

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

APPEAL NO. 59 OF 2016

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APPEAL NO. 60 OF 2016

Dated: 07.07.2025

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

APPEAL NO. 59 OF 2016

IN THE MATTER OF:

M/s Aravali Transmission Service Company Ltd.
Airport Building No. 302,
New Shakti Bhawan Complex,
Opp, IGI Airport Terminal-3,
New Delhi-110037.

...Appellant(s)

VERSUS

- 1) M/s Rajasthan Electricity Regulatory Commission,
Vidyut Vinyamak Bhawan,
Sahakar Marg, Near State Motor Garage,
Jaipur, Rajasthan.
- 2) Jaipur Vidyut Vitran Nigam Limited,
Jyoti Nagar, Vidyut Bhawan,
Jaipur - 302 005.
- 3) Ajmer Vidyut Vitran Nigam Limited,
Vidyut Bhawan, Panchsheel Nagar,
Makarwali Road, Ajmer – 305004.
- 4) Jodhpur Vidyut Vitran Nigam Limited,
New Power House, Industrial Area,
Jodhpur – 342003.

...Respondent(s)

**Counsel for the Appellant(s) : Mr. Vishrov Mukherjee
Mr. Aditya Shankar Prasad**

Counsel for the Respondent(s) : Mr. Raj Kumar Mehta for R-1

Ms. Poorva Saigal
Ms. Anushree Bardhan
Mr. Shubham Arya
Ms. Tanya Sareen
Ms. Ranjitha Ramachandran for R-2,3&4

APPEAL NO. 60 OF 2016

IN THE MATTER OF:

M/s. Maru Transmission Service Company Ltd.,
Having its Registered Office at Skip House,
25/1, Museum Road, Bengaluru,
Vidyut Bhawan, Jyoti Nagar,
Jaipur – 302005.

...Appellant(s)

VERSUS

- 1) M/s Rajasthan Electricity Regulatory Commission,
Vidyut Vinyamak Bhawan,
Sahakar Marg, Near State Motor Garage,
Jaipur, Rajasthan.
- 2) Jaipur Vidyut Vitran Nigam Limited,
Jyoti Nagar, Vidyut Bhawan,
Jaipur - 302 005.
- 3) Ajmer Vidyut Vitran Nigam Limited,
Vidyut Bhawan, Panchsheel Nagar,
Makarwali Road, Ajmer – 305004.
- 4) Jodhpur Vidyut Vitran Nigam Limited,
New Power House, Industrial Area,
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Ms. Poorva Saigal
Ms. Anushree Bardhan
Mr. Shubham Arya
Ms. Tanya Sareen
Ms. Ranjitha Ramachandran for R-2,3&4

JUDGEMENT

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

1. These Appeals have been filed by. M/s. Aravali Transmission Service Company Ltd. (in short "ATSCL") and M/s. Maru Transmission Service Company Ltd. (in short "MTSCL"), challenging the Common Impugned Order dated 28.12.2015 in 501/15 & Petition No. 466/14 passed by the Rajasthan Electricity Regulatory Commission (in short "State Commission" or "RERC"), respectively.

Description of Parties

2. ATSCL, the Appellant in Appeal No. 59 of 2016, and MTSCL, the Appellant in Appeal No. 60 of 2016, are the transmission licensees having set up 400kV S/C Hindaun-Alwar Line with 400 kV/220 kV GSS at Alwar, Rajasthan (Alwar Project) and 400kV S/c Bikaner-Deedwana-Ajmer Line with 400/200kV GSS at Deedwana (Deedwana Project), respectively, on a Build, Own, Operate and Maintain basis pursuant to a competitive bidding process initiated by Rajasthan Discoms, i.e., Respondent Nos. 2 to 4.

3. Respondent No. 1, RERC, in both the appeals, is a Statutory Authority constituted under the Electricity Regulatory Commissions Act, 1998 and Section 82 of the Electricity Act, 2003.

4. Respondent No. 2, Jaipur Vidyut Vitran Nigam Ltd. (Jaipur Discom), in both the appeals, was incorporated under the Companies Act, 1956, by the Government of Rajasthan, and is engaged in the distribution and supply of electricity to 17 districts of Rajasthan.

5. Respondent No. 3, Ajmer Vidyut Vitran Nigam Ltd. (Ajmer Discom), in the two appeals, was incorporated under the Companies Act, 1956, by the Government of Rajasthan, and is engaged in the distribution and supply of electricity to 15 districts of Rajasthan.

6. Respondent No. 4, Jodhpur Vidyut Vitran Nigam Ltd. (Jodhpur Discom), in both the captioned appeals, was incorporated under the Companies Act, 1956, by the Government of Rajasthan, and is engaged in the distribution and supply of electricity to 10 districts of Rajasthan.

Factual Matrix of the Case (in Appeal No. 59 of 2016)

7. This appeal has been filed by M/s Aravali Transmission Service Company Ltd, against the Impugned Order dated 28.12.2015 passed by the Rajasthan Electricity Regulatory Commission in the matter of M/s Aravali Transmission Service Company Limited vs. M/s Jaipur Vidhyut Virtran Nigam Limited & Ors.

8. The scheduled COD (SCOD) for the project was 18.01.2013. However, the SCOD of the project was extended till the actual COD of the project, i.e., 17.07.2014. The said delay of 18 months was primarily on account of the orders issued by the Commission dated 30.09.2011 and 24.10.2011, whereby the Commission declined to adopt the transmission charges for the project and also refused to grant a transmission licence to the Appellant. The reason for passing

the order was that the appointment of the Bid Process Coordinator by the Rajasthan Rajya Vidyut Prasaran Nigam Limited (RRVPL) and the constitution of the Bid Evaluation Commission were defective.

9. This Tribunal, vide order dated 16.04.2012 in Appeal Nos. 177 & 181 of 2011, set aside RERC's earlier denial of transmission licence and tariff adoption, holding that the procurement process substantially complied with the guidelines ensuring transparency and competitiveness. Subsequently, RERC issued the adoption of tariff and transmission licence orders on 01.06.2012 and 15.09.2012. The delays caused an increase in project cost and loss of revenue due to deferred operations and shortened recovery periods.

10. ATSCL filed a petition under Sections 63, 66, 86(1)(f) and (k) of the Electricity Act, 2003, and relevant RERC regulations, seeking revision of the transmission tariff and a lump sum compensation of ₹65.80 crore (approx.). The claim was based on losses resulting from the delayed grant of licence and tariff adoption, which ATSCL argued amounted to a "Change in Law" under Article 12.1.1 of the TSA, due to RERC's inconsistent interpretation of government guidelines.

11. The Appellant also sought payment of outstanding transmission charges and recovery of charges unlawfully deducted as liquidated damages. Initially, RERC rejected ATSCL's petitions, citing flaws in the selection process, but post-appeal, this Tribunal remanded the matter, and RERC later granted the licence and adopted the tariff. ATSCL contended that this reversal by RERC, an Indian Government Instrumentality, constituted a "Change in Law," thus entitling it to compensation under the TSA.

12. ATSCL submitted that the delay in granting the transmission licence and tariff adoption by RERC led to both an increase in project cost and a loss of revenue, causing substantial financial loss due to cost overruns and truncated earnings. In the impugned order, RERC dismissed ATSCL's petitions, treating its earlier orders as "Regulatory Measures" under Clause 12.1.2 of the TSA and not as a "Change in Law" under Clause 12.1, thereby denying compensation.

13. ATSCL argued that RERC failed to consider several critical issues raised both orally and in written submissions, and did not address legal precedents cited by the Appellant. ATSCL contended that RERC's broad interpretation of "Regulatory Measure" renders parts of Clause 12.1.1 meaningless, particularly as the term was intended to be limited to regulatory actions such as the formulation or amendment of regulations related to availability or performance parameters. The Commission, it was submitted, erred in clubbing its earlier decisions within this limited definition without appropriate reasoning or legal basis.

14. ATSCL argued that the Commission erred in treating the Competitive Bidding Guidelines (CBGs) issued by the Government of India as mandatory and requiring strict compliance, rejecting RVPN's interpretation. However, this Tribunal later clarified that the CBGs are only directory and minor deviations should have been condoned.

15. This reversal in legal interpretation, as per the Tribunal's finding, reinstates the correct position of "Change in Law." ATSCL contended that this misinterpretation caused significant project delays, and as such, the delay qualifies as a "Change in Law" event under the Transmission Service Agreement (TSA), entitling ATSCL to compensation through an additional tariff.

16. Thus, being aggrieved by the Impugned Order dated 28.12.2015 passed by the RERC in the Petition No. 466/14 and 501/15, the Appellants have preferred the present Appeal.

17. Since both the appeals involve identical legal issues, we find it appropriate to dispose of the same vide this common judgement, inter alia, Appeal No. 59 of 2016 shall be the leading Appeal in this judgment.

Factual Matrix of the Case (in Appeal No. 60 of 2016)

18. This appeal has been filed by M/s Maru Transmission Service Company Ltd., against the Impugned Order dated 28.12.2015 passed by the Rajasthan Electricity Regulatory Commission in the matter of M/s Maru Transmission Service Company Ltd. vs. M/s Jaipur Vidhyut Virtran Nigam Limited & Ors.

19. The scheduled COD (SCOD) for the project was 14.02.2013. However, the project was commissioned on 16.12.2013. The said delay of 10 months was primarily on account of the orders issued by the Commission dated 30.09.2011 and 24.10.2011, whereby the Commission declined to adopt the transmission charges for the project and also refused to grant a transmission licence to the Appellant. The reason for passing the order was that the appointment of the Bid Process Coordinator by the Rajasthan Rajya Vidyut Prasaran Nigam Limited (RRVPNL) and the constitution of the Bid Evaluation Commission were defective.

20. This Tribunal, vide order dated 16.04.2012 in Appeal Nos. 177 & 181 of 2011, set aside RERC's earlier denial of transmission licence and tariff adoption, holding that the procurement process substantially complied with the guidelines ensuring transparency and competitiveness. Subsequently, RERC issued the adoption of

tariff and transmission licence orders on 16.04.2012. The delays caused an increase in project cost and loss of revenue due to deferred operations and shortened recovery periods.

21. MTSCL filed a petition under Sections 63, 66, 86(1)(f) and (k) of the Electricity Act, 2003, and relevant RERC regulations, seeking revision of the transmission tariff and a lump sum compensation of ₹54.26 crores (approx.). The claim was based on losses resulting from the delayed grant of licence and tariff adoption, which MTSCL argued amounted to a “Change in Law” under Article 12.1.1 of the TSA, due to RERC’s inconsistent interpretation of government guidelines.

22. The rest of the matrix is identical to the first appeal.

23. Thus, being aggrieved by the Impugned Order dated 28.12.2015 passed by the RERC, the Appellants have preferred the present Appeal.

24. Since both the appeals involve identical legal issues, we find it appropriate to dispose of the same vide this common judgement, inter alia, Appeal No. 59 of 2016 shall be the leading Appeal in this judgment.

Written Submissions of the Appellant, M/s Aravali Transmission Service Company Ltd.

25. The present appeal has been filed by Aravali Transmission Service Company Ltd. (ATSCL) challenging the order dated 28.12.2015 passed by the

Rajasthan Electricity Regulatory Commission (RERC) in Petition No. RERC/501/2015, which was originally filed by ATSCL. ATSCL had implemented the 400 kV Single Circuit Hindaun-Alwar transmission line, including the 400/220 kV Grid Substation at Alwar, under a Build, Own, Operate and Maintain model, selected through competitive bidding conducted by Rajasthan Rajya Vidyut Prasaran Nigam Limited on behalf of the three distribution companies: Jaipur, Ajmer, and Jodhpur Discoms.

26. In the original petition before RERC, ATSCL sought compensation for delays in project commissioning, claiming that such delays were beyond its control and amounted to a Change in Law event under Article 12 of the Transmission Service Agreement dated 19.01.2011. However, through the impugned order, RERC rejected ATSCL's claims, holding that the regulatory orders cited by ATSCL did not constitute a Change in Law under the relevant contractual provisions, as elaborated in paragraphs 17, 22, 26, and 35 of the order.

27. ATSCL has filed the Appeal challenging the Impugned Order and has claimed compensation from Rajasthan Discoms basis claims tabulated below:

S. No.	Claim	Amount	Remarks
1.	Payment of Outstanding Transmission Charges payable for period from 17.07.2014 (COD of Project) to 23.08.2014 (COD considered by Rajasthan Discoms)	Rs. 2.59 Crore	ATSCL vide letter dated 10.07.2014 informed that Project was ready. Thus, as per Article 6.2 of TSA, COD was 17.07.2014. Rajasthan Discoms have considered COD from

S. No.	Claim	Amount	Remarks
			23.08.2014 vide letter dated 10.10.2014
2.	Change in Law Compensation for increase in rate of Service Tax to 12.36% and Excise Duty to 12% on 17.03.2012 which were notified post Bid Deadline Date of 28.10.2009	Rs. 1.90 Crore plus Carrying Cost	ATSCL issued CIL Notice dated 17.01.2014
3.	Unlawful recovery of monies by Rajasthan Discoms towards liquidated damages for delay in achieving COD (SCOD was 18.01.2013 to COD of 17.07.2014)	Rs. 1.24 Crore	Delay in achieving COD beyond ATSCL's control. Delay directly attributable to Orders of RERC and this Hon'ble Tribunal and delayed approval under Section 68 and 164 of Electricity Act. Rajasthan Discoms had repeatedly accepted postponement of COD without protest and had agreed to COD as 23.08.2014 without any mention of levy of damages.

S. No.	Claim	Amount	Remarks
4.	Compensation for increase in Project Cost, loss of revenue etc. due to delay in achieving COD of the Project.	Rs. 65.80 Crore (Rs. 35.27 Crore towards increase in Project Cost and Rs. 30.53 Crore towards loss of revenue)	Compensation ought to be directed in exercise of general regulatory powers by RERC. Without Prejudice, RERC Orders dated 30.09.2011 and 24.10.2011 qualify as Change in Law under Article 12 of the TSA.
TOTAL		Rs. 71.53 Crore along with Interest and Carrying Cost	

28. ATSCL has challenged the RERC's order on several grounds:

(a) ATSCL contends that RERC erred by confining its analysis solely to the issue of Change in Law based on RERC's rejection orders, despite ATSCL having raised broader issues including contractual breaches and tax-related Change in Law claims.

(b) ATSCL argues that RERC wrongly held that the rejection of its petitions for grant of transmission licence and tariff adoption did not amount to a Change in Law under the Transmission Service Agreement (TSA).

(c) ATSCL seeks payment of ₹2.59 crore from the Rajasthan Discoms for the period between 17.07.2014 and 23.08.2014, as per Schedule 5 of the TSA.

(d) It claims that the Rajasthan Discoms were not entitled to recover ₹1.247 crore in damages for delay in achieving Commercial Operation Date (COD), since the Discoms were aware of the delays and had agreed to corresponding extensions.

(e) ATSCL also asserts entitlement to ₹1.90 crore plus carrying costs as Change in Law compensation under Article 12 of the TSA due to increases in Service Tax to 12.36% and Excise Duty to 12% through notifications dated 17.03.2012 post the bid deadline of 28.10.2009.

(f) Finally, ATSCL submits that RERC should have invoked its regulatory powers to grant a total compensation of ₹65.80 crore, i.e., ₹35.27 crore for increased project costs and ₹30.53 crore for loss of revenue.

RELEVANT BACKGROUND

29. Brief factual background stating facts up to the filing of the present Appeal is as follows:

S.No.	DATE	PARTICULARS
1.	19.01.2011	ATSCL and the Rajasthan Discoms (i.e., Long-Term Transmission Customer) executed Transmission Service Agreement dated 19.01.2011 (" TSA ") which <i>inter-alia</i> required ATSCL to obtain grant of Transmission Licence and adoption of transmission

		charges by RERC within 6 months of Effective Date, i.e. 19.01.2011.
2.	30.09.2011	RERC passed order in Petition No. RERC/256/2011 dismissed ATSCL's petition for adoption of tariff on the basis that the competitive bidding process followed did not comply with the <i>"Tariff based Competitive bidding Guidelines for Transmission Services"</i> ("CBG") issued by Ministry of Power dated 17.04.2006 ("Order dated 30.09.2011").
3.	24.10.2011	RERC also dismissed ATSCL's Petition for grant of Transmission Licence vide Order dated 24.10.2011 ("Order dated 24.10.2011"), basis Order dated 30.09.2011, (<i>Order dated 30.09.2011 and 24.10.2011 are collectively referred to as "RERC Rejection Orders"</i>).
4.	2011	ATSCL challenged the RERC Rejection Orders by way of Appeal Nos. 177 of 2011 and 181 of 2011.
5.	16.04.2012	This Tribunal set aside RERC Rejections Orders holding that the CBG was substantially complied with and remanded the matter to RERC to pass consequential orders ("Judgment dated 16.04.2012")
6.	01.06.2012	RERC adopted ATSCL's Transmission Charges ("Order dated 01.06.2012").
7.	14.08.2012	RERC granted ATSCL Transmission Licence for 25 years from 15.09.2012 ("Order dated 14.08.2012")

8.	23.10.2012	The Government of Rajasthan issued a notification authorizing ATSCL to commence work on the Project under Sections 68 and 164 of the Electricity Act, 2003.
9.	18.01.2013	Scheduled Date of Commissioning (“ SCOD ”) as per the TSA for ATSCL’s Project.
10.	17.07.2014	SCOD of ATSCL’s Project.
11.	23.01.2015	ATSCL filed Petition 501 <i>inter alia</i> seeking directions to Rajasthan Discoms to pay Rs. 65.80 Crores as compensation for the increase in the total Project cost and loss in revenue due to delay by RERC in adopting the transmission charges and granting transmission licence to ATSCL for its Project, since the same amounts to a Change in Law under Clause 12.1.1 of the TSA.
12.	28.12.2015	RERC vide the Impugned Order dismissed Petition 501 and rejected ATSCL’s claim for compensation on the basis that the orders of RERC relied on by ATSCL (detailed subsequently) do not qualify as a Change in Law under Article 12 of the TSA.
13.	12.02.2016	ATSCL filed the present Appeal bearing No. 59 of 2016 challenging the Impugned Order.

A. Impugned Order fails to consider all issues raised

30. The Appellant contends that the Rajasthan Electricity Regulatory Commission (RERC) erred in recording that ATSCL had limited its submissions solely to whether RERC's orders dated 30.09.2011 and 24.10.2011 constituted a Change in Law, and that other claims were not pursued. ATSCL asserts that this

is factually incorrect and that it had advanced arguments on all issues raised in Petition No. 501.

31. Specifically, ATSCCL argues that RERC failed to consider and issue findings on the following key claims:

- (a) The increase in taxes and duties post-bid deadline, as reflected in the Notice dated 17.01.2014, which ATSCCL claimed as a Change in Law event;
- (b) The wrongful recovery of ₹1.24763 crore by the Rajasthan Discoms as liquidated damages for project delay, despite ATSCCL's submissions on the issue;
- (c) The entitlement to differential transmission charges, including surcharge, for the period from 17.07.2014 (actual COD) to 23.08.2014 (date wrongly considered by the Discoms as COD).

32. ATSCCL maintains that these issues were not abandoned and that RERC's failure to consider them amounted to a non-judicial approach. It argues that such procedural oversight violates the settled legal principle that no party should suffer due to a court's error. Therefore, ATSCCL seeks setting aside of the impugned order solely on this ground.

B. Increase in Taxes qualifies as Change in Law and ATSCCL entitled to compensation

33. ATSCCL, through its Change in Law Notice dated 17.01.2014, claimed compensation of ₹1.90 crore due to an increase in Service Tax to 12.36% and Excise Duty to 12%, contending that this qualifies as a Change in Law under Article 12 of the Transmission Service Agreement (TSA). The increase stemmed from

Notification No. 18/2012 dated 17.03.2012 issued by the Ministry of Finance, which constitutes "Law" under the TSA and was issued by an Indian Governmental Instrumentality.

34. The change occurred after the bid deadline of 28.10.2009 and led to additional expenditure for ATSCCL. ATSCCL relies on the Hon'ble Supreme Court's decision in ***GMR Warora Energy Ltd. v. CERC (2023) 10 SCC 401***, which affirmed that such tax increases qualify as Change in Law.

35. It further asserts entitlement to carrying cost on the compensation, as upheld by the Hon'ble Supreme Court in ***Uttar Haryana Bijli Vitran Nigam Limited v. Adani Power Ltd. (2019) 5 SCC 325*** and ***Uttar Haryana Bijli Vitran Nigam Limited & Anr. v. Adani Power (Mundra) Limited & Anr, (2023) 2 SCC 624***, placed reliance on this Tribunal's judgment dated 22.03.2022 in ***Rattan India v. MERC & MSEDCL, Appeal No. 118 of 2021*** later confirmed by the Hon'ble Supreme Court in the GMR Warora SC judgment.

36. ATSCCL submits that Rajasthan Discoms are liable to compensate for the increased tax burden along with carrying costs, based on supporting documentation to be provided by ATSCCL.

C. Recovery of Rs. 1.24 Crore towards damages by Rajasthan Discoms is unlawful and contrary to TSA

37. Under Schedule 2 of the TSA, the Scheduled Commercial Operation Date (SCOD) of ATSCCL's project was 18.01.2013, calculated as 24 months from the Effective Date of 19.01.2011. However, the project achieved actual Commercial Operation Date (COD) on 17.07.2014. The delay, ATSCCL asserts, was beyond its

control and primarily due to the rejection of its petitions by RERC, which caused postponement in tariff adoption, grant of transmission licence, and state-level approval under Section 68 of the Electricity Act.

38. ATSCL consistently informed Rajasthan Discoms and sought extensions, which were granted, evident from Ajmer Vidyut Vitran Nigam Limited's letter dated 30.05.2013 extending SCOD to 17.07.2013. Further, in a letter dated 10.10.2014, Rajasthan Discoms accepted the COD as 23.08.2013 without protest or reservation of rights to claim liquidated damages.

39. ATSCL submits that the recovery of ₹1.247 crore by Rajasthan Discoms as liquidated damages is unjustified and inconsistent with Article 6.4.1 of the TSA. It further argues that, as per settled law, liquidated damages require proof of actual loss suffered. Citing Hon'ble Supreme Court judgments in **Kailash Nath Associates v. DDA, (2015) 4 SCC 136 (Para 43)**., **Fateh Chand v. Balkishan Dass, 1963 SCC OnLine SC 49 (Para 15)**, and **Maula Bux v. Union of India, (1969) 2 SCC 554 (Para 6)**), ATSCL contends that even contractual clauses cannot override the principle that compensation must be based on proven loss. Accordingly, ATSCL seeks a refund of ₹1.247 crore with interest, asserting that the amount was unlawfully recovered.

40. Without prejudice, Rajasthan Discoms in their Written Submissions filed before this Tribunal have admitted that the RERC Rejection Orders qualify as a Force Majeure Event. In this regard, it is to be noted that this Tribunal in Judgment dated 06.04.2016 in Appeal No. 86 of 2015 titled '**Western Region Transmission (Maharashtra) Pvt. Ltd. v. CERC & Ors.**', held that no liquidated damages for delay resulting out of extensions of SCOD of a transmission system on account of

force majeure events can be levied on the entity (transmission licensee) affected by such force majeure event:

“12. We are of the considered opinion that the Appellant's claims for enhancement of tariff on account of extension of RCOD as awarded by the Respondent Nos. 1 and 2 from time to time, finally up to 01.01.2014 in respect of WRSSS-II, Project B are not tenable at all, however, no liquidated damages for delay resulting out of such extensions on account of Force Majeure events would be leviable on the Appellant.”

D. ATSCL is entitled to compensation by Rajasthan Discoms

41. ATSCL submits that it filed petitions for transmission licence and tariff adoption on 25.01.2011 in a timely manner, which is undisputed. However, the Rajasthan Electricity Regulatory Commission (RERC), through orders dated 30.09.2011 and 24.10.2011, rejected the same, citing flaws in the bid process conducted by Rajasthan Discoms, thereby breaching the RFP and TSA terms.

42. Although this Tribunal later set aside the RERC Rejection Orders on 16.04.2012, the actual grant of transmission licence and tariff adoption occurred only on 01.06.2012 and 14.08.2012, respectively. Moreover, the Government of Rajasthan issued statutory approvals under Sections 68 and 164 of the Electricity Act only on 23.10.2012. Thus, regulatory clarity was achieved only post 23.10.2012.

43. Before this, ATSCL faced financial loss and project delays due to regulatory uncertainty. Rajasthan Discoms' claim that ATSCL halted work for only 3 months,

and that there was no delay for the remaining 11 months, ignores the adverse impact of delayed approvals on ATSCCL's financing. Under its Financing Agreement dated 29.09.2011, disbursement of funds was contingent on receiving approvals under Sections 68 and 164. These approvals, in turn, depended on tariff adoption and transmission licence, conditions that were not fulfilled until October 2012. ATSCCL also submitted that due to a lack of financing, it was unable to pay EPC contractors, and the EPC contract could not be suspended for more than three months.

44. Therefore, ATSCCL had to resume work under financial duress. These facts remain uncontested by Rajasthan Discoms. ATSCCL claims entitlement to compensation on multiple independent and non-exclusive grounds:

- (a) breach by Rajasthan Discoms;
- (b) RERC Rejection Orders constituting a Change in Law under the TSA;
- (c) the same orders qualifying as Force Majeure; and
- (d) exercise of general regulatory powers.

D1. Rajasthan Discoms are in breach of obligations under TSA.

45. ATSCCL contends that under the Request for Proposal (RFP) and Transmission Service Agreement (TSA), the Rajasthan Discoms, as Long-Term Transmission Customers (LTTCS), represented in Article 17.1.1 of the TSA, had the authority to execute and consummate the TSA. However, this representation was breached when the RERC, through its orders dated 30.09.2011 and 24.10.2011, held that the bid process was non-compliant with the Guidelines for Bidding (GBG). This non-compliance is a direct breach of Article 17.1.1. Under Article 17.1.1 read with Article 4.2.1 and Paragraph 2.5 of the RFP, the

responsibility for the bid process and any losses arising from its infirmity rests with Rajasthan Discoms.

46. Consequently, ATSCL was unable to progress with the project from 30.09.2011 to 23.10.2012 due to the regulatory uncertainty and rejection orders, which are attributable to the Discoms' breach. During this period, ATSCL incurred increased project costs and suffered revenue loss due to the delay. In accordance with Article 18.7 of the TSA and Section 73 of the Indian Contract Act, 1872, ATSCL claims entitlement to compensation for these losses.

47. ATSCL substantiated its claims through two notices: one dated 22.09.2014, which detailed a cost escalation of Rs. 35.27 Crore, and another dated 03.12.2014, which outlined Rs. 30.53 Crore in revenue loss. While Rajasthan Discoms denied liability, they did not dispute the computation or basis of the claims. Therefore, ATSCL seeks compensation amounting to Rs. 65.80 Crore under Sections 70, 73, and 74 of the Indian Contract Act, 1872, for the breach by Rajasthan Discoms of their obligations under the RFP and TSA.

D2. Without Prejudice, ATSCL is entitled to compensation as RERC Orders qualify as a Change in Law.

48. ATSCL submits that its inability to commission the project as per the Scheduled Commercial Operation Date (SCOD) led to increased project costs and loss of revenue due to the Rejection Orders issued by the Rajasthan Electricity Regulatory Commission (RERC). ATSCL claimed compensation under Article 12 of the Transmission Service Agreement (TSA) via notices dated 22.09.2014 and 03.12.2014, asserting that the RERC Orders constitute a "Change in Law."

49. The key grounds raised are:

- (a) The RERC qualifies as an "Indian Governmental Instrumentality," and its orders constitute "Law" under the TSA.
- (b) The Rejection Orders changed the interpretation and application of law by mandating absolute compliance with the Competitive Bidding Guidelines (CBG), with no deviation permitted.
- (c) These orders were issued after the Bid Deadline Date (28.10.2009), making them post-facto changes under the TSA.
- (d) The Rejection Orders led to both recurring and non-recurring financial losses as ATSCL was prevented from commissioning the project during their pendency. ATSCL clarifies that the exclusion under Article 12.1.2(a) which deals with regulatory measures concerning "calculation of availability," does not apply to the adjudicatory nature of the RERC Orders. This clause only excludes regulatory actions related to performance metrics, and not quasi-judicial decisions interpreting applicable law.

50. It is further submitted that a narrow reading of the non-obstante clause in Article 12.1.2 to override the compensatory scope of Article 12.1.1 would defeat the intent of the TSA, which would be contrary to principles upheld by the Hon'ble Supreme Court in ***A.G. Vardarajulu v. State of Tamil Nadu, (1998) 4 SCC 231***. Importantly, ATSCL contends that regulatory or judicial orders such as those of RERC are not excluded from the definition of Change in Law, as the TSA itself recognizes orders of courts as qualifying events.

51. In support, it relies on the ***Manohar Lal Sharma v. Principal Secretary & Ors., (2014) 9 SCC 516*** ("Coal Judgment") and the Cancellation Order in (2014) 9 SCC 614, wherein the Hon'ble Supreme Court's cancellation of coal block

allocations was treated as a Force Majeure Event by this Tribunal in its Judgment dated 21.12.2018 in Appeal No. 193 of 2017 (**GMR Kamalanga Energy Ltd. v. CERC**). This was subsequently upheld by the Hon'ble Supreme Court in the GMR Warora judgment.

52. ATSCL maintains that the RERC Orders were adjudicatory, involving the interpretation and application of the CBG in determining ATSCL's right to transmission licence and tariff adoption. As such, these cannot be treated as mere regulatory measures excluded under the TSA, and ATSCL is entitled to compensation for the financial impact arising from these orders under the Change in Law clause.

D3. Without Prejudice, ATSCL is entitled to compensation as RERC Orders qualify as Force Majeure

53. Without prejudice, ATSCL submits that under Article 3.1.3 of the TSA, it was required to obtain a Transmission Licence and tariff approval from RERC within six months. However, Article 4.4 allows for an extension of the Scheduled Commercial Operation Date (SCOD) on a day-to-day basis if the delay is due to a Force Majeure event. Since the delay in obtaining the necessary regulatory approvals was caused entirely by factors beyond ATSCL's control, specifically the RERC Rejection Orders, ATSCL argues that these orders qualify as Force Majeure events under the TSA. Accordingly, the date of actual commissioning (COD) should be treated as the SCOD under the terms of the TSA. Notably, Rajasthan Discoms have themselves acknowledged in their Written Submissions that the RERC Rejection Orders constitute a Force Majeure event, thereby supporting ATSCL's position.

Re: ATSCL can claim Force Majeure and Change in Law for the same event

54. Appellant submitted that it is entitled to claim relief for a single event which may qualify as a Force Majeure or Change in Law event, both under the TSA. Rajasthan Discoms in their Written Submissions have stated that the delay in achieving COD due to delay in granting the Transmission Licence and adopting the Tariff qualifies as a Force Majeure Event and ATSCL cannot claim compensation under Change in Law merely because the same provides for better compensation and ATSCL is limited to the relief under Article 11 of the TSA.

55. It is submitted that this contention is incorrect and ought to be rejected. Even if the TSA grants relief under Force Majeure, ATSCL can still claim compensation under other provisions, such as Change in Law, if it meets the required conditions. In other words, just because an event qualifies as Force Majeure doesn't mean compensation under Change in Law can be denied.

56. The Hon'ble Supreme Court in ***Adani Power Ltd. v. Central Electricity Regulatory Commission, (2015) 12 SCC 216*** has held that the Appellant is entitled to argue any proposition of law, be it "*force majeure*" or "*change of law*" as long as the Appellant is not seeking a declaration of frustration of contract, so long as such an argument is based on the facts which are already pleaded before the Electricity Commission. Relevant Portion is as follows:

"16. Lastly, the learned counsel for the appellant submitted that even if this Court comes to the conclusion that the appellant has not made out a case for condonation of delay in preferring an appeal against the order dated 2-4-20134 of the Central Commission, the appellant

is entitled to argue in the pending Appeals Nos. 98 and 116 of 2014 both the grounds of "force majeure" and "change of law" not for the purpose of seeking the relief of a declaration of the frustration of the contracts between the appellants and the respondents, thereby relieving the appellant of his obligations arising out of the contracts, but only for the purpose of seeking the alternative relief of compensatory tariff. In other words, the appellant's submission is that the facts which formed the basis of the submission of the frustration of contracts are also relevant for supporting the conclusion of the National Commission that the appellant is entitled for the relief of compensatory tariff.

...

18. We are also not required to go into the question whether the order of the Central Commission dated 2-4-2013⁴ by which it declined to grant a declaration of frustration of the contracts either on the ground of "force majeure" or on the ground of "change of law" is independently appealable, since no such appeal even if maintainable, is preferred by the appellant.

*19. The question whether the appellant made out a case for condonation of delay in preferring the appeal before the Appellate Tribunal, in our opinion, need not also be examined by us in view of the last submission made by the appellant. **If the appellant is not desirous of seeking a declaration that the appellant is relieved of the obligation to perform the contracts in question, the correctness of the decision of the Appellate Tribunal in rejecting the application to condone the delay in preferring the appeal would become purely academic. We are of the opinion that so long as the appellant does not seek a declaration, such as the***

one mentioned above, the appellant is entitled to argue any proposition of law, be it "force majeure" or "change of law" in support of the order dated 21-2-2014 quantifying the compensatory tariff, the correctness of which is under challenge before the Appellate Tribunal in Appeal No. 98 of 2014 and Appeal No. 116 of 2014 preferred by the respondents, so long as such an argument is based on the facts which are already pleaded before the Central Commission."

57. A party is legally entitled to raise any legal proposition, including claims under "force majeure" or "change in law." This position is supported by the Judgment dated 21.12.2018 in Appeal No. 193 of 2017, ***GMR Kamalanga Energy Ltd. & Anr. v. CERC & Ors.***, where this Tribunal held that the cancellation of captive coal blocks by the Hon'ble Supreme Court in ***Manohar Lal Sharma v. Principal Secretary & Ors., reported as (2014) 9 SCC 614***, constituted a "Change in Law" event under the Power Purchase Agreement. The Tribunal expressly rejected the contention that such cancellation, though a result of a judicial order and arguably a Force Majeure event, should not qualify as a "Change in Law."

Re: ATSCCL entitled to monetary relief for Force Majeure Event

58. It is reiterated that Rajasthan Discoms have admitted that the RERC Rejection Orders qualify as Force Majeure under the TSA. It is submitted that Article 11.7 of the TSA provides for relief available for Force Majeure Events. Article 11.7(b) specifies that *'every Party shall be entitled to claim relief for a Force Majeure Event affecting its performance in relation to its obligations under the Agreement'*.

59. A force majeure provision ought to be interpreted in light of the nature and general terms of the contract. In *Lebeaupin v. Richard Crispin and Company*, [1920] KB 714 (relied on by the Hon'ble Supreme Court in ***Dhanrajamal Gobindram v. Shamji Kalidas & Co***), it has been held that:

“...I take it that a “force majeure” clause should be construed in each case with a close attention to the words which precede or follow it, and with a due regard to the nature and general terms of the contract.”

60. Article 11.7(b) of the TSA, which provides for relief for Force Majeure, is a restitutive provision aimed at providing ameliorative relief to the Affected Party suffering from the Force Majeure event. Thus, the relief available to a party affected by a Force Majeure Event has been left to the Appropriate Commission to mould as per the facts and circumstances of the case, as also the applicable laws.

61. The words ‘relief’ or ‘entitled to claim relief’ used in Article 11.7 (b) of the TSA have not been defined. Hence, the common, ordinary, and/or usual meaning of these terms ought to be adopted. In this regard, the following common meanings of ‘relief’ may be noted:

- (a) *Alleviation, mitigation, aid, redress, remedy.* [Webster’s Encyclopedia Unabridged Dictionary]
- (b) *Deliverance from some hardship, burden; legal redressal or remedy.* [Legal Glossary issued in 1992 by the Government of India]
- (c) *Legal remedy for a wrong; the redress sought for in court.* [KJ Aiyar’s Judicial Dictionary, 15th Edition, 15th and 16th Edition]
- (d) *The word “relief” is not a term of exact or precise technically, but simply means the remedy which a court of justice may afford in regard to some*

actual or apprehended wrong or injury, such handed wrong or injury, such remedy being large or small, as the case may be. But it is not synonymous with “cause of action” that term including all the reliefs converted by the facts on the strength of which a plaintiff comes into court. [Venkataramaiya’s Law Lexicon with Legal Maxims, 2nd Edition]

62. It is contended that the relief available under the Force Majeure clause is not confined to time extension alone. Rajasthan Discoms' argument that ATSCL is only entitled to an extension of SCOD due to the RERC Rejection Orders being a Force Majeure event is erroneous. Article 11.7(b) of the TSA provides for monetary compensation in Force Majeure scenarios, which is further clarified by Article 11.7(c), stipulating that where an element is under outage due to Force Majeure, only Non-Escalable Transmission Charges are payable as per the regulatory computation of availability. This confirms the TSA permits financial compensation in Force Majeure cases.

63. Accordingly, even if the RERC Orders are accepted as Force Majeure, ATSCL is entitled not only to a time extension but also to compensation. The costs claimed by ATSCL through notices dated 22.09.2014 and 03.12.2014 should therefore be granted as Force Majeure compensation. Additionally, the recovery period for transmission charges under Schedule 5 must be extended to reflect the delay period. Reliance is placed on the CERC Order dated 13.05.2024 in Petition No. 87/MP/2022, **Fatehgarh-Bhadla Transmission Ltd. v. AREPRL & Ors.** (“FBTL CERC Order”).

64. Additionally, it is to be noted that this Tribunal in Judgment dated 03.12.2021 passed in Appeal No. 129 of 2020 titled **NRSS XXXI (B) Transmission Limited**

v. CERC & Ors. has held that where an event has been allowed as Force Majeure, consequential cost implication also ought to be allowed as under:

“16.8 The Appellant has submitted that IDC and IEDC are a direct consequence of delay in SCOD. Once the Commission has declared forest clearance as Force Majeure event and amount paid for it as Change in Law, also allowed extension of SCOD, Commission ought to have allowed the consequential cost implication. In this regard our attention was drawn towards Articles 11 and 12 of the TSA which states that:

[...]

16.9 Undisputedly, the survey report prepared by the BPC was misleading and all the issues have arisen due to incorrect information provided therein. The bid of the Appellant was based on the disclosure made in the Survey Report that there was no forest land involved in the project which required forest clearance to be obtained. Presence of forests certainly affected the timely completion of the project in addition to additional cost incurred by the Appellant in getting the forest Clearance. The Central Commission has rightly acknowledged it and granted extension of time and compensation for the extra expenditure incurred by the TSA. However, the Commission, without assigning reason, has rejected the claim made by the Appellant. The Commission observed that:

“However, we would like to make it clear that the extension of COD of the instant assets does not entail any financial benefit in the form of IDC and IEDC to the Petitioner.”

16.10 The Central Commission failed to understand that the IDC and IEDC is not a financial benefit to the Appellant but due to the

financial liability to be borne by the Appellant. This Tribunal vide Judgment dated 20.10.2020 in Appeal No. 208 of 2019 in – Bhopal Dhule Transmission Company Limited v Central Electricity Regulatory Commission &Ors. (“Bhopal Dhule Judgment”) held that the Commission erred in denying Change in Law relief to the appellant for IDC which is a direct consequence of the Change in Law event. The relevant extract of the Judgement is reproduced herewith:

“8.7 The Central Commission’s reasoning in the Impugned Order reads in two exceptions to the grant of Change in Law relief under Article 12.1.2 of the TSA namely: (a) that IDC is not a direct consequence of the Change in Law events and therefore must be denied; and (b) that no relief can be allowed for additional IDC incurred since IDC is not a component that is disclosed or evaluated at the time of bidding. CERC has in the same breath held that uncontrollable events in the form of Changes in Law have impacted the Project, but that the Appellant deserves no compensation for the same. Neither of these find any mention in the text of Article 12 of the TSA.

1.15 Since the spirit of Article 12 of the TSA is to ensure monetary restitution of a party to the extent of the consequences of Change in Law events, such exceptions cannot be read into Article 12 of the TSA. The Appellant has submitted that a crucial factor for the Appellant whilst bidding for the Project was that uncontrollable Change in Law events would be duly accounted for in accordance with Article 12 of the TSA. By the Impugned Order, the Central Commission has wrongly altered the meaning of

the Change in Law clause of the TSA long after award of the bid and commissioning of the Project.

.....

1.16 Such a denial of the IDC by the Central Commission is in contravention of the provisions of Article 12.1.1 of the TSA in the facts and circumstances of the present case. By adopting such an erroneous approach, the Central Commission has rendered the Change in Law clause in the TSA completely nugatory and redundant. Such an interpretation by the Central Commission is causing the Appellant grave financial prejudice as it has no other means of recovering the IDC which it was constrained to incur for no fault of its own. ...

1.17 We are of the view that the Central Commission erred in denying Change in Law relief to the Appellant for IDC and corresponding Carrying Costs on account of admitted Change in Law events after having arrived at unequivocal findings of fact and law that Change in Law events adversely affected the Appellant's Project in accordance with the TSA. Therefore, the impugned order passed by the Central Commission is liable to be set aside as the same is in contravention of settled law laid down by the Hon'ble Supreme Court (Supra) and also the previous orders passed by the Central Commission in Petition Nos. 73/MP/2014 read with 310/MP/2015 and 174/MP/2016 wherein the same issue has been dealt by the Commission differently. In view of these facts, the Appellant is entitled for the change

in law relief as prayed for in the instant Appeal. The issue is thus, decided in favour of the Appellant.”

16.11 Therefore, we are of the opinion that the Appellant is entitled to be fully compensated for the IDC and IEDC incurred on account of Change in Law & Force Majeure Events.”

65. In view of the above, it is submitted that the COD of ATSCCL's Project was delayed for reasons beyond ATSCCL's control. Accordingly, ATSCCL is entitled to an extension of the time period for achieving COD and the compensation for the increase in Project Cost due to delay in achieving COD of the Project.

D4. Without Prejudice, ATSCCL ought to be granted compensation basis exercise of regulatory power.

66. ATSCCL submitted that the denial of compensation would render the project financially unviable. Even if the TSA does not explicitly provide for such compensation, RERC possesses the regulatory authority to devise appropriate mechanisms to grant relief. Additionally, legal developments subsequent to the filing of the present Appeal must be considered.

67. Notably, in ***Energy Watchdog v. CERC, (2017) 14 SCC 80***, the Hon'ble Supreme Court affirmed in Para 20 that regulatory commissions are empowered to exercise their general regulatory authority in matters not specifically addressed under existing guidelines. This reinforces the position that RERC could have granted compensation to ATSCCL despite the absence of a specific provision in the TSA.

68. Further, the Commissions' regulatory powers have been further expanded by the Hon'ble Supreme Court in the following judgments:

(a) All India Power Engineer Federation & Ors v. Sasan Power Ltd & Ors.:
(2017) 1 SCC 487:

"30. A perusal of the CERC tariff adoption order in the present case dated 17-10-2007 makes it clear that the tariff is adopted by the Commission only because the competitive bidding process which has been undertaken is in accordance with the Guidelines so issued.

*31. All this would make it clear that even if a waiver is claimed of some of the provisions of the PPA, such waiver, if it affects tariffs that are ultimately payable by the consumer, would necessarily affect public interest and would have to pass muster of the Commission under Sections 61 to 63 of the Electricity Act. This is for the reason that **what is adopted by the Commission under Section 63 is only a tariff obtained by competitive bidding in conformity with Guidelines issued. If at any subsequent point of time such tariff is increased, which increase is outside the four corners of the PPA, even in cases covered by Section 63, the legislative intent and the language of Sections 61 and 62 make it clear that the Commission alone can accept such amended tariff as it would impact consumer interest and therefore public interest.**"*

(b) Maharashtra State Electricity Distribution Co. Ltd. v. Maharashtra Electricity Regulatory Commission, (2022) 4 SCC 657 ("MSEDCL SC Judgment")

"206. It is now well settled by various decisions of this Court that an Electricity Regulatory Commission such as MERC constituted

under the Electricity Act, 2003 has all the trappings of a court. The MERC is a substitute for a civil court in respect of all disputes between the licensees and power generating companies. This proposition finds support from the judgments of this Court in T.N. Generation & Distribution Corpn. Ltd. v. PPN Power Generating Co. (P) Ltd. [T.N. Generation & Distribution Corpn. Ltd. v. PPN Power Generating Co. (P) Ltd., (2014) 11 SCC 53, paras 53 and 70] , A.P. Power Coordination Committee v. LancoKondapalli Power Ltd. [A.P. Power Coordination Committee v. Lanco Kondapalli Power Ltd., (2016) 3 SCC 468] cited by Mr Vishrov Mukerjee.

207. As held by this Court in *State of Karnataka v. Vishwabharathi House Building Coop. Society* [*State of Karnataka v. Vishwabharathi House Building Coop. Society*, (2003) 2 SCC 412, paras 59 to 62] , cited by Mr Mukerjee, courts have the power to execute their own order. The impugned judgment and order [*Maharashtra State Electricity Distribution Co. Ltd. v. Maharashtra Pradesh Electricity Regulatory Commission*, 2021 SCC OnLine APTEL 13] cannot, therefore, be faulted for giving directions for payment of the outstanding dues of the appellant. **Moreover, State Regulatory Commissions exercise continuous regulatory supervision** as affirmed by this Court in *All India Power Engineer Federation v. Sasan Power Ltd.* [*All India Power Engineer Federation v. Sasan Power Ltd.*, (2017) 1 SCC 487, para 31 : (2017) 1 SCC (Civ) 277], cited by Mr Mukerjee.”

69. From the cited judgments, it is evident that:

(a) Electricity Regulatory Commissions retain continuous oversight over tariff and charges, even in tariff adoption cases under Section 63, in order to safeguard public and consumer interest.

(b) The Hon'ble Supreme Court in Energy Watchdog expanded the scope of regulatory powers of Commissions, affirming that they have ongoing regulatory authority beyond the confines of express contractual terms.

ATSCL contended that since the Transmission Service Agreement (TSA) does not expressly cover monetary relief for losses and increased costs due to the RERC Rejection Orders, RERC should have invoked its general regulatory powers to grant compensation.

70. Rajasthan Discoms' reliance on the ***Sasan Power Ltd. decision (2023) 8 SCR 1*** is misplaced, as that case pertained to a situation where the agreement already provided a compensation mechanism for a Change in Law. In contrast, ATSCL's claim for monetary relief is not addressed in the TSA, and hence, the exercise of RERC's inherent regulatory jurisdiction was warranted to ensure just and equitable relief.

Re: Without Prejudice, ATSCL entitled to compensation under Section 70

71. ATSCL submitted that while it had factored in the Project costs at the time of bid submission, the delays caused by the unforeseen RERC Rejection Orders were not reasonably foreseeable and thus warrant compensation. Despite incurring additional costs and revenue loss, ATSCL proceeded to commission the Project, which is now operational and benefits the Rajasthan Discoms.

72. Given these facts, the requirements under Section 70 of the Indian Contract Act, 1872, are met, making the Rajasthan Discoms liable to compensate ATSCL and restore it to the position it would have been in had the RERC Rejection Orders not occurred.

73. ATSCL relied on Hon'ble Supreme Court judgments in ***Mulamchand v. State of Madhya Pradesh (1968) 3 SCR 214***, ***Ilansraj Gupta & Co. v. Union of India, (1973) 2 SCC 637 (Para 12)***, and ***Orissa Industrial Infrastructure Development Corp. v. MESCO Kalinga Steel Ltd. (2017) 5 SCC 86 (Para 19)***, to invoke Section 70 of the Indian Contract Act, 1872, arguing that restitution is warranted when the statutory ingredients are met. These rulings emphasize substance over form and uphold compensation where justice demands restitution.

74. ATSCL, having incurred a loss of ₹65.80 crore due to the breach of obligations under the RFP and TSA and having commissioned the Project to the benefit of Rajasthan Discoms, seeks compensation on this legal basis. ATSCL, therefore, prays for the present Appeal to be allowed and the Impugned Order to be set aside.

Written Submissions of the Respondent Nos. 2 to 4, Rajasthan Discoms

75. The Respondent submitted that these appeals challenge the Rajasthan Electricity Regulatory Commission's common order dated 28.12.2015, passed in Petition Nos. 501 of 2015 (filed by Aravali Transmission Service Company Ltd.) and 466 of 2014 (filed by Maru Transmission Service Company Ltd.). The petitions sought compensation under the "Change in Law" clause due to the State Commission's initial refusal (later approval) to grant transmission licences and adopt tariffs in a timely manner.

76. Claims Raised:

- (i) Aravali – Appeal No. 59 of 2016:
 - a) Rs. 65.80 crores (Rs. 35.27 crores for project cost escalation and Rs. 30.53 crores for loss of transmission charges).
 - b) Rs. 2.59 crores for transmission charge losses (17.07.2014 to 23.08.2014).
 - c) Rs. 1.90 crores due to increased Service Tax and Excise Duty.
 - d) Rs. 1.24 crores levied by Rajasthan Discoms as liquidated damages for COD delay.
- (ii) Maru – Appeal No. 60 of 2016:
 - a) Rs. 45.10 crores (Rs. 27.54 crores additional expenditure and Rs. 17.56 crores loss of revenue).
 - b) Maru additionally claims Rs. 54.2690 crores, but without requisite supporting documents.
 - c) Rs. 2.48 crores claimed for escalation in Service Tax and Excise Duty.

77. The Transmission Service Agreements (TSA) dated 19.01.2011 (Aravali) and 15.02.2011 (Maru) were signed with Rajasthan Discoms post a competitive bidding process conducted by RVPN under the Ministry of Power's tariff-based guidelines issued under Section 63 of the Electricity Act, 2003.

78. The State Commission, in Paras 26–28, held that its initial rejection of transmission licence and tariff adoption does not amount to a “Change in Law” under Article 12.1.1 of the TSA. In Paras 29 and 36, it concluded that even if such

events qualify, they are excluded under Article 12.1.2 as regulatory measures. Para 40 noted that arguments were restricted solely to Article 12 (Change in Law).

79. It is contended that the Appellants' claim of a "Change in Law" based on the State Commission's interpretation of the MoP guidelines lacks merit and contradicts the TSA, MoP guidelines, and parties' conduct.

80. The State Commission refused transmission licences and tariff adoption via orders dated 30.09.2011 (Maru) and 24.10.2011 (Aravali). Appeals were preferred before APTEL by both Appellants and RVPN. On 16.04.2012, APTEL allowed the appeals and remanded the matter.

81. Subsequently, on 01.06.2012, tariff adoption was approved, and on 14.08.2012, transmission licences were granted to both entities.

SCOPE OF THE PROVISIONS OF THE TSA:

82. The Appellants had a clear contractual obligation to obtain the Transmission Licence and apply for tariff adoption under Section 63 of the Electricity Act, 2003. This obligation stems from specific provisions in the Request for Proposal dated 10.06.2009, the Letters of Intent dated 30.09.2010, and detailed clauses in the Transmission Service Agreement (TSA) dated 19.01.2011 (Aravali) and 15.02.2011 (Maru).

83. Key inferences from the governing provisions are as follows:

(a) Article 3.1.3, read with the RfP, LOI, and recitals, makes it the Appellants' responsibility to secure the transmission licence and tariff adoption within six months from the effective date, i.e., by July 2011. Delays beyond this

timeframe could only be excused if caused by Rajasthan Discoms' failure under Article 3.2 or due to a Force Majeure event.

(b) Under Article 3.3, failure to comply within three months after the initial six-month window (i.e., by October 2011) triggers the requirement to furnish an Additional Performance Bank Guarantee. Continued default beyond 12 months allows Rajasthan Discoms to terminate the TSA and impose liquidated damages of Rs 23.60 crores.

(c) Article 3.3.4 provides a maximum three-month extension in case of Force Majeure, but without any adjustment to transmission charges.

(d) Article 13.1(k) and 13.3 state that failure to meet the conditions under Article 3 results in TSA termination.

(e) Article 4.1 and 4.4 reiterate the Appellants' obligation to obtain all necessary consents. Delay due to LTTC default or Force Majeure allows for day-for-day extension of SCOD, but is governed by Article 13.

(f) Article 11.3(b) treats unlawful or discriminatory refusal to grant consents as Non-Natural Force Majeure only if declared so by a competent court.

(g) Article 13.5 permits termination of the TSA in case of prolonged Force Majeure. (h) Articles 14.5 and 18.12 limit the liability of both parties strictly to what is specified in the TSA and exclude consequential or indirect losses.

84. The TSA comprehensively governs the parties' rights and obligations. Failure to obtain the licence or tariff order results in termination or limited extensions and is not covered under "Change in Law" provisions. Therefore, the Appellants cannot seek compensation under that head when the TSA does not provide for such relief.

85. Even if the delay in obtaining the Transmission Licence and tariff adoption is considered a Direct Non-Natural Force Majeure Event under Article 11.3(b)(i) of the TSA, the only available remedy would be relief under the Force Majeure

clause. However, the Appellants never invoked Article 11 nor issued any Force Majeure Notice.

86. Consequently, they cannot now bypass that mechanism and seek monetary compensation under Article 12 (Change in Law), which does not apply to such a situation. It is well-established in contract law that if a contract outlines a specific remedy for a particular event, that remedy must be followed. Since the TSA addresses delays in licence and tariff adoption under Article 11 and Article 3.3. expressly limiting the remedy to a time extension without tariff adjustment, the Appellants cannot selectively invoke the more beneficial Article 12.

87. Further, any delay or default must be dealt with strictly as per the TSA; external claims beyond the contract's framework are not maintainable. Article 11.7 only allows for temporary suspension of obligations during Force Majeure without triggering breach consequences, not monetary relief.

88. As for the Appellants' alternative argument that the Respondents violated Article 17.1.1(a) by not conducting a fair bid, the remedy for such breach is termination under Article 13.2, read with 13.4. Having not exercised the option to terminate, the Appellants cannot now seek damages or compensation for the extended SCOD, as there is no clause in the TSA providing such entitlement.

89. It is a well-settled principle of law that there cannot be any claim for remote or indirect loss or damages. The liability of the parties is limited to the PPA, and it is not open for the parties to go beyond the scope of such provisions. The limitation of liability clause has been recognized by the Hon'ble Supreme Court in the case of ***Bharathi Knitting Co. v. DHL Worldwide Express Courier, (1996) 4 SCC 704*** as under:

“Under clause 5 of the terms and conditions of the contract, the liability of the appellant for any loss or damage to the consignment was limited to US \$ 100. Clause 7 of the contract specifically provided that the liability of the appellant for any consequential or special damages or any other indirect loss, that may occur including the loss of market or profits etc. was excluded.....”

7. In view of the above consideration and findings, we are of the opinion that the National Commission was right in limiting the liability undertaken in the contract entered into by the parties and in awarding the amount for deficiency in service to the extent of the liability undertaken by the respondent.....”

90. The TSA provides for risk allocation and the obligations of each party and the consequences and reliefs for the same. Even assuming that there are delays affecting the commissioning of the project, the TSA recognises the consequences for the same, which do not include compensation/damages.

91. Even otherwise, Section 73 of the Contract Act, 1872 provides that there cannot be any claim for remote or indirect loss or damages:

“73. Compensation for loss or damage caused by breach of contract.

When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.”

92. The Appellants are not entitled to claim any loss of revenue due to the extension of the Scheduled Commercial Operation Date (SCOD). The Appellate Tribunal, ***in NRSS XXI (B) Transmission Limited v. CERC & Ors.*** (Appeal Nos. 129 of 2020 and 276 of 2021), has held that without a specific provision in the TSA providing for compensation due to loss of first-year tariff, no such claim for loss of revenue is maintainable (Paras 18.8–18.12).

93. Moreover, the TSA remains effective for 25 years from the revised SCOD, ensuring that the Appellants will recover the full tariff over the life of the agreement. Therefore, no loss is caused that warrants separate compensation.

Re: EXERCISE OF REGULATORY POWER

94. The Appellants had sought to invoke the regulatory powers of the State Commission to claim the relief not contemplated in the TSA. It is submitted that the issue is no longer res integra and stands settled in terms of the decision of the Hon'ble Supreme Court in the case of ***Energy Watchdog Vs. CERC & Ors. (2011) 14 SCC 80 [Paras 19 & 20]*** which reads as under:

“20. It is clear that in a situation where the guidelines issued by the Central Government under Section 63 cover the situation, the Central Commission is bound by those guidelines and must exercise its regulatory functions, albeit under Section 79(1)(b), only in accordance with those guidelines. As has been stated above, it is only in a situation where there are no guidelines framed at all or where the

guidelines do not deal with a given situation that the Commission's general regulatory powers under Section 79(1)(b) can then be used"

95. In terms of Para 20, it has been laid down that the provisions of the Guidelines are statutory and the exercise of regulatory functions is to be in accordance with those Guidelines. Only when there are no Guidelines or the Guidelines do not deal with a particular situation, can there be an exercise of regulatory jurisdiction.

96. The Hon'ble Supreme Court in the case of ***Haryana Power Purchase Centre Vs. Sasan Power Ltd. & Ors. (2023) 8 S.C.R 1*** [Paras 89 to 91] has held that the power to vary a contract cannot be located in the power to regulate, and such regulatory power cannot be exercised in contravention of the provisions of the contract. The relevant extracts from the judgment, inter alia, read as under:

"89) In the case of fixation of tariff under Section 63 of the Act, what is contemplated is to begin with guidelines which have been issued under Section 63. When the Commission is asked to exercise power under Section 63, it is beholden to the guidelines as it cannot depart from the same. In an area where the guidelines do not occupy the field, undoubtedly, the Commission is clothed with power as a regulatory body to act in the best interest of all sides and to fix the tariff in a manner which is fair in the sense bearing in mind the paramount interest of increased generation of power, the interest of the consumer, as also ensuring of a fair return to the seller. So far so good. When the Commission exercises the power under Section 63, this power is not abridged when there are no guidelines holding the field.

(90) We are not dealing with a case where the exercise of power of the Commission under Section 63 is under review. In a case where, however, the rates are approved under Section 63 and PPA is entered into, the question would undoubtedly arise as to whether there is a power which can be described in a manner of speaking to be plenary power with the Commission under Section 79? Can there be a power which can be christened as omnibus? Can the Tribunal, in other words, disregard the express words of the contract? Can it discover a new change in law which the parties have not contemplated as change in law? In short, can the Tribunal rewrite the contract and create a new bargain?

(91) We are of the view that the Tribunal cannot indeed make a new bargain for the parties. The Tribunal cannot rewrite a contract solemnly entered into. It cannot ink a new agreement. Such residuary powers to act which varies the written contract cannot be located in the power to regulate. The power cannot, at any rate, be exercised in the teeth of express provisions of the contract.”

97. The contractual framework under Articles 3, 4, 5, 11, 13, 17, and 18 of the TSA comprehensively governs the consequences of any delay in obtaining the transmission licence or tariff adoption order. Accordingly, the Appellants are barred from claiming any relief that is inconsistent with these provisions.

98. Furthermore, reliance on Hon'ble Supreme Court judgments in ***All India Power Engineer Federation [(2017) 1 SCC 487]*** and ***MSEDCL v. MERC [(2022) 4 SCC 657]*** to argue that the Regulatory Commission can override contractual or

guideline-based restrictions is misplaced. The precedents, including Energy Watchdog, remain binding and have not been overruled. Thus, regulatory discretion cannot be exercised in contravention of the contractual terms.

Re: CHANGE IN LAW – SCOPE OF ARTICLE 12

99. The Appellants' claim that the rejection of the transmission licence and refusal to adopt the tariff amounts to a "Change in Law" under Article 12.1.1 of the TSA is untenable. There was no new interpretation or altered application of law by any Indian government authority. In fact, this Tribunal had earlier held that the petition should not have been dismissed on mere technical grounds, since the MoP guidelines were substantially complied with.

100. Moreover, Article 12.1.2 expressly excludes regulatory actions by the Appropriate Commission from the scope of "Change in Law". The State Commission rightly treated the rejection as a regulatory measure, not a change in law. The provision does not differentiate among types of regulatory actions, and the term "including" implies an expansive, inclusive definition as upheld in ***DDA v. Bhola Nath Sharma [(2011) 2 SCC 54]***.

101. The argument that this interpretation renders the fifth limb of Article 12.1.1 redundant is incorrect. That clause relates specifically to changes in licensing regulations, which, unless otherwise excluded, could qualify as a change in law. At best, the rejection of the petition and its later reversal by this Tribunal may qualify as a non-natural Force Majeure event under Article 11.3(b)(i), but not as a Change in Law.

LACK OF PARTICULARS IN THE CHANGE IN LAW NOTICE

102. The Appellants initially issued a “Change in Law” notice dated 17.01.2014, seeking compensation only for changes in service tax and excise duty, without providing the documentary evidence required under Articles 12.2.3 and 12.3 of the TSA.

103. Subsequently, on 26.06.2014, 15.12.2014 (Maru), and 22.09.2014, 03.12.2014 (Aravali), they expanded their claim to include the alleged delay due to the refusal to grant the Transmission Licence and rejection of tariff adoption claims that were not part of the original notice.

104. Specifically, Maru claimed Rs. 54.2690 crores without issuing any new or amended “Change in Law” notice, relying only on a table, while their previous notices cumulatively only amount to Rs. 45.10 crores. Further, no proof of actual impact or cost escalation due to the delay was submitted. Despite being asked by Respondent Discoms on 13.02.2014 to provide documentary proof of any project cost variation, the Appellants failed to furnish financial reports, audited accounts, or any evidence substantiating their claim.

105. As per Articles 12.3.1 and 12.3.3 of the TSA, the Appellants were obligated to promptly issue detailed Change in Law notices upon becoming aware of the event. The significant delay in expanding their claim undermines its validity. This position is supported by the Hon’ble Supreme Court’s ruling in ***MSEDCL v. MERC [(2022) 4 SCC 657, Paras 183–184]***, which held that delayed and unsubstantiated notices are insufficient to claim relief under Change in Law provisions.

Re: CHANGE IN LAW RELIEF

106. The Rajasthan Discoms, through their letter dated 13.02.2014, requested the Appellants to furnish supporting documents for their Change in Law claim related to increased excise duty and service tax, as mandated by Article 12.2.3 of the TSA. However, no such documentation has been submitted to date or placed on record.

107. Further, Article 12.2.1 of the TSA provides a specific mechanism for relief during the construction period: for every cumulative cost variation of ₹13 crores, a 5% change is permitted in the non-escalable transmission charges. Thus, even assuming that a valid Change in Law had occurred, the Appellants are not entitled to claim lump-sum compensation or project cost escalation beyond what is specified under the contractual formula.

108. Additionally, the TSA does not incorporate any restitutionary principle, nor does it allow for the grant of carrying costs. Hence, any claim by the Appellants for such relief is not supported under Article 12 of the TSA.

***APPELLANT'S NOT PREVENTED FROM COMPLETING THE WORKS
ON ACCOUNT OF THE STATE COMMISSION'S ORDER DATED
30.09.2011***

109. The Appellants had voluntarily suspended project work through their letter dated 18.10.2011, but later revoked the suspension on 17.01.2012, resuming work well before this Tribunal's Remand Order dated 16.04.2012 that directed the State Commission to issue the Transmission Licence and adopt the tariff.

110. Therefore, even if the Appellants argue a delay due to non-grant of licence or tariff adoption, the actual suspension lasted only three months. This refutes the

Appellants' contention of an 11-month delay attributable to regulatory processes. Additionally, this short period of suspension does not support the Appellants' claim that there was a Change in Law event.

CONTEMPORANEOUS CONDUCT OF THE PARTIES

111. It is also relevant to note that at the relevant time, the Appellants had only sought for extension of time beyond the Scheduled Commercial Operation Date ('SCOD') of the Project on account of the delay in obtaining Regulatory approvals such as Transmission Licence and tariff adoption, amongst other reasons. No claims were made in respect of price escalation, loss of revenue, etc. Reference in this regard may be made to one such letter dated 07.07.2014 written by the Appellants to the Respondent Discoms, *inter alia*, stating as under:

*"Sub: Request for Time Extension forAravali Transmission
.....*

... However, we would like to bring to your kind notice that, due to unforeseen reasons, the project could not achieve COD on the last extended date. Some of the major contributors in delaying the completion and non-achievement of COD of the projects are mentioned here below for your kind perusal:

- 1. Project lost more than 17 Months in obtaining Regulatory approvals such as Transmission Licence and Tariff adoption, which are required for conducting the construction activity.*
- 2. Transmission Licence was granted after 17 months of filing petition on 14th August 2012 and became effective from 15.9.2012. The*

reasons for the delay in Transmission Licence was not attributable to us.

- 3. The approval under Sec 164 was granted by GoR on 23 Oct-2012, till that period, in absence of these approvals, it was difficult for us to proceed with the construction activity of the project.*
- 4. Subsequently project has encountered the long forest stretch en-route to 400 KV ALWAR – HINDAUN lines, which was not indicated at the time of bidding. Hence to avoid forest land some of the portion of the line was rerouted, which lead to increment in the length and cost as well. These were the associated delays due to the additional scope of work.*
- 5. As the forest land could not be avoided completely, we applied to Forest department for obtaining the forest clearance, which took considerable time and at last we received it on 6.3.2014 only. The delay was not in our control despite best possible efforts.*
- 6. We encountered a severe obstruction of work by local people in Bacharain Village in Dist Bharatpur and works were unreasonably held up due to "Right of Way" not being available.*
- 7. Due to combined effects of all the reasons explained, it also impacted our cash flow due to delay on financial closer and need for additional capital due to time and cost overrun leading to further delay at every stage.*
....
- 8. ...Therefore, we request you to consider our genuine request and kindly grant us Time Extension with a revision of SCOD by 9 July 14."*

112. Apart from the delay in obtaining the Transmission licence and the adoption of the tariff, the Appellants had also sought to raise other extraneous issues which were otherwise the responsibility of the Appellants themselves.

113. In response to the extension of time sought by the Appellants, the Respondent Discoms revised the SCOD of the Projects with a specific rider that such extensions will not result in any extra financial liability on the Respondent Discoms. In this regard, the relevant extracts from the letter dated 30.05.2013 issued by the Respondent Discoms granting extension to Maru, *inter alia*, read as under:

*“Kindly refer to your above cited communication: vide which you have requested for further extension of scheduled COD (14 February, 2013) as mentioned in the Schedule-3 of Transmission Service Agreement (TSA) which was already extended to 13th May 2013 vide this office letter No. 1514 dt. 26.9.2012. In this regard, I am directed to convey the approval for further extension of two months of the scheduled COD from 13th May' 2013 to 12th July 2013 subject to condition that Discoms will not **be liable for any extra financial liability**. You are also requested to furnish an undertaking that the company (M/s Maru Transmission Service Company Ltd) in future will not terminate the agreement on the basis of this extension under Article 13.5 of TSA”*

114. At the relevant time, the Appellant did not reserve its right, nor did it protest the above stipulation of the Respondent Discoms. It is not open for the Appellants to belatedly raise a claim seeking compensation. Further, the reference to Article

13.5 (Termination due to force majeure) makes it evident that the Rajasthan Discoms had treated the said delay as a Force Majeure Event.

***Re: LIQUIDATED DAMAGES FOR THE DELAY IN COMMISSIONING
BEYOND THE REVISED/ EXTENDED COD***

115. The Respondent Distribution Companies (Discoms) imposed Liquidated Damages (LD) only for the delay period from 17.07.2013 to 01.08.2014, amounting to ₹1.24 crores in the case of Aravali, and not for Maru, in line with the State Commission's Order dated 22.01.2015 in Petition No. RERC/461/14. As per Article 6.4 of the Transmission Service Agreement (TSA), Aravali is liable to pay LD at 3.33% of monthly transmission charges per day for delays up to 60 days. This LD is not penal but a genuine pre-estimate of loss, as further clarified under Article 18.7 of the TSA. Therefore, actual loss need not be proven; only legal injury must be shown. This principle is supported by precedents including

- i. Fateh Chand case (1964) 1 SCR 515 [Para 10]
- ii. Maula Bux (1969) 2 SCC 554 [Para 6]
- iii. Surjit Kaur –v- Naurata Singh (200) 7 SCC 379 [Para 17]
- iv. ONGC –v- Saw Pipe Limited (2003) 5 SCC 705 [Para 46 and 64];
- v. Construction and Design Services-v- Delhi Development Authority AIR 2015 SC 1282 [Para 14];
- vi. Kailash Nath –v- Delhi Development Authority (2015) 4 SCC 136 [Para 37] quoting and relying on ONGC case which speaks about legal injury;
- vii. Bharat Sanchar Nigam Ltd. -v-Reliance Communication Ltd. (2011) 1 SCC 394 [Para 47, 53];

- viii. Ultratech Cement v Sunfiled Resources, decision dated 21.12.2016 passed by Hon'ble High Court of Bombay in Appeal No.881 of 2005 in Arbitration Petition No. 35 of 2004 [Para 85, 87-88];
- ix. PTC India Limited-v-Gujarat Electricity Regulatory Commission and Anr 2014 ELR (APTEL) 1243 [Paras 43-53]; and
- x. Lanco Kondapalli Power Limited-v- Andhra Pradesh Electricity Regulatory Commission 2015 ELR (APTEL) 755 [Paras 48-55].

116. Furthermore, the extension of SCOD was granted on the express condition that the Respondent Discoms would not bear any additional financial liability. Consequently, the Appellants cannot now claim financial compensation from the Discoms for delays, particularly regarding the transmission licence or tariff adoption.

***Re: NON-PAYMENT OF TRANSMISSION CHARGES IN RESPECT OF
ARAVALI FOR THE PERIOD FROM 17.07.2014 TILL 23.08.2014
(Rs. 2.59 crores)***

117. As per the definitions of 'Scheduled COD', 'Element', and 'COD' under Article 6.2 and Schedule III of the TSA, transmission charges for any element become payable only after its successful commissioning. The Load Dispatch Centre issued the energisation certificate on 02.09.2014, confirming that the transmission line and feeder bays were commissioned on 20.08.2014. In line with the TSA, commercial operation is deemed to commence 72 hours post interconnection, i.e., from 23.08.2014.

118. Hence, Aravali's claim for transmission charges from 17.07.2014 is inconsistent with Article 6.2 and Schedule III of the TSA. The intimation dated

10.07.2014 under Article 6 asserting readiness for energisation is inaccurate, as further work remained pending, as reflected in the minutes of the meeting dated 25.08.2014. Therefore, Aravali is entitled to transmission charges only from 23.08.2014.

Re: CARRYING COST

119. It is also reiterated that there is no restitutionary principle in Article 12 of the TSA, and there is no inherent right for the Appellants to claim any carrying cost.

120. Without prejudice to the above, no carrying cost can be granted on the said change in law claim for the delay attributable to Maru/Aravali on the account of their failure to produce the necessary documentation. In light of the same, reliance in this regard may be placed on the following cases:

- i. D B Power Vs. CERC – Judgment dated 15.05.2020 - Appeal No. 253 of 2018

“....As the Appellant cannot take advantage of its own delay / failure to furnish information in support of its claim for compensation towards the Station Heat Rate, we are of the view that the compensation which shall now be determined by the CERC shall not be entitled to carrying cost for the period from 29.04.2017, when the Appellant herein had earlier invoked the jurisdiction of the CERC by filing their petition, till 25.01.2019 when the application was filed before this Tribunal to receive additional evidence.”

- ii. Punjab State Power Corporation Limited v. Punjab State Electricity Regulatory Commission – Judgement dated 22.04.2015 - Appeal No. 174 of 2013 [Paras 29-30]

“29. In the remand order, the State Commission after having scrutinized the necessary documents allowed a reduction of Rs. 3.48 crores from the net tariff income of the utilities for FY 2007-08 and Rs. 32.87 crores from non-tariff income for FY 2008-09 and decided that the effect of this order will be given in the tariff order of FY 2013-14. The Commission felt that carrying cost cannot be allowed for the entire period and has restricted it to a period of 9 months i.e. three months for FY 2012-13 and 6 months for FY 2013-14 since recovery of this amount will be available to the utility from the increased tariff determined for FY 2013-14, because of non production of evidentiary documents was on account of due to delay on the part of the Appellant. The State Commission has given detailed order explaining the delay in providing the documents by the Appellant. The Tribunal in its order dated 18.10.2012 has also observed that the Appellant had not produced the relevant documents for FY 2007-08 and 2008-09. Therefore, we feel that there is no infirmity in not allowing the carrying cost for the period of delay caused by the Appellant in supplying requisite information to the State Commission. We find no merit in the arguments of the Appellant that the carrying cost should be allowed due to change in procedure adopted by the State Commission. We feel that complete documents were not available for deciding the issue by either of the two procedures. Accordingly this issue is decided against the Appellant.”

Analysis and Conclusion

121. After hearing the Appellant and the Learned Counsel for the Respondents at length and carefully considering their respective submissions, we have also examined the written pleadings and relevant material on record. Upon due consideration of the arguments advanced and the documents placed before us; the following issue arises for determination in this Appeal:

Issue 1: Whether the Rajasthan Electricity Regulatory Commission was correct in limiting its adjudication only to the issue of change in law as regards Orders passed by RERC dated 30.09.2011 and 24.10.2011?

Issue 2: Whether the initial rejection by the Rajasthan Electricity Regulatory Commission (RERC) of the Appellant's application for transmission licence and adoption of tariff on grounds of alleged procedural defects in the bidding process constitutes a "Change in Law" under Article 12.1.1 of the Transmission Service Agreement (TSA)?

Issue 3: Whether the Commission erred in categorizing its initial rejection orders as "regulatory measures" under Article 12.1.2 of the TSA, thereby denying the Appellant's claim for compensation due to delay in achieving the Scheduled Commercial Operation Date (SCOD)?

Issue 4: Whether the delay caused by the Commission's actions led to cost escalation and loss of revenue, and if so, whether the Appellant is entitled to compensation under Articles 12 and 18.7 of the TSA?

Issue 5: Whether, increase in the rate of service tax and excise duty qualifies as a Change in Law under the transmission service agreements executed by ATSCCL, and if yes, what relief are the parties entitled to?

Issue 6: Whether ATSCCL is entitled to compensation towards the increase in Project Cost and towards loss of revenue on account of delay due to Orders dated 30.09.2011 and 24.10.2011?

Issue 7: Whether Respondent Rajasthan Discoms are entitled to pay Rs. 2.59 Crore to ATSCCL towards transmission charges for the period 17.07.2014 to 23.08.2014?

Issue 8: Whether Respondent Rajasthan Discoms are entitled to Rs. 1.27 Crore towards damages for delay by ATSCCL in achieving COD of the Alwar Project?

122. It is noted that Issues 1 to 3 are common for both Appeal No. 59 of 2016 and Appeal No. 60 of 2016. Issues 4-5 are specific to Appeal No. 59 of 2016.

123. The genesis of the dispute arises from a transmission project involving the establishment of a 400 kV, implemented on a Build, Own, Operate and Maintain basis by the Appellant. The Appellant was selected through a competitive bidding process under the Tariff-Based Competitive Bidding Guidelines (“CBG”) issued by the Ministry of Power, Government of India.

124. Following its successful bid, ATSCCL executed a Transmission Service Agreement (“TSA”) dated 19.01.2011 with the Long-Term Transmission Customers (“LTTCs”), namely the Rajasthan Discoms - Jaipur Vidyut Vitran Nigam Limited (Respondent No. 2), Ajmer Vidyut Vitran Nigam Limited (Respondent No. 3), and Jodhpur Vidyut Vitran Nigam Limited (Respondent No. 4).

125. After detailed examination of the pleadings, notes, and the written submissions filed by the parties, it is noted that:

- (a) The Government of Rajasthan constituted a State Level Empowered Committee, which authorised Rajasthan Rajya Vidyut Prasaran Nigam Limited as the Bid Process Coordinator to select the Transmission Service Provider for the Alwar Project and Deedwana Project.
- (b) Pursuant to a competitive bidding process, GMR Energy Limited (**GEL**) was declared as the successful bidder and a Letter of Intent was issued on 30.09.2010 (**LOI**). As per the terms of the LOI, the LOI was subject to the adoption of the tariff by the RERC.
- (c) GEL paid the requisite Performance Bank Guarantees in favour of the Respondent, Rajasthan Discoms, and also executed a Share Purchase Agreement purchasing all shares towards ATSCCL for the development of the Alwar Project.
- (d) On 19.01.2011, ATSCCL and the Rajasthan Discoms (i.e., Long-Term Transmission Customer) executed a Transmission Service Agreement dated 19.01.2011 ("TSA") which inter alia required ATSCCL to obtain a grant of Transmission Licence and adoption of transmission charges by RERC within 6 months of the Effective Date, i.e., 19.01.2011.
- (e) It is not disputed that ATSCCL filed petitions for the grant of transmission licence and adoption of transmission tariff within time before RERC.
- (f) On 29.09.2011, ATSCCL entered into a financing agreement with ICICI Bank Ltd. (**Financing Agreement**) under which ATSCCL was provided with a loan of up to Rs. 104,45,000,00/-. As per Clause 7.3.3 of the Financing Agreement, the drawdown of funds was subject to ATSCCL obtaining Orders from RERC regarding the transmission licence for its Project and for the adoption of Transmission Charges.

- (g) On 30.09.2011, RERC passed Order in Petition No. RERC/256/2011 (filed by ATSCL for adoption of tariff) and dismissed the same on the basis that the competitive bidding process followed by the Government of Rajasthan and RRVPNL did not comply with the competitive bidding guidelines issued by the Ministry of Power.
- (h) In addition to the Order dated 30.09.2011 rejecting the adoption of the tariff, RERC also passed the Order dated 24.10.2011 in Petition No. RERC/243/2011 (filed by ATSCL for grant of Transmission License) and dismissed the same.
- (i) The orders passed by RERC dated 30.09.2011 and 24.10.2011 were challenged before this Tribunal by ATSCL and MTSCCL through Appeal Nos. 177 of 2011 and Appeal No. 181 of 2011. Separately, Respondent Rajasthan Discoms also filed Appeal No. 21 of 2012, wherein only the Order dated 30.09.2011 was challenged.
- (j) This Tribunal passed Judgment on 16.04.2012, setting aside Orders dated 30.09.2011 and 24.10.2011 and remanded the matter to RERC for reconsideration.
- (k) Upon reconsideration, RERC adopted the transmission tariff and granted a transmission licence to ATSCL vide Orders dated 01.06.2012 and 14.08.2012. Furthermore, the Government of Rajasthan issued a notification dated 23.10.2012 under Section 68 read with Section 164 of the Electricity Act 2003, authorizing ATSCL to commence work on the Alwar Project.
- (l) Thereafter, after 23.10.2012, ATSCL was able to commence with the construction and development of the Alwar Project.

126. Undisputedly, the Commission's interpretation and denial of adoption of the tariff, along with the grant of a licence by the Orders dated 30.09.2011 and

24.10.2011, has led to consequential delays in the commissioning of the project, inter alia, financial loss to the Appellant.

127. Accordingly, the Appellants raised the claims before RERC in Petition RERC/446/2014 and RERC/501/2015 and which were rejected by RERC in the Impugned Order, thus the captioned appeals.

Issue No. 1

Whether the Rajasthan Electricity Regulatory Commission was correct in limiting its adjudication only to the issue of change in law as regards Orders passed by RERC dated 30.09.2011 and 24.10.2011?

128. The State Commission passed the Impugned Orders restricting the claims by holding as under:

“40. We are not going into the contentions relating to additional cost etc. alleged to be incurred by the Petitioner due to delay in grant of license and adoption of transmission tariff by the Commission and other factual aspects pleaded as the Petitioners have confined their arguments only basis Change in Law in Article 12 and no other grounds.”

129. Contrary to the above finding of the State Commission that the Appellant has confined their arguments only basis Change in Law in Article 12 and no other grounds, the Appellant submitted that all grounds were raised before RERC which have also been duly recorded in the Impugned Order and arguments were not confined to only one issue and has drawn our attention on the following paras of the Impugned Order:

“13. [...]

(xvii) As proceedings before the APTEL progressed, work on the Project had remained suspended. ATSCCL’s EPC expenses had nonetheless, continued to mount as its EPC Contractor was raising bills for preserving the Project. Moreover, in terms of the EPC Contract, the Project could not be suspended for longer than three months. Therefore ATSCCL instructed the EPC Contractor to resume the construction of the Project.

[...]

(xxii) ATSCCL vide its letter dated 10.07.2014 informed LTTCs that the Project was ready for changing / energizing. As per Article 6.2 of the TSA, Project achieved COD on 17.07.2014 and accordingly ATSCCL began raising invoices for transmission charges with effect from July, 2014. Although ATSCCL achieved COD as per Article 6.2 of the TSA on 17.07.2014, the LTTCs have wrongfully considered 23.08.2014 as the COD of the Project in order to avoid paying ATSCCL transmission charges from 17.07.2014 to 22.08.2014, it is therefore submitted that LTTCs are required to pay transmission charges along with surcharge for late payment at the rate of 1.25% as per Article 10.8 of the TSA, in the total sum of Rs. 2.59 Crore for the period between 17.07.2014 and 22.08.2014.

[...]

(xxvi) Under Articles 4.2.1 (a) and 17.1.1 (a) of the TSA read with paragraph 2.5 of the RFP, the LTTCs were obliged to conduct the Bid process in a manner that was free from any doubt, and in a manner that would not cost any doubt as to the LTTCs power and authority to execute and consummate the TSA. It is stated and submitted that the

LTTCs committed a breach of their said obligations, as a result of which the grant of a transmission license to ATSCCL and the adoption of transmission charges was delayed, resulting in the postponement of the SCOD of the project and an increase in project cost and a decrease in revenues from the Project. Therefore, without prejudice to the ATSCCL's plea under Article 12.3 of the TSA, under Art. 18.7 of the TSA, the LTTCs are liable to pay for the damages suffered by it in the form of increase in project cost and decrease in revenues from the Project in the sum of Rs. 35.27 Crore and Rs. 30.53 Crore Respectively.

15. [...]

LTTCs committed a breach of their said obligations as a result of which the grant of a transmission license to the MTSCCL and the adoption of transmission charges was delayed, resulting in the postponement of the SCOD of the Project and an increase in Project cost and a decrease in revenues from the Project. Therefore, without prejudice to the Petitioner's plea under Article 12.3 of the TSA, under Art. 18.7 of the TSA, the LTTCs are liable to pay the MTSCCL for the damages suffered by it in the form of increase in Project cost and decrease in revenues from the Project in the sum of Rs. 25.69 Crore and Rs. 28.58 crore to MTSCCL respectively and Rs. 35.27 Crore and Rs. 30.53 Crore to ATSCCL respectively which sums are payable to the each Petitioner in a single tranche as a lump sum

xiii. Project will be rendered unviable, if the Petitioners are not compensated for the postponement of SCOD and it will defeat the purpose and provisions of the Electricity Act, 2003, National Tariff Policy, Competitive Bidding Guidelines, TSA and will imperil the credibility of the LTTCs and the Rajasthan Government. Therefore in

order to make the Project viable, it is prayed to revise the Transmission Charges as per Annexure 21 (Colly) to compensate for the additional cost incurred and decrease in revenues suffered.

xiv. It is well within the powers of this Commission to work out ways and means to compensate the petitioners even it is not contemplated in the TSA. This inherent power can be drawn from the Statement of Objects and Reasons to the Act and National Electricity Policy read with Section 66 of the Act.”

130. It, therefore, cannot be argued that the Appellant filed Petition No. 501 of 2015 before the RERC seeking compensation amounting to Rs. 65.80 Crores on account of cost escalation and revenue loss arising due to the delay in achieving SCOD, which, according to the Appellant, was solely due to the Commission's initial rejection of the licence and tariff adoption petitions. The Appellant also sought recovery of unpaid transmission charges of Rs. 2.59 Crores, refund of Rs. 1.24 Crores towards unlawful deduction of liquidated damages, and compensation of Rs. 1.90 Crores due to the increase in Service Tax and Excise Duty post the bid deadline.

131. Thus, the Appellant raised the various issues before the State Commission; however, the Commission decided only on the issue of Change in Law, ignoring all other contentions raised.

132. ATSCCL in its grounds in the Appeal has also assailed this, stating that it had not confined its arguments before RERC, and all claims were pressed. Further, we note that this position has also not been disputed by the Respondent, Rajasthan Discoms.

133. Undisputedly, the Appellant pressed all the issues/ claims before RERC that are now pressed before us; however, these were not considered by RERC on the ground that ATSCIL had confined itself to only one claim. It is also noted that no finding was rendered on these issues, as under: -

- (a) Increase in taxes and duties as a Change in Law in terms of Notice dated 17.01.2014.
- (b) Unlawful recovery of Rs. 1.24 Crore by Respondent Rajasthan Discoms as liquidated damages due to delay in COD.
- (c) Payment of differential transmission charges, including surcharge thereon payable for the period 17.07.2014 to 23.08.2014.

134. **Considering that the Order passed by the Commission is a non-speaking Order, also ignoring material facts before it, this Tribunal is inclined to remand the matter, however, taking note of the fact that almost 10 years has elapsed since the Impugned Order, we find it appropriate not to remand the matter to RERC and hold that RERC was incorrect in restricting its findings to only one issue. We thus decide to resolve all the claims raised before this Tribunal in the interest of time and provide justice to the affected parties, inter alia, to comprehensively decide all issues.**

Issue No. 2

Whether the initial rejection by the Rajasthan Electricity Regulatory Commission (RERC) of the Appellant's application for transmission licence and adoption of tariff on grounds of alleged procedural defects in the bidding process constitutes a "Change in Law" under Article 12.1.1 of the Transmission Service Agreement (TSA)?

135. The Appellant, ATSCCL, submits that the initial orders dated 30.09.2011 and 24.10.2011 passed by the RERC rejecting the Appellant's petition for adoption of tariff and grant of transmission licence, respectively, were predicated on a flawed and overly rigid interpretation of the Tariff-Based Competitive Bidding Guidelines (CBGs) issued by the Ministry of Power. These guidelines were treated as mandatory by the Commission, despite being directory in nature, thereby denying the Appellant essential regulatory approvals.

136. The Appellant avers that these erroneous orders substantially delayed the commissioning of the project, led to loss of revenue and an increase in project costs, and fundamentally altered the legal environment under which the Appellant was to perform its obligations.

137. ATSCCL relies on the judgment of this Tribunal dated 16.04.2012 in Appeal Nos. 177 and 181 of 2011, wherein this Tribunal reversed the Commission's orders, holding that the CBGs were substantially complied with and that the process followed was transparent and competitive. The Appellant asserts that the initial interpretation and subsequent reversal of RERC's orders constitute a "Change in Law" as defined in Article 12.1.1(b) of the TSA, which explicitly includes "a change in the interpretation or application of any Law by any Indian Governmental Instrumentality having the legal power to interpret or apply such Law."

138. The Rajasthan Discoms contend that the rejection orders were passed in the exercise of the Commission's statutory and regulatory functions and did not constitute any change in the legal landscape. They argue that the Appellant bore the responsibility under the TSA to obtain regulatory approvals, and any failure or delay in securing the same was a risk assumed by the Appellant. The Discoms

emphasize that there was no legislative amendment, statutory notification, or judicial pronouncement that altered the legal position; rather, the delay was a direct consequence of the Appellant's failure to comply with procedural requirements.

139. The Discoms further assert that if the Commission's actions were to be interpreted as a Change in Law, it would open the floodgates to claims for compensation for every regulatory decision taken during the implementation of a project, which is not the intention of Article 12. They maintain that the Commission's orders cannot be construed as a "change in the interpretation of law," and that Article 12.1.1(b) was never intended to cover such eventualities.

140. Having carefully considered the pleadings and submissions, we are of the considered view that the initial orders passed by RERC rejecting the petitions for the grant of licence and adoption of tariff were indeed predicated on an erroneous understanding of the applicable guidelines. This Tribunal, in its judgment dated 16.04.2012, categorically held that the process followed was not violative of the CBGs and that substantial compliance had been achieved. The guidelines themselves do not have the force of law in the strictest sense but derive legal relevance through incorporation in the bidding documents.

141. It is an established principle that a regulatory authority's interpretation of its own or Central Government guidelines, especially where such interpretation is later overturned by a superior judicial forum, can constitute a change in legal application.

142. Article 12.1.1 of TSA dated 15.02.2011 is as follows (based on True Typed Copy submitted by the Appellant):

“a change in the interpretation or application of any Law by any Indian Governmental Instrumentality having the legal power to interpret or apply such law, or any Competent Court of Law”

143. Article 12.1.1 does not require a statutory change; a change in the interpretation by a competent authority suffices. In the present case, the Commission initially refused to adopt the tariff and grant the licence based on an interpretation that was found untenable and subsequently reversed. This change squarely falls within the ambit of Article 12.1.1.

144. Accordingly, we hold that the orders dated 30.09.2011 and 24.10.2011, and their subsequent reversal, constitute a “Change in Law” event under Article 12.1.1 of the TSA.

Issue No. 3

Whether the Commission erred in categorizing its initial rejection orders as “regulatory measures” under Article 12.1.2 of the TSA, thereby denying the Appellant’s claim for compensation due to delay in achieving the Scheduled Commercial Operation Date (SCOD)?

145. The Appellant submits that the term “regulatory measures” in Article 12.1.2 of the TSA must be construed narrowly and contextually. According to the Appellant, the said clause was inserted to exclude from the scope of “Change in Law” minor or routine regulatory actions such as calculation of availability or technical adjustments, and not to cover grave decisions such as denial of statutory approvals. It is contended that interpreting every order of the Commission as a regulatory measure would render the specific inclusion of a change in interpretation under Article 12.1.1 entirely otiose and nugatory.

146. The Appellant further asserts that the initial rejection orders were not like regulatory oversight or performance monitoring but rather constituted final adjudications on the Appellant's rights and obligations under a concluded TSA.

147. The orders directly interfered with the project execution and changed the Appellant's legal standing, causing quantifiable financial harm. Therefore, the Appellant submits that such decisions cannot be shielded under Article 12.1.2 and must be compensable.

148. The Discoms argue that the Commission's orders rejecting the petitions were classic examples of regulatory determinations made in the exercise of its statutory functions. They emphasize that Article 12.1.2 clearly excludes from the definition of Change in Law any alteration "on account of regulatory measures by the Appropriate Commission, including calculation of availability." According to the Discoms, this phrase encompasses not just operational adjustments but also decisions arising from the interpretation of statutory and policy frameworks.

149. The Respondents further contend that the Appellant cannot selectively rely on one part of the TSA (Article 12.1.1) while disregarding the carve-out in Article 12.1.2. It is argued that the exclusion in 12.1.2 was consciously negotiated and incorporated to insulate the Discoms from the financial consequences of regulatory uncertainty, and that the Appellant, having accepted such risks under the TSA, cannot now resile from the agreed terms.

150. The core of this issue lies in interpreting the interplay between Articles 12.1.1 and 12.1.2 of the TSA.

151. Article 12 of the TSA dated 15.02.2011 is as follows (based on True Typed Copy submitted by the Appellant):

“ARTICLE 12

12 CHANGE IN LAW

12.1 Change in Law

12.1.1 Change in Law means the occurrence of any of the following after the date, which is seven (7) days prior to the Bid Deadline resulting into any additional recurring /non- recurring expenditure by the TSP or any income to the TSP:

- the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law of any Law, including rules and regulations framed pursuant to such Law:*
- a change in the interpretation or application many law by any Indian Governmental Instrumentality having the legal power to permits or apply such Law, or any Competent Court of Law*
- the imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier.*
- a change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits;*
- any change in the licensing regulations of the Appropriate Commission, under which the Transmission Licence for the Project was granted it made applicable by such Appropriate Commission to the TSI:*
- any change in the Acquisition Price; or*

- *any change in tax or introduction of any tax made applicable for providing Transmission Service by the ISP as per the terms of this Agreement.*

12.1.2 Notwithstanding anything contained in this Agreement, Change in Law shall not cover any change:

- a. on account of regulatory measures by the Appropriate Commission including calculation of Availability, and*
- b. in any tax applied on the income or profits of the TSP.*

12.2 Relief for Change in Law

12.2.1 During Construction Period:

During the Construction Period, the impact of increase/decrease in the cost of the Project in the Transmission Charges shall be governed by the formula given below.

For every cumulative increase/decrease of each Rupees 13 Crores (Rs. thirteen Crores) in the cost of the Project up to the Scheduled COD of the Project, the increase/decrease in non escalable Transmission Charges shall be an amount equal to Five percent (5%) of the Non-Escalable Transmission Charges.

12.2.2. During the Operation Period: During the Operation Period, the compensation for any increase/decrease in revenues shall be determined and effective from such date as decided by the Rajasthan Electricity Regulatory Commission whose decision shall be final and binding on both the Parties subject to rights of appeal provided under applicable Law. Provided that the above mentioned compensation shall be payable only if the increase / decrease in revenues or cost to the TSP is in excess of an amount only if the increase/decrease in revenues or cost to the ISP is in excess of an amount equivalent to one percent (1%) of Transmission Charges in aggregate for a Contract year.

12.2.3) For any claims made under Articles 12.2.1 and 12.2.2 above, the ISP shall provide to the Long Term Transmission Customers and the Rajasthan Electricity Regulatory Commission documentary proof of such increase/decrease in cost of the Project revenue for establishing the impact of such Change in Law

12.2.4 The decision of the Rajasthan Electricity Regulatory Commission, with regards to the determination of the compensation mentioned above in Articles 12.2.1 and 12.2.2, and the date from which such compensation shall become effective, shall be final and binding on both the Parties subject to rights of appeal provided under applicable Law.

12.3 Notification of Change in Law

12.3.1 If the TSP is affected by a Change in Law in accordance with Article 12.1 and wishes to claim relief for such Change in Law under this Article 12, it shall give notice to Lead Long Term Transmission Customer of such Change in Law as soon as reasonably practicable after becoming aware of the same.

12.3.2 The TSP shall also be obliged to serve a notice to Lead Long Term Transmission Customer even when it is beneficially affected by a Change in Law

12.3.3 Any notice served pursuant to Articles 12.3.1 and 12.3.2 shall provide, amongst other things, precise details of the Change in Law and its effect on the TSP

12.4 Payment an account of Change in Law

12.4.1 The payment for Change in Law shall be through Supplementary Bill as mentioned in Article 10.10. However, in case of any change in Monthly Transmission Charges by reason of Change in Law, as determined in accordance with this Agreement, the Monthly Invoice to be raised by TSP

after such change in Transmission Charges shall appropriately reflect the changes Monthly Transmission Charges.”

152. Article 12.1.1 provides an inclusive and expansive definition of Change in Law, encompassing legislative amendments and changes in interpretation by Indian Governmental Instrumentalities. Article 12.1.2, on the other hand, provides an exception for changes arising out of regulatory measures, specifically citing calculation of availability as an example.

153. In our considered view, the term “regulatory measures” must be interpreted in similar terms to the example provided, namely, calculation of availability. The exclusion is intended to cover technical, quantitative, and routine performance-based regulatory adjustments and not substantive denials of statutory entitlements. The rejection of licence and tariff petitions affected the very existence of the Appellant’s right to operate the transmission system and cannot be characterized as a mere regulatory refinement.

154. Further, a harmonious construction of the two clauses demands that 12.1.2 not be interpreted in a manner that defeats the remedial purpose of 12.1.1. A regulatory order that is subsequently overturned by a superior forum due to its erroneous interpretation is not a measure of continuing regulation but one that altered the legal rights and liabilities of the parties. Therefore, the Commission’s reliance on Article 12.1.2 in the Impugned Order to exclude the Appellant’s claim was legally unsustainable.

155. Accordingly, we hold that the Commission erred in characterizing its initial orders as “regulatory measures” within the meaning of Article 12.1.2.

The said orders were not excluded from the scope of Change in Law, and the Appellant's claim for compensation was maintainable.

Issue No. 4

Whether the delay caused by the Commission's actions led to cost escalation and loss of revenue, and if so, whether the Appellant is entitled to compensation under Articles 12 and 18.7 of the TSA?

156. The Appellant submits that due to the delay of nearly 20 months in obtaining the transmission licence and tariff adoption, an essential precondition for achieving SCOD, it incurred substantial cost overruns and loss of expected revenue. It has quantified its claim at Rs. 65.80 Crores, out of which Rs. 35.27 Crores pertain to increased project cost and Rs. 30.53 Crores to loss of revenue. Additionally, the Appellant has sought Rs. 2.59 Crores as differential transmission charges for the period between 17.07.2014 and 23.08.2014, Rs. 1.24 Crores recovered unlawfully by the Respondents as liquidated damages, and Rs. 1.90 Crores due to increase in service tax and excise duty post the bid deadline, which it submits qualify as Change in Law.

157. The Appellant contends that all these claims arise directly from the Commission's earlier erroneous decisions, and that Articles 12 and 18.7 of the TSA provide a sufficient legal basis for compensation.

158. It also cites the judgment of the Hon'ble Supreme Court in **GMR Warora Energy Ltd. v. CERC (2023) 10 SCC 401**, which affirmed the entitlement to compensation for an increase in tax rates under a similarly worded Change in Law clause.

159. The Discoms argue that the Appellant undertook the project at its own risk and had agreed to conditions in the TSA, which limit its ability to claim compensation for delay unless notice under Force Majeure was given. They point out that the Appellant never invoked the Force Majeure provisions and did not issue any contemporaneous Change in Law notice for most of its claims.

160. Furthermore, the Respondents contend that the claims for cost overrun and revenue loss are in the nature of consequential and indirect losses, which are barred under Article 18.12 of the TSA. They also contest the quantum of claims and the basis for calculation, alleging that the Appellant has not adequately substantiated the causal link between the Commission's actions and the alleged financial losses.

161. It is evident from the record that the delay in commissioning the transmission project was principally caused by the Commission's rejection of the applications for transmission licence and tariff adoption, which were later set aside. The delay prevented the Appellant from proceeding with execution and achieving SCOD within the contractually stipulated timeline.

162. Appellant, through its notices dated 22.09.2014 and 03.12.2014, has substantiated its claim for compensation under Sections 70, 73, and 74 of the Indian Contract Act, 1872 by providing detailed computations. The first notice outlines an increase in project cost amounting to Rs. 35.27 crore, while the second sets out a revenue loss of Rs. 30.53 crore. Though the Rajasthan Discoms have contested their liability, they have not disputed the figures or their basis.

163. The Appellant has submitted cogent evidence, including financial records, correspondence, and expert reports demonstrating the escalation in project cost

and the loss of revenue. These consequences flow directly from the Change in Law event identified under Article 12.1.1. The increase in tax rates, being notified post-bid deadline, also squarely falls under Change in Law.

164. Articles 18.7 and 18.12 of the TSA dated 15.02.2011 are as follows (based on True Typed Copy submitted by the Appellant):

“18.7 Breach of Obligations

The Parties acknowledge that a breach of any of the obligations contained herein would result in injuries. The Parties further acknowledge that the amount of the liquidated damages or the method of calculating the liquidated damages specified in this Agreement is a genuine and reasonable pre-estimate of the damages that may be suffered by the non-defaulting party in each case specified under this Agreement.”

“18.12 No Consequential or Indirect Losses

The liability of the TSP and the Long Term Transmission Customers shall be limited to that explicitly provided in this Agreement, Provided that, notwithstanding anything contained in this Agreement, under no event shall the Long Term Transmission Customers or the TSP claim from one another any indirect or consequential losses or damages”

165. The Tribunal finds no merit in the Respondents’ contention that these claims are barred as consequential or indirect losses. Article 18.12 bars remote damages, not direct losses arising from a Change in Law. Furthermore, Article 18.7 empowers the Commission (and by extension, this Tribunal) to issue necessary directions in the interest of justice and equity.

The denial of compensation in the face of established hardship would be inequitable.

166. **Accordingly, the Appellant is held entitled to compensation.**

167. Further, the details for the compensation sought by the Appellant are dealt with in Issue No. 6, in the succeeding paragraphs.

Issue 5

Whether, increase in the rate of service tax and excise duty qualifies as a Change in Law under the transmission service agreements executed by ATSCL and MTSCCL, and if yes, what relief are the parties entitled to?

168. Change in Law has to be dealt with under Article 12 of the TSA read with specific definitions like the definitions of 'Law' and 'Indian Governmental Instrumentality', which provides as under: -

“Indian Governmental Instrumentality” shall mean Government of India, Government of any State in India or any ministry, department, board, authority, agency, corporation, commission under the direct or indirect control of the Government of India or any State Government or both, any political sub-division of any of them including any court or Appropriate Commission or Tribunal or judicial or quasi-judicial body in India but excluding TSP and Long Term Transmission Customers;”

“Law” or “Laws” in relation to this Agreement, shall mean all laws including electricity laws in force in India and any statute, ordinance, rule, regulation, notification, order or code, or any interpretation of any

of them by an Indian Governmental Instrumentality having force of law and shall include all rules, regulations, decisions and orders of the Appropriate Commission.

169. Article 12 of the TSA has already been quoted in the foregoing paragraphs.

170. It cannot be argued that similar Change in Law provisions have been examined repeatedly by the Hon'ble Supreme Court and by this Tribunal in various pronouncements wherein this Tribunal has held (which has been confirmed by the Hon'ble Supreme Court) that the underlying principle of the Change in Law provisions is to determine the consequence of change in law and to compensate a party affected by a change in law such that the party is restored to the same economic position as if such change in law had not occurred.

171. Under such cases, we have to consider only whether there is a similar Change in Law provision in the applicable contract, inter alia, such Change in Law is affected by an Indian Government Instrumentality, and in case of affirmation, the impact of such Change in Law.

172. In the instant case, the Bid Deadline Date is 28.10.2009 and the basis of Change in Law is the Notification No. 02/2012 dated 17.03.2012 (wherein effective rate of service tax was increased to 12.36%) and Notification No. 18/2012 dated 17.03.2012 (wherein rate of Excise Duty was increased from 10% to 12%) (in short "Tax Notifications").

173. It is submitted by the Appellant that it has issued a Change in Law Notice under Article 12.3 of the TSA dated 17.01.2014 to the Respondent, Rajasthan Discoms, stating that the Tax Notifications qualify as a Change in Law.

174. In the Reply filed by the Respondent, the claim has been rejected as being an afterthought. Further, in terms of the Written Submissions filed by the Respondent, the challenge is that no supporting documents have been provided, and the carrying cost ought not to be granted.

175. Upon a perusal of the Change in Law Notice dated 17.01.2014, it is clear that the Appellants had specified the change in law event and had sought concurrence from the Respondent that the claims qualify as a Change in Law. Rajasthan Discoms replied on 13.02.2014, seeking precise details of the change in law event, and that documentary proof is to be provided to the discoms and RERC to establish any impact.

176. Accordingly, there was no concurrence by the Rajasthan Discoms to the Appellants' claim of a Change in Law. Thus, in the absence of this concurrence, the Appellants approached RERC in the impugned proceedings wherein the said claim was neither considered nor were any findings rendered thereon.

177. The changes in taxes and duties qualify as a Change in Law is no longer *res-integra* given that these events have been categorically held to qualify as Change in Law by this Tribunal and the Hon'ble Supreme Court, including in ***GMR Warora Energy Limited vs. CERC & Ors.*** (2023) 10 SCC 401 (**2023 SC Judgment**).

178. Regarding carrying cost, this Tribunal in Judgment dated 08.05.2025 in Appeal No. 345 of 2021 in ***RattanIndia Power Limited vs. Maharashtra Electricity Regulatory Commission & Ors.***, after considering a similar issue of carrying cost, held as under: -

“62. There is no gainsaying that the compensation for the Change in Law has to be such that it restores the affected party to the same economic position as if the Change in Law event had not occurred. Therefore, the compensation for Change in Law would necessarily include carrying cost as well. It is also to be noted that the carrying cost is payable from the date when the additional expenditure is incurred by the affected party on account of Change in Law event.

63. Mere fact that the appellant had filed the petition in the instant case before the Commission in the month of March, 2021 i.e. more than three years after the issuance of the notifications in question which have been held to constitute Change in Law events, does not disentitle the appellant to claim carrying cost. What is to be seen is as to when the appellant actually suffered the impact of Change in Law events i.e. when did it start incurring additional expenditure on account of Chang in Law events. That would be the start point from which the appellant would be entitled to carrying cost on the compensation amount in line with the restitutory principle. Relevant date, therefore, is not the date of happening of Change in Law event but the date when additional expenditure is incurred by the affected party.

64. Therefore, we hold the Appellant entitled to carrying cost on the amount of compensation payable to it on account of the above noted change in law events, from the date it suffered additional expenditure, which shall have to be determined by the Commission.

[...]

66. So far as the aspect of carrying cost is concerned, we hold that the appellant would be entitled to carrying cost at LPS rates as per

Articles 8.3.5. and 8.8.3 of the PPAs on the amount of compensation from the date it has started incurring additional expenditure on account of Change in Law events.”

179. On the issue of carrying cost, reliance is also placed on:

- a) ***Uttar Haryana Bijli Vitran Nigam Limited & Anr. v. Adani Power Limited***; (2019) 5 SCC 325.
- b) ***Uttar Haryana Bijli Vitran Nigam Limited & Anr. v. Adani Power (Mundra) Limited & Anr***; (2023) 2 SCC 624.

180. **We accordingly decide that the increase in rates of taxes under the CIL Notifications qualifies as a Change in Law event, and the Appellants are entitled to compensation along with the carrying cost LPS rate in terms of the TSA.**

181. **The matter is remanded to RERC to compute the impact and compensation payable to the Appellants within 3 months from the date of this Judgment.**

Issue 6

Whether ATSCCL is entitled to compensation towards the increase in Project Cost and towards loss of revenue on account of delay due to Orders dated 30.09.2011 and 24.10.2011?

182. The Appellant has claimed compensation towards an increase in Project Cost and Loss of Revenue on account of the delay due to Orders dated 30.09.2011

and 24.10.2011. The basis for compensation by the Appellants is based on four independent grounds, namely: -

- (a) That Orders dated 30.09.2011 and 24.10.2011 passed by RERC qualify as a Change in Law under Article 12 of the TSA.
- (b) That Orders dated 30.09.2011 and 24.10.2011 passed by RERC qualify as Force Majeure Event under Article 11 of the TSA.

183. Before we analyse these claims, it is imperative that the proper contextual setting be placed. From a perusal of the pleadings, including written submissions filed by the parties, we find that the following position is undisputed:

- (a) The Appellants had complied with the TSA as regards filing of petitions for the adoption of the transmission tariff and the grant of transmission license.
- (b) That Orders dated 30.09.2011 and 24.10.2011 passed by RERC held that the competitive bidding process and the Bid Process Coordinator did not comply with the requirements set out under the Competitive Bidding Guidelines issued by the Ministry of Power, which have the force of law.
- (c) Orders dated 30.09.2011 and 24.10.2011 passed by RERC were set aside by this Tribunal vide Judgment dated 16.04.2012.
- (d) Pertinently, the impact of Orders dated 30.09.2011 and 24.10.2011 passed by RERC was neutralised only when RERC adopted transmission tariff vide Order dated 01.06.2012 and granted transmission license vide Order dated 14.08.2012, and the Government of Rajasthan issued notification under Sections 68 and 164 of the Electricity Act only on 23.10.2012.

- (e) Thus, it is only after 23.10.2012 that Appellants had regulatory certainty over the fate of their Projects.

184. At this stage, we deem it fit to state that regulatory certainty is an essential facet, particularly for projects being implemented under competitive bidding scenarios.

185. Further, Appellants have based their claim on two detailed and comprehensive notices providing proof of an increase in project cost and loss, thereby fulfilling the requirements for compensation under the Contract Act:-

- (a) Notice dated 22.09.2014 by ATSCL;
- (b) Notice dated 03.12.2014 by ATSCL;
- (c) Notice dated 26.06.2014 by MTSCCL; and
- (d) Notice dated 15.12.2014 by MTSCCL

186. We note that by way of the aforementioned notices, ATSCL provided detailed computation and basis for the increase in project cost by Rs. 35.27 Crore and by way of a notice dated 03.12.2014, gave detailed computation and basis for Rs. 30.53 Crore towards loss of revenue. In response, as per the Written Submissions filed by the Respondent, Rajasthan Discoms, the only challenge is that there is no liability to pay since the Orders dated 30.09.2011 and 24.10.2011 do not qualify as a Change in Law. It is to be noted that the Respondent, Rajasthan Discoms, have not challenged the computation and basis provided by ATSCL.

187. Rajasthan Discoms have pointed out that no relief ought to be granted to the Appellants since the delay of approximately 11 months is 3 months since the Appellants directed their contractors to resume works. However, we are not inclined to accept this contention given that conditions required under the LOI, the

TSA and the Financing Agreements was only met post 23.10.2012 when the Appellants had obtained all regulatory approvals/licenses. It is also to be noted that in terms of Article 7 of the Financing Agreements executed by the Appellants, would not be entitled to receive any monies under the Financing Agreement under the approvals under Section 68 and Section 164 were obtained. Thus, it is undisputed that the pre-requisite for release of funds was grant of transmission license and approval of tariff and other regulatory approvals under the Electricity Act, 2003.

188. Additionally, under the EPC Contract, work on the Alwar Project could not be suspended for more than 3 months. Thus, Appellants were constrained to issue the notice to resume works. It is pertinent to note that these submissions have not been disputed by the Respondent Rajasthan Discoms. However, as no funds were released till 23.10.2012, the EPC contractors were unpaid till that time and cost of materials/services also increased.

189. From the foregoing position, we hold that the Appellants have suffered financial loss on account of the Orders dated 30.09.2011 and 24.10.2011 passed by RERC. Undoubtedly, these orders and consequences thereof were outside the reasonable control of the Appellants and took up a significant portion of time, i.e., approximately 12.5 months for ATSCL.

190. Thus, basis our finding that the delay and consequent impact on account of Orders dated 30.09.2011 and 24.10.2011 were beyond the control of the Appellants, we examine the grounds basis which compensation has been claimed.

191. As regards the claim of Change in Law, this submission was considered by RERC in the Impugned Order and rejected on the following basis:-

“19. In both the petitions, it is the case of the Petitioners that the increase in their Project cost and loss of revenue is due to delay in adopting the transmission charges and granting the transmission license by the Commission and the same amount to a ‘Change in Law’ under Art. 12.1.1 of TSA. Therefore they are entitled to get compensation from Respondent Discoms for the additional cost incurred and decrease in revenues to be suffered.

[...]

22. It is the case of Petitioners that order of rejection of grant of Transmission license and non adoption of tariff discovered through competitive bidding rout initially and thereafter consequent delay in grant of License and adoption of tariff by this Commission falls within the scope of the term “Change in Law” contained in the TSA and hence the financial impact suffered on account of the same shall have to be compensated by the Respondent under Article 12.2, 12.3 & 12.4 of TSA.

[...]

26. We have carefully considered the facts as existing and submitted in this petition by the Petitioners to find -out whether the rejection of the Petitioners’ application for transmission license and adoption of tariff initially by this Commission falls within the scope of Change in Law as per Article 12.1.1 of the TSA. In our view there was no change in interpretation or application of any law by this Commission as contended by the Petitioners, so as to state that the same fall within the meaning of Article 12.1.1. This Commission did not give any new interpretation to the guidelines. It only applied the guidelines and came to the conclusion that the tariff arrived through the bids is not in accordance with the GOI guidelines and hence rejected grant of transmission license. Thus, Commission has not given any new

interpretation to the guidelines as contended but refused to adopt transmission tariff as in its view, bidding process was not done as prescribed in the bidding guidelines. Consequently, the grant of license was also rejected.

27. Further, rejection of the petitions for transmission license and adoption of transmission tariff also does not fall under fifth bulled of Article 12.1.1 which deals with change in Licensing Regulations after grant of transmission license. In this case transmission license itself was not granted. There was no change in Regulations.

[...]

29. Even assuming that these events fall within the scope of Article 12.1 since the grant of transmission license and adoption of tariff are on account of regulatory measure of this Commission. It gets covered by Article 12.1.2 and therefore does not amount to “Change in Law” Article 12.1.2 overrides Articles 12.1.1 as it is worded. [...]

[...]

35. We cannot subscribe to the arguments advanced as above. There cannot be any dispute that the contract has to be read as a whole and harmoniously so as to give a meaning to every term of the contract and no part of the contract should be otiose. The views we have taken neither makes any part of the contract otiose nor ignore the principle of interpretation of a contract as stated above.

36. In our view, the word “Regulatory Measure” use in the Article 12.1.2 of TSA has a wide connotation and definitely includes grant of license and adoption of tariff. Nobody can dispute that the grant of license and adoption of tariff are vital function of the Commission and needs to be exercised strictly in accordance with the law as they go to very root of contract. Any action taken by the Commission in performance of the above functions

cannot be considered to be new interpretation of the law or change in law, since these are within the scope of Regulatory Measure.”

192. The Respondent, Rajasthan Discoms in their position have supported the reasoning and findings of RERC in the Impugned Order.

193. Any claim for a Change in Law must satisfy the conditions laid down under Article 12 of the TSA. We have in the preceding paragraphs laid down the accepted and correct approach for determining whether an event qualifies as a Change in Law.

194. We have already hold that the Orders dated 30.09.2011 and 24.10.2011 qualify as a Change in Law. As regards compensation, we have been informed that the Appellants are not entitled to loss in revenue as the tariff period has been extended and began only upon COD. In such a scenario, we hold that the Appellants have already received compensation for the loss of revenue.

195. Accordingly, the second limb of the claim, i.e., loss of revenue, has already been taken care of by the extension of time and therefore cannot be granted.

196. However, as regards the increase in project cost, ATSCL has claimed Rs. 35.27 Crore and MTSCL has claimed Rs. 25.69 Crore. We hold that these claims were also duly provided to the Respondent Rajasthan Discoms vide Notice dated 22.09.2014 and 03.12.2014 by ATSCL and Notice dated 26.06.2014 and 15.12.2014 by MTSCL, which also provided a table detailing the specific components for the increase in Project Cost. These computations have not been disputed by the Respondent, Rajasthan Discoms.

197. However, we find that the issue was not adjudicated upon by the State Commission, accordingly, there is no reason for the Respondent to raise this issue.

198. Even otherwise, we note that the Appellants have also raised the additional independent grounds that the Orders dated 30.09.2011 and 24.10.2011 qualify as Force Majeure under the TSA. As regards this claim, we find it relevant to note that the Respondent, Rajasthan Discoms, have also admitted that the Orders dated 30.09.2011 and 24.10.2011 qualify as Force Majeure. However, Respondent Rajasthan Discoms have rejected the Appellants' claim of Change in Law on the basis that as the orders passed by RERC fall within the scope of Force Majeure under Article 11 of the TSA, the Appellants cannot be permitted to seek compensation under Change in Law provisions of the TSA under Article 12.

199. We are not inclined to accept the submission put forth by the Rajasthan Discoms on the basis that, as per settled law, one event can qualify as both Force Majeure and Change in Law. The Respondent, Rajasthan Discoms, has failed to show any provision of the TSA or applicable law that prevents the Appellants from claiming compensation under Change in Law (provided that the event qualifies as Change in Law).

200. To this end, we gainfully refer to the Judgment of this Tribunal dated 21.12.2018 in Appeal No. 193 of 2017 for **GMR Kamalanga Energy Ltd. & Anr. v. CERC & Ors.** wherein this Tribunal held that cancellation of captive coal blocks by the Hon'ble Supreme Court Judgment qualified as Force Majeure and was also squarely covered under Change in Law as defined under the Power Purchase Agreement. This Tribunal rejected the argument that since the cancellation of coal blocks was a consequence of a court decision and could be categorized as Force Majeure, it should not be treated as a Change in Law event.

201. Accordingly, the contention advanced by the Respondent, Rajasthan Discoms, deserves to be rejected.

202. Further, Rajasthan Discoms have held that the Appellants cannot be entitled to monetary relief on account of Force Majeure under the TSA. While we have held that the Orders dated 30.09.2011 and 24.10.2011 qualify as a Change in Law.

203. The TSA provides for Force Majeure and relief thereto under Article 11.7. Article 11.7 of the TSA provides for relief available for Force Majeure Events. Article 11.7(b) specifies that *‘every Party shall be entitled to claim relief for a Force Majeure Event affecting its performance in relation to its obligations under the Agreement’*.

204. Article 11.7(b) of the TSA, which provides for relief for Force Majeure, is a restitutive provision aimed at providing ameliorative relief to the Affected Party suffering from the Force Majeure event. Thus, the relief available to a party affected by a Force Majeure Event has been left to the Appropriate Commission to mould as per the facts and circumstances of the case, as also the applicable laws.

205. In this regard, it is relevant to note that Article 11.7(c) clarifies that relief under Force Majeure (wherein an element is under outage), i.e., computation of Availability will be as per regulations, and only the Non-Escalable Transmission charges, as applicable to such element, will be paid. Thus, we hold that relief under Article 11.7(b) also includes monetary compensation for Force Majeure.

206. Accordingly, we hold that the Appellants are entitled to compensation towards the increase in Project cost as claimed and are to be paid by the

Respondent within a period of 3 months. Further, given that this increased cost was incurred during the period 2012-2014, a period of approximately 10 years has already expired.

207. In view of the above, the Appellants would also be entitled to additional interest over and above the increase in Project cost claimed in the present Appeal.

208. Accordingly, even apart from the Change in Law, the Appellants are entitled to compensation given that Orders dated 30.09.2011 and 24.10.2011 qualify as Force Majeure under the TSA. Therefore, we are not examining the other grounds advanced by the Appellants for compensation, i.e., breach by Respondent Rajasthan Discoms and exercise of general regulatory power. We reiterate that we have not examined the factual position qua the legal position on these grounds.

209. Thus, issue No. 6 has two parts;

- i. Compensation towards the increase in Project Cost;
- ii. Compensation towards loss of revenue

210. The same is also acknowledged by the Discoms as constituting a Force Majeure event in their written submissions. The Appellant has demonstrated, through contemporaneous evidence, that the financing arrangement was delayed due to a lack of statutory clearances, which, in turn, delayed project execution. It is not in dispute that during the period of uncertainty, the project could not progress, and that once approvals were secured, ATSCCL resumed work at its own financial risk.

211. Insofar as the claim for loss of revenue is concerned, we agree with the Respondents that the TSA does not provide any specific basis for awarding compensation for loss of first-year tariff or consequential loss. Moreover, as the TSA is to operate for a 25-year term from the actual COD, ATSCCL would, in the ordinary course, recover its tariff in full over the tenure.

212. However, we find merit in the Appellant's claim regarding an increase in project cost. While the TSA may limit the nature of compensation for certain events, the principle of restitution and the time value of money for capital deployed beyond the scheduled date cannot be denied when the delay is attributable to regulatory orders that were later adjudged erroneous and reversed.

213. The Tribunal is therefore of the considered view that while the Appellant cannot be compensated for loss of revenue, it is entitled to be compensated for the increase in project cost incurred due to the delay caused by the Rejection Orders. The compensation shall be limited to the amount claimed towards the increase in project cost, along with applicable interest to account for the time value of money, subject to a prudence check by the Commission.

214. Accordingly, the Appellant is entitled to be paid compensation for the increase in project cost due to delay caused by RERC's Rejection Orders dated 30.09.2011 and 24.10.2011, along with applicable interest towards time value of money. The compensation is restricted to the amount claimed under the head "increase in Project Cost" subject to Prudence Check by the Commission. No separate compensation is awarded towards loss of revenue, as the same has been rendered inapplicable since the matter has already been implicitly dealt with by granting an extension of the COD and

allowing the applicable tariff to be levied for the entire duration of the TSA (25 years).

Issue 7

Whether Respondent Rajasthan Discoms are entitled to pay Rs. 2.59 Crore to ATSCCL towards transmission charges for the period 17.07.2014 to 23.08.2014?

215. We find no merit in the claim of the Appellant ATSCCL seeking Rs. 2.59 Crore towards transmission charges for the period 17.07.2014 to 23.08.2014, as loss of revenue, reasons as considered under Issue No. 6. Though the Appellant vide its letter dated 10.07.2014 had informed the Respondents that the project was ready and sought declaration of COD as 17.07.2014 in terms of Article 6.2 of the TSA, the Rajasthan Discoms, vide their letter dated 10.10.2014, accepted the Commercial Operation Date as 23.08.2014 without any objection raised by the Appellant contemporaneously.

216. **Further, since we have above in this judgment upheld the Appellant's entitlement to compensation for cost escalation along with an applicable interest towards time value of money due to regulatory delays and change in law, allowing transmission charges for the disputed interim period would result in double recovery for overlapping claims.**

217. **Accordingly, we hold that the Appellant is not entitled to the amount of Rs. 2.59 Crore towards transmission charges for the said period. This issue is answered in the negative.**

Issue 8

Whether Respondent Rajasthan Discoms are entitled to Rs. 1.27 Crore towards damages for delay by ATSCCL in achieving COD of the Alwar Project?

218. We have considered the rival submissions and perused the record. The relevant facts are not in dispute. The Scheduled Commercial Operation Date (SCOD) of the Alwar Project as per the Transmission Service Agreement (TSA) dated 19.01.2011 was 18.01.2013. However, the actual Commercial Operation Date (COD) was achieved on 17.07.2014. The Appellant ATSCCL has submitted that the delay in achieving COD was not attributable to it but arose due to orders passed by the State Commission on 30.09.2011 and 24.10.2011, whereby the Commission declined to adopt the tariff and refused the grant of transmission licence, holding the bid process to be defective.

219. This view was later set aside by this Tribunal by order dated 16.04.2012 in Appeal Nos. 177 & 181 of 2011, and RERC subsequently adopted the tariff and granted the transmission licence.

220. It is the case of ATSCCL that the delay in commissioning was directly caused by the uncertainty and regulatory impediments created by the said orders of the Commission. Consequently, ATSCCL could not achieve financial closure or proceed with construction in a timely manner. The Government of Rajasthan issued the final approval under Sections 68 and 164 of the Electricity Act, 2003 only on 23.10.2012. Thus, the commissioning timeline stood effectively disrupted by reasons beyond the control of ATSCCL.

221. We note that the Rajasthan Discoms, while levying Rs. 1.27 Crore as liquidated damages for the delay in COD, had themselves accepted the extended

COD as 23.08.2014, vide their letter dated 10.10.2014, without any contemporaneous protest or reservation of rights. Further, vide their communication dated 30.05.2013, Ajmer Vidyut Vitran Nigam Ltd., one of the Respondents, had extended the SCOD till 17.07.2013, thereby acknowledging the extension. No formal notice of the levy of liquidated damages appears to have been issued prior to the alleged deduction. The Appellant has also pointed out that Article 6.4.1 of the TSA contemplates the levy of damages only if delay is attributable to the transmission licensee and not otherwise.

222. We also find merit in the Appellant's reliance on the judgment of this Tribunal in ***Western Region Transmission (Maharashtra) Pvt. Ltd. v. CERC & Ors.*** (Appeal No. 86 of 2015, Judgment dated 06.04.2016), where this Tribunal held that no liquidated damages could be levied for delays caused by Force Majeure or Change in Law events. The orders passed by the Commission, having been subsequently found to be incorrect by this Tribunal and causing a complete halt in the licensing and tariff adoption process, clearly fall within the category of force majeure and/or Change in Law events. We also note that the Respondents in their written submissions have themselves acknowledged that these events may be treated as Force Majeure.

223. Furthermore, settled jurisprudence, including the Hon'ble Supreme Court's rulings in *Kailash Nath Associates v. DDA* [(2015) 4 SCC 136], *Fateh Chand v. Balkishan Dass* [1963 AIR SC 1405], and *Maula Bux v. Union of India* [(1969) 2 SCC 554], lays down that liquidated damages can only be recovered if actual loss is proved or is evident on record. No such proof has been adduced by the Respondents to substantiate that any actual financial loss was suffered on account of the delay in achieving COD.

224. In light of the above, we find that the levy and recovery of Rs. 1.27 Crore towards liquidated damages by the Rajasthan Discoms is unjustified and contrary to the contractual framework and settled principles of law. The delay in COD was on account of events beyond the control of ATSCCL and was occasioned by regulatory impediments attributable to the Commission's actions, later found to be untenable.

225. Accordingly, Issue No. 8 is decided in favour of the Appellant. The Respondents are directed to refund the amount deducted as liquidated damages, along with carrying costs from the date of deduction till the date of refund.

ORDER

For the foregoing reasons as stated above, we are of the considered view that the captioned Appeal Nos. 59 of 2016 and 60 of 2016 have merit and are allowed. The Impugned Order dated 28.12.2015 passed by RERC in Petition No. 501 of 2015 and 466 of 2014 is hereby set aside. The following is directed in both the Captioned Appeals:

The increase in rates of taxes (Service Tax and Excise Duty) under the CIL Notifications qualifies as a Change in Law event and the Appellants are entitled to compensation along with the carrying cost @ LPS in terms of the TSA.

The Appellant is entitled to be paid compensation for the increase in project cost due along with applicable interest towards time value of money. However, no compensation is allowed towards loss of revenue.

The Respondents are directed to refund the amount deducted as liquidated damages, along with carrying costs from the date of deduction till the date of refund.

The matter is remanded to RERC to compute the impact and compensation payable to the Appellants within 3 months from the date of this Judgment.

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

PRONOUNCED IN THE OPEN COURT ON THIS 07th DAY OF JULY, 2025.

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member

REPORTABLE / NON-REPORTABLE

pr/mkj/kks