed when the Ministry of Petroleum and Natural Gas (MoPNG) confirmed gas availability. Consequently, Appellant submitted that it would notify PGCIL about the project's commissioning only after receiving such confirmation, enabling PGCIL to execute the transmission system at that time. Given the unavailability of gas and the lack of expected project commissioning before 2017-18, there was no justification for blocking the Bank Guarantee (BG) for such an extended period. Appellant requested the return of its BG, asserting that the Bulk Power Transmission Agreement (BPTA) was effectively frustrated by the MoP circular, which stalled project progress. Also, the Appellant criticized RECTPCL and PGCIL for rigidly adhering to the timelines set in the Request for Proposal (RFP) and related documents, ignoring the MoP circular and its implications.

16. The Respondent Commission (CERC) failed to consider the hardships faced by generating companies, including the Appellant, due to the MoP

circular in both the original and review orders. CERC, as a regulatory body, must safeguard the interests of all stakeholders, including private entities, which play a significant role in the power sector, and should account for external factors such as policy directives when adjudicating disputes. The BPTA was executed between PGCIL and four generators, including the Appellant and SPGL. While the Appellant and SPGL complied with the BPTA by furnishing the required Bank Guarantees (BGs) and executing a Transmission Service Agreement (TSA) with RECTPCL, the other two generators failed to provide their BGs. Despite non-compliance by these generators, no costs or obligations were imposed on them, whereas the Appellant and SPGL, who adhered to the terms of the agreement, were unfairly burdened with costs. This is inequitable, as the transmission asset was originally planned for all four generators. The MoP circular (dated 19.03.2012) was an unforeseen event beyond the control of the parties and led to the cancellation of the transmission system.

17. The Respondent Commission (CERC) failed to recognize that both RECTPCL and PGCIL neglected their responsibilities, contributing to the situation. The circular was public and widely known, making RECTPCL and PGCIL liable for the costs incurred due to the acquisition of VTSL. The Appellant should not be held liable for such costs. The negligence and inaction by RECTPCL are evident in a letter dated 18.04.2012, which demonstrates its failure to address the implementation of the transmission system. RECTPCL did not engage with the Appellant or SPGL regarding their concerns and did not escalate issues to the Empowered Committee on Transmission before transferring VTSL. This lack of diligence prejudiced both PGCIL and the generators. RECTPCL's actions undermined its duty to ensure proper coordination and implementation of the transmission system,

further exonerating the Appellant from any liability associated with VTSL acquisition costs.

18. Also, the Impugned Order directing SPL and SPGL to reimburse the acquisition price contradicts the Commission's earlier order dated 13.12.2011, which explicitly stated that only Point of Connection (PoC) charges would be payable by ISTS customers. Despite a written request from one of the two LTTCs for non-execution of the line, PGCIL proceeded with acquiring VTSL and incurring expenses without seeking clarification or direction from the Ministry of Power (MoP). As both the developer and Central Transmission Utility (CTU), PGCIL had the obligation to halt further action until a decision from MoP was secured. PGCIL's claim that costs were incurred due to RECTPCL's insistence does not absolve it of responsibility for its imprudent actions.

19. The Commission, in its orders dated 09.05.2013 and 27.09.2013, acknowledged:

1. PGCIL/VTSL exhibited reluctance to implement the project.
2. No tangible progress was made in the transmission system’s development during the pendency of the petitions.
3. Consequently, the Commission directed the return of bank guarantees to the LTTCs.

20. These findings highlight that PGCIL’s inaction contributed to the project’s non-implementation, undermining its argument that external factors were solely responsible. PGCIL’s failure to progress with the project was self-evident in the Commission’s prior orders. The Impugned Order unfairly shifts the financial burden of PGCIL’s mismanagement onto the Appellants, suggesting an attempt to unjustly extract funds from them.

21. Also submitted that they have challenged the arbitrary imposition of 80% of the acquisition cost of VTSL as directed by the CERC, because the percentage lacks any objective basis. This burden is unwarranted, as the Commission itself acknowledged that the Vemagiri Transmission System could not be executed due to the Ministry of Power's circular (19.03.2012) and accordingly discharged the Appellant from liability under the BPTA and TSA, including the refund of bank guarantees. Imposing liability arising from the same transaction is contradictory and unjust.

22. The CERC also recognized that PGCIL/VTSL failed to fulfill their obligations under the TSA, as no investment was made in the project. In contrast, SPL complied with its obligations and incurred significant costs—approximately ₹8,900 crores by commissioning 4 out of 6 gas turbines. Despite this, the Commission penalized SPL and SPGL for costs incurred by PGCIL in acquiring VTSL without providing a valid contractual, statutory, or equitable basis for doing so.

23. Further highlighted that the decision to cancel the transmission corridor was a conscious and deliberate action taken after analyzing the non-availability of gas and other factors discussed by Southern Region Stakeholders. This cancellation decision renders the imposition of liability on it baseless and arbitrary, as there is no legal or logical foundation to justify the claim.

24. It is also submitted that, as per BPTA and TSA, there were no specific beneficiaries identified for the Vemagiri-Khammam-Hyderabad transmission line. PGCIL itself acknowledged in the Standing Committee Meeting of Southern Region Constituents on 31.07.2014 that the line could not qualify

as a "system strengthening line." PGCIL incurred no system strengthening or extra costs for the exclusive use of this transmission system by the Appellant. Commission recognized PGCIL's lack of progress and cost justification in its order dated 29.07.2013, directing the return of the bank guarantee to the Appellant. RECTPCL and PGCIL failed to substantiate claims of actual costs incurred related to the transmission system's development for the Appellant. They neither presented evidence nor sought reimbursement for such costs in the main petition. Precedents establish that claims for compensation or reimbursement require explicit petitions and proof of costs incurred, which were not filed in this case (Ganganagar Sugar Mills Ltd. vs. Delhi Cloth Mills & General, 1999 (50) DRJ 530, para 24; Mulamchand vs. State of Madhya Pradesh, AIR 1968 SC 1218 at para 7).

25. The costs allegedly incurred by PGCIL were the result of a hasty and imprudent executive decision and should not be borne by private developers such as the Appellant. Under Section 38(2) (d) of the Electricity Act, 2003, PGCIL, as the Central Transmission Utility (CTU), is obligated to provide non-discriminatory open access for its transmission system. The costs associated with fulfilling this statutory obligation are subject to regulatory approval and should not be passed on to developers when the project is cancelled. If a policy decision leads to the development and subsequent cancellation of a transmission system, neither the Appellant nor other developers initiating such a system can be held liable for costs incurred. This is contrary to principles of equity and statutory obligations under the Electricity Act.

26. Further, RECTPCL and PGCIL have failed to demonstrate actual damages or losses related to the acquisition of VTSL, and the amount paid was primarily for a consultancy/success fee rather than substantive expenses. Specifically, PGCIL paid ₹18,27,93,533 to RECTPCL, out of which

₹16,54,50,000 was designated as a success fee for VTSL's acquisition. Despite this expenditure, PGCIL neither pursued arbitration nor filed any suit against RECTPCL to recover these amounts following the termination of the BPTA and TSA, as directed by the CERC on 27.09.2013. Also highlighted that RECTPCL proceeded with the bid process and issued the Letter of Intent (LoI) to PGCIL on 20.03.2012, just one day after the MoP circular (19.03.2012) advised against planning projects based on domestic gas. This continued despite a developer's letter on 30.03.2012, informing RECTPCL and PGCIL that the project would not proceed due to the circular. RECTPCL and PGCIL failed to seek clarifications from their administrative ministry or request an extension of the acquisition date. Instead, RECTPCL appeared to prioritize securing its success fee, while PGCIL knowingly assumed the risk and proceeded with VTSL's acquisition. This demonstrates negligence and imprudence on the part of RECTPCL and PGCIL, and as a result, PGCIL cannot shift the financial burden onto the developers, including the Appellant.

27. Additionally, PGCIL's actions confirm that no actual loss or damage was incurred, as the payment primarily covered administrative fees rather than operational costs related to the transmission system. Thus, the liability for these costs should not be imposed on the developers.

28. Further, the expenditure by RECTPCL as a bid process coordinator and the success fee of ₹16.54 crores paid by PGCIL to RECTPCL cannot be considered expenses incurred on the actual transmission line. Further, despite the termination of the BPTA and TSA, PGCIL has never initiated arbitration or legal proceedings against RECTPCL to recover these amounts.

29. Even if liability were hypothetically shared with the Appellant, PGCIL and RECTPCL must provide proof that the acquisition costs were reasonably incurred with detailed figures. Without such substantiation, imposing liability

on the Appellant is baseless. Under Section 65 of the Indian Contract Act, 1872, the Appellant asserted it is not liable for costs resulting from a frustrated agreement. Additionally, the imprudent and injudicious actions of RECTPCL and PGCIL in pursuing the acquisition despite the project's infeasibility absolve the Appellant of any obligation. The Appellant cannot be penalized for the ill-considered actions of these entities, and the quantum of the acquisition price is not payable. Therefore, the direction of the CERC (dated 06.04.2015) requiring the Appellant and SPGL to reimburse 80% of PGCIL's total costs for VTSL's acquisition is unwarranted and must be set aside.

30. Commission erred by failing to acknowledge that the PoC Regulations (Notification No. L-1/44/2010-CERC, dated 15.06.2010), effective from 01.01.2011, supersede the TSA. The Appellant was not obligated to pay the full transmission charges as claimed by PGCIL. PGCIL, being the Central Transmission Utility (CTU), is fully aware of the PoC Regulations and the Commission's order dated 13.12.2011, which clarified that the Appellant is liable only for PoC charges, not full charges under the TSA. Despite this, PGCIL continues to demand full payment, which contradicts the regulations and order. It is emphasized that unilateral alterations of a concluded contract are impermissible under law. Such variations can only occur with mutual consent, as upheld by the Andhra Pradesh High Court in National Energy Trading Services Ltd. & Ors v. Central Power Distribution Co. & Ors. (W.P. Nos. 4118 and 4163 of 2013).

31. PGCIL’s attempt to bypass the PoC Regulations and impose full transmission charges on the Appellant is unlawful and violates the principle of consensus ad idem, which is foundational to contracts. PoC Regulations supersede the TSA, absolving the Appellant from full transmission charges.

The imposition of these charges is both contrary to law and inequitable, given PGCIL's failure to execute the transmission project.

32. It is a settled legal principle that no party can benefit from its own failure or wrongdoing. As PGCIL/VTSL failed to perform their contractual duties, the agreements, including those for long-term open access, cannot be enforced against the Appellant. Given PGCIL/VTSL's breach, the Appellant cannot be held liable to pay any charges to PGCIL for services or infrastructure that were never provided.

33. Commission overlooked PGCIL's breach of the doctrines of promissory estoppel and legitimate expectation despite being a statutory body.

34. Continued to argue that the Appellant challenged the demand raised by PGCIL in its letter dated 05.05.2015, arguing it is not payable for two primary reasons:

A. Contravention of the Impugned Order: The Commission had explicitly directed that the Appellant and SPGL are responsible for 80% of the acquisition price of VTSL. However, PGCIL must bear the remaining 20% of the acquisition price and all expenses incurred by VTSL from the acquisition date to its liquidation. The demand by PGCIL includes 80% of the post-acquisition expenditures, which directly violates the Impugned Order.
B. Unsustainability of Demand: As the demand contradicts the explicit terms of the Impugned Order, it is legally unsustainable and should be set aside.

35. Thus, the letter dated 05.05.2015 from PGCIL is ineligible for enforcement due to its inconsistency with the Commission's order and the applicable legal framework.

Submissions of the Respondent No. 1, CERC

36. The Respondent Commission submitted that the Commission seeks to clarify two key issues raised during the hearings:

1. Maintainability of I.A. No. 24/2014 – Filed by PGCIL in Petition No. 127/2012, requesting a refund of the acquisition price and audit costs from the date of the Share Purchase Agreement until the winding up of Vemagiri Transmission Company.
2. Maintainability of Appeal No. 60 of 2017 – Filed after allowing the Review sought in Review Petition No. 10/RP/2015.

37. Initially, PGCIL filed Petition No. 127/2012 for the adoption of transmission charges for the Vemagiri Transmission System, a wholly owned subsidiary of PGCIL, and Petition No. 128/2012 for granting a transmission license. However, during the pendency of these petitions, the transmission system was deemed unnecessary, rendering the acquisition of the Vemagiri Transmission System unwarranted. As a result, PGCIL filed I.A. No. 24/2014, seeking reimbursement of costs incurred due to the now-redundant acquisition.

38. I.A. No. 24 of 2014, concerning the refund/recovery of the acquisition price and audited costs of the company from the Share Purchase Agreement date to the company’s winding up, was listed for hearing on 28.08.2014, as reflected in the Commission’s Hearing Schedule. The I.A. was served on all parties, including the Appellants in Appeals No. 128 of 2015 and 171 of 2015.

Despite adequate notice and transparency, the Appellants did not file any response or challenge the maintainability of the I.A. at the relevant time. Given the above, the Appellants are estopped from belatedly raising the issue of maintainability in the current appeals (Appeal No. 128 of 2015 and Appeal No. 171 of 2015). Therefore, the maintainability challenge should be dismissed based on procedural compliance and the Appellants' inaction.

39. Regarding the maintainability of Appeal No. 60 of 2017, the Respondent Commission, in its order dated 20.10.2016 in Review Petition No. 10/RP/2015 (related to Petition Nos. 127/2012,128/TL/2012 and 156/MP/2012), concluded that its earlier order dated 06.04.2015 warranted a review. The phrase "Accordingly, we allow the review" in Para 15 of the order reflects the Commission's intention to review the liability of PGCIL, not to allow the Review Petition in its entirety. The relief sought in the Review Petition—specifically the refund of ₹19.40 crores (acquisition and audit costs of Vemagiri Transmission System)—was deferred until the resolution of Appeals No. 128 of 2015, 171 of 2015, and 156 of 2015.

40. Since the relief was not granted, PGCIL retains the right to appeal the order dated 20.10.2016, alleging that the relief sought was not fully addressed.

Submissions of the Respondent No. 2, PGCIL

41. Respondent No. 2 submitted that the Central Commission's Review Order dated 20.10.2016 in Review Petition 10/RP/2015 concluded that POWERGRID's liability to pay 20% of the acquisition price was reconsidered and subsequently revised. The decision remains final and binding as neither of the Appellants challenged it.

42. Therefore, the Appellants are now limited to contesting only the legality and validity of their payment obligations regarding the acquisition price payable to POWERGRID.

43. The Appeals pertain solely to the Transmission Service Agreement (TSA) dated 15.12.2011 and are confined to two 765 kV double circuit (D/C) ISTS transmission lines:

(a) Vemagiri Pooling Station to Khammam and

(b) Khammam to Hyderabad

44. This issue is distinct from and does not involve the broader transmission system planned for multiple projects in the southern region, which falls under the Bulk Power Transmission Agreement (BPTA) dated 24.12.2010. The scope of the TSA is limited to specific projects (referenced in Schedule 2 at Page 97 of the TSA). The Appellants are improperly conflating the TSA with the BPTA to make allegations against POWERGRID. This attempt misrepresents the actual issue under the TSA. The contention revolves around separating the TSA-specific obligations from the broader framework of the BPTA, thereby addressing erroneous allegations effectively.

45. The Appellants, Samalkot and Spectrum, are the only generators under the TSA, and the Transmission Project was planned exclusively for them. References to POWERGRID not taking action against entities like GMR are irrelevant, as GMR is not a party to the TSA. The rights and obligations concerning the transmission lines and the TSA are confined to the executing parties. Arguments about other non-participating entities are misplaced. Spectrum and Samalkot's challenge to the Impugned Order dated

06.04.2015 should be evaluated only concerning the TSA. Their attempt to conflate obligations under the BPTA, which was outside the Tariff-Based Competitive Bidding (TBCB) process, is improper.

46. The liability of the Appellants to pay POWERGRID under the TSA has been correctly upheld by the Central Commission. Their claims of exemption due to changes in circumstances affecting their generation projects, such as non-availability of gas and the Central Government's communication dated 18.03.2012, are untenable for the following reasons:

A. Role of RECTPCL and Acquisition Price: RECTPCL was designated as the Bid Process Coordinator (BPC) under the Central Government's Guidelines. RECTPCL procured transmission services specifically for Spectrum and Samalkot and incurred costs and fees, covered by the acquisition price. If the TSA is terminated or repudiated, Spectrum and Samalkot remain liable to cover these costs and fees, irrespective of the reason for termination.

B. Force Majeure in TSA: Spectrum and Samalkot argue that the event leading to the cancellation of the Transmission Service Agreement (TSA) does not qualify as a force majeure under Article 11 of the TSA dated 16.09.2019. To constitute force majeure, the event must wholly or partly prevent or unavoidably delay Spectrum's and Samalkot's obligations under Article 4.2 and Article 13.2. However, the alleged non-availability of gas for their generating projects does not impact their TSA obligations and is not considered a force majeure event under Articles 11.3 and 11.7. Relevant case law supporting this position includes: Jayasawal Neco Urja Ltd. v. Power Grid Corp. of India Ltd. (Appeal No. 197 of 2014, Judgment dated 15.04.2015) – Paras 33-36 and Maruti Clean Coal & Power Ltd. v. Power Grid Corp.

of India Ltd. (Appeal No. 212 of 2016, Judgment dated 07.11.2017) – Paras 9-10. Both judgments emphasize that force majeure claims must demonstrate an impact on contractual obligations directly tied to the event, which is absent in this case. Therefore, the plea for force majeure is untenable in the context of the TSA.

C. Established principles mandate a narrow interpretation of force majeure clauses: Energy Watchdog v. CERC (2017 SCC 14, Paras 43, 45-47). NTPC Vidyut Vyapar Nigam Ltd. v. Precision Technique (2018 SCC OnLine Del 13102, Paras 32-37, 41). Halliburton Offshore Services Inc v. Vedanta Ltd. (Delhi High Court, Decision dated 29.05.2020, Para 63).

Article 11.4 explicitly excludes insufficiency of finance, funds, or agreements becoming onerous as valid force majeure events. Challenges faced by the Spectrum and Samalkot generation projects do not excuse their liability under the TSA.

D. Obligations Before and After Gas Availability Issue: The claims by RECTPCL, covered under the acquisition price, pertain to services rendered prior to the Central Government’s communication dated 14.03.2012 about gas availability issues. No force majeure notice or claims were raised by Spectrum or Samalkot up to 20.03.2012, and Samalkot continued supporting the project until 30.03.2012. Samalkot's Initially intended to proceed with the project and did not object to the transmission system’s implementation. In its affidavit dated 27.08.2012, for the first time, highlighted gas allocation challenges and proposed an LNG terminal without a specified timeline. On 04.07.2013, filed I.A. 20 of 2013, indicating it was no longer interested in the transmission project, marking a shift approximately one year post-acquisition.

E. Unilateral Repudiation and Default Under TSA: Spectrum unilaterally repudiated the TSA, with Samalkot also refusing to pay the transmission charges, constituting a default under Article 13.2(b) of the TSA. Despite subsequent deliberations, no agreement was reached to release Spectrum, Samalkot, or RECTPCL from their accrued obligations under the TSA. The Central Commission adjudicated the matter in its Order dated 06.04.2015, reaffirmed in its Review Order dated 20.10.2016 (Review Petition No. 10/RP/2015).

47. Further, they continued to submit that they have a claim against RECPTCL, Respondent No. 3, for compelling it to proceed with the implementation of the TSA despite Spectrum raising concerns about the non-availability of gas. Despite Spectrum's requests to cancel the TSA on 30.03.2012 and 06.04.2012, RECPTCL directed POWERGRID on 13.04.2012 to comply with the RFP and pay the acquisition price. RECPTCL should have deferred the acquisition of the SPV by POWERGRID until a decision was made by the Empowered Committee regarding the transmission project's viability due to the gas issue. However, RECPTCL proceeded with the transaction, requiring POWERGRID to pay and assume control of the SPV on 17.04.2012. Spectrum and Samalkot wrongly argue that POWERGRID should have withheld its obligations under the bid. In reality, POWERGRID had acted prudently by informing RECPTCL via its letter dated 11.04.2012 and advising Spectrum to address the issue directly with RECPTCL. No response from Samalkot was received. Before paying the acquisition price, POWERGRID highlighted Spectrum's concerns to RECPTCL, but RECPTCL did not extend the deadline and insisted on payment. POWERGRID, bound by bid conditions, had no choice but to comply to avoid breach of contract and potential consequences. The Central

Commission's Review Order of 20.10.2016 confirmed POWERGRID's actions were in accordance with its obligations.

48. As BPC under Clause 2.4(e) of the RFP, RECTPCL had exclusive powers to extend deadlines or postpone processes to address pending issues. Unlike other TBCB projects where such powers were exercised, RECTPCL did not extend the timeline in this case and instead insisted that POWERGRID acquire the SPV and pay the acquisition price. Instances where RECTPCL extended timelines include: Kallam Transmission Ltd. v. Renew Solar Power Pvt. Ltd. & Ors. (Order dated 01.06.2022, Petition No. 31/AT/2022). Udupi Kasargode Transmission Ltd. v. Power Co. of Karnataka Ltd. (Order dated 28.01.2020, Petition No. 336/AT/2019). Khetri-Narela Transmission Ltd. v. Southern Power Distribution Co. of Telangana Ltd. & Ors. (Order dated 26.09.2022, Petition No. 149/TL/2022).

49. RECTPCL sought an urgent meeting with the Empowered Committee on 23.04.2012, after POWERGRID had already paid the acquisition price (via letter dated 09.04.2012). Spectrum's letter to cancel the TSA came even later, on 07.06.2012, after POWERGRID had acquired the SPV and completed key formalities, such as filing applications for a transmission license and tariff adoption with the Central Commission.

50. POWERGRID could not unilaterally decide to halt the transmission project or avoid paying the acquisition price, as the decision rested with the Central Commission. Non-payment would have led to RECTPCL encashing the bid bond submitted by POWERGRID under Clause 2.7 of the RFP. RECTPCL, as an agent of Spectrum and Samalkot, failed to ensure a decision was made to avoid insisting on POWERGRID's acquisition of the SPV or extending the bid timelines under Clause 2.4(e) of the RFP.

51. Given the circumstances, RECPTCL, having failed to adhere to proper guidelines, should be held liable to refund the acquisition price and associated costs to POWERGRID. Any monetary recovery by RECPTCL should be pursued directly from Spectrum and Samalkot. In essence, RECPTCL's non-compliance with guidelines shifts the financial responsibility back to RECPTCL, with Spectrum and Samalkot being the appropriate parties for any further claims.

52. The Central Commission's Review Order dated 20.10.2016 modified the earlier findings of deficiency attributed to POWERGRID in the original Order dated 06.04.2015. This modification binds Spectrum and Samalkot, as they have not challenged the Review Order. Spectrum and Samalkot's assertion that the Review Order dismissed the petition and thus does not alter the original Order is incorrect. Paragraphs 14-16 of the Review Order (20.10.2016) confirm that the petition was allowed and disposed of accordingly, contradicting their contention. As per Order 47 Rule 7 and Hon'ble Supreme Court precedents like DSR Steel Pvt. Ltd. v. State of Rajasthan (2012) 6 SCC 782 and Sushil Kumar v. State of Bihar (AIR 1975 SC 1185), the original Order (06.04.2015) merges with the Review Order (20.10.2016). The Review Order is now the operative and effective ruling. POWERGRID has elaborated on the implications of the Review Order in submissions for Appeal No. 60 of 2017.

53. Further, submitted that the Central Commission's Order dated 20.10.2016 confirmed that POWERGRID committed no wrongful act or omission. This finding was unchallenged and final. Therefore, reimbursement to POWERGRID is deemed appropriate. The Transmission Project was implemented exclusively for Spectrum and Samalkot, the only Long-Term

Transmission Customers (LTTCs) under the TSA. POWERGRID, as the selected bidder, incurred significant expenses. The project's non-completion was not due to POWERGRID's fault, and thus, it is entitled to reimbursement for amounts paid to RECPTCL and other incurred costs. POWERGRID should not be forced to bear costs when the LTTCs—Spectrum and Samalkot—no longer require the transmission system. Principles of restitution and equity demand that POWERGRID be compensated, reimbursed, and indemnified for losses incurred. It would be inequitable to impose the financial burden on POWERGRID when the project's failure was due to issues with the generators, not the developer.

54. Under Section 79(1) of the Electricity Act, 2003, Clause (c) grants authority to regulate inter-state transmission. Clause (d) covers tariff determination. Clause (f) empowers the Commission to adjudicate disputes involving inter-state transmission and tariff matters. The Commission's powers extend beyond tariff-related matters to the entire field of inter-state transmission, as affirmed in: K. Ramanathan v. State of Tamil Nadu (1985) 2 SCC 116 (Para 24). Judgment dated 04.09.2012, BSES Rajdhani Power Ltd. v. DERC (Appeal No. 94 of 2012, Para 44).

55. The Commission has jurisdiction over the bidding process, even if the guidelines or documents don't explicitly mention RECPTCL. Relevant case law includes: Energy Watchdog v. CERC (2017) 14 SCC 80 (Paras 19-20). Judgment dated 27.03.2018, PSPCL v. Patran Transmission Co. Ltd. (Appeal No. 390 of 2017, Paras 15(b) and (e).

56. While Section 79(1)(f) mentions generators and transmission licensees, it does not restrict the other party in a dispute, as long as the matter relates to Sections 79(1)(a) to (d). Terms "Involving" and "In Connection With" should

be interpreted broadly to include adjudicatory and arbitral functions. Relevant cases: Renusagar Power Co. Ltd. v. General Electric Co. (1984) 4 SCC 679 (Para 25). Royal Talkies v. ESIC (1978) 4 SCC 204 (Para 14).

57. Also argued further that RECPTCL was appointed as the Bid Process Coordinator (BPC) under Section 63 of the Electricity Act, 2003, by the Central Government pursuant to the Guidelines issued under the Act. As BPC, RECPTCL is a party interacting with the transmission licensee. The Central Commission has authority over Transmission Service Agreements (TSA), determination of transmission tariffs, and adjudication of disputes involving inter-state transmission licensees under Section 79(1)(c) of the Act. Disputes related to bidding processes, earnest money, or agreements between BPC and selected bidders (prospective licensees) also fall under the purview of Section 79(1)(c) and Section 79(1)(d), as they are directly connected to inter-state transmission regulation. The Appellate Tribunal for Electricity (APTEL) has co-extensive powers with the Central Commission, enabling it to adjudicate matters within the same jurisdictional scope.

58. Spectrum and Samalkot's claim that the Order dated 27.09.2013 resolved all issues and barred any further consideration in the Order dated 06.04.2015 (Petition No. 127 of 2012) is incorrect. The 27.09.2013 Order only addressed Applications 20, 28, and 31 of 2013 concerning the restraint on POWERGRID from invoking bank guarantees, not the main petition. While the Central Commission noted in Para 8 that the Vemagiri Transmission System could not proceed in its current form, it did not finalize the project's reconfiguration. Instead, it sought a report from the CEA on this matter. Following the 27.09.2013 Order, POWERGRID filed IA No. 24 of 2014 requesting directions for refund/recovery of acquisition costs and expenses from the date of acquisition to the company's winding up.

59. The Central Commission's Order considered developments that occurred after filing Petitions 127 of 2012 and 128/TL/2012. Spectrum and Samalkot's objections to the application are unfounded for several reasons:

(a) The Central Commission, while guided by the CPC, is not strictly bound by procedural rules, especially if such rules hinder substantial justice.

(b) As per the 22.08.2014 judgment in Gujarat Urja Vikas Nigam Ltd. v. GERC (Appeal No. 279 of 2013), procedural challenges are invalid if the process follows natural justice and transparency.

(c) Courts can consider subsequent events to adjust relief when the original relief becomes inappropriate or infructuous.

(d) Relief has been granted in prior cases even when not specifically pleaded.

(e) Spectrum and Samalkot did not raise these objections before the Central Commission and are doing so belatedly. In conclusion, POWERGRID's application is legally maintainable, and Spectrum and Samalkot's objections are procedurally and substantively unsound.

Rejoinder Submissions of the Respondent No. 2, PGCIL

60. Respondent No. 2 vide Rejoinder Submissions stated that the rejoinder submissions are confined to addressing specific points raised by RECTPCL in its reply and by Spectrum and Samalkot in their rejoinders.

61. During the hearing on 23.07.2024, RECTPCL primarily argued:

1. Lack of Authority: RECTPCL asserted that it lacked the authority to extend project timelines.

2. Empowered Committee Referral: RECTPCL had referred the matter to the Empowered Committee via a letter dated 23.04.2012.

3. Jurisdictional Limitation: Relief under Section 79(1)(f) of the Electricity Act, 2003, is not applicable against RECTPCL. Any dispute regarding acquisition price must be resolved through a bilateral arbitration process.

4. Review Petition Clarification: The order dated 20.10.2016 in Review Petition No. 10/RP/2015 does not amend or review the original order dated 06.04.2015.

62. RECTPCL, designated as the Bid Process Coordinator (BPC) under the Competitive Bidding Guidelines for Transmission Service dated 17.04.2006, was appointed by the Central Government to conduct the bidding process on behalf of Spectrum and Samalkot, as per the Transmission Service Agreement (TSA). RECTPCL's actions in conducting the bid process fall within the adjudicatory jurisdiction of Section 79(1)(f) of the Electricity Act, 2003, akin to actions taken directly by Spectrum and Samalkot. RECTPCL acted contrary to its statutory role as BPC under Section 63 of the Electricity Act, 2003, by compelling POWERGRID to pay the acquisition price of Rs. 18,27,93,533/- (inclusive of Rs. 15,00,00,000/- as professional fees) without first consulting the Empowered Committee or the Central Commission to resolve whether the project should proceed.

63. This indicates a deviation from established guidelines, suggesting intent to unlawfully appropriate funds. Given RECTPCL’s failure to adhere to statutory guidelines and its unjust actions, POWERGRID seeks restitution

under Section 79(1)(f) of the Electricity Act, 2003, arguing that RECTPCL's conduct caused financial loss and constituted an unlawful gain.

64. Despite being notified by Spectrum on 30.03.2012 about the cancellation of the TSA and the stalling of the bidding process, and further concerns raised by POWERGRID in its letter dated 11.04.2012, REC prioritized demanding payment of the acquisition price. It was only on 23.04.2012 that REC approached the Empowered Committee. This sequence of events demonstrates REC's self-serving approach, addressing financial interests before seeking a resolution through the proper authority. In this regard, the following specific events are relevant:

Date	Particulars
30.03.2012	Spectrum wrote a letter to POWERGRID with a copy marked to RECTPCL requesting cancellation of the TSA.
06.04.2012	Spectrum, *inter-alia,* requested that the **TSA** signed with RECTPCL **be cancelled and the bidding process initiated to be stalled**.
09.04.2012	RECTPCL wrote to POWERGRID, directing POWERGRID to pay the acquisition price on or before 20.04.20212.
11.04.2012	POWERGRID wrote to Spectrum with a copy marked to RECTPCL requesting Spectrum to take up the issue of cancellation of TSA with RECTPCL.
16.04.2012	RECTPCL wrote to POWERGRID, again directing POWERGRID to pay the acquisition price.
18.04.2012	POWERGRID paid the acquisition price.

	If the acquisition price was not paid, POWERGRID would have been subjected to forfeiture of bid bond and further for violating the bidding process which may even lead to blacklisting.
23.04.2012	RECTPCL wrote to CEA requesting to convene a meeting the Empowered Committee for necessary directions.

65. It is further submitted that RECTPCL's actions fall under Sections 79(1)(c) and 79(1)(d) of the Electricity Act, 2003, which regulate inter-state transmission and its tariff, read with Section 63. Consequently, disputes involving RECTPCL are adjudicable under Section 79(1)(f), which encompasses disputes involving transmission licensees (such as POWERGRID) and matters connected with clauses (c) and (d). Unlike Section 86(1)(f), which specifies disputes between generating companies and licensees, Section 79(1)(f) does not mandate a second party to the dispute.

66. The acquisition price forms part of the tariff quoted by the selected bidder, and any modification in this price constitutes a "change in law" event under Article 12.1.1 of the TSA. Such disputes, being intrinsically linked to tariff, fall within the jurisdiction of the Central Commission under Section 79 of the Electricity Act, 2003. This reinforces the Central Commission's wide regulatory powers over inter-state transmission matters, including RECTPCL's actions and the associated tariff issues.

67. RECTPCL’s claim that it lacked authority to extend timelines is incorrect and contradicts Clause 2.4(e) of the RfP dated 05.09.2011, issued by RECTPCL itself. Furthermore, RECTPCL has previously extended timelines in similar cases, such as Kallam Transmission Limited, Udupi Kasargode Transmission Limited, and Khetri-Narela Transmission Limited, where it

acted as the Bid Process Coordinator (BPC). RECTPCL's deviation in the present case suggests an intent to secure undue financial gains.

68. Further, RECTPCL's argument that disputes over acquisition price must be resolved through bilateral arbitration under the Arbitration and Conciliation Act, 1996, is misplaced. It is well established that disputes falling under the Electricity Act, 2003, particularly Sections 79(1)(f) and 86(1)(f), are outside the scope of the Arbitration Act, as affirmed by Section 2(3) of the Arbitration Act. This principle is supported by landmark judgments, including: Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd. (2008) 4 SCC 755, Hindustan Zinc Ltd. v. Ajmer Vidyut Vitran Nigam Ltd. (2019) 17 SCC 82, M.P. Power Trading Co. Ltd. v. Narmada Equipments (P) Ltd. (2021) 14 SCC 548, PTC v. Jaiprakash Power Ventures Ltd., (2012) 130 DRJ 351. These precedents establish that disputes under the Electricity Act should be resolved by the regulatory authorities, not through arbitration.

***Re.* ORDER DATED 20.10.2016 PASSED IN REVIEW PETITION 10/RP/2015:**

69. The contention of RECTPCL, Spectrum, and Samalkot that the Order dated 20.10.2016, passed in Review Petition 10/RP/2015, did not modify/review the Order dated 06.04.2015, is wholly erroneous. The Central Commission in the Order dated 20.10.2016 has clearly held at Para 15 at Page 55 of Appeal No. 60 of 2017 that *"there are sufficient reasons to review the liability of PGCIL to pay 20% of the acquisition price. Accordingly, we allow the review and direct that the liability of payment of 20% of the acquisition price shall be decided afresh by taking holistic view……..".*

70. The Order dated 20.10.2016, which remains unchallenged by RECTPCL, Spectrum, and Samalkot, includes the following key findings:

1. Distinction of Roles: A clear distinction exists between POWERGRID's responsibilities as the Central Transmission Utility (CTU) and its obligations as the Transmission Service Provider (TSP) upon becoming the successful bidder.

2. CTU Responsibilities: As CTU, POWERGRID must handle LTA grants, Bulk Power Transmission Agreements (BPTA)/LTA Agreements, and LTTCs' bank guarantee maintenance until project completion and LTA operationalization.

3. BPC's Role in Bidding: During the bidding process, the Bid Process Coordinator (BPC), not POWERGRID as CTU, oversees all responsibilities until the SPV is transferred to the successful bidder.

4. Bidder Obligations: As a bidder, POWERGRID is bound by the RfP's provisions and must fulfill obligations under Clauses 2.4, 2.5, and 2.6 post-LoI issuance. Non-compliance leads to bid bond forfeiture under Clause 2.7.

5. RECTPCL's Contradictory Position: RECTPCL denied involvement in LTTC deletions/cancellations under the TSA but required POWERGRID to provide a contract performance guarantee while assuring it would refer the issue to the Empowered Committee on Transmission.

71. Based on this assurance, POWERGRID provided the guarantee, paid the acquisition price, and acquired the SPVs. These findings emphasize the delineation of roles and RECTPCL's contradictory stance on its involvement in the TSA amendments and the guarantees demanded from POWERGRID.

72. Also, it is incorrect to claim that the review petition's dismissal negated the need for a challenge. The Review Order dated 20.10.2016 modified the original Order dated 06.04.2015, causing the latter to merge into the former. Consequently, the Review Order becomes the operative judgment and must be considered as the binding decision.

Re. **INVESTMENT:**

73. Also submitted that the investments made by Samalkot in the power project are irrelevant to the present dispute. Financial insufficiency or onerous performance is excluded from Force Majeure under Article 11.4 of the TSA. RECTPCL must refund the acquisition price to POWERGRID due to its wrongful actions. RECTPCL, as the agent of Spectrum and Samalkot under the statutory guidelines of Section 63 of the Electricity Act, 2003, cannot deprive POWERGRID, the innocent party, of its rightful claim for restitution. RECTPCL collected the payment from POWERGRID before referring the matter to the Empowered Committee on 23.04.2012, which should have occurred beforehand.

74. Based on the Review Order dated 20.10.2016, Spectrum and Samalkot are also liable to restitute POWERGRID under the Contract Act, 1872, as principals are responsible for their agents' actions. POWERGRID is entitled to recover the entire acquisition price with interest from 18.04.2012 onwards at the rate determined by the Central Commission for delayed payments or wrongful actions.

Submissions of the Respondent No. 3, RECTPCL

75. Respondent No. 3, RECTPCL, submitted that the Appellant did not seek any relief against REC before the Central Electricity Regulatory Commission (CERC). Therefore, the Appellant cannot file an appeal under Section 111 of the Electricity Act, 2003, as it is not a "person aggrieved." Appellant (SPL) had conceded that if SPGL exited the bid, it would assume responsibility for the corresponding capacity.

76. Moreover, until 31.07.2012, Appellant maintained its intention to utilize the transmission asset and even pushed for its expeditious implementation, as evidenced in Appeal No. 128/2015. Appellant was already identified as a Long Term Transmission Customer (LTTC) under the RFP dated 05.09.2011. A counter affidavit filed by the Appellant on 31.07.2012 further confirms this position.

77. Since the Appellant never sought relief against REC before CERC, it is legally barred from raising such claims at the Appellate stage.

78. SPGL also did not seek any relief against REC before the Central Electricity Regulatory Commission (CERC). As per established legal principles, a party that fails to claim relief before the initial court cannot introduce new grounds or seek relief at the appellate stage. This principle is supported by the Hon'ble Supreme Court’s judgment in State of Maharashtra v. Hindustan Construction Limited (2010) 4 SCC 518. Therefore, SPGL is barred from raising new claims against REC in the appeal. The relevant extracts of the judgment are as follows:

“….

35. The question then arises, whether in the facts and circumstances of the present case, the High Court committed any error in rejecting the appellant's application for addition of new grounds in the memorandum of arbitration appeal.

36. As noticed above, in the application for setting aside the award, the appellant set up only five grounds viz. waiver, acquiescence, delay, laches and res judicata. The grounds sought to be added in the memorandum of arbitration appeal by way of amendment are absolutely new grounds for which there is no foundation in the application for setting aside the award. ***Obviously, such new grounds containing new material/facts could not have been introduced for the first time in an appeal when admittedly these grounds were not originally raised in the arbitration petition for setting aside the award.*** *Moreover, no prayer was made by the appellant for amendment in the petition under Section 34 before the court concerned or at the appellate stage.*

37. As a matter of fact, the learned Single Judge in para 6 of the impugned order has observed that the grounds of appeal which are now sought to be advanced were not originally raised in the arbitration petition and that the amendment that is sought to be effected is not even to the grounds contained in the application under Section 34 but to the memo of appeal. In the circumstances, it cannot be said that discretion exercised by the learned Single Judge in refusing to grant leave to the appellant to amend the memorandum of arbitration appeal suffers from any illegality.

38. The result is, the appeal has no force and is dismissed with no order as to costs.

…"

79. Also, SPGL named REC as a pro forma Respondent before the Central Electricity Regulatory Commission (CERC) without seeking any relief against it. According to legal principles, pro forma Respondents are parties against whom no relief is claimed and whose involvement does not impact the court's decision. SPGL is therefore barred from asserting any claims against REC at the appellate stage. This principle is supported by the Punjab and Haryana High Court's judgment in Babu Gita Ram Kalsi v. S. Prithvi Singh and Others, 1955 SCC OnLine Punj 72. The relevant extracts of the judgment is as follows:

"…

By "necessary parties" is meant parties between whom and the plaintiff there is a conflict and against whom the plaintiff claims some relief. By "proper parties" is meant persons against whom no relief may be claimed but who are interested in the decision of the suit and whose rights may be adversely affected by granting the plaintiff the relief he claims. These are persons who are indirectly interested in the suit. Persons having a smaller interest even than "proper parties" are frequently called "pro forma parties". These are persons against whom no relief is claimed, who can scarcely be said to be interested in the issue of the suit and whose presence or absence would really make no difference to the Court in arriving at a correct decision. There can be no doubt that the phrase "pro forma" is frequently used and has been given a certain definite meaning. The expression has been frequently used in judicial decisions.…"

80. Also continued to argue that PGCIL's appeal challenges the Review Order dated 20.10.2016, which was decided in its favour. As per Section 111

of the Electricity Act, 2003, only a "person aggrieved" can file an appeal. PGCIL repeatedly emphasized that the CERC absolved it from liability for the SPV Acquisition Price and merely directed the submission of documents to reassess liability. Thus, PGCIL, having no grievance, is not entitled to appeal. Given PGCIL's admission that the Review Order benefited it, PGCIL cannot qualify as a "person aggrieved" under Section 111, making the appeal non-maintainable.

81. Further, the appeal is also time-barred. PGCIL did not challenge the original Order dated 06.04.2015 but instead appealed the Review Order dated 20.10.2016, which is not independently appealable. Reliance is placed on the judgment in Tamil Nadu Electricity Board v. Neyveli Lignite Corporation Limited & Anr., APTEL judgment dated 24.05.2010. Thus, the appeal is both procedurally and substantively non-maintainable. The relevant extracts of the judgment are as follows:

> *"…*
>
> *14. From the various judgments quoted above, it is evident that the following guidelines have been given in those judgments with reference to maintainability of the Appeal, as against the order passed by the Commission dismissing the review petition.*
>
> *The order of the court rejecting the application for review shall not be appealable under Order 47, Rule 7 of the Code of Civil Procedure.*
>
> *The main order alone can be appealed before the Tribunal and the Appeal is not provided as against the order of dismissal of review petition by the Commission which confirmed the main order earlier passed.*
>
> *The course open to the Appellant whose application for the review of the main order has been dismissed is to file an appeal*

as against the main order along with an application to condone the delay which occurred due to the pendency of the review petition before the Commission. The Appellate Tribunal in such an event would decide the condoning delay application taking into consideration the pendency of the review petition before the Commission during that period. The Tribunal after condoning the delay would then entertain the application. Without doing so, the Appellant cannot file an appeal as against the dismissal order passed by the review petition alone.

Under the CPC, the appeal is provided as against the orders mentioned below:

Order 41, Rule 1 read with section 96 provides for the appeal arising out of original decree.

Order 43, Rule 1 provides for an appeal arising out of the orders passed under CPC.

Section 100 of CPC provides for the second appeal.

These provisions do not provide for any prohibition for appeal against the orders referred to above. But the prohibition of an appeal as against the order rejecting the review petition has been specifically provided in Order 47 Rule 7.

Therefore, restriction contained in Order 47, Rule 7 will have application to the orders passed by the Commission dismissing the review petition concerning the main order."

82. The CERC, in its Order dated 20.10.2016, directed PGCIL to apply with supporting documents to determine its 20% liability toward the acquisition price. Instead of complying, PGCIL filed an appeal, arguing that no consequential order was passed. The liability determination was contingent on PGCIL's submission of documents. Since PGCIL failed to comply, it

cannot challenge an order that it claims allowed the review. If the order is seen as allowing the review, PGCIL is not a "person aggrieved" under Section 111 of the Electricity Act, 2003, and cannot appeal. Conversely, if the review was not allowed, PGCIL should have appealed the original Order dated 06.04.2015, as no appeal lies against an unallowed review order. Thus, the appeal in its current form is legally non-maintainable.

83. CERC should not have entertained PGCIL's review petition in its current form. Respondent No. 3, RECTPCL, reserves the right to object to its maintainability in future CERC proceedings, which are currently adjourned due to pending appeals by the Appellants. The reliefs sought in IA No. 24 of 2014 are also non-maintainable. No claim was made against REC, which was merely a pro forma Respondent—a party against whom no relief is claimed and whose presence is not essential to the court's decision.

84. Also, PGCIL's appeal is barred by the principles of Order 2 Rule 2 of the CPC. While the Civil Procedure Code (CPC) does not strictly apply to regulatory commissions and tribunals under the Electricity Act, 2003, its principles must be observed to prevent a miscarriage of justice. PGCIL should have raised all its claims in its initial proceedings. Reliance is placed on the Hon'ble Supreme Court's judgment in M/s Virgo Industries (Eng.) P. Ltd. v. M/s Venturetech Solutions P. Ltd. (Civil Appeal No. 6372 of 2012), which underscores the importance of adhering to these principles. Therefore, PGCIL's appeal is procedurally improper and not maintainable. The relevant extracts of the judgment is as follows:

> *"…*
>
> *9. Order II Rule 1 requires every suit to include the whole of the claim to which the plaintiff is entitled in respect of any particular*

cause of action. However, the plaintiff has an option to relinquish any part of his claim if he chooses to do so. Order II Rule 2 contemplates a situation where a plaintiff omits to sue or intentionally relinquishes any portion of the claim which he is entitled to make. If the plaintiff so acts, Order II Rule 2 of CPC makes it clear that he shall not, afterwards, sue for the part or portion of the claim that has been omitted or relinquished. It must be noticed that Order II Rule 2 (2) does not contemplate omission or relinquishment of any portion of the plaintiff's claim with the leave of the court so as to entitle him to come back later to seek what has been omitted or relinquished. Such leave of the Court is contemplated by Order II Rule 2(3) in situations where a plaintiff being entitled to more than one relief on a particular cause of action, omits to sue for all such reliefs. In such a situation, the plaintiff is precluded from bringing a subsequent suit to claim the relief earlier omitted except in a situation where leave of the Court had been obtained. It is, therefore, clear from a conjoint reading of the provisions of Order II Rule 2 (2) and (3) of the CPC that the aforesaid two sub-rules of Order II Rule 2 contemplate two different situations, namely, where a plaintiff omits or relinquishes a part of a claim which he is entitled to make and, secondly, where the plaintiff omits or relinquishes one out of the several reliefs that he could have claimed in the suit. It is only in the latter situations where the plaintiff can file a subsequent suit seeking the relief omitted in the earlier suit proved that at the time of omission to claim the particular relief he had obtained leave of the Court in the first suit. …"

85. Further argued that the Central Electricity Regulatory Commission (CERC) lacks jurisdiction under Section 79(1)(f) of the Electricity Act, 2003 to adjudicate disputes involving REC. Section 79(1)(f) is limited to disputes between a generating company and a licensee concerning matters listed under Section 79(1)(a) to (d). Therefore, PGCIL's prayers before CERC against REC are not maintainable. REC acted as the Bid Process Coordinator (BPC), as per a gazette notification dated 16.03.2011, and not as an agent of generators. An agent follows the instructions of a principal, whereas REC was appointed by the Ministry of Power (MoP) and the Empowered Committee for a distinct role. The fee claimed by REC for its role was also notified by the MoP through a gazette notification dated 04.02.2011, over which CERC has no jurisdiction to interfere. Any grievances regarding the fee must be addressed before a writ court.

86. Furthermore, matters related to the Share Acquisition Price fall under the purview of the Companies Act and the Share Purchase Agreement (SPA). PGCIL's claims essentially seek the return of consideration paid for share acquisition, which is beyond the statutory regulatory forums under the Electricity Act, 2003. Such disputes should be resolved through arbitration under the SPA. PGCIL's claim of jurisdiction based on Clause 10 of the Transmission Service Agreement (TSA) is unfounded. The TSA pertains only to disputes arising directly from its provisions and does not extend to matters covered under the SPA. REC is not a party to the TSA, and there is no privity of contract between REC and PGCIL or the generators under the TSA. Consequently, no claims against REC can arise from the TSA. This principle is supported by the Hon'ble Supreme Court judgment in Gurmit Singh Bhatia v. Kiran Kant Robinson, (2020) 13 SCC 773. The claims made by PGCIL are legally unsustainable and outside the jurisdiction of CERC. The relevant extracts of the judgment is as follows:

"…

5.2. An identical question came to be considered before this Court in Kasturi [Kasturi v. Iyyamperumal, (2005) 6 SCC 733] and applying the principle that the plaintiff is the dominus litis, in the similar facts and circumstances of the case, this Court observed and held that the question of jurisdiction of the court to invoke Order 1 Rule 10 CPC to add a party who is not made a party in the suit by the plaintiff shall not arise unless a party proposed to be added has direct and legal interest in the controversy involved in the suit. It is further observed and held by this Court that two tests are to be satisfied for determining the question as to who is a necessary party. The tests are : (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings; (2) no effective decree can be passed in the absence of such party. It is further observed and held that in a suit for specific performance the first test that can be formulated is, to determine whether a party is a necessary party there must be a right to the same relief against the party claiming to be a necessary party, relating to the same subject-matter involved in the proceedings for specific performance of contract to sell. It is further observed and held by this Court that in a suit for specific performance of the contract, a proper party is a party whose presence is necessary to adjudicate the controversy involved in the suit. It is further observed and held that the parties claiming an independent title and possession adverse to the title of the vendor and not on the basis of the contract, are not proper parties and if such party is impleaded in the suit, the scope of the suit for specific performance shall be enlarged to a suit for title and possession, which is impermissible.

It is further observed and held that a third party or a stranger cannot be added in a suit for specific performance, merely in order to find out who is in possession of the contracted property or to avoid multiplicity of the suits. It is further observed and held by this Court that a third party or a stranger to a contract cannot be added so as to convert a suit of one character into a suit of different character. ”

87. As per Clause 2.5(i) and (ii) of the Request for Proposal (RFP), REC's role as Bid Process Coordinator (BPC) ceased after the acquisition of VTSL. Post-acquisition rights, obligations, and liabilities were to be undertaken by the Lead Long-Term Transmission Customer (LTTC). Any claim for reimbursement of REC’s fee or acquisition price violates the covenants of the Bidding Guidelines, RFP, and Share Purchase Agreement (SPA). REC became functus officio after the equity transfer, making claims against REC unsustainable. Disputes over who should bear the acquisition price after project abandonment must be resolved under the SPA’s dispute resolution mechanism, not through regulatory forums. Courts cannot impose obligations not expressly provided by law. Judicial interpretation must supplement existing law, not create new provisions (Cellular Operators Association of India v. TRAI, (2016) 7 SCC 703 (Para 50 and 52); V.K Naswa v. Home Secretary, UOI, (2012) 2 SCC 542 (Para 6, 11, and 18); UOI v. National Federation of the Blind, (2013) 10 SCC 772 (Para 45).

88. It is also stated that no legal or contractual obligation exists for it to refund or reimburse fees, nor can such an obligation be presumed. Claims that REC failed to extend timelines or address issues are factually incorrect, as,

I. REC had no authority to extend timelines under the RFP.

II. No party, including PGCIL or generators, requested an extension.

III. Appellant identified as a dedicated LTTC under the RFP, did not seek deferment or project abandonment. The transmission line remained PGCIL's responsibility.

IV. Any extensions or modifications under the Transmission Service Agreement (TSA) could only have been initiated by PGCIL or the Central Transmission Utility of India Limited (CTUIL) as the nodal agency, not REC.

89. In essence, REC fulfilled its obligations within the defined legal and contractual framework, and any claims against it lack merit or jurisdictional basis. The relevant extracts of the letter dated 23.04.2012 are as follows:

"…

Further, we would also like to intimate you that as on the date of handing over of the SPV to Power Grid, we received a communication from CTU vide letter dated 18.04.2012 that M/s Spectrum Power Generation Limited should not be considered eligible for receipt of Contract Performance Guarantee to be submitted by selected bidder (Power Grid) as SPGL has requested CTU to return the construction BG. The selected bidder (Power Grid), referring to the aforesaid letter of CTU, also insisted that CPG in favour of Spectrum Generation Power Limited should not be handed over to them as SPGL is requesting CTU/RECTPCL for return of BG/cancellation of TSA. Based on the above advise of CTU, RECTPCL gave an undertaking to the selected bidder that the CPG in favour of Spectrum Power Generation Limited will be retained by RECTPCL, however, the matter will be referred to Empowered Committee and further any

action in this regard shall be taken based on the directions from the Empowered Committee/CTU.

In view of the above, we request you to kindly convene a meeting of Empowered Committee on urgent basis so that the Empowered Committee may be apprised of the developments and we may seek directions for further actions in this regard. The Agenda for the ensuing meeting of the Empowered Committee is attached herewith with a request to kindly arrange circulation to all members of Empowered Committee including the CTU.

…"

90. The Ministry of Power (MoP), through the Minutes of the Meeting of the Empowered Committee dated 21.06.2012, directed REC to forward the Contract Performance Guarantee (CPG) related to SPGL to the Central Transmission Utility (CTU). This highlights REC's compliance with instructions issued by the Empowered Committee and its defined role within the bidding and project coordination process. The relevant extracts of the Minutes of the Meeting dated 21.06.2012 are as follows:

"…

3.1.4 Director (Projects), POWERGRID said that the CPG should not be given to IPP/Generator and instead can be placed with CTU as custodian. He elaborated that in both the cases viz. Vemagiri Transmission system and Nagapattinam Transmission system there is a uncertainty with respect to materialization of generation projects and under such circumstances it would not be prudent to hand over the CPG from TSP to generation developer. To avoid legal hassles in future he urged that the Committee may take a decision to take a decision to take back

the CPG already handed over to generation developers and keep them with some government body like BPC, CEA or CTU. He further observed that decision for encashing, if required, can be taken through Empowered Committee decided that RECTPCL may forward the Contract Performance Guarantee, in respect of M/s Spectrum Power Limited to the CTU.

…"

91. As late as 30.09.2013, the Central Electricity Authority (CEA) maintained that the transmission asset was required, a fact noted in the Impugned Order by CERC. Initially, in July 2012, Appellant expressed its intention to use the transmission asset (Letter dated 31.07.2012). However, the Appellant withdrew from its obligation when required to bear the entire transmission charges. REC's role concluded with the declaration of the successful bidder. Beyond that point, REC had no involvement in project execution or related decisions.

92. The Bidding Guidelines do not allow reimbursement of the fee paid to REC as BPC. The fee is tied to project implementation and cannot be reversed. The Share Acquisition Price, notified by the Central Government, is outside the jurisdiction of regulatory authorities under the Electricity Act, 2003. Any disputes regarding the price fall under the Companies Act must be resolved through arbitration under the Share Purchase Agreement (SPA). Claims to reverse the acquisition price or seek reimbursement must adhere to the SPA's dispute resolution mechanism and cannot involve REC.

93. While this Tribunal and CERC can direct generators or PGCIL to share the acquisition cost, they lack the legal authority to order REC to return or absorb the acquisition fee.

Analysis and Conclusion

94. PGCIL filed Petition Nos. 127/2012 and 128/TL/2012 before the Central Commission for the adoption of transmission tariff and grant of transmission licence to Vemagiri Transmission System Ltd. (a wholly owned subsidiary of PGCIL), respectively. CERC vide Impugned Order dated 06.04.2015 disposed of these Petitions as having been rendered infructuous on account of developments that took place after the project was awarded to PGCIL through tariff-based bidding.

95. However, CERC, in its Order of 06.04.2015, held that SPL and SPGL shall reimburse the 80% of the acquisition price of VTSL incurred by PGCIL, in proportion to the Long-Term Access (in short “LTA”) granted to them.

96. PGCIL, being aggrieved by the imposition of liability on it for the balance 20% of the acquisition price, filed a Review Petition No. 10/RP/2015, which was disposed of by the Commission vide its Order dated 20.10.2016, against which PGCIL has filed the present Appeal No. 60/2017.

97. Thus, SPL and SPGL are aggrieved by the decision of the Central Commission directing them to bear 80% of the costs of acquisition of VTSL, whereas PGCIL is aggrieved by the direction to it to bear the remaining 20% of the acquisition price of VTSL.

98. It is important to note the other facts of the case, which are recorded in the subsequent paragraphs.

99. The Central Commission, vide Order dated 13.12.2011, granted regulatory approval for the development and execution of the Transmission system associated with IPPs of Vemagiri Area-Package-A ("Project") for the evacuation of power from the generation projects of SPL and SPGL. While SPL was setting up a 2400 MW gas-fired combined cycle power plant at Samalkot in Andhra Pradesh, SPGL decided to set up a 1400 MW gas-based power plant in the Vemagiri area of East Godavari District in Andhra Pradesh.

100. Thereafter, the Empowered Committee on Transmission Planning decided that the Project would be executed through the Tariff-Based Competitive Bidding route (in short "TBCB"). As such, following the "Tariff-Based Competitive Bidding Guidelines for Transmission Service" (in short "Bidding Guidelines"), the RECTPCL was notified by the Ministry of Power as the Bid Process Coordinator for the selection of the Transmission Service Provider for the Project. Accordingly, VTSL was incorporated on 20.04.2011 under the Companies Act, 1956, as a wholly owned subsidiary of RECTPCL for the Project.

101. Based on the competitive bidding conducted by RECTPCL, PGCIL was selected as the successful bidder for the Project, and a Transmission Service Agreement (in short "TSA") was entered into between the SPL, SPGL, and VTSL on 15.12.2011.

102. In compliance with the Request for Proposal, PGCIL acquired the 100% shareholding of VTSL from RECTPCL on 18.04.2012 on payment of INR 18,27,93,533/- to RECTPCL.

103. Subsequently, PGCIL filed Petition No. 127/2012 for the adoption of transmission tariff and Petition No. 128/TL/2012 for the grant of transmission licence to VTSL for implementation of the Project.

104. It is important to note that during the pendency of the two petitions No. 127/2012 and No. 128/TL/2012 filed by PGCIL, SPGL filed Petition No. 156/MP/2012 on 10.07.2012, intimating the Central Commission of the Ministry of Power's letter dated 14.03.2012, which informed all gas-based project developers of the non-availability of domestic gas.

105. SPGL informed the Central Commission that as soon as it became aware of the non-availability of gas, it requested PGCIL vide its letter dated 30.03.2012 not to take further action for the execution of the Project and return the Bank Guarantee of INR 67.50 crore, additionally, also requested RECTPCL vide letter dated 06.04.2012 to cancel the TSA.

106. However, PGCIL acquired VTSL on 18.04.2012, compelling SPGL to request again for cancellation of the TSA vide letter dated 07.06.2012, and also to keep the bidding process in abeyance.

107. In light of the above submissions, PGCIL, through an affidavit dated 27.06.2012 filed before the Commission in Petition No. 127/2012, submitted that since SPGL has requested the cancellation of the TSA, SPL would have to bear the entirety of transmission charges.

108. In response, SPL vide affidavit dated 31.07.2012 contended that it was not liable to pay full transmission charges on account of the cancellation of SPGL's TSA and also argued that it was obliged to pay only as per the PoC mechanism.

109. The Central Commission, vide order dated 09.05.2013, referred the matter to the Central Electricity Authority (in short "CEA") and the Central Transmission Utility of India Limited (in short "CTU" or "CTUIL") for reconsidering the need for the Project.

110. The CTUIL, in turn, on 12.09.2013, filed a report prepared by it, namely the "Report of Central Transmission Utility on Vemagiri Transmission System", which *inter alia*, recommended that the Project was not required, however, the letter of the CEA dated 30.09.2013, on the other hand, recommended that the Project be implemented as soon as possible.

111. Meanwhile, SPL filed I.A. Nos. 20/2013 and 28/2013 in Petition No. 127/2012, and SPGL filed I.A. No. 31/2013 in Petition No. 156/MP/2012, seeking directions to restrain PGCIL from encashing the bank guarantees. Central Commission vide Order dated 27.09.2013 allowed the same, *inter alia*, directed PGCIL to return the bank guarantee to SPL and SPGL.

112. Thereafter, PGCIL filed I.A. No. 24/2014 in Petition No.127/2012 and 128/TL/2012 seeking suitable directions for refund/recovery of acquisition price it had incurred in acquiring VTSL and audited cost of the company incurred from the date of Share Purchase Agreement (18.04.2012) till the date of winding up of the company (31.03.2014) for an amount of INR 19,40,63,338/-.

113. This claim of the PGCIL is the crux of the matter before us, in the light of the directions passed by the Central Commission in the Impugned Order dated 06.04.2015 in the following terms:

"*25. On the basis of the commitment given by SPL and SPGL through the LTA granted to them and the LTA Agreement signed by them, the process for selection of a Transmission Service Provider was undertaken as per the Guidelines. After selection of PGCIL as TSP, PGCIL acquired the Vemagiri Transmission System Limited and paid an amount of ₹18,27,93,533/-. Though SPGL approached for cancellation of TSA vide its letter dated 30.3.2012, it accepted the Contract Performance Guarantee furnished by PGCIL. SPL did not have any objection to the execution of the transmission system but declined to bear the full transmission charges.* ***Since the process of competitive bidding was undertaken by RECTPCL on the basis of commitment of SPL and SPGL, we are of the view that they are liable to bear the cost of acquiring the Vemagiri Transmission System Limited and the expenditure incurred by PGCIL subsequently.*** *Both PGCIL and RECTPCL have not acted upon the letter of SPGL dated 30.3.2012 in which it was requested not to proceed with the execution of the project based on the LTA granted to SPGL.* ***Accordingly, we direct that 80% of the acquisition price incurred by Vemagiri Transmission Company Ltd shall be reimbursed by SPL and SPGL to PGCIL in proportion to the LTA granted to them. The balance 20% and the expenditure incurred by VTSL from the date of acquisition till the liquidation of the company shall be borne by PGCIL.*** *In case there is any realization from the assets of VTSL in future, the same shall be apportioned between the LTTCs and PGCIL in the ratio of 80:20.*"

114. PGCIL filed the Review Petition against the Order dated 06.04.2015, directing PGCIL to bear 20% of the acquisition price as well as the expenditure incurred by VTSL. The Review Petition was disposed of by the Central Commission vide Order dated 20.10.2016. However, the captioned appeal Nos. 128/2015 and 171/2015 had already been filed in the following terms:

> "*15. … In our view, PGCIL has paid the acquisition price and acquired the VSTL in view of the provisions of clause 2.7 of the TSA which would have resulted in the encashment of Bid Bond by RECTPCL. Further, CTU could not take any action in terms of the BPTA since the matter was under consideration of RECTPCL. In our view, there are sufficient reasons to review the liability of PGCIL to pay 20% of the acquisition price.* ***Accordingly, we allow the review and direct that the liability of payment of 20% of the acquisition price shall be decided afresh by taking a holistic view in the matter after disposal of appeals of Samalkot Power Limited and Spectrum Power Generation Ltd. by the Appellate Tribunal for Electricity.*** *Accordingly, PGCIL is directed to move an appropriate application with all relevant documents and concerned parties for the purpose of determining the liability for payment of 20% of the acquisition price.*"

115. Since the relief prayed for by PGCIL in the Review Petition was not granted by the Central Commission, Appeal No. 60 of 2017 has been filed by PGCIL against the above Order.

116. We have heard the learned Counsels for the Appellants as well as the learned Counsels appearing for the Respondents. We have also perused the

material on record as well as the written submissions filed by the learned Counsel, the following issues need to be dealt with for adjudicating the matter:

a) ISSUE NO. 1 - Jurisdiction of Central Commission to grant relief(s) in Petition Nos. 127/2012 and 128/TL/2012
b) ISSUE NO. 2 - Applicability of the principle of restitution in this case
c) ISSUE NO. 3 - Whether the Central Commission has been arbitrary in its decision to impose 80% of the burden of the acquisition cost on SPL and SPGL

117. Let us take up the issues in sequence:

ISSUE NO. 1 - Jurisdiction of Central Commission to grant relief(s) in Petition Nos. 127/2012 and 128/TL/2012

118. Appellant, SPL, has argued that the Impugned Order dated 06.04.2015 must be set aside because the Central Commission has overstepped its jurisdiction. These Petitions, it is contended, were filed by PGCIL and VTSL for the adoption of tariff under Section 63 and grant of license under Section 14 of the Electricity Act, 2003 and these provisions do not grant the Central Commission the jurisdiction to pass directions qua payment of acquisition cost specially when the main Petitions were held to be infructuous. Further, it has been argued that the relief sought by PGCIL in its interim application I.A. No. 24/2014 (seeking payment of acquisition costs by the generators) could not go beyond the scope of the original petitions. Finally, it is contended that having allowed the return of the bank guarantee, the Central Commission could not have entertained PGCIL's application concerning the refund of the acquisition cost.

119. Similarly, Appellant, SPGL, has also disputed the Central Commission's jurisdiction to pass the Impugned Order dated 06.04.2015. It is contended that the Central Commission has passed the Impugned Order in an interim application filed by PGCIL (wherein PGCIL has sought the adjustment of the acquisition price) despite having observed that the main Petition Nos. 127 and 128/TL/2012 have been rendered infructuous on account of the Project being cancelled. Further argued that an interim application cannot go beyond the four corners of the pleadings and prayers made in the main petition, else the same would be violative of the principles enshrined in Order 2 Rule 2 of the CPC. Thus, a relief for refund of the acquisition price could not be claimed in a petition for adoption of the tariff and grant of transmission license. Furthermore, since the main petitions had been disposed of by the Central Commission as having been infructuous, no relief could be granted in the interim application filed by PGCIL.

120. RECTPCL has also disputed the maintainability of I.A. 24/2014 on the ground that an application cannot travel beyond the scope of the main petition. It has additionally argued that IA No. 24/2014 and the relief(s) sought therein are not maintainable on the grounds that RECTPCL is a pro forma Respondent against whom no relief had been claimed in the main petition. Thus, PGCIL was barred from raising any claim for payment towards the acquisition price against RECTPCL in this application.

121. However, the Central Commission countered by stating that SPL and SPGL had been served a copy of the I.A. No. 24/2014 filed by PGCIL and that the Record of Proceedings related to the said interim applications were regularly uploaded on the Central Commission's website. Despite having notice, neither SPL nor SPGL filed any response in respect of the said interim application and

raised no dispute on its maintainability. Given the same, argued that SPL and SPGL are estopped from raising this plea at this belated stage, challenging the maintainability of I.A. No. 24/2014 filed by PGCIL.

122. PGCIL has also contended that the objections raised by SPL and SPGL against the maintainability of the application before the Central Commission must have been raised before the Central Commission itself and cannot be raised now at this belated stage. It has further submitted that the provisions of the CPC have limited application on the proceedings before the Central Commission, and hence, procedural technicalities would not bar the Central Commission from hearing issues to render substantial justice. Since the Central Commission was dealing with all issues arising out of the Project, that is, the adoption of tariff, grant of license, and petition filed by SPGL for cancellation of the TSA, it was justified for it to adjudicate the dispute arising out of payment of acquisition cost by PGCIL for the same Project. For this, it was also argued that the regulatory powers of the Central Commission are wide enough to include matters not specifically provided for in the statute or the TSA, which also justifies raising the claim against RECTPCL. Also, argued that filing a separate petition in this case would only have led to multiplicity of litigation among the same parties.

123. Undisputedly, Petition Nos. 127/2012 and 128/TL/2012 were filed for the adoption of the tariff and grant of transmission license to VTSL, respectively. The respective prayers in the two Petitions are set out below for ease of reference:

i. In Petition No. 127/2012:

"*(a) Approve the adoption of Transmission Charges for the project discovered through competitive bidding process.*

(b) Allow the Transmission system associated with IPPs of Vemagiri Area: Package-A to be part of Transmission Service Agreement approved by the Hon'ble Commission under PoC Charges Regulations (Sharing of InterState Transmission Charges and Losses Regulations, 2010)."

ii. In Petition No. 128/TL/2012:

"(a) Declare the Applicant as a deemed licencee and also issue a clarification that a Government company shall be deemed to be a transmission licensee if it emerges as a successful bidder in bidding process undertaken in accordance with the competitive bidding guidelines as notified by GoI. Or

(b) Issue Transmission License to the Applicant ; and

(c) Allow the Transmission system associated with IPPs of Vemagiri Area: Package – A to be part of Transmission Service Agreement approved by the Hon'ble Commission under PoC charges Regulations (Sharing of Interstate Transmission Charges and Losses Regulations).

(d) Pass such other order/ orders, as may be deemed fit and proper in the facts & circumstances of the case."

124. Additionally, I.A. 24/2014 filed by PGCIL seeking directions on the fixation of liability from whom the acquisition cost shall be recovered, along with other expenses incurred by VTSL on account of the Project having been cancelled.

125. It is not in dispute before us that, in the normal course of events, had the Project gone through, PGCIL would not have been entitled to any such reimbursement and would have merely received the PoC charges payable by SPL and SPGL, as determined by the Central Commission. However, the

Project got cancelled even before Petition Nos. 127/2012 and 128/TL/2012 could have been disposed of by the Central Commission, PGCIL filed I.A. 24/2014 in these Petitions itself to recover the acquisition cost paid by it, which itself is a contentious issue, as the cause of filing the main petition was entirely different.

126. Therefore, the question is whether the interim application filed by PGCIL, which undeniably was beyond the scope of the main petitions filed by it, could have been allowed by the Central Commission.

127. We are of the view that it was improper for the Central Commission to allow the interim application seeking recoveries of costs of the Project, in petitions pertaining to the adoption of a tariff and grant of a transmission licence, especially since the main petitions had admittedly been rendered infructuous.

128. As noted above, it is not in dispute that the main petitions were filed for adoption of a tariff under Section 63 and grant of a transmission licence under Sections 14 of the Electricity Act, 2003, and due to subsequent developments, have been rendered infructuous by the Central Commission in para 20 of the Impugned Order dated 06.04.2015, para 20 is reproduced as under:

> "*20. Since we have held that in the changed circumstances, Vemagiri-Khammam-Hyderabad 765 kV D/C lines is neither required as an evacuation line nor as a system strengthening line, no useful purpose will be served by adopting the transmission charges and granting licence to the petitioner for the said transmission line.* ***Accordingly, we dispose of the Petition No.127/2012 and 128/TL/2012 without any relief as the said petitions have been rendered infructuous on account of***

***developments which took place after the project was awarded to PGCIL through tariff based competitive bidding.*"**

129. In our view, the proper course of action for the Central Commission was to dispose of the main petitions having been rendered infructuous, as opposed to traveling beyond the scope of the said petitions and granting relief(s) which were not prayed for in the main petitions.

130. Our attention was invited to various judgments quoted by the contesting parties.

131. Reliance was placed on the decision of the Hon'ble Supreme Court in ***Messrs. Trojan & Co. v RM. N.N. Nagappa Chettiar, AIR 1953 SC 235***, wherein the Supreme Court cautioned against granting relief(s) which travel beyond the main prayers made in a proceeding, the Hon'ble Court observed as under:

"*38. …It is well settled that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found. Without an amendment of the plaint the court was not entitled to grant the relief not asked for and no prayer was ever made to amend the plaint so as to incorporate in it an alternative case. The allegations on which the plaintiff claimed relief in respect of these shares are clear and emphatic. There was no suggestion made in the plaint or even when its amendment was sought at one stage that the plaintiff in the alternative was entitled to this amount on the ground of failure of consideration. That being so, we see no valid grounds for entertaining the plaintiff's claim as based on failure of consideration on the case pleaded by him.*"

132. That being the case, it was improper for the Central Commission to travel beyond the scope of the main petitions and grant relief(s) which were not even prayed for in the main petition. Further, the Hon'ble Supreme Court in ***Bachhaj Nahar v Nilima Mandal & Anr., (2008) 17 SCC 491****,* has held as under:

> "*23. It is fundamental that in a civil suit, relief to be granted can be only with reference to the prayers made in the pleadings. That apart, in civil suits, grant of relief is circumscribed by various factors like court fee, limitation, parties to the suits, as also grounds barring relief, like res judicata, estoppel, acquiescence, non-joinder of causes of action or parties etc., which require pleading and proof. Therefore, it would be hazardous to hold that in a civil suit whatever be the relief that is prayed, the court can on examination of facts grant any relief as it thinks fit. In a suit for recovery of rupees one lakh, the court cannot grant a decree for rupees ten lakhs. In a suit for recovery possession of property 'A', court cannot grant possession of property 'B'. In a suit praying for permanent injunction, court grant a relief of declaration or possession. The jurisdiction to grant relief in a civil suit necessarily depends on the pleadings, prayer, court fee paid, evidence let in, etc.*
>
> *24. In the absence of a claim by plaintiffs based on an easementary right, the first defendant did not have an opportunity to demonstrate that the plaintiffs had no easementary right. In the absence of pleadings and an opportunity to the first defendant to deny such claim, the High Court could not have converted a suit for title into a suit for enforcement of an easementary right. The first appellate court had recorded a finding of fact that plaintiffs had not made out title. The High Court in second appeal did not disturb the said*

finding. As no question of law arose for consideration, the High Court ought to have dismissed the second appeal. Even if the High Court felt that a case for easement was made out, at best liberty could have been reserved to the plaintiffs to file a separate suit for easement. But the High court could not, in a second appeal, while rejecting the plea of the plaintiffs that they were owners of the suit property, grant the relief of injunction in regard to an easementary right by assuming that they had an easementary right to use the schedule property as a passage."

133. The generators argued that the above judgments clarify that reliefs not prayed for cannot be granted, it is also a settled position of law that an interim application and the relief(s) prayed therein cannot travel beyond the relief(s) sought in the main petition since an interim application is to be made in aid of the main prayer.

134. Also placed before us, the Hon'ble Supreme Court judgment in ***Meena Chaudhary v Commissioner of Delhi Police & Ors., (2015) 2 SCC 156,*** supports this principle wherein it has held:

"*3. …The scope of an interim application cannot be greater in scope than the main appeal. Additionally, over and above the aforeextracted reliefs, the appellant has also prayed for certain other directions in her rejoinder-affidavit. Ex facie, the said prayers are also beyond the scope of the main appeals and, therefore, cannot be granted. Accordingly, both the applications, being bereft of any merit, are dismissed.*"

135. Also contended that the same is also supported by the case of ***Ritona Consultancy Pvt. Ltd. & Ors. v Lohia Jute Press and Ors.*, *(2001) 3 SCC 68***, wherein the Hon'ble Supreme Court held as follows:

> "*5. …The High Court shall decide on such applications bearing in mind the salutary principle that an interlocutory order is made by way of aid to the proper adjudication of the claims and disputes arising in and not made beyond the scope of the suit or against the parties who are not before it. That neither excessive conservatism or traditional technical approach nor over-zealous activist approach is conducive to advancement of justice.*"

136. It cannot be argued that an interim relief can be granted only in aid of and as ancillary to the main relief which may be available to the party on final determination of his rights in a suit. Further, no interim injunction can be issued in a matter wherein the final relief cannot be granted. The case of ***Cotton Corporation of India Ltd. v United Industrial Bank Ltd.*, *(1983) 4 SCC 625*** supports this view wherein the Hon'ble Supreme Court held as follows:

> "*10. …It is indisputable that temporary injunction is granted during the pendency of the proceeding so that while granting final relief the court is not faced with a situation that the relief becomes infructuous or that during the pendency of the proceeding an unfair advantage is not taken by the party in default or against whom temporary injunction is sought. But power to grant temporary injunction was conferred in aid or as auxiliary to the final relief that may be granted.* ***If the final relief cannot be granted in terms as prayed for, temporary relief in the same terms can hardly if ever be granted.***"

137. This Tribunal in ***Teesta Urja Ltd. v CERC*, *2023 SCC OnLine APTEL 26*** has held as under:

> "*29. It is well settled that interim relief is granted in aid of, and as ancillary to, the main relief which may be available to the party on the final determination of his rights in a suit or proceedings.* ***As this is the purpose to achieve which power to grant temporary relief is conferred, in cases where the final relief cannot be granted in the terms sought for, temporary relief of the same nature cannot be granted*** *(State of Orissa v. Madan Gopal Rungta, 1951 SCC 1024 : AIR 1952 SC 12; Cotton Corporation of India v. United Industrial Bank, (1983) 4 SCC 625). A relief which can be granted only at the final hearing of the matter, should not ordinarily be granted by way of an interim order. (State of U.P. v. Desh Raj, (2007) 1 SCC 257). The final relief, sought in a petition, cannot be granted at an interlocutory stage, that too without deciding the issues involved in the case. (Union of India v. Modiluft Ltd., (2003) 6 SCC 65)*"

138. In the present case, the main petitions, Petition Nos. 127/2012 and 128/TL/2012 have been disposed of by the Central Commission in its Order dated 06.04.2015 because they have been rendered infructuous. Since the final reliefs cannot be granted, no other reliefs by way of interim applications can be granted in these proceedings.

139. Furthermore, it is pertinent to note that in the present case, admittedly, the main petitions were preferred under Sections 63 and 14 of the Electricity Act, 2003. In our view, there is nothing under the said provisions that would

allow the Central Commission to pass orders determining compensation of a party which claims to be aggrieved.

140. However, the Central Commission argued that the generators had been given notice of the interim application and, despite that, chose not to object to its maintainability and, as such, are estopped from raising the same now.

141. The generators are aggrieved by the directions as rendered in the Impugned Order regarding the liability imposed upon them for sharing the acquisition cost of VTSL.

142. We, at this stage, prefer not to interfere with the allowance of the IA No. 24/2014 filed in Petition No. 127/2012, as the same has not been objected to by any of the contesting parties before the Central Commission.

143. On being asked, the contesting generators, SPL and SPGL, submitted that they are only claiming relief against the liability imposed on them for sharing 80% of the acquisition price, on the other hand Respondent No. 2, PGCIL is aggrieved by the levy of 20% of the acquisition price, on the contrary RECTPCL has challenged the jurisdiction of this Tribunal in deciding the matter against RECTPCL.

144. Accordingly, without going into this issue, we proceed, in the interest of justice, to examine the matter on the merits.

ISSUE NO. 2 - Applicability of the principle of restitution in this case, and

ISSUE NO. 3 - Whether the Central Commission has been arbitrary in its decision to impose 80% of the burden of the acquisition cost on SPL and SPGL

145. We proceed further by not interfering with the decision of the Central Commission in entertaining I.A. 24/2014. SPL and SPGL have also challenged the basis on which the Central Commission has imposed the liability of bearing the acquisition price on them.

146. The generators submitted that the Impugned Order dated 06.04.2015 does not establish any basis in law or substantiate any reason for imposing the burden of the acquisition price on the power generators. It is contended that the Bulk Power Transmission Agreement dated 24.12.2010 (hereinafter referred to as "BPTA") executed inter alia amongst SPL, SPGL, and PGCIL, as well as the TSA, had been cancelled by PGCIL, pursuant to the Orders of the Central Commission, and the bank guarantees were returned. The BPTA and TSA were also terminated on account of reasons beyond the control of participating entities.

147. On this ground, it is argued that there was no basis on which the Central Commission could have imposed the liability to pay on SPL or SPGL. Further contended that the Order is like an Order of Restitution that directs the power generators to restore PGCIL to the same position as it was before entering into the BPTA and TSA.

148. Considering that SPL or SPGL has not been enriched by any act of PGCIL, it argued that the principles of restitution do not apply to the present case. Also stated that the Central Commission vide Order dated 27.09.2013

has observed that PGCIL has neither made any investment nor made any progress in the implementation of the transmission system. As such, any question of the power generators being enriched at the cost of PGCIL does not arise. Lastly, the generators have highlighted that the Central Commission failed to appreciate the fact that the Ministry of Power had directed all gas-based power generation companies not to make any further investment due to the non-availability of gas, a force majeure event which was entirely beyond the control of the generators. Basis this direction, SPGL even issued the letter dated 30.03.2012 to PGCIL not to make further investment in the transmission project. However, PGCIL ignored the same and ostensibly went ahead with the investment.

149. It is also argued that there is no law, contract, bidding document, or even equitable principles that impose such a liability on the generators. It has argued that the Central Commission, being the court of first instance, has sufficient record and basis for the claim to have been presented by the Claimant, that is, PGCIL. Further, it has been argued that the entire case has arisen on account of the Circular issued by the Ministry of Power, wherein the scarcity of gas was intimated to the power generators. It is on this basis that the Central Commission has directed the return of bank guarantees, and consequently, the BPTA and TSA have been cancelled. As such, intervening circumstances have hindered the setting up of a power plant by SPL and SPGL, for which they must not be held liable.

150. Furthermore, SPGL had taken the requisite steps by informing PGCIL vide letter dated 30.03.2012 not to proceed with the Project, yet the Central Commission had imposed liability on SPGL.

151. The Central Commission countered the arguments put forth by the generators, contending that since the process for selection of a Transmission Service Provider was undertaken based on the commitment given by SPL and SPGL through the LTA granted to them and the LTA Agreement signed by them, they should bear the burden of the acquisition price paid by PGCIL. PGCIL had incurred expenditure on acquiring VTSL solely to set up the transmission system for SPL and SPGL. Thus, they must bear the cost of acquisition paid by PGCIL.

152. Similarly, PGCIL has also argued that the Project was being implemented for SPL and SPGL and that PGCIL, as the selected bidder, had incurred expenditure only because of the requirement of transmission of power from the proposed power projects of SPL and SPGL. However, the Project could not be implemented for no fault of PGCIL, which could not have unilaterally taken any decision on the requirement of the Project, and therefore, the Central Commission had rightly reimbursed the amount it paid to RECTPCL and subsequently incurred by it. It was argued that this was justified on grounds of restitution (based in equity) and hence is applicable even if the contract (the TSA in this case) is terminated. Instead, PGCIL has argued that even the finding that it must be held liable for 20% of the acquisition price of VTSL and other expenditure incurred by VTSL must be set aside, and the said costs must be apportioned between SPL, SPGL, and RECTPCL. This is because PGCIL had no fault whatsoever in incurring those costs (which had happened on the insistence of RECTPCL) and the cancellation of the Project (which had happened on account of non-viability of the power plants).

153. It was further argued that RECTPCL had not incurred any expenditure and had received the entire amount from PGCIL as professional fees. Now that the Project has been discontinued, there is no justification for RECTPCL to

retain the said amounts received. On force majeure, it has been argued that the event of force majeure relates to the period after the bid process had been concluded and the professional fee had been paid to RECTPCL. Thus, the obligations of SPL and SPGL to bear the cost of such expenses were unaffected by the alleged force majeure events.

154. PGCIL also contended that RECPTCL, Respondent No. 3, compelled it to proceed with the implementation of the TSA despite Spectrum raising concerns about the non-availability of gas. Despite Spectrum's requests to cancel the TSA on 30.03.2012 and 06.04.2012, RECPTCL directed POWERGRID on 13.04.2012 to comply with the RFP and pay the acquisition price. RECPTCL should have deferred the acquisition of the SPV by POWERGRID until a decision was made by the Empowered Committee regarding the transmission project's viability due to the gas issue. However, RECPTCL proceeded with the transaction, requiring POWERGRID to pay and assume control of the SPV on 17.04.2012.

155. Further argued that Spectrum and Samalkot wrongly argue that POWERGRID should have withheld its obligations under the bid. In reality, POWERGRID had acted prudently by informing RECPTCL via its letter dated 11.04.2012 and advising Spectrum to address the issue directly with RECPTCL. No response was received from Samalkot. Before paying the acquisition price, POWERGRID highlighted Spectrum's concerns to RECPTCL, but RECPTCL did not extend the deadline and insisted on payment. POWERGRID, bound by bid conditions, had no choice but to comply to avoid breach of contract and potential consequences. The Central Commission's Review Order of 20.10.2016 confirmed POWERGRID's actions were in accordance with its obligations.

156. We agree with the submissions of the PGCIL that it cannot extend the timelines under the contractual terms, also has acted pro-actively in informing the other and taking timely action on the letter dated 30.03.2012 issued by SPGL.

157. In response to the above submissions made by PGCIL, the RECTPCL has argued that the only role that it had in the Project was that of a Bid Process Coordinator. Once VTSL was acquired by the selected bidder, its obligations towards the Project had ceased, and for the purpose of performing its functions under the Request for Proposal, it would be paid a certain compensation by the selected bidder.

158. Thus, any question of reimbursing/returning the fee paid to RECTPCL for conducting the bidding process does not arise and is in breach of the covenants of the Bidding Guidelines and the Share Purchase Agreement dated 18.04.2012. Furthermore, RECTPCL could not extend the timeline for the Project since it does not have any such power to extend the timeline, and also because no such extension of time was sought by PGCIL or the generators. Instead, PGCIL itself had the power to extend timelines under the TSA but failed to do so. Also highlighted RECTPCL's letter dated 23.04.2012, through which it approached the Empowered Committee within 24 days of the receipt of the letter of 30.03.2012 from SPGL, to resolve the issues arising on account of non-availability of gas. Thus, argued that not only does PGCIL not have any basis for making a claim against RECTPCL, but also that RECTPCL had taken good faith measures to resolve the situation as well.

159. We have considered the rival submissions made before us. We find that the Central Commission has erred in holding SPL and SPGL liable to pay 80%

of the acquisition price to PGCIL. In this regard, the only reasoning given by the Central Commission is as under:

> "*25…Since the process of competitive bidding was undertaken by RECTPCL on the basis of commitment of SPL and SPGL, we are of the view that they are liable to bear the cost of acquiring the Vemagiri Transmission System Limited and the expenditure incurred by PGCIL subsequently.*"

160. We agree with the contentions of SPL and SPGL that PGCIL, having chosen to incur the said expenditures on 18.04.2012, after the power generators had informed it on 30.03.2012 that power projects could not be continued on account of non-availability of gas, cannot fasten liability upon the generators. PGCIL was expected to operate prudently in the face of circulars passed by the Ministry of Power, as well as the intimation received from the power generators. Having failed to do so, PGCIL cannot saddle such unreasonable costs incurred by it on the power generators.

161. At the same time, we also find that PGCIL cannot be fastened with such liability as it was forced to pay the acquisition cost to RECTPCL, as its failure to pay might have had other serious consequences, including encashment of the BG deposited as part of the bidding.

162. We find the conduct of RECTPCL unacceptable; once aware of the force majeure situation, it should have approached the Government of India, the Ministry of Power, and the Empowered Committee within a reasonable time, but, certainly before completing the acquisition process.

163. It is important to note that despite being notified by Spectrum on 30.03.2012 about the cancellation of the TSA and the stalling of the bidding process, and further concerns raised by POWERGRID in its letter dated 11.04.2012, REC prioritized demanding payment of the acquisition price. It was only on 23.04.2012 that REC approached the Empowered Committee, i.e. after receiving the disputed amount from PGCIL. This sequence of events demonstrates REC's self-serving approach, addressing financial interests before seeking a resolution through the proper authority. In this regard, the following specific events are relevant:

Date	Particulars
30.03.2012	Spectrum wrote a letter to POWERGRID with a copy marked to RECTPCL requesting cancellation of the TSA.
06.04.2012	Spectrum, *inter-alia,* requested that the **TSA** signed with RECTPCL **be cancelled and the bidding process initiated to be stalled**.
09.04.2012	RECTPCL wrote to POWERGRID, directing POWERGRID to pay the acquisition price on or before 20.04.20212.
11.04.2012	POWERGRID wrote to Spectrum with a copy marked to RECTPCL requesting Spectrum to take up the issue of cancellation of TSA with RECTPCL.
16.04.2012	RECTPCL wrote to POWERGRID, again directing POWERGRID to pay the acquisition price.
18.04.2012	POWERGRID paid the acquisition price. If the acquisition price was not paid, POWERGRID would have been subjected to forfeiture of bid bond

	and further for violating the bidding process which may even lead to blacklisting.
23.04.2012	RECTPCL wrote to CEA requesting to convene a meeting the Empowered Committee for necessary directions.

164. We are satisfied that RECTPCL has acted in a manner that cannot be accepted; it should have immediately approached the MoP/ Empowered Committee once made aware of the Force Majeure Event.

165. PGCIL and RECTPCL ought to have been aware of the MoP letter dated 19.03.2012, even if it is assumed that the two were not aware of it, SPGL vide letter dated 30.03.2012 has informed the two.

166. The PGCIL and RECTPCL were duty-bound to immediately approach the MoP and the Empowered Committee; however, they continued with the bidding process, something which cannot be appreciated.

167. Further, the Central Commission has also failed to provide any basis in statute or contract to establish the liability of the power generators for the acquisition price. No clause in the TSA imposes such a burden on power generators, who were simply liable to pay the PoC charges to the transmission company as determined by the Central Commission. In the absence of any such basis in the Guidelines or the TSA or otherwise, the Central Commission could not have imposed the liability on SPL and SPGL without any basis.

168. It is trite law that any judicial order must be based on reasons and that the order must contain the basis or reasoning through which the conclusion has

been drawn, reliance is placed on ***Mahipal v Rajesh Kumar, (2020) 2 SCC 118***.

169. We have examined the Impugned Order and observed that Para 25 of the Impugned Order does not provide any reason or basis for imposing the liability on SPL and SPGL. Merely stating that the process of bidding was undertaken based on the commitment by SPL and SPGL as the reason behind imposing the liability to bear the acquisition cost on them does not suffice, especially when the power generators had informed PGCIL to not go ahead with the transmission system on account of the lack of gas supply, a force majeure event.

170. Even if the reasoning of the Central Commission was based on equity, the same must have been spelled out in its Order, which it has clearly failed to do. In any event, we hold that equity cannot provide a cause of action to a party which itself acts in an imprudent manner, reference ***Dalip Singh v State of Uttar Pradesh & Ors., (2010) 2 SCC 114***).

171. The direction to SPL and SPGL to bear the burden of the acquisition cost is based on equity; we find that the same has no merit. This is because the power generators had not been enriched at the expense of PGCIL in any manner and had not acted unreasonably. They had not received any benefit on account of PGCIL paying the acquisition price to RECTPCL. Instead, the power generators had incurred costs towards their power plants, for which they were never compensated.

172. Thus, the reasoning given by PGCIL on the grounds of restitution does not stand, as PGCIL has neither been able to prove any unjust enrichment of

the power generators nor has it been able to show that such enrichment is at the cost of PGCIL.

173. On the contrary, RECTPCL argued that no prayers are made against REC by SPGL before CERC. It is a settled principle of Law that when a party omits to claim any relief before the court of first instance, it cannot raise new grounds to claim a relief(s) in appeal. The reliance is placed on the judgment of the Hon'ble Supreme Court in the case of ***State of Maharashtra v Hindustan Construction Limited, (2010) 4 SCC 518***.

174. Further, RECTPCL contended that it was merely arrayed as a pro forma respondent by SPGL before CERC. Since at no time, any claim been made against REC, therefore, the same cannot be made now. Pro forma Respondents are the parties against whom no relief is claimed, who can scarcely be said to be interested in the issue of the suit and whose presence or absence would make no difference to the Court in arriving at a correct decision The reliance is placed on the judgment of the Hon'ble Punjab and Haryana High Court in the case of ***Babu Gita Ram Kalsi v. S. Prithvi Singh and Others, 1955 SCC OnLine Punj 72***.

175. However, none of the generators have claimed any relief against the RECTPCL; their only prayer is to set aside the Impugned Order, as they cannot be made liable to reimburse PGCIL the acquisition cost.

176. RECTPCL further submitted that CERC under Section 79(1)(f) of the Electricity Act, 2003, does not have any jurisdiction over REC. Under Section 79(1)(f), CERC has been empowered/vested with powers to 'adjudicate' disputes involving a generation company and licensee in so far as the subject

matter of Section 79(1)(a) to Section 79(1)(d) is concerned. The prayers, therefore, made by PGCIL before are not maintainable qua REC.

177. We decline to accept the submissions of RECTPCL, the Bid Coordinator as nominated by the MoP, is in line with the provisions of CERC Regulation and bidding guidelines, thus cannot be said to be out of the domain of the Electricity Act, 2003, the notification as referred by RECTPCL clarified the same, as noted below:

> "THE GAZETTE OF INDIA: EXTRAORDINARY [PART 1I-Sec. 3(ii)1
>
> MINISTRY OF POWER
> NOTIFICATION
> New Delhi, the 15th March, 2011
>
> S.O. 579(E).—**In exercise of the powers conferred by Sub-para 3.2 of Para 3 of the Guidelines circulated under Section 63 of the Electricity Act, 2003 (No. 36 of 2003),** the Central Government hereby appoints the following Bid-Process Coordinators for the Transmission Projects, as shown against the name of each Transmission Project :--"

178. Further, submitted that RECTPCL has been recognised by MOP/Empowered Committee to be a BPC. Even the 'fee' claimed by REC, part of the acquisition of SPV, has been notified by MoP by way of the gazette notification dated 04.02.2011.

179. As already observed, we agree that BPC is part of the bidding process under the Competitive Bidding Guidelines notified by MoP under section 63 of the Act, and therefore cannot be shelved from the domain of the CERC, even if CERC under Section 79 does not have any power to interfere with such fee notified by MoP.

180. We strongly condemn the argument of RECTPCL that RECTPCL has no power to extend timelines under the RFS; further, none of the parties requested for extension of timelines. Once bidding is concluded, the role of REC ceases to take any steps under RFS.

181. It cannot be disputed that RECTPCL was not well aware of the occurrence of Force Majeure Event as the Govt. notification regarding non-availability of gas was available on the public domain and also informed by the SPGL on 30.03.2012 itself, well before the completion of the acquisition process, even then it preferred to continue with the process and failed to take up the matter before MoP/ Empowered Committee.

182. Undisputedly, RECTPCL's actions fall under Sections 79(1)(c) and 79(1)(d) of the Electricity Act, 2003, which regulate inter-state transmission and its tariff, read with Section 63. Consequently, disputes involving RECTPCL are admissible under Section 79(1)(f), which encompasses disputes involving transmission licensees (such as POWERGRID) and matters connected with clauses (c) and (d). Unlike Section 86(1)(f), which specifies disputes between generating companies and licensees, Section 79(1)(f) does not mandate a second party to the dispute.

183. Also, the acquisition price forms part of the tariff quoted by the selected bidder, thus, the jurisdiction of the Central Commission under Section 79 of the Electricity Act, 2003. This reinforces the Central Commission's wide regulatory powers over interstate transmission matters, including RECTPCL's actions and the associated tariff issues.

184. We decline to accept the RECTPCL's argument that it lacked authority to extend timelines is incorrect and contradicts Clause 2.4(e) of the RfP dated 05.09.2011, issued by RECTPCL itself.

185. It was brought to our notice that RECTPCL has previously extended timelines in similar cases, such as Kallam Transmission Limited, Udupi Kasargode Transmission Limited, and Khetri-Narela Transmission Limited, where it acted as the Bid Process Coordinator (BPC). RECTPCL's deviation in the present case suggests an intent to secure undue financial gains.

186. We agree with the submission of the Respondent No. 2 that RECTPCL's argument that disputes over acquisition price must be resolved through bilateral arbitration under the Arbitration and Conciliation Act, 1996, is misplaced. It is well established that disputes falling under the Electricity Act, 2003, particularly Sections 79(1)(f) and 86(1)(f), are outside the scope of the Arbitration Act, as affirmed by Section 2(3) of the Arbitration Act. This principle is supported by landmark judgments, including: Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd. (2008) 4 SCC 755, Hindustan Zinc Ltd. v. Ajmer Vidyut Vitran Nigam Ltd. (2019) 17 SCC 82, M.P. Power Trading Co. Ltd. v. Narmada Equipments (P) Ltd. (2021) 14 SCC 548, PTC v. Jaiprakash Power Ventures Ltd., (2012) 130 DRJ 351. These precedents establish that disputes under the Electricity Act should be resolved by the regulatory authorities, not through arbitration.

187. We also reject the contentions of RECTPCL that, as per Clause 2.5(i) and (ii) of the Request for Proposal (RFP), REC's role as Bid Process Coordinator (BPC) ceased after the acquisition of VTSL. Post-acquisition rights, obligations, and liabilities were to be undertaken by the Lead Long-Term Transmission Customer (LTTC). Any claim for reimbursement of REC's

fee or acquisition price violates the covenants of the Bidding Guidelines, RFP, and Share Purchase Agreement (SPA).

188. In fact, RECTPCL was informed much before the acquisition process was completed, therefore, such submissions have to be rejected that are incorrect.

189. We also find the argument of RECTPCL as perverse and unjustified, as it has approached the Empowered Committee within 24 days of the receipt of the letter of 30.03.2012 from Spectrum, to resolve the issues vide its letter dated 23.04.2012. We reject such a contention as BPC, which delayed taking up the matter before the MoP/ Empowered Committee and issued a letter affecting PGCIL to pay the acquisition cost before writing to MoP on 23.04.2012.

190. Further, the fee as notified by the MoP has to be charged once the process is complete; however, to the fact that RECTPCL was well aware of the force majeure event, it hurried the process and indirectly forced PGCIL to pay the acquisition cost and then only approach the Government/ Empowered Committee.

191. On being asked, even RECTPCL could not provide us with the details of the expenditure by them, instead submitted that it is on account of professional services as decided by MoP.

192. Finally, on the issue of force majeure, it is settled law that parties cannot be held liable for force majeure events that are entirely beyond their control.

193. We agree with SPL and SPGL that they could not have proceeded with the development of the power plant on account of the non-availability of gas

and clear instructions from the Government of India not to proceed with any such investment. As such, not proceeding with the construction of the plant was an event beyond their control, for which they cannot be held liable today.

194. We also agree that PGCIL did not default at any stage, instead has acted prudently, and as such cannot be mulcted with the acquisition cost.

195. As already noted, similar cases occurred in the past, and in such cases, the bid coordinators always approached the Government of India; however, we find in this case that RECTPCL preferred to continue with the bidding process contrary to the past practice, and therefore, the conduct of RECTPCL cannot be appreciated.

196. **In light of the above, we hold that the Central Commission erred in holding that SPL and SPGL are liable to compensate PGCIL for the costs of acquisition by PGCIL of VTSL or that they are liable to reimburse any operational costs.**

197. We also direct that PGCIL cannot be held liable for such acquisition costs paid under compelling circumstances, and should be adjusted by CERC by taking suitable measures under the law, either by recovering the money from RECTPCL in the light of the above observations or by adjusting the same through other modes.

ORDER

For the foregoing reasons, we are of the considered view that the Appeal Nos. 128 of 2015, 171 of 2015, and 60 of 2017 have merit and are allowed to the extent as concluded herein.

The Impugned Orders dated 06.04.2015, passed by the Central Electricity Regulatory Commission in Petition 127 of 2012 and Petition No. 156/MP/2012 and dated 20.10.2016, passed by the Central Electricity Regulatory Commission in Review Petition No. 10/RP/2015 are set aside to the extent as concluded herein.

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

Pronounced in the Open Court on this **27th day of May, 2025.**

(Virender Bhat)	**(Sandesh Kumar Sharma)**
Judicial Member	**Technical Member**

REPORTABLE / ~~NON-REPORTABLE~~

pr/mkj/kks