

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

**APPEAL Nos. 385 & 393 of 2022**

Dated : 11<sup>th</sup> September, 2025

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

**In the matter of :**

**APPEAL No. 385 of 2022**

**Kharghar Vikhroli Transmission Limited**

*Through its Authorised Representative*

Adani Corporate House,  
Shantigram, S G Highway,  
Ahmedabad 382 421, Gujarat, India  
Email: [bhavesk.kundalia@adani.com](mailto:bhavesk.kundalia@adani.com)

... Appellant

*Versus*

**1. Maharashtra Electricity Regulatory Commission**

*Through its Secretary*

World Trade Centre, Centre No. 1,  
13<sup>th</sup> Floor, Cuffe Parade,  
Mumbai – 400 005  
Email: [mercindia@merc.gov.in](mailto:mercindia@merc.gov.in)

**2. Maharashtra State Electricity Transmission Company**

*Through its Chairman and Managing Director*

Prakashganga, Plot C-19, E-block,  
Bandra-Kurla Complex, Bandra (E),  
Mumbai – 400051  
Email: [agmfirc@mahatransco.in](mailto:agmfirc@mahatransco.in)

**3. Maharashtra State Electricity Distribution Company Limited**

*Through its Chairman and Managing Director*  
Prakashgadh, Plot No. G-9  
Dr. Anant Kanekar Marg, Bandra(East)  
Mumbai – 400 051  
Email: [setrcmsedcl@gmail.com](mailto:setrcmsedcl@gmail.com)

**4. Tata Power Company - Distribution**

*Through its Managing Director*  
Backbay Receiving Station,  
148, Lt. Gen. 1,  
Bhosale Marg, Nariman Point,  
Mumbai – 400092  
Email: [prashant.kumar@tatapower.com](mailto:prashant.kumar@tatapower.com)

**5. Adani Electricity Mumbai Limited- Distribution**

*Through its Managing Director*  
AEML, CTS 407/A (New), 408 Old Village,  
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Near Devidas Telephone Exchange,  
Borivali (East), Mumbai – 400051  
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**6. Barihanmumbai Electric Supply and Transport**

*Through its Managing Director*  
Best Bhavan, Best Marg, Colaba,  
Mumbai – 400 001  
Email: [deemerc@bestundertaking.com](mailto:deemerc@bestundertaking.com)

**7. Mindspace Business Park Pvt. Ltd.**

*Through its Managing Director*  
Plot No. C 30, Block G, Bandra Kurla Complex,  
Bandra (East), Mumbai – 400 051  
Email: [krcpower.ho@kraheja.com](mailto:krcpower.ho@kraheja.com)

**8. Gigaplex Estate Pvt. Ltd., Raheja Tower**

*Through its Managing Director*  
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Bandra (East), Mumbai – 400 051  
Email: [krcpower.ho@kraheja.com](mailto:krcpower.ho@kraheja.com)

**9. Nidar Utilities Panvel Limited Liability Partnership**

*Through its Managing Director*  
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**10. Central Railway H.Q.**

*Through its Managing Director*  
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Harinder Toor  
for Res. 6

**APPEAL No. 393 of 2022**

**Maharashtra State Electricity Distribution Company Limited**

*Through its Chief Engineer*

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Anant Kanekar Marg, Bandra(East)

Mumbai – 700051

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*Versus*

1. **Maharashtra Electricity Regulatory Commission**  
*Through its Secretary*  
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3. **Maharashtra State Electricity Transmission Company**  
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4. **Tata Power Company Limited - Distribution**  
*Through its MD*  
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5. **Adani Electricity Mumbai Limited Distribution**  
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for Res. 11

## **J U D G M E N T**

### **PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER**

1. Both these appeals arise out of the order dated 2<sup>nd</sup> August, 2022 passed by Maharashtra Electricity Regulatory Commission (hereinafter referred to as “the Commission”) in Case No. 142 of 2021 thereby holding the increase of price of Rs.71.70/- crore for Vikhroli land parcel as a Change in Law event in terms of Article 12 of the Transmission Service Agreement (in short “TSA”) executed between the parties and directing the respondents to compensate Kharghar Vikhroli Transmission Ltd. (in short “KVTL”) accordingly. However, the Commission did not allow carrying cost on the compensation amount.
2. Since both these appeals arise out of the same order of the Commission and involve same facts and circumstances, we find it

appropriate to take up both the appeals for disposal vide this common judgement.

3. In order to avoid any confusion, we shall be referring to the parties in both the appeals as per their names instead of Appellant and Respondents.

**Brief Conspectus of the case :**

4. Brief facts and circumstances of the case which are germane for disposal of these two appeals, are noted hereinbelow :-

(a) The appeals relate to 400 KV Kharghar Vikhroli Project (hereinafter referred to as “Project”).

(b) Kharghar Vikhroli Transmission Ltd. (KVTL) – Appellant in Appeal No. 385 of 2022, is a Special Purpose Vehicle in short “SPV” formed as a company for the purpose of implementing the said project i.e. 400 KV Vikhroli receiving station and associated incoming transmission lines, inter alia, for strengthening the Mumbai Transmission System (“Project”). It is a transmission licensee for the propose of Section 2(73) of the Electricity Act having been granted license by the Commission vide order dated 23<sup>rd</sup> January, 2021 passed in

Case No. 141 of 2020. Earlier, at the time of filing petition before the Commission it was a Private Limited Company by the name Kharghar Vikhroli Transmission Pvt. Ltd. (KVPTL). During the proceedings of the petition, it was converted from private to public company with the changed name as Kharghar Vikhroli Transmission Ltd. (KVTL).

- (c) Maharashtra State Electricity Transmission Company Ltd. (in short MSETCL), which is impleaded as Respondent No. 2 in Appeal No. 385 of 2022 and Respondent No. 3 in Appeal No. 393 of 2022 is a wholly owned corporate entity of the Govt. of Maharashtra and is a State Transmission Utility (STU) in terms of Section 2(67) of the Electricity Act, 2003. It performs obligation as an operator of transmission in the State of Maharashtra. Maharashtra State Electricity Development Corporation Ltd. (in short MSEDCL) which is Appellant in Appeal No. 393 of 2022 and Respondent No. 3 in Appeal No. 385 of 2022 alongwith. Tata Power Company Ltd. – Distribution (in short TPCL-D), Adani Electricity Mumbai Limited – Distribution (in short AEML – D), Brihanmumbai

Electricity Supply and Transport (in short BEST), Mindspace Business Park Private Ltd. (MBPPL), Gigaplex Estate Pvt. Ltd. (GEPL), Nidar Utilities Panel LLP and Central Railways which are impleaded as Respondents in both the appeals, had executed the Transmission Service Agreement dated 14<sup>th</sup> August, 2019 with KVTL for transmission of electricity through Tariff Based Competitive Bidding (TBCB) for establishing the project.

- (d) The project was initially contemplated to be implemented by Tata Power Corporation – Transmission (in short TPC-T) in terms of Section 62 of the Electricity Act, 2003. However, owing to gross delays on the part of TPC-T in establishment of the project, the Commission vide order dated 12<sup>th</sup> September, 2018 passed in Case No. 204 of 2017 directed that the project be treated as deemed closed.
- (e) Thereafter, it was decided that the project be established through TBCB under Section 63 of Electricity Act, 2003. MSETCL was appointed as Bid Process Coordinator (BPC) for the purpose of selection of the bidder as the transmission

service provider in order to establish the project on Build, Owned, Operate and Maintain (BOOM) basis. Accordingly, MSETCL (BPC) issued Request for Qualification (RFQ) on 24<sup>th</sup> April, 2019 which was followed by Request For Proposal (RFP) on 22<sup>nd</sup> June, 2019. In terms of clause 1.4 of RFP, MSETCL informed the bidders on 22<sup>nd</sup> July, 2019 that the indicative acquisition price for the project was Rs.152.65/- crores (Rs.135.44/- crores as pre-development expenses in addition to Rs.17.21/- crores as Bid Process Cost). The pre-development expenses included Rs.26/- crores towards purchase of Vikhroli Land parcel. Survey Report was provided to the qualified bidders on 5<sup>th</sup> July, 2019.

- (f) Subsequently, TSA dated 14<sup>th</sup> August, 2019 came to be signed between KVTL and Long Term Transmission Customers (LTTCS) i.e. Respondent No. 2 to 10 in Appeal No. 385 of 2022 and Respondent No. 3 to 10 in Appeal No. 393 of 2022.
- (g) M/s Adani Transmisison Ltd. (ATL) was declared successful bidder. Accordingly, MSETCL issued Letter of Intent (LoI) dated 12<sup>th</sup> December, 2019 in favour of ATL. ATL executed

Share Purchase Agreement dated 25<sup>th</sup> June, 2020 to acquire 100% share holding in the Special Purpose Vehicle i.e. KVTL.

(h) Thereafter, a host of correspondence came to be exchanged between ATL, KVTL, MSETCL, MSEDCL, TPC-D, TPC-T and Godrej & Boyce on various issues such as transfer of land, clearances, approvals etc. The relevant communications exchanged between the parties along with chronology of material events is depicted in the following table :-

Sr. No.	Date of Correspondence	Particulars of the events
1.	06 .04.2011	A parcel of land admeasuring 8015.12 Sq. M. (" <b>Plot-A</b> ") located at Vikhroli was sold by Godrej to TPC-T against a consideration of Rs. 24.68 Crore. The cost was decided on the basis of the prevalent ready Reckoner Rate. The possession of the land was taken over by TPC-T on 31.10. 2011.
2.	30.07.2011	Godrej agreed to handover possession of the Plot-A and Plot-B at Vikhroli, on account of urgency expressed by TPC, with certain terms and conditions. One of the conditions was for TPC to secure all necessary sanctions and the plan approvals regarding acquisition of the Plot-A and Plot-B within a maximum period of 12 months alongwith other condition of not to transfer

		or assign either Plot-A or Plot-B or any part thereof to any person or body without prior express permission in writing from Godrej.
3.	12.09.2018	Considering the inordinate delay in execution of the 400kV Vikhroli Project, the Commission passed an Order in Case No. 204 of 2017 deciding to treat the Vikhroli Project as deemed closed. The Commission also directed STU to submit its report to the Commission on review of TPC-Ts proposed 400 kV Vikhroli Receiving Station within a month.
4.	31.10.2018	TPC-T filed Appeal No. 88 of 2019 against the Order dated 12.09.2018 before the Hon'ble APTEL.
5.	02.01.2019	TPC-T sought review of MTR Order dated 12.09.2018. The prayer therein was limited to a withdrawal of the direction of deemed closure and grant of permission to TPC-T to continue and execute the Vikhroli Project. (Case No. 03 of 2019)
6.	29.01.2019	The Commission dismissed Case No. 3 of 2019 filed by TPC-T. The Commission also directed STU to submit its recommendations regarding execution of the 400 kV Vikhroli Transmission Project under TBCB as per GoM's Resolution dated 04.01.2019. STU was also directed to setup a credible mechanism for continuous monitoring of the project to ensure that the project remains on track to avoid any further delay.
7.	24.04.2019	MSETCL issued RFQ for the establishment of 400kV Vikhroli Project under TBCB.

8.	15.06.2019	TPC-T informed that in order to develop the Project, TPC-T had incurred Rs. 135.44 Crore till 31.05.2019 towards procurement of land parcels, surveys, statutory approvals, design, engineering, and other developmental charges etc. The documents for the Project would be given by TPC-T to SPV upon payment of such pre-development expenses.
9.	20.06.2019	<p>The Commission issued a letter to MSETCL and TPC-T informing that:</p> <p>(a) In the RFP to be issued for the Project, the bidders are to be informed that the predevelopment expenses incurred by TPC-T Rs. 135.44 Crore will have to be paid by the successful bidder to SPV, which in turn would pay to TPC-T.</p> <p>(b) Any deviation in this pre-development expense on account of transfer of approval/clearances/land etc. in favour of the SPV shall be claimed by TPC-T in its upcoming tariff Petition.</p> <p>(c) TPC-T would provide its NOC for transfer of the land acquired for the Project and clearance along with the documents for issuance of RFP.</p> <p>(d) STU shall ensure that there would not be double recovery of expenses.</p>
10.	22.06.2019	MSETCL issued Request for Proposal.



11.	28.06.2019 (As per MoM dated 29.06.2019)	Meeting held between CMD, MSETCL and TPC-T regarding the transfer of documents, clearance, and permissions by TPC-T to the proposed SPV for the Project. MoM of the meeting dated 28.06.2019 were issued on 29.6.2019. TPC was directed to obtain the NOC of Godrej for transfer of Vikhroli land. TPC-T was asked to approach the Commission in respect of the directions issued on 20.6.2019, if it has any issues on expenses related to transfer of approvals/clearances/land, etc which can be claimed by TPC in its Tariff Petition.
12.	12.07.2019 (MoM 16.7.2019)	A meeting was held in presence of Energy Secretary, CMD MSETCL, STU and TPC-T. It was decided that TPC-T will approach the Commission in respect of the directions issued on 20.6.2019 if it has any issues on expenses related to transfer of approvals/clearances/land, etc which can be claimed by TPC in its Tariff Petition.
13.	18.07.2019	MSETCL by its pre-bid clarification provided a breakup of the pre- development expenses which is part of the acquisition price. The Breakup included Rs. 26.00 Crore towards the Purchase cost of Vikhroli land Parcel "A". The breakup also includes the cost of Rs. 44.68 Crore for purchase of land at Khargar. It was mentioned that land is available and is in possession of TPC-T. The land will be transferred to the SPV after completion of the bidding.
14.	22.07.2019	In terms of Clause 1.4 of RFP, MSETCL informed the Bidders that the indicative acquisition price was Rs. 152.65 Crores (Rs. 135.44 Crores Pre-development expenses in addition to Rs. 17.21 Crores as bid process cost of BPC. The Said pre-development expenses includes Rs.26 Crore towards purchase cost of Vikhroli Land Parcel "A").

15.	22.07.2019	TPC-T wrote letter to MSETCL regarding NOC for transfer of Vikhroli Parcel A & B. Further, it also specified that prior written approval is required from Godrej before transfer of Land Parcel.
16.	14.08.2019	<p>TSA was executed between the Petitioner/SPV and LTTCs. Article 12 of the TSA specifically provided 'Change in Acquisition Price' as Change in Law event.</p> <p>As per Article 12.1 of TSA, the cut-off date for invoking change in law clause was seven (7) days prior to Bid Deadline of 21.08.2019. Therefore, cut-off date for the purpose of Change in Law is 14.08.2019.</p>
17.	23.09.2019	The Hon'ble APTEL dismissed TPC's Appeal No. 88 of 2019 challenging the Commission's Order dated 12.09.2018 whereby the Commission directed that the Scheme for development of the Project is being treated as deemed closed.
18.	12.12.2019	Letter of Intent (LoI) was issued to ATL upon it emerging as the successful bidder for the Project. ATL was also requested to inter alia comply with the terms of the RFP, including Clause 2.4, 2.5 and 2.6 within the timeline prescribed therein.
19.	26.12.2019	<p>TPC-T issued a letter to Godrej stating:</p> <p>(a) Plot-A had been acquired from Godrej against a consideration. Although TPC-T remained in possession of the plot since 31.10.2011, various formalities and a litigation in the Bombay HC were pending, which had delayed acquisition.</p> <p>(b) Plot-B had been acquired under a duly registered conveyance deed from the Governor of Bombay.</p> <p>(c) The Vikhroli Project, which required both plots of land, is to</p>

		<p>be executed by KVTPL as a result of the TBCB process.</p> <p>(d) MSETCL asked TPC-T to submit all original documents pertaining to the Project.</p> <p>(e) Thus, Godrej was requested to issue an NOC to facilitate the transfer of Plot-A to KVTPL.</p>
20.	06.01.2020	<p>ATL transferred funds of Rs. 17.21 Crore towards Bid Process Cost and requested resolution of key issues related to project before balance indicated acquisition price Rs. 135.44 Crore as per RFP is transferred.</p>
21.	10.01.2020	<p>A meeting was held between MSETCL (STU and BPC), ATL, TPC-T and Godrej pursuant to ATL's letter dated 6.01.2020. In the meeting, the following issues were resolved, inter alia:</p> <p>(a) Parties to explore the possibility of providing NOC for the Plot "A" and "B" of land so that the Project could be undertaken swiftly.</p> <p>(b) MSETCL, as BPC, will provide the original copies of all approvals etc. already provided by TPC-T.</p>
22.	29.01.2020 And 31.01.2020	<p>Pursuant to the meeting of 10.01.2020, ATL issued letters to Godrej and requested for transfer of Plot-A on an as-is basis while resolution of the issue of ownership of Plot-B and other related issues is arrived at.</p>
23.	31.01.2020	<p>Godrej rejected ATL's proposal of handing over Plot-A on an as-is basis in view of the delay in land acquisition by TPC-T, while keeping the door open for any other reasonable proposal.</p>
24.	11.02.2020	<p>ATL issued another letter to TPC-T stating that it had paid the bid processing charges and reimbursed MSETCL/BPC expenses. It was now in the process of clearing the pre-</p>

		development expenses subject to transfer of title of Plot-A and B, execution of modified lease deed for Kharghar land etc.
25.	15.02.2020 (As per MoM 20.2.2020)	A meeting was held between the CMD MSETCL, TPC-T and ATL, Godrej. The suggestions recorded were as follows: (a) MSETCL suggested that cost of Plot-B be recovered by TPC-T in its upcoming ARR. (b) For Plot-A, MSETCL shall write to Godrej requesting an early NOC. (c) ATL agreed to pay the pre-development expenses upon the (d) suggestion of MSETCL.
26.	15.02.2020	ATL requested MSETCL for an extension of the bid validity period up to 31.03.2020. This was accepted by MSETCL on 17.02.2020.
27.	27.02.2020	The CMD MSETCL wrote to the Chairman Godrej requesting for a resolution in the transfer of Vikhroli Land Plot-A to KVTPL.
28.	03.03.2020	For the first time Godrej communicated a demand for payment of additional consideration for Vikhroli land parcel "A" as per the Ready Reckoner Rate of Rs. 85,900 / sq.mtr. for transfer of the land to KVTPL.
29.	05.03.2020	Godrej sent an email enclosing the draft tripartite agreement to be executed by and in between ATL, Godrej and the Petitioner. The agreement, inter alia, provided that NOC would be given by Godrej, for transfer of land to the SPV on payment of an additional amount of Rs. 71.70 Crore towards difference in the prevalent Circle Ready Reckoner rate and the Circle Ready

		Reckoner rate existing on the date of transfer of land to TPC in the year 2011.
30.	30.03.2020	ATL again requested MSETCL for an extension of the bid validity period up to 31.05.2020. This was accepted by MSETCL on 31.03.2020.
31.	30.03.2020	The Commission passed its Order in TPC-T's MYT Petition being Case No. 299 of 2019 wherein the Commission has observed that TPC-T's additional claim of Rs. 52.20 Crore towards pre-development expenses was a mere estimate and was premature to evaluate. Therefore, the Commission has not considered any impact /recovery of pre- development expenditure of Rs 135.55 Crore as well as additional claim of Rs.52.20 Crore in MYT Order.
32.	08.04.2020	ATL communicated to MSETCL about its willingness to pay Rs.135.44 Crore and sought MSETCL's approval for the additional amount of Rs.71.70 Crore demanded by Godrej. ATL further it stated that additional amount being paid shall be considered as Change in Law. ATL also requested MSETCL to expedite the transfer of SPV.
33.	14.04.2020	In response to ATL's letter dated 08.04.2020, MSETCL issued a letter stating that in terms of Clause 2.4 of the RFP and the meeting held on 15.02.2020, ATL is required to clear the pre-development expenses in order to facilitate transfer to the SPV (KVTPL) from ATL.
		ATL issued another letter to MSETCL stating that it has no problem in paying the pre-development expenses subject to MSETCL confirming that it will verify the expense in terms of the

34.	20.04.2020	Commission's Order passed on 30.03.2020. Consent of MSETCL was requested for paying Godrej an additional cost for Plot-A and clearing the pre-development expenses.
35.	21.4.2020	MSETCL informed ATL that it has sought details from TPC-T in terms of the Commission's Order dated 30 March,2020. Further, MSETCL stated that the issue of payment of Rs. 71.70 Crores by ATL and applicability of Change in Law was being examined for necessary action.
36.	29.05.2020	ATL issued a letter to MSETCL informing that it had paid the pre-development expenses of Rs. 135 Crore. On the same day, ATL requested for another extension of the bid validity, which was accepted by MSETCL by granting extension till 10.07.2020.
37.	11.06.2020	MSETCL stated that issue of additional payment of Rs. 71.70 Crores to Godrej was referred to the Empowered Committee (EC) setup for TBCB by GoM. As per MoM of EC dated 30.05.2020, the issue of payment of Rs. 71.70 Crore to Godrej for acquiring NOC / handing over of land and claiming same under Change in Law raised by ATL, recommended to approach the Commission for necessary adjudication and decision.
38.	25.06.2020	Share Purchase Agreement signed between MSETCL, KVTPL and ATL for acquisition of SPV by ATL.
39.	07.07.2020	The Petitioner filed the Case No. 142 of 2020 for adoption of Tariff. In the Petition it was submitted that Acquisition of SPV was delayed because of issues related to the Vikhroli land for substation. ATL has submitted the bid for the aforesaid project considering the acquisition cost of Rs. 135 Crore towards the developmental charges by TPC-T for the Project. However, any change over and above Rs.135 Crore, qualifies as change in

		acquisition price and will fall under Change in Law (CIL) as per Article 12 of the TSA. In the event of an increase in the acquisition price, KVTL reserved its rights to file a separate Petition in respect of reliefs in relation to the same.
40.	07.07.2020	The Petitioner (without prejudice to its rights otherwise) made payment of this amount of Rs. 71.70 Crore to Godrej, to secure transfer of the Vikhroli land parcels. The Petitioner paid this additional amount in order to complete the project in time bound manner and in the interest of the Consumers of Mumbai.
41.	13.07.2020	ATL wrote to TPC-T stating that Godrej has agreed to issue its NOC for transfer of Plot-A and therefore, TPC-T may coordinate such transfer.
42.	20.07.2020	The Petitioner issued change in law notice in terms of Article 12 of TSA to the LTTCs/Respondent Nos. 2 to 9.
43.	22.07.2020	MSETCL informed ATL that to protect the interest of all stakeholders, it had transferred the pre-development expenses paid by ATL from KVTPL's account to that of MSETCL's, pending verification of the said expenses. Once verified, TPC-T shall be reimbursed. In the meanwhile, ATL was requested to go ahead with execution of the Project.
44.	11.8.2020	MSEDCL in Case No. 142 of 2020(Tariff Adoption Petition) submitted that KVTPL should restrict itself to the claims regarding adoption of tariff only as the Petition was for adoption of tariff for Vikhroli Project. For any claims pertaining to CIL, KVTPL may approach the Commission separately and the Commission may allow the same only after prudence check. Similar submission was made by other LTTCs.

45.	26.08.2020	Godrej handed over its NOC for transfer of Plot-A to KVTPL.
46.	28.8.2020	MSEDCL, in reply to the Petitioner's CIL notice dated 20.7.2020, has denied the claim stating that BPC as well as EC has not considered Rs. 71.70 Crore as part of the Acquisition Price and recommended to approach the Commission. Hence, Rs 71.70 Crore paid to Godrej towards difference in the prevalent Circle rate and the Circle rate existing on the date of transfer of land to TPC, does not satisfy the condition of Change in Law as defined in Article 12 .1.1 of the TSA.
47.	14.09.2020	<p>The Commission issued a letter to MSETCL, inter-alia, stating that:</p> <p>(a) Rs. 118.27 Crore has been approved as the pre-development expenses of TPC-T as validated by STU.</p> <p>(b) TPC-T's may consider its additional expense of Rs. 52.20 Crore (One time lease cost of Land Parcel B, RoW cost, GST etc.,) as a deviation against the pre-development expenses and claim it in its next ARR.</p> <p>(c) TPC-T to hand over "possession" of the Plots in Vikhroli to KVTPL for execution of the Project.</p>
48.	20.9.2020	The Petitioner in Reply to MSEDCL letter dated 28.8.2020 (reply to CIL notice) denied the contentions of MSEDCL and stated that EC has asked to refer the matter of amount of Rs. 71.70 Crore to the Commission. EC has not denied considering this cost as an Acquisition Price as contended by MSEDCL. Accordingly, the Petitioner will approach the Commission at appropriate time to claim the CIL for payment made to Godrej.



49.	03.10.2020	<p>The Commission issued a letter to MSETCL, TPC-T and ATL directing:</p> <p>(a) TPC-T to handover transfer “possession of the complete land, documents, permissions etc., ” at Vikhroli to KVTPL.</p> <p>(b) MSETCL to transfer the validated pre-development expense of Rs.118.27 Cr. to TPC-T.</p>
50.	05.10.2020	<p>TPC-T issued a letter to KVTPL stating that:</p> <p>(a) Rs. 20.5 Cr. would have to be paid for transfer of Plot-B through a lease deed.</p> <p>(b) The RoW for the Nerul to Vashi Creek would be shared under an agreement subject to payment of Rs. 13.45 Cr.</p>
51.	07.10.2020	TPC-T issued a letter to the Commission stating that TPC-T is going ahead with the transfer of the complete land at Vikhroli in terms of the letter dated 03.10.2020 issued by the Commission.
52.	16.12.2020	TPC-D in reply to the Petitioner’s CIL notice, denied the claim stating that additional payment of Rs.71.70 Crore made by ATL to Godrej does not amount to an increase in Acquisition Price and falls within the obligation of ATL under Article 4.1 of the TSA.
53.	5.1.2021	In reply to the TPC-D’ letter dated 16.12.2020, the Petitioner stated that it has paid the Amount to Godrej after the bid due date, and it qualifies as CIL in terms of Article 12.1 of the TSA.
54.	23.01.2021	The Commission granted the Transmission Licence to KVTPL in Case No. 141 of 2020 and also adopted the tariff derived under TBCB in Case No. 142 of 2020. The Commission in Case No. 142 of 2020 has ruled that Petition if any is filed by KVTPL in future for CIL, the Commission shall provide due opportunity to the concerned Stakeholders/Respondents to file their submission/arguments.

55.	1.11.2021	Present Petition filed by the KVTL under CIL with copy of its Petition to all LTTCs.
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- (i) It appears that during the course of such exchange of correspondence, ATL was informed about the requirement of paying additional money to Godrej and Boyce in order to obtain their No Objection Certificate for acquisition of Vikhroli land parcel. Accordingly, KVTL was constrained to make additional payment of Rs.71.70/- crores to Godrej and Boyce in this regard on 14<sup>th</sup> August, 2019 i.e. after the cut-off date thereby increasing the acquisition price of the land parcel. On account of the same, KVTL issued Change in Law notice dated 20<sup>th</sup> July, 2020 to MSEDCL in terms of Article 12 of the TSA, which was rejected by MSEDCL vide reply dated 28<sup>th</sup> August, 2020.
- (j) In view of the same, KVTL approached the Commission by way of case No. 142 of 2021 seeking compensation for the said Change of Law event. The prayers made in the petition were as under :-

- (a) *“Hold and declare that increase in Acquisition price of Rs. 71.70 Cr for Vikhroli Land Parcel is a change in law event in terms of Article 12 of the TSA.*
- (b) *Hold and declare that the Petitioner is entitled for carrying cost in accordance with the inherent restitution principle for compensation of Change in Law.*
- (c) *Direct the Respondents to pay the compensation corresponding to increase in Acquisition Price of Rs. 71.70 Cr at the rate of 5.112% of monthly transmission charges in accordance with Article 10.10 and 12.2.1 of the TSA.*
- (d) *Direct the respondents to pay carrying cost at the rate of 9.35% on compound interest basis.---*”
- (k) Upon noting the background of the case and on the basis of contentions/submissions of the parties, the Commission had framed following two issues for its consideration :-

*Issue No. 1 : Whether additional amount of Rs. 71.70 Crore paid by the Petitioner to Godrej towards Vikhroli Land Plot “A” for obtaining NOC during construction period which has changed / increased Acquisition Price is a Change in Law in terms of Article 12 of the TSA?*

*Issue No. II: If the additional amount of Rs. 71.70 Crore is entitled to be claimed under Change in Law, then whether the Petitioner is entitled for carrying cost in accordance with the restitution principle of Change in Law as claimed?*

- (I) The petition was disposed off by the Commission vide impugned order dated 02.08.2022. The Commission decided the Issue No. 1 in favour of KVTL holding it entitled to claim the additional cost of Rs.71.71/- crores, paid by it to Godrej to acquire the Vikhroli Land Parcel, in terms of Article 12 of the TSA. However, the Commission decided the Issue No. 2 against KVTL thereby rejecting its claim for carrying cost on the compensation amount.

5. MSEDCL has assailed the said order of the Commission in Appeal No. 393 of 2022 in so far as it holds KVTL entitled to claim additional cost of Rs.71.71 crores in terms of Article 12 of TSA. KVTL has impugned the said order of the Commission by way of Appeal No. 393 of 2022 in so far as it has declined carrying cost on the compensation amount.

6. We may note that initially Tata Power Company – Transmission (TPC-T) was not a party to these appeals. It was in pursuance to order dated 20<sup>th</sup> August, 2024 passed by this Tribunal in these appeals that TPC-T was impleaded as Respondent No. 11 in Appeal No. 393 of 2022.

7. We have heard Mr. G. Sai Kumar, Learned Senior Counsel appearing on behalf of MSEDCL, Ms. Deepa Chawan, Learned Senior Counsel appearing on behalf of KVTL, Mr. Sajan Poovayya, Learned Senior Counsel appearing on behalf of TPC-T, Mr. Buddy Ranganadhan, Learned Senior Counsel appearing on behalf of BEST and Shri Venkatesh, Learned Counsel appearing on behalf of TPC-T.

8. We have also gone through written submission filed by Learned Counsels.

**Our Analysis :**

**Appeal No. 393 of 2022**

9. The issue which arise for our consideration in this appeal is :-

*“Whether the additional amount of Rs.71.70/- crores paid by KVTL to Godrej and Boyce towards the Vikhroli Land Parcel for obtaining NOC during pre-construction period thereby increasing the*

*acquisition price of the land parcel, constitutes Change in Law Event in terms of Article 12 of the TSA?”*

10. Clause 1.6.2 of the RFQ envisages the scope of responsibilities of the Bid Process Coordinator (BPC) as well as the expenditure to be incurred by it for arranging the approvals or consents including acquisition of land parcel to be recovered from Transmission Service Provider i.e. KVTL. The clause is extracted herein below:-

*“1.6.2 Scope of Bid Process Coordinator (BPC)*

*1.6.2.1 To obtain approval for laying of overhead transmission lines under section 68 of Electricity Act, from Appropriate Government.*

*1.6.2.2 BPC or its authorized representative may arrange to carry out the following activities to expedite the Project.*

**a) To initiate acquisition of land for location specific substations and/or switching stations b) To initiate process of seeking forest clearance, if required.**

*1.6.2.3 The details and documents as may be obtained by the BPC in relation to the Project shall be **handed over to the TSP on as-is-where-is basis, so that it may take further actions to obtain Consents, Clearances and Permits. ---***

*1.7 All costs (including direct and indirect) incurred by the BPC in connection with the activities concerning the Project shall be*

*recovered from the TSP, details of which will be provided during the RFP stage.”*

*(Emphasis supplied)*

11. As per the said clause of RFQ, BPC was required to hand over all the documents related to the project to TSP i.e. KVTL on as-is-where-is basis, and, thereafter, TSP was required to take further action in obtaining consents, clearances and permits.

12. Clause 1.8 of the RFP provides that the documents obtained by BPC in relation to the project shall be handed over to the Successful Bidder on ‘as is where basis’ so as to enable the successful bidder to obtain all necessary Consents, Clearances and Permits. The clause is reproduced hereinbelow :-

*“ 1.8 Once the Successful Bidder is selected, the details and documents as may be obtained by the BPC in relation to the Project, shall be handed over to the Successful Bidder on as is where basis, so that it may take further actions to obtain all necessary Consents, Clearances and Permits and the TSP shall not be entitled for any extensions in the Scheduled COD of the Project except as provided for in the TSA.”*

*(Emphasis supplied)*

13. As per the relevant clauses of TSA dated 14<sup>th</sup> August, 2019 executed between the KVTL and LTTCs, it was the responsibility of the selected bidder i.e. KVTL to acquire the land and obtain the consents/clearances etc. These clauses are quoted hereinbelow :-

*“ 4.1 TSP's obligations in development of the Project Subject to the terms and conditions of this Agreement, **the TSP at its own cost and expense shall observe, comply with, perform, undertake and be responsible:***

*a. **for procuring and maintaining in full force and effect all Consents, Clearances and Permits, required in accordance with Law for development of the Project;---***

*5.1.4 The TSP shall be responsible for:*

*(a) **acquisition of land for location specific substations, switching stations or HVDC terminal or inverter stations (if required);----***

*(d) seeking access to the Site and **other places where the Project is being executed, at its own costs, including payment of any crop compensation or any other compensation as may be required.***

(Emphasis supplied)

14. Here, we may note that before awarding the project to KVTL under TBCB, it was being executed by TPC-T under Section 62 of Electricity Act, 2003. However, on account of inordinate delay in



execution of the project by TPC-T, the scheme was deemed closed and it was decided to execute the project through TBCB route. Prior to the deemed closure of the project, TPC-T had incurred certain expenses towards land procurement, various approvals, statutory charges etc. in relation to the said project. Hence, the said Vikhroli project was a Brown field project where part expenses were already incurred by TPC-T. It is not in dispute that TPC-T had incurred Rs.135.44/- crores towards various works of the projects, the details of which are given in the following table :-

<b>400kV Kharghar Vikhroli Line Project</b>		
<b>SN</b>	<b>Item</b>	<b>Rs. Cr</b>
1	<b>Purchase of Land at Kharghar</b>	<b>44.68</b>
2	Statutory Payment for Stage-I Forest clearance	9.84
3	Payment to CIDCO for CC of Kharghar Building	0.73
4	All type of survey related expenses	2.15
5	Engineering Consultancy	0.44
6	Site Development Expenses	1.56
7	IDC, Interest, Staff Cost, Preliminary Expenses, Security & other Misc	14.35
	<b>Total</b>	<b>73.75</b>
<b>400kV Vikhroli Receiving Station Project</b>		
<b>SN</b>	<b>Item</b>	<b>Rs. Cr</b>
1	Expenditure incurred for Ghatkopar (Package Substation, Statutory Payment to MCGM (for CC & others) CRZ application expenses etc),	1.77

2	Expenditure incurred for Vikhroli (Statutory payment to MCGM for CC & others etc.)	3.47
3	Expenditure incurred for 400kV Cable job permission (Statutory payment towards Reinstatement charges, Ground Rent, Security Deposit & Bank Guarantee charges)	5.05
4	<b>Purchase of Land (excluding stamp duty &amp; registration costs) (Land Parcel "A")</b>	<b>26.00</b>
5	Engineering Consultancy	3.00
6	Site Development Expenses	2.80
7	IDC, Interest, Staff Cost, Preliminary Expenses, Security & other Misc. (Note-1)	19.60
	<b>Total</b>	<b>61.69</b>
	<b>Sub Total (A+B)</b>	<b>135.44</b>

16. As is clear from the above table and also recorded by the Commission in the impugned order, the amount incurred by TPC-T on purchase of land at Kharghar is Rs.44.68 /- crores. It has also been noted in the impugned order that when the project was conceptualized way back in the year 2011, two plots were identified at Vikhroli, one Land Parcel "A" admeasuring 8015.12 sq. mtr. and the other Land Parcel "B" admeasuring 1591.35 sq. mtr. required for construction of 400 KV Vikhroli sub-station by TPC-T itself. The cost of Land Parcel "A" was considered as Rs.26/- crore excluding stamp duty and registration cost under the pre-development expense and the same was stated as part of indicated acquisition price by BPC for payment by the

successful bidder. The land parcel 'B' is also allocated to KVTL on 35 years lease by TPC-T. The issue of additional payment made by KVTL to Godrej involved in the instant appeal is only about the transfer of land parcel A of Vikhroli. TPC-T has transferred land parcel "B" to KVTL without any additional impact on the acquisition price set out in RFP.

17. As per the provisions of RFP, MSETCL had provided pre-bid clarification on 18<sup>th</sup> July, 2019 thereby providing a break-up of pre-development expenses which include Rs.26/- crores towards purchase cost of Vikhroli land parcel "A". The relevant portion of pre-bid clarification is extracted hereinbelow :-

<i>S. No.</i>	<i>Clause No. and Existing provision</i>	<i>Clarification required</i>	<i>Suggested text for the amendment</i>	<i>Rationale for the Clarification or Amendment</i>	<i>BPC Reply</i>
3	RFP	The land acquired for Vikhroli RSS by TPCT is adjacent to the National Highway and the area of the Land being provided is not adequate to cater to the	-	-	<b><i>Please refer to the Note on Project Development related Activities enclosed at Annexure-1. The land already acquired will be transferred to SPV. The additional land if required will have to be acquired by SPV after its acquisition by Successful Bidder.</i></b>

		<p>requirement of both Substation</p> <p>and erection of Dead End tower. As such, necessary</p> <p>land required for dead end tower of 400 kV lines may be acquired by BPC and handed over to successful bidder at the time of SPV acquisition.</p>			
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18. With respect to the List of Documents furnished to the bidders and other approval status, Annexure I further provide as under :-

<i>S.No.</i>	<i>Particulars</i>	<i>Status of possession with TPC-T</i>	<i>List of Documents furnished to the Bidders (Refer to Appendix 3)</i>
<i>I</i>	<i>Vikhroli RSS</i>		
<i>1</i>	<i>Land</i>	<i>Available &amp; in possession.</i>	<p><u>1. Agreement Letter from M/s Godrej &amp; Boyce Mfg. Co. Ltd. dated 30.07.2011</u></p> <p><u>2. Possession Receipt dated 31.10.2011</u></p>

2	<i>NOC from AAI for Height Clearance.</i>	<i>Received</i>	<i>1. NOC dated 04.08.2014</i>
3	<i>Commencement Certificate</i>	<i>Received</i>	<i>1. Commencement Certificate from Municipal Corporation of Greater Mumbai dated 12.06.2015</i>

19. It is thus clear that the bidders were informed by way of pre-bid clarification that the land at Vikhroli was in possession of TPC-T and available for the project. Agreement letter from Godrej and Boyce dated 30<sup>th</sup> July, 2011 and possession receipt dated 31<sup>st</sup> October, 2011 were also shared with all the bidders including KVTL by the BPC. Evidently, land parcel 'A' proposed for Vikhroli Sub-station by TPC-T itself was in its possession since year 2011 and hence was available for the project.

20. MSETCL in its letter dated 11<sup>th</sup> June, 2019 had requested TPC-T to provide following details regarding the 400 KV Vikhroli project for initiation of TBCB process :-

- (a) *Survey report.*
- (b) *Land information and NOC for transfer of land acquired for the project in the name of SPV.*
- (c) *Details of Clearances / Permissions from statutory Authorities for the project and NOC for transfer of it in*

*the name of SPV.*

(d) *Expenditure incurred by TPC-T for the project.*

21. In reply to said letter of MSETCL, TPC-T vide reply dated 15<sup>th</sup> June, 2019 stated as under:-

*“ In view of the above, you may appreciate that desired documents/ information i.e.(a) Survey Report;(b) Land details;(c) Copies of the Statutory Clearances/ permissions received along with the status of the statutory clearances/ permissions pending to be received by Tata Power for the Project and (c) No Objection Certificate on the Land acquired by Tata Power, entails aforesaid direct costs. As above, the direct cost incurred by Tata Power is to the tune of Rs. 135.44 Crores till 31.05.2019. Tata Power is willing to provide the desired documents / information i.e. (a) to (d) above, subject to MSETCL reimbursing the expenses incurred by Tata Power so far on development of the said project. It is important to point out that such NoC when provided by Tata Power will be subject to the final outcome of the appeal pending for adjudication before the Hon’ble APTEL. Kindly note that there would be some additional expenditure during the process of transferring the approvals/clearances/land etc. in favour of the*

SPV which will be to SPV's account and the same also be accounted and reimbursed in favour of Tata Power."

*(Emphasis supplied)*

22. TPC-T had thus clearly indicated that there would be additional expenditure over and above Rs.135.44/- crores incurred by it during the process of transfer of approvals/clearances/land etc. in favour of the SPV and the same shall be reimbursed to TPC-T. Subsequently, MSETCL addressed letter dated 19<sup>th</sup> June, 2019 to the Commission with the following request :-

- (a) To direct TPC-T to claim the expenditure incurred on 400 kV Vikhroli Project in ARR of its regulated transmission business.*
- (b) To furnish the information and NOC sought by MSETCL on Vikhroli project, as RFP document for the Project under TBCB is to be issued to the Bidders on 22.06. 2019.*

23. The Commission, vide communication dated 20<sup>th</sup> June, 2019 clarified and directed MSETCL and TPC-T as under:-

**" 4. In order to *comply with provisions of RFP Documents for 400kV Vikhroli Project under TBCB and to bring the clarity***

on the issue before issuance of RFP, I am directed by the Commission to convey followings:

- a) The Commission notes that TPC has claimed reimbursement of Rs. 135.44 Crore on predevelopment expenses for development of 400kV Vikhroli Project (including IDC on 400kV Kharghar Vikhroli Line and 400kV Vikhroli Receiving Station) till 31.05.2019.
- b) MSETCL in its **RFP shall also clarify that the successful bidder of 400 kV Vikhroli Project shall have to pay the predevelopment expenses of Rs.135.44 Crores to SPV ("Kharghar Vikhroli Transmission Pvt. Ltd.") which in turn would reimburse the same to TPC.**
- c) **Any deviation in the predevelopment expenses of Rs. 135.44 Crores on account of expenses required on transfer of approval/clearances/land etc. in favour of SPV, viz. Kharghar Vikhroli Transmission Pvt. Ltd., TPC-Transmission shall incorporate the same as a part of its regulated business in its upcoming Tariff Petition with requisite information and supporting documents in accordance with prevailing MYT Regulations.**
- d) TPC-T shall provide its NOC to transfer **the land acquired for the project and clearances / permissions obtained from the various Authorities in the name of SPV ("Kharghar Vikhroli Transmission Pvt. Ltd.") along with**



*copy of survey report and other related documents immediately for issuance of RFP Document Requirement.*

**e) MSETCL/STU shall ensure there would not be double recovery of the expenses.”**

*(Emphasis supplied)*

24. It appears that post issuance of RFP on 22<sup>nd</sup> June, 2019 by BPC, a meeting was held between MSETCL and TPC-T on 28<sup>th</sup> June, 2019 with regards to the transfer of documents/clearances and permissions by TPC-T to the proposed SPV for the project wherein TPC-T was asked to obtain permission from Godrej to transfer land parcels A & B in the name of SPV and to provide the NOCs in respect of these land parcels in the name of SPV i.e. KVTL. It was also clarified that as per the letter dated 20<sup>th</sup> June, 2019 of the Commission, the expenses related to transfer of approvals/clearances/land etc. in favour of SPV are to be borne by TPC-T and to be claimed in ARR Petition.

25. In the subsequent meeting held on 12<sup>th</sup> July, 2019 in presence of Energy Secretary, CMD MSETCL, STU and TPC-T, TPC-T was asked to request Godrej to transfer land parcel A in the name of SPV and to provide NOC of the said land parcel in the name of SPV. It was also

decided that in case of any dues related to expenses for transfer of approvals/clearances/land etc., TPC-T will approach the Commission.

26. It is, therefore, manifest from the Commission's letter dated 20<sup>th</sup> June, 2019 and minutes of meetings dated 28<sup>th</sup> June, 2019 & 12<sup>th</sup> July, 2019 as well as the pre-bid clarification given by BPC, TPC-T was to obtain NOC from the Godrej for Vikhroli land parcel which was already in its possession and the expenses required for transfer of approvals/clearances/land etc. were to be incurred by it and to be claimed in ARR petition.

27. Vide letter dated 22<sup>nd</sup> July, 2019, BPC had informed the bidders about the indicated acquisition price of SPV as Rs.152.65/- crores (Rs.135.44 crores as pre-development expenses incurred by TPC-T till 31<sup>st</sup> May, 2019 and Rs.17.21 crores as bid processing cost).

28. What, therefore, emerges is that the incurred cost of Rs.135.44 crores by TPC-T was to be reimbursed/paid to it by successful bidder as pre-development expenses as part of acquisition price. It was also indicated that pre-development expenses may change on account of transfer of land/approval/clearances. It is in this background that the acquisition price in RFP was stated as Rs.152.65 crores

(Rs.135.44+17.21 crores). Since a sum of Rs.24.68 crores was paid by TPC-T to Godrej towards purchase of land parcel A in the year 2011 for construction of Vikhroli sub-station, it was the responsibility of TPC-T to obtain NOC from Godrej and transfer the land in the name of SPV. Any further expenses to be incurred by TPC-T were to be recovered by it in its ARR petition.

29. It is nowhere indicated in the aforesaid correspondences exchanged between the parties as well as by the above noted events that in order to transfer the Vikhroli land parcel A in the name of SPV, additional cost would have to be incurred by the successful bidder. It appears that despite the same KVTL was constrained to pay additional amount of Rs.71.70/- crores to Godrej for obtaining NOC for transfer of land parcel A in its name from TPC-T. In fact, understanding as well as assurances held out to the bidders was to the effect that Vikhroli land parcel A was in possession of TPC-T and available for the project for which no further payment was required to be made in obtaining NOC from Godrej.

30. Pursuant to the issuance of LOI dated 12<sup>th</sup> December, 2019 to the successful bidder i.e. KVTL after completion of the bidding process,

KVTL addressed letters dated 29<sup>th</sup> January, 2020 and 31<sup>st</sup> January, 2020 to Godrej and Boyce with the request for transfer of land parcel A on as is basis as per the bidding documents for construction of the sub-station. However, vide letter dated 21<sup>st</sup> January, 2020, Godrej and Boyce rejected the proposal of KVTL on the ground that the delay in completion of land acquisition proceedings was on the part of the TPC-T. Extract of the said letter is quoted hereinbelow:-

*“ After a lapse of over 8 years, we are once again being told about time being of the essence to complete the project. As far back as July,2011 on account of the urgency expressed by TPCL Godrej and Boys Manufacturing Co. Ltd.( Godrej) agreed to handover possession of an aggregate area of approximately 9,606.21 square metre of our lands in village Vikhroli(the “said land”) to TPCL on the terms and condition recorded in Godrej letter dated 30 July 2011 addressed to TPCL. We wish to make it plain, that Godrej is not and cannot possibly be held liable and responsible for the inordinate delay since July 2011 in the failure of initiating and completing land acquisition proceedings in respect of the said land under the then extant law relating to land acquisition.*

*In these extenuating circumstances, you will appreciate that it is not possible for us to accede to your proposal of possession*

*of the said land being hand over to the SPV formed for the project on as is basis*

*However, if you have any other reasonable proposal which contemplates forthwith initiation of land acquisition proceedings forthwith under the new prevailing law relating to land acquisition, we are ready and willing to hold a meeting on “Without Prejudice” basis with you to explorer proposal. ---”*

31. It is clear from the said letter of Godrej and Boyce, there was an inordinate delay on the part of TPC-T in completing the land acquisition proceedings in respect of the land parcel in question. Even though, TPC-T had taken possession of the said land parcel from Godrej and Boyce in the month of July, 2011 yet it did not formally acquire the said land parcel. Godrej and Boyce rejected the proposal of successful bidder i.e. ATL for transfer of the land parcel on as is where is basis on account of lapse of over 8 years after handing over its possession to KPTL.

32. Given such kind of situation, it was not possible for KVTL to go ahead with the project activities such as tendering, procurement of material, hiring of agency etc. in the absence of formal acquisition of

land parcel A. The KVTL could have approached the Commission in this regard but that process also would have delayed the project. Accordingly, KVTL in consultation with BPT and TPC-T paid a sum of Rs.71.70/- crores to Godrej on 7<sup>th</sup> July, 2020 for transfer of land parcel A so that project activities could be commenced in time bound manner. The details of said additional payment made by KVTL to Godrej and Boyce are mentioned in the given below table :-

Particulars		UoM	Values
Land Area	a	Sq.mt.	8,015
Ready Reckoner Rate	b	Rs./Sq. mt.	85,900
TDR Load Factor	c		1.40
Total Cost as per Ready Reckoner rate	$d = a*b*c$	Rs. Cr	96.39
Received by Godrej from /paid by TPC	e	Rs. Cr	24.69
Received by Godrej from /paid by (Balance) KVTPL	$f=d-e$	Rs. Cr	71.70

33. It appears that Godrej and Boyce had insisted upon payment of additional amount of Rs.71.70/- crores as the difference between Ready Reckoner Rate of the year 2020 (in which the additional payment was sought and the instrument of transfer was to be executed) and of the year 2011 (in which year the payment had earlier been made for the said land parcel by TPC-T at the time of taking its possession). The

original cost of Rs.24.69/- crores paid by TPC-T to Godrej and Boyce in the year 2011 was as per the Ready Reckoner in force during that year and was part of acquisition price of SPV. In none of the bidding documents was it conveyed to the bidders that they might have to pay additional amount for acquisition of the land parcel A for the project. It was for the first time in the letter dated 3<sup>rd</sup> March, 2020 (i.e. after the cut-off date) that Godrej and Boyce raised the demand for additional payment for transfer of said land parcel A in the name of SPV.

34. It was vehemently argued on behalf of MSEDCL that the claim of additional payment of Rs.71.70/- crores paid by KVTL to Godrej and Boyce on account of Change in the Ready Reckoner Rate of the land parcel in question does not qualify as Change in Law event under the TSA. It is submitted that the Ready Reckoner Rate is only for the purpose of determining the stamp duty and registration charges in terms of Maharashtra Stamp Act, 1958 and in view of Section 2(na) of the Act the consideration in the sale deed can be less or more than the ready reckoner rate but the stamp duty and registration charges are payable on higher of the two. It is argued that the demand of Godrej and Boyce does not have "Force of Law" as the ready reckoner rate is only be

indicative rate for the purpose of payment of stamp duty as well as registration charges and in no way justify payment of current rates as the sale consideration of the property in question.

35. In order to analyze the arguments of the Learned Counsel for MSEDCL, it is necessary to refer to Article 12.1 of the TSA which defines Change in Law. The same is extracted hereinbelow :-

## **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, including rules and regulations framed pursuant to such Law;*
- *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;*
- *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 License for the Project was granted if made applicable by such Appropriate Commission to the TSP;*
- **any change in the Acquisition Price; or**
- *any change in tax or introduction of any tax made applicable for providing Transmission Service by the TSP as per the terms of this Agreement.----*

## **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 Rupees Four Crore Thirty Nine Lakh (Rs. 4.39/-) 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 zero point three one three percent (0.313%) 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 Appropriate 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 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 TSP shall provide to the Long Term Transmission Customers and the Appropriate 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 Appropriate 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.*

*(Emphasis supplied)*

36. This article in the TSA specifically provides that any change in the acquisition price after the cut off date resulting in additional recurring and non-recurring expenditure by TSP would constitute Change in Law. We have already noticed that the indicative acquisition price of the SPV, as was informed by BPC to the bidders before signing the TSA, was Rs.152.65/- crores. Therefore, in terms of the above noted Article 12 of the TSA any change in acquisition price of SPV after the cut off date i.e. 14<sup>th</sup> August, 2019 (which is 7 days prior to bid deadline) resulting in any additional recurring and non-recurring expenditure to the TSP tantamounts to Change in Law. In the instant case, KVTL was constrained to pay additional amount of Rs.71.70 crores for acquisition of land parcel A from Godrej and Boyce after the cut off date even despite follow up with the said company, TPC-T and BPC.

37. Manifestly, the demand of additional amount of Rs.71.70 crores on the part of Godrej and Boyce was as per the ready reckoner rates prevailing in the year 2020, which undisputedly have the “Force of Law”. It is true that as per Section 2(na) of Maharashtra Stamp Act, 1958, consideration in the sale deed can be less or more than ready reckoner rate but the stamp duty and registration charges would be payable on the higher of the two i.e. ready reckoner rate or the consideration mentioned in the sale deed. Therefore, it is left to the mutual agreement of the seller and buyer to mention any amount in the instrument of transfer with respect of any property as its price, which may be higher or lower than the ready reckoner rate (which is known as circle rate in Delhi) subject to the condition that the stamp duty and registration charges shall be payable on the ready reckoner rate in case the price mentioned in the instrument of transfer is less than the same. In fact, the discretion is with the seller to sell his property either at the ready reckoner rate or at any other price which may be higher or lower than the ready reckoner rate. In the instant case, the owner of land parcel A was indisputably Godrej and Boyce. Even though the company had handed over the possession of land parcel A to TPC-T in the year 2011

upon receipt of Rs.24.69 crores for the same, yet the ownership remained all along with Godrej and Boyce on account of failure on the part of the TPC-T in getting the acquisition process completed at that time. In these circumstances, Godrej and Boyce was within its right to claim additional payment as per the ready reckoner rate prevailing in the year 2020 in lieu/ of NOC to be issued by it for transfer of the land parcel A to the name of SPV-KVTL.

38. Undoubtedly, the demand of Godrej and Boyce for additional amount of Rs.71.70/- crores towards price of the land parcel A in terms of the ready reckoner rate prevailing in the year 2020 has resulted in Change in acquisition price of the said land parcel to be borne by KVTL. Thus, there cannot be any gain-saying that the same constitutes Change in Law in terms of 12.1.1 of the TSA.

39. In view of the above discussion, we do not find any palpable error in the decision of the Commission on this issue. We hereby affirm the same. Accordingly, the Appeal No. 393 of 2022 filed by MSEDCL on this aspect is liable to be dismissed.

**Appeal No. 385 of 2022**

40. The issue which arises for our consideration in this appeal is :-

*“Whether the Commission has erred in denying Carrying Cost to KVTL on the additional amount of Rs.71.70/- crores in accordance with the restitution principle enshrined in Change in Law Provision?”*

41. The Commission has held the claim of KVTL with regards to the Carrying Cost as pre-mature in view of Clause 12.2.1 of the TSA, which has already been reproduced hereinabove in paragraph No. 35. For the sake of convenience the said clause is again reproduced hereinbelow:-

## ***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 Rupees Four Crore Thirty Nine Lakh (Rs. 4.39/-) 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 zero point three one three*

*percent (0.313%) of the Non-Escalable Transmission Charges.*

42. We may note here that like a Power Purchase Agreement executed between the Power Producer and Distribution Company, the TSA executed in the instant case between KVTL and LTTCs is a sacrosanct document embodying the rights, duties and liabilities of the parties. All the provisions of TSA are binding upon the parties and none of them can claim departure from the same. The claims of the parties have to be seen and decided in terms of the relevant provisions of the TSA i.e. contractual framework agreed to between the parties. The relationship between the parties would be governed by the provisions of the TSA and the regulatory bodies are enjoined upon to ensure compliance of those provisions in letter and spirit. Neither the Commission nor this Tribunal has any power or jurisdiction to re-write the contract on behalf of the parties. Following observations of the Hon'ble Supreme Court in recent judgement in Civil Appeal No. 6888 of 2018 in the case of Chamundeshwari Electricity Supply Co. Ltd. Vs.

Saisudhir Energy (Chitradurga)Pvt. Ltd. & Anr. decided on 25<sup>th</sup> August, 2025 are material in this regard and are quoted hereinbelow :-

*“43. Finally, as to the competence of the regulatory fora, Appellant and Respondent No. 2/KPTCL, though both State instrumentalities, are parties to a commercial contract concluded through competitive bidding. Their relationship is governed not by overarching notions of equity but by the terms of the PPA. The jurisdiction of the regulatory bodies is to ensure compliance with law and to adjudicate disputes within the four corners of the contract. It does not extend to recasting the contractual framework by directing restitution of amount lawfully realised under the PPA, or by mandating alterations to tariff and timelines in a manner inconsistent with the agreement. The directions of the State Commission, affirmed by the APTEL, requiring restoration of the performance security, extension of contractual timelines, and renegotiation of tariff, transgress the limits of that jurisdiction.”*



43. In the instant case, Article 12 of TSA nowhere provides for grant of carrying cost on the additional expenditure incurred by affected party due to a Change in Law event. The relief to which the affected party is entitled in respect of Change in Law event occurring during construction period is provided in Article 12.2 which has already been quoted hereinabove. The Commission has correctly observed that the amount claimed by KVTL under Change in Law and allowed by the Commission is towards the transfer of land cost which becomes the capital cost of the project and since the project is under construction and COD was yet to be achieved, the claim of KVTL in this regard falls under Article 12.2.1 of the TSA and the relief to which KVTL would be entitled on account of having incurred additional expenditure due to Change in Law event would be in accordance with the said Article of TSA.

44. However, in our opinion the Commission has erred in holding the claim of KVTL with regards to the carrying cost as pre-mature. Instead the Commission ought to have directed that KVTL would be entitled to

relief on account of increased project cost in terms of the provisions of Article 12.2.1.

45. In view of the same, we set aside the findings of the Commission on this aspect and hold that KVTL would be entitled to relief on account of impact of increase project cost due to the above noted Change in Law events in terms of the provisions of Article 12.2.1 of the TSA.

### **Conclusion**

46. In the light of the above discussion, we affirm the impugned order of the Commission to the extent that the additional payment of Rs.71.70/- crores made by KVTL to Godrej and Boyce towards transfer of Vikhroli Land plot A for obtaining NOC during construction period constitutes Change in Law in terms of Article 12 of the TSA. However, we set aside the findings of the Commission in the impugned order to the extent that claim of KVTL for carrying cost is held to be pre-mature. We hold that the KVTL shall be entitled to relief on account of impact of increase in project cost due to the said Change in Law event in terms of the formula given in Article 12.2.1 of TSA.

47. Accordingly, Appeal No. 393 of 2022 filed by MSEDCL is hereby dismissed whereas the Appeal No. 385 of 2022 filed by KVTL stands allowed.

48. The impugned order of the Commission stands modified in above terms.

Pronounced in the open court on this 11<sup>th</sup> day of September, 2025.

(Virender Bhat)  
Judicial Member

(Sandesh Kumar Sharma)  
Technical Member (Electricity)

✓

*REPORTABLE / ~~NON-REPORTABLE~~*

*js*