

**COURT-I**

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

**APPEAL NO. 88 OF 2019 &  
IA NO. 372 OF 2019**

**Dated : 23<sup>rd</sup> September, 2019**

**Present: Hon'ble Mrs. Justice Manjula Chellur, Chairperson  
Hon'ble Mr. S. D. Dubey, Technical Member**

**In the matter of:**

**Tata Power Company Limited (Transmission)**

Bombay House, 24,  
Homi Modi Street,  
Fort, Mumbai 400 001

... **Appellant(s)**

**Versus**

**1. Maharashtra Electricity Regulatory Commission**

13<sup>th</sup> Floor, Centre No.1,  
World Trade Centre,  
Cuffe Parade, Mumbai – 400 005

**2. Maharashtra State Electricity Transmission**

**Company Limited,**  
Prakashganga, Plot No. C-19, E-Block,  
Bandra-Kurla Complex, Bandra (E),  
Mumbai - 400051

... **Respondent(s)**

**Counsel for the Appellant(s) :** Mr. Basava Prabhu Patil, Sr. Adv.  
Mr. Hemant Sahai  
Ms. Molshree Bhatnagar  
Ms. Jyotsna Khatri  
Ms. Geet Ahuja

**Counsel for the Respondent(s):** Mr. S.K. Rungta, Sr. Adv.  
Ms. Pratiti Rungta  
Mr. Sumit Pargal for R-1  
Mr. Sajan Poovayya, Sr. Adv.  
Mr. Sudhanshu S. Choudhari  
Mr. Yogesh S. Kolte for R-2

## **JUDGMENT**

**(PER HON'BLE MRS. JUSTICE MANJULA CHELLUR, CHAIRPERSON)**

This appeal is directed against the Order dated 12.09.2018 passed in Case No. 204 of 2017 by the Respondent-Maharashtra Electricity Regulatory Commission (hereinafter referred to as “**Respondent-Commission**”). Tata Power Company Limited (hereinafter referred to as “**Appellant/TPC**”) admittedly is an integrated utility carrying out the functions of generation, transmission, wheeling and retail supply of electricity in and around Mumbai. The Appellant, Tata Power Company Limited (Transmission) has been granted transmission license in term of Order dated 14.08.2014 in Case No. 112 of 2014, therefore, the Appellant is a transmission licensee as per the Maharashtra Electricity Regulatory Commission (Transmission License Conditions) Regulations, 2004 (hereinafter referred to as “**License Regulations**”).

2. Apparently, the Appellant filed Mid-Term Review (hereinafter referred to as “**MTR**”) for truing up of ARR for FY 2015-16 under the MYT Regulation, 2011, truing up of ARR for FY 2016-17 and Provisional truing up of ARR for 2017-18. It also had sought for approval of Revised ARR for FY 2018-19 and FY 2019-20 in terms of MYT Regulations, 2015. After admitting the MTR Petition on 15.06.2018, the Respondent-

Commission directed the Appellant herein to publish the same in terms of Section 64 of the Electricity Act, 2003 (for short "**the Act**"). Public notice was also issued by the Appellant on 20.06.2018. However, no suggestions/objections whatsoever were received opposing the petition. Public hearing was scheduled on 24.07.2018. The Respondent-Commission passed the impugned order on 12.09.2018 on different issues including deemed closure of "400 kV Receiving station at Vikhroli" and the Transmission lines concerned. Apart from the above opinion pertaining to deemed closure of DPR Vikhroli scheme, several other issues were considered and appeal is filed against the said findings including deemed closure of DPR scheme of Vikhroli. The Appellant filed the instant appeal aggrieved by the opinion of the Respondent-Commission in the impugned order and raises challenge on various findings, however at this stage we are concerned with finding (f) which reads as under:

*(f) "Erred in issuing directions for deemed closure of 400 kV Vikhroli Transmission Scheme."*

**3.** It is also contended by the Appellant that on 31.10.2018 the Appellant presented this appeal and on 02.01.2019 the Appellant filed Review Petition challenging observations made by the Commission in relation to 400 kV Vikhroli Transmission Scheme. On 29.01.2019, the

Respondent-Commission dismissed the Review Petition filed by the Appellant and again issued directions for deemed closure of 400 kV Kharghar-Vikhroli transmission line along with the Appellant's 400 kV Receiving Station at Vikhroli and LILO of 400 kV Talegaon – Kalwa Line.

4. In this appeal, the Appellant raises various grounds against the findings of the Respondent-Commission contending that such directions and opinion observed in the impugned order gravely prejudices the rights and interest of the Appellant as a transmission licensee.

5. According to the Appellant, on account of non-appreciation of facts on record, the Respondent-Commission, without considering the documents of Appellant on record and previous observation of Respondent-Commission itself, adopted erroneous approach which resulted in passing erroneous orders dated 12.09.2018 and 29.01.2019. Since Respondent-Commission passed the order without reasoning, it is, therefore, non-est in the eye of law.

6. Respondent-Commission failed to appreciate that the delay caused in execution of 400 kV Vikhroli transmission scheme was beyond reasonable control of the Appellant, and statutory authorities like the

Respondent-Commission are required to safeguard the interest of the licensees.

7. A review petition came to be filed for review of the impugned order dated 12.09.2018. However, Respondent-Commission totally ignoring the facts and circumstances proceeded to reaffirm its direction for deemed closure of the entire scheme including 400 kV GIS receiving station at Vikhroli etc.

8. The Appellant further contends that Respondent-Commission was not justified in attributing delay to the Appellant which was totally incorrect, since statutory approvals necessary for execution of the project were not within the reasonable control of the Appellant. It further contends that Respondent-Commission failed to acknowledge the enormous efforts undertaken by the Appellant for obtaining statutory approvals pertaining to CRZ (Costal Regulatory Zone) at Forest Stage I and II, Maharashtra Maritime Board, part aviation from Airport Authority of India, Municipal Corporation of Greater Mumbai, Flamingo Sanctuary etc.

9. Further, according to the Appellant, Respondent-Commission failed to acknowledge that the Appellant has already invested huge amount in the said DPR scheme and various milestones have been

achieved by the Appellant despite all hindrances. Further, Respondent-Commission erred in not appreciating various correspondences which indicate that beyond the control of the Appellant, the hindrances have occurred in implementing the scheme on time.

**10.** Based on the submission of the 2<sup>nd</sup> Respondent-Maharashtra State Electricity Transmission Company Limited (“**2<sup>nd</sup> Respondent/MSETCL/STU**”), the Respondent-Commission opined that there has been inordinate delay in achieving completion of the scheme in question and the same can be considered for completion under Tariff Based Competitive Bidding. This opinion of the Commission was based on STU report dated 07.08.2018. There was no justification to place reliance on such report since STU had just made a statement regarding delay of 400 kV transmission scheme without analysing the reasons for delay. STU merely reported the importance of the subject transmission scheme and its need to be completed expeditiously.

**11.** According to the Appellant, Respondent-Commission was again wrong in placing reliance on recommendation of the STU even in review proceedings. As a matter of fact, in the meeting dated 12.10.2018, the Appellant committed to complete the scheme by March 2021. There is no reason for the Respondent-Commission to opine that now the

scheduled completion of the scheme in question would be by the year 2022-23.

**12.** The Appellant further contends that Respondent-Commission totally ignoring its power to regulate and adjudicate under Section 86 of the Act, abdicated its duty to examine the reasons causing the said inordinate delay in achieving completion of 400 kV Vikhroli transmission scheme and proceeded to penalize the Appellant arbitrarily without proper evaluation.

**13.** On the above grounds, the Appellant has sought for setting aside the opinion of Respondent-Commission pertaining to deemed closure of transmission scheme in question apart from other reliefs.

**14.** With these averments they had sought for various reliefs, but at this stage we are concerned with prayer (g) only.

**g) Hold and declare that the Ld. Commission has erred in issuing directions for deemed closure of 400 kV Vikhroli Transmission Scheme;**

**15.** As against this, the 1<sup>st</sup> Respondent-Commission challenges the appeal contending that the appeal and the stay application filed along with the appeal are devoid of any merit.

**16.** The Commission was justified in relying on the said transmission utilities' submissions stating that there has been an inordinate delay in achieving completion of scheme in question by the Appellant and the same could be considered under Tariff Based Competitive Bidding (**TBCB**) route for expeditious completion. Contention of the Appellant that it was just a suggestion made for considering the TBCB route without analyzing the reasons for the delay, is not justified. The Respondent-Commission further contends that it was justified in dismissing the review petition and the contention of the Appellant that several aspects of the submissions of the Appellant were not captured by the Commission are without any merit. They further contend that the Appellant's suggestion for revised SCOD of Vikhroli scheme should be at least 31.03.2021 and the same should have been accepted by the Commission is without any merit on the part of the Appellant. They also contend that based on the recommendation of the 2<sup>nd</sup> Respondent-STU during the review meeting held on 11.02.2019 referred to the submission of the Appellant in the meeting dated 12.10.2018 wherein the Appellant made a commitment to complete the scheme by March 2021, but the same was not taken into consideration by the Respondent-Commission is incorrect. The contention of the Appellant that the Respondent-Commission has wrongly observed that the monitoring of the project by



the Appellant was not rigorous and should have subjected to strict timelines in terms of the Order dated 29.01.2019 is also incorrect.

**17.** Stand of the Appellant that if TBCB route is adopted as directed by the Commission, the new bidder will then also have to go through similar incidents has no merit since the consent /clearances (including the land) which have already been obtained by the Appellant would then be made use of by the successful bidder.

**18.** The Respondent-Commission further brings on record certain relevant facts pertaining to the scheme in question. As per the provisions of MERC Guidelines for in-principle clearance of proposed investment schemes of 2005, the Respondent-Commission had granted in-principle approval so far as 400 kV Vikhroli scheme is concerned. In terms of the said guidelines, the Appellant or for that matter any transmission licensee has to execute investment scheme approved by the Commission within time frame of 3 to 5 years. This time frame was to assess the benefits accrued to the consumers, who are expected to pay for the said scheme through tariffs. According to them, the Commission did pass the reasoned and speaking order and the contentions raised by the Appellant in the appeal were clearly dealt with in the impugned order itself. The facts narrated and the rationale

behind making the reasons by the Commission would make it crystal clear that the Appellant deserved the impugned order. According to the Respondent-Commission, there is no infirmity or illegality in its order, and therefore, the appeal deserves to be dismissed so far as deemed closure of 400 kV Vikhroli scheme is concerned.

**19.** The 2<sup>nd</sup> Respondent-STU has also filed detailed objections contending that none of the grounds set out in the appeal establishes any case on merit so far as the Appellant is concerned and the appeal deserves to be dismissed so far as deemed closure of 400 kV Vikhroli scheme.

**20.** The 2<sup>nd</sup> Respondent has no grievance against the impugned order, which holds the 2<sup>nd</sup> Respondent with responsibility of taking up the 400 kV Vikhroli Transmission Scheme under TBCB route and in furtherance of direction, 2<sup>nd</sup> Respondent has to submit its report within one month from the date of the impugned order.

**21.** The 2<sup>nd</sup> Respondent narrates the importance of the scheme and the background why the scheme in question is very essential and important. According to this Respondent, operation of the impugned order would not cause injustice or prejudice to the Appellant.

**22.** They further contend that the inordinate delay of more than 8 years caused by the Appellant has resulted in grave injustice and hardship to the consumers residing within the city of Mumbai. Therefore, the impugned order is in complete consonance with the principles of law and it is neither in contravention of the Scheme nor aims and objects of the Act. According to the 2<sup>nd</sup> Respondent the impugned order is a well reasoned order and is in line with the principles applicable for passing such order. With respect to Scheme in question, the 2<sup>nd</sup> Respondent submits that this project is highly essential to the city of Mumbai since the Mumbai city is considered as financial capital and business hub of India. This has resulted in high growth of demand in power sector. The upcoming of various infrastructural projects in the financial capital is the cause for such demand. The existing capacity of transmission corridor is not sufficient to bring more power into the network. Power Purchase Agreements of embedded generating units of Mumbai have expired and the same are being extended from time to time including the PPA of the Appellant up to March 2024 and up to February 2023 so far as M/s Adani generating units are concerned. Unit – 6 of the Appellant is under economic shutdown due to unavailability of fuel. The increased power load of Mumbai cannot be met from the existing power supply unless power is being imported into Mumbai. With this need, the Scheme of 400 kV Vikhroli substation was conceptualized. This would

bring about 1000 MWs power from the 2<sup>nd</sup> Respondent utility and the Power Grid Corporation of India Limited. This would result in reliable power supply in Mumbai city to meet the future upcoming power load of the city. This also results brining in cheaper power by distribution utilities of Mumbai from outside Mumbai to the consumers of Mumbai area. This further stabilises the power system network within the state. The 2<sup>nd</sup> Respondent initially approved this Scheme under 400 kV Dehrand – Vikhroli multi circuit line ; Dehrand – Nagothane mauti circuit line and 400 kV Kharghar – Vikhroli Scheme in question. Due to uncertainty of Dehrand Generation project, the Appellant requested to revise 400 kV Vikhroli substation scheme to have interconnection with Respondent No.2 network proposed to commission 400 kV D/C Kharghar – Vikhroli line in place of S/C Kharghar – Vikhroli line resulting in 400 kV Vikhroli scheme being revised as under:

<b>“Sr. No</b>	<b>Name of the Scheme Name</b>	<b>Name of the Projects</b>	<b>Date of Approval by Respondent No. 2 (STU)</b>	<b>Date of Approval by MERC</b>
1	400 kV Kharghar-Vikhroli DC line & 400 kV AIS bays (R1)	400 kV AIS station at Kharghar 400 kV Kharghar-Vikhroli transmission line	03/09/2013	05/02/2014

<b>Sr. No</b>	<b>Name of the Scheme Name</b>	<b>Name of the Projects</b>	<b>Date of Approval by Respondent No. 2 (STU)</b>	<b>Date of Approval by MERC</b>
1	400 kV Kharghar-Vikhroli DC line along with 400 kV bays (R2)	400 kV GIS station at Kharghar 400 kV Kharghar-Vikhroli transmission line	12/03/2015	20/10/2015”

23. Subsequently, the request of the Appellant to have an alternate feeder to Mumbai to Kalwa was also approved resulting in the following scheme.

<b>“Sr. No</b>	<b>Name of the Scheme Name</b>	<b>Name of the Projects</b>	<b>Date of Approval by Respondent No. 2 (STU)</b>	<b>Date of Approval by MERC</b>
1	400 kV Talegaon-Kalwa Line LILO at 400 kV Ghatkopar Switching station - 400 kV Vikhroli S/S	400 kV LILO of Talegaon – Kalwa line at 400 kV Ghatkopar Switching-400 kV Vikhroli S/S	03/03/2017	10/09/2017”

**24.** However, there was inordinate delay in commissioning Vikhroli project by the Appellant which was initially scheduled to be commissioned in 2014-15. On account of revision of the project at the instance of the Appellant it got delayed and numerous revisions were sought for varied reasons by the Appellant. At this stage, no tangible work was done by the Appellant except acquisition of land for 400 kV Vikhroli scheme. In spite of extension of time no progress whatsoever came to be made. From system studies, it revealed that 500 MW Thermal unit at Trombay needs to be on bar till commissioning of 400/220 kV Vikhroli substation. Therefore, STU recommended that the project can be considered under TBCB route in view of timely development of an efficient Intra State Transmission system in terms of Section 39 of the Act. At that point of time the Appellant informs that the project could be completed only by March 2021-22, effectively keeping the project pending for almost 8 years. According to the 2<sup>nd</sup> Respondent, even at this stage, there is no certainty whether it would be completed in 2021-22. They further contend that in TBCB route liquidated damages for delay in achieving Commercial Operation Date (COD) of project mechanism as well as termination mechanism in the event of default are incorporated as part of Transmission Service Agreement, which is again in terms of specification by Ministry of Power. Even in the past, STU did experience that the Appellant had not adhered

to the completion of project as per time line. However, TBCB mechanism ensures timely completion of the project. If TBCB process is adopted, the objectives of guidelines issued by the Ministry of Power, could be achieved.

**25.** In terms of time table for the bid process TBCB guidelines gives 145 days from '0' date till signing of the agreements between the parties. The clearances obtained by the Appellant , be it CRZ (Costal Regulatory Zone) or Flaminga Sanctuary Forest Rights etc., were possible because of the 2<sup>nd</sup> Respondent as STU assisted the Appellant in getting such statutory clearances. According to the 2<sup>nd</sup> Respondent if TBCB process is undertaken, the statutory approvals and clearances, if any, obtained earlier will be transferred to the successful bidder. Therefore, there will not be duplication of efforts. The 2<sup>nd</sup> Respondent further undertakes that financial expenditure incurred by the Appellant would be salvaged to the maximum extent possible. The Government of Maharashtra formed an 'Empowered Committee' for execution of projects under TBCB. Several meeting were held by this Committee on 14.02.2019 and 07.03.2019 in which the project in question came to be discussed and it was decided that this project also must be taken under TBCB , thereby 'Bid Process Coordinator' (BPC) was appointed. Bid Evaluation Committee also came to be approved as per TBCB guidelines for Transmission Service

as indicated by the Ministry of Power. Government of Maharashtra after notifying the appointment of BPC along with the project schemes to be identified under TBCB started the process of formation of Special Purpose Vehicle (SPV) for the purpose of taking up 400 kV Vikhroli scheme under TBCB and the name of SPV is finalized as "KHARGHAR VIKHROLI TRANSMISSION PRIVATE LIMITED". The Request for Qualification (RFQ) for 400 kV Vikhroli scheme came to be published on 24.04.2019 and RFQ documents to bidders were made available up to 18.05.2019. The last date for bidders to submit response to RFQ was 23.05.2019. Therefore, the 2<sup>nd</sup> respondent contends that TBCB process which already started would not cause any prejudice to the Appellant in any manner if it is continued since considerable amount of time could be saved. Respondent No.2 contends that in the impugned order the Respondent-Commission was justified in opining that the Appellant was responsible for causing inordinate delay due to its own fault.

**26.** The 2<sup>nd</sup> Respondent further contends that the Respondent-Commission passed the impugned order with reference to deemed closure of the scheme on the ground that there was inordinate delay caused by the Appellant in completion of the scheme; however, the 1<sup>st</sup> Respondent was directed to review the scheme under TBCB route. They further contend that even in the TBCB process, the Appellant could



participate and as on the date of filing of reply, the TBCB process was already commenced and the last date for submission of bids was 23.05.2019 and this was pursuant to Empowered Committee's directions issued in February and March as stated above. The said deemed closure and consequent order of commencement of TBCB process was solely on the basis that the urgency of completion of 400 kV Vikhroli scheme which affects large number of consumers. If TBCB bidding process is continued, much time can be saved since TBCB process is a transparent process, therefore no prejudice whatsoever would be caused to the Appellant.

**27.** Both the Appellant and the Respondents submitted that present judgment shall be restricted only to the issue of deemed closure of 400 kV Vikhroli scheme and all other issues be kept open pertaining to capitalization and other challenges raised by the Appellant. Therefore, we are restricting our consideration only with regard to deemed closure of 400 kV Vikhroli scheme since TBCB process has almost come to an end i.e., except for issuance of letter of intent all other stages of the process are completed till date.

**28.** Based on the above pleadings, the points that would arise for our consideration are:

- (i) “Whether the Respondent-Commission was justified in opining that the 400 kV Vikhroli scheme deemed to have been closed on account of inordinate delay?
- (ii) Whether the said order is illegal and contrary to law established?”

**29.** The Appellant’s main contention is that Vikhroli transmission scheme in question comprises three interlinked interdependent elements.

**30.** It is further argued that a proper business practice and conduct would be that a receiving substation is made, once the corresponding receiving transmission lines are ready. These facts were within the knowledge of the Respondent-Commission and were also incorporated in the impugned order. Such approach of the Appellant was never objected to by the Respondent-Commission. The receiving substation at Vikhroli and S/C transmission line were considered as interdependent assets by the Appellant. Therefore, Vikhroli transmission line was considered to be dependent for implementation of Vikhroli receiving station. Therefore, the Appellant prepared its DPR and submitted the same to 2<sup>nd</sup> Respondent-STU way back on 17.03.2009. 2<sup>nd</sup> Respondent gave its endorsement and approval to both DPRs i.e., receiving station

and transmission line at Vikhroli on 27.10.2009. Initially, it was planned for single circuit transmission line but the same came to be converted to double circuit when PGCIL Panvel Navi Mumbai single circuit transmission line was inordinately delayed. This resulted in submission of revised DPR to STU and thereafter to the Commission. The approval from STU was in September 2013 and from Commission, it was in October 2014.

**31.** Another revision came to be proposed by STU on account of stringent conditions of preservation of mangroves resulting in reduction in tower foot print and piling. Therefore, they had to shift Quad Moose Conductor process to Twin High Ampacity conductor to reduce cutting of mangroves. Again this resulted in AIS bays changed to GIS, which could occupy less space. This again led to second revision in January 2015 and approval in March 2015. Subsequently, the Commission also approved the same in October 2015. Therefore, the target for completion was revised up to March 2019.

**32.** At the instance of STU alone, a LILO came to be included as additional source to Vikhroli receiving station in 2015. Approval of the same also was completed in November 2017 by the Commission. At the instance of STU, the Appellant prepared revised DPR for Vikhroli

receiving station and Kharghar-Vikhroli line in September 2018 as desired by STU. Before approval of the same, the deemed closure of the project came to be passed by the Commission; therefore, STU did not process these DPRs further.

**33.** It is the further contention of the Appellant that while planning the entire Vikhroli transmission project (all three elements), the approvals/clearances formed part of the critical path of the same. Therefore, according to them any delay in receipt of such approval/clearance lead to delay in completion of the time lines given. The primary objective of the proposed transmission scheme was to decongest the existing transmission system and to bring power from outside Mumbai into the city to cater to the needs of growing demand of power for Mumbai. Therefore, the opinion of the Respondent-Commission that the transmission scheme in question was to bring cheaper power is wrong. The detailed three project reports clearly indicate the intention for the implementation of the project was to bring additional power into Mumbai to address purely the technical requirement of Grid stability and security and not otherwise. This was clearly stated in the DPR to Commission so far as 400 kV Kharghar Vikhroli Transmission Line is concerned. Even otherwise while granting approval by the Respondent-Commission to the 3 DPRs presented by

the Appellant, there is no provision/condition which entitles deemed closure of the scheme by the Appellant.

**34.** Pertaining to allegation of delay attributed to the Appellant, they contended that various bottlenecks hindered the smooth execution of the scheme and these bottlenecks and the impact of the same on the completion of the project were not taken into consideration by the Respondent-Commission. According to them the entire Vikhroli transmission scheme has to be completed by March 2022, therefore the direction of deemed closure is unfair, arbitrary and illegal. They also contend that certain clearances came to be introduced by the State Government subsequent to DPR being approved and the same could not be avoided by the Appellant since they substantially affected the progress of the scheme.

**35.** They further contend that unique approvals/statutory clearances like Flamingo sanctuary approval, Airports Flight path approval etc., in addition to normal clearances like Forest Clearance, CRZ clearance, which can be envisaged in any other transmission project occurred in this case also, which added to the delay complained of.

**36.** According to the Appellant in spite of their best efforts by promptly applying for required clearances, the delay in receiving the same was at the hands of the concerned authorities and the Appellant had no control over these state authorities except pursuing them by way of writing letters and repeated reminders.

**37.** They also contend that the Respondent-Commission failed to appreciate that in the case of receiving stations, the time required for construction and commissioning is generally less than the time required for construction and commissioning of incoming overhead transmission line. Therefore, prudence requires to construct the receiving station only after commencement of construction of transmission line.

**38.** The multiple changes delayed the completion of the project specification. The approval of the Commission was only in the year 2015, and by that time, the Appellant had initiated clearance process from statutory authorities for the purpose of implementing the scheme expeditiously. According to the Appellant, the Commission was not justified in opining that there was 8 years delay in implementing the scheme in question. By the impugned order, the Respondent-Commission has pre-closed the two DPRs of Vikhroli Transmission Scheme i.e., 400 kV GIS Receiving Station at Vikhroli and 400 kV

Kharghar-Vikhroli transmission line, which require target completion in March 2015 and March 2019, respectively, and (LILO) of 400 kV Talegaon-Kalwa Line, which require target completion in March 2022. Therefore, on the date of impugned order, this time dead line is yet to reach.

**39.** The delay pertaining to Vikhroli Receiving Station is not 8 years, but if at all admitted, it would be 3 ½ years. They further contend that without commencement of execution of transmission line, if receiving station is initiated, it would become an idle asset, which cannot be put to any use on its own. "Construction Commencement Certificate" was obtained as early as 30.07.2011, but DPR was approved on 12.06.2015, as such the Appellant could not make any progress in so far as Receiving Station prior to 12.06.2015. They also contend that the Appellant acting as a prudent utility took proper decisions with regard to commencement of construction of transmission line and receiving station and the reasons for delay in terms of time was clearly explained in its MYT as well as MTR petitions. If amounts were spent, till such time the entire transmission system became operational, the effect would have been that the Appellant would have claimed IDC/IEDC in its ARR burdening the consumers, therefore even on commercial terms, the Appellant was prudent awaiting statutory clearances.

**40.** The Appellant further submits that various projects initiated by MSETCL have been commissioned beyond original scheduled commercial operation date and delay for such belated commissioning is approved treating the Appellant differently.

**41.** They challenge the impugned order and the conduct of the Respondent-Commission as arbitrary and discriminatory for the following reasons.

**42.** The delay attributed to the Appellant in implementation of transmission scheme is not something unique to the case of the Appellant since such delay was noticed in the CEA report on Transmission System on monthly progress issued for the month of December 2018. While proceeding to issue deemed closure of the scheme in question pertaining to the Appellant, the Respondent-Commission did not mention anything about other projects, where similar delays are suffered by state transmission utilities like Koradi II – Butibori, LILO of Tarapur-Borivli at Boisar II, LILO of Lonikhand (MSETCL)-Kalwa at Navi Mumbai, Wardha-Aurangabad (on 1200 kV), Boisar-Wada 220 kV D/C line of MSETCL, Babhaleshwar-Kudus, Jejuri Hinjewadi-I and II.



**43.** The opinion of the Respondent-Commission that the consumers of Mumbai are subjected to expensive power on account of non implementation of Vikhroli transmission scheme, according to the Appellant, the Respondent-Commission has incorrectly compared the tariff rate of only one component of bidding at INR 3.94 per unit with the weighted average price of entire power tie up by BEST at INR 4.63 per unit. According to them, if properly considered, the weighted average cost pertaining to BEST in a competitive bidding process would be INR 4.72 per unit, which is evidently higher than the existing cost of INR 4.63 per unit in the existing PPA.

**44.** The Appellant further submits that the MSEDCL is seeking for in-principle approval for short term power purchase at available market rate than the ceiling rate of Rs.4.00 per unit on the ground that it is required to meet the demand supply gap as and when power required from power exchange or through short term tenders. They also bring on record the order dated 18.04.2019 in the case No. 85 of 2019, where the Respondent-Commission had increased the ceiling rate for power procurement through short term route at the average rate of Rs.5.00/KWh. This is also much higher than the marginal power purchase of MSEDCL i.e., higher than INR 3.94 per kWh.

**45.** They also contend that the Respondent-Commission has made incorrect comparison between the Manikaran Power Limited and M/s Sai Wardha Power Generation Limited and the Appellant pertaining to 100 MW RTC power. The entity in question which is before National Company Law Tribunal (NCLT) in a proceeding initiated pursuant to financial default, therefore, such remaining 100 MWs RTC power too could have been supplied at INR 3.94 per unit. This is nothing but an attempt to prejudice and misguide the Tribunal.

**46.** They contend that the delay has been caused not at the instance of the Appellant but for the reasons beyond their control. Therefore, the deemed closure is arbitrary and not sustainable if factually verified.

**47.** With these arguments, they have sought for setting aside the proceedings/directions/opinion given by the Respondent-Commission so far as deemed closure of transmission scheme in question is concerned.

**48.** The gist of arguments placed on behalf of the 1<sup>st</sup> Respondent is as under:

- i) They admit that principal approval of the DPR scheme 400 kV receiving station Vikhroli and 400 kV Kharghar to Vikhroli transmission line was given in the year 2011 and the

completion date of the scheme was fixed as 2015 as per the proposal of the Appellant itself.

- ii) These two schemes formed composite and combined scheme being inter dependent.
- iii) Except applying for various statutory permissions, no field work on ground was undertaken till 2015.
- iv) Twice, the time for completion of the scheme was extended, firstly up to the year 2017 and secondly up to March 2019 as per the request of the Appellant itself.
- v) In terms of approval, periodical progress report has to be furnished, and every time the Commission has been issuing directions again and again expressing its dissatisfaction over the progress made and also for expeditious completion of the project within the time fixed.
- vi) During MTR proceedings for FY 2012-13 to FY 2015-16, the Appellant submitted that required permissions are at different stages and allotment of land was at final stage. They also submitted that major contracts were at advanced stage of finalization. Based on these facts, the Appellant proposed time for completion of the scheme in FY 2017-18. Based on

the said assurance, the time was extended. Accordingly, the Respondent-Commission while considering MYT proceedings for FY 2015-16 to FY 2019-20 noted that the Appellant claimed Rs.6.15 Crores as preliminary expenses for the said scheme, however, the Appellant in spite of Respondent-Commission was insisting the Appellant to submit closure/Review report of the scheme, the same was not submitted.

- vii) When the Appellant did not comply with the said direction, the Commission after recording the factual matrix passed the deemed closure order directing the 2<sup>nd</sup> Respondent to suggest way forward since the 2<sup>nd</sup> Respondent recommended for opting tariff based competitive bidding process, which could ensure expeditious completion of the project apart from being transparent in nature.
- viii) The Respondent-Commission passed the impugned order based on the progress report submitted by the Appellant itself and also on admitted position that in spite of repeated extensions as proposed by the Appellant, no substantial progress was achieved by the Appellant. They contend that the impugned order was passed only after considering the

entire material and directions issued from time to time, keeping in mind that the scheme under which the DPR was approved was contemplating with a horizon of 3 to 5 years only in terms of guidelines pertaining to investment schemes of 2005, but the Appellant in spite of granting extension in all amounting to 8 years has not completed the scheme, therefore the deemed closure is justified.

- ix) They further contend that the Appellant was all along aware of the requirement of obtaining permissions for land, construction of building, hiring of contractors etc., Taking into consideration all these facts, the Appellant himself has proposed the dead line for completing the scheme. Twice the extension of time was granted at the instance of the Appellant.
- x) At every stage of seeking extension of time, the Appellant had within its knowledge the pace at which progress was made for execution of the scheme in question. Based on such analysis, the Appellant itself proposed the extension twice. Therefore, now the Appellant cannot take shelter under no fault theory.

- xi) Further, they contend that there was no contract either between the Commission or the Appellant or between the 2<sup>nd</sup> Respondent and the Appellant. Alternatively, they contend that even if the contract were to be there, the time for completion of the scheme was up to 31.03.2019. Therefore, for non-completion of the scheme, since admittedly the Appellant was not in a position to complete the scheme in question within 31.03.2019, the deemed closure of the scheme was justified. In such a situation, the Appellant could not have sought for enforcement of contract or enlargement of time for completing the scheme in question. For this proposition, they place reliance on Section 55 of the Indian Contract Act.
- xii) Since the Appellant itself failed to complete the scheme within the extended period, the Appellant cannot compel the Respondent-Commission to extend time further.
- xiii) They contend that since the Respondent-Commission opined that the payment of the amount spent by the Appellant has to be reimbursed by the successful bidder in TBCB process, the interest of the Appellant is well protected.

- xiv) Based on grounds of the Amended Appeal, the Respondent-Commission contend that the Appellant is contemplating now to revise completion date as March 2022. They contend that at every stage including the proceedings in which the impugned order was passed, the Appellant was participating and had notice of the proceedings. Therefore, there is no question of issuing further show cause notice before passing the impugned order so far as deemed closure is concerned.
- xv) The Respondent-Commission made further observation in the impugned order that successful bidder apart from paying the above said Rs.135.44 Crores will also have to pay any deviation in the actual expenditure incurred by the Appellant for the purpose of implementing the scheme.
- xvi) They further contend that the Appellant cannot claim a vested right for completing the project nor can compel the answering respondent to enlarge time for completion of the project. They place on record relevance and importance of the guidelines notified by Government of India for completing various projects in power sector by adopting TBCB route. The said approach is transparent both financially and procedurally. In the DPR process, neither the Commission

nor the 2<sup>nd</sup> Respondent-STU seek penalty for non-adherence to the timeline nor would have got the project implemented on competitive cost basis. But TBCB process provides strict monitory regime, which is absent in DPR mode. Therefore, public interest is well protected if project is timely delivered and implemented.

xvii) With these submissions, they have contended that the deemed closure of the scheme is justified.

**49.** Per contra, gist of arguments of 2<sup>nd</sup> Respondent is as follows:

- (i) It was the Appellant which submitted proposal for construction and implementation of the scheme in question. The Capex scheme proposes completion of the project within a time span of 3 to 5 years which is totally contravened by the Appellant.
- (ii) The 2<sup>nd</sup> Respondent also reiterate the contention that not only the 400 kV transmission line and receiving station for meeting the demand of the city are important but also to enable sourcing relatively cheaper energy.
- (iii) Further they contend that if the scheme in question is delayed, the Appellant would stand to gain benefit since



TPCL also has a generation wing with power generating capacity embedded in the city of Mumbai.

- (iv) Considering the approvals and extension of time, there is no scope to continue with the scheme by the Appellant beyond the Financial Year 2018-2019 in the absence of any legal right pertaining to 400 kV receiving Station and the concerned transmission line.
- (v) The Appellant has not laid single brick towards construction on the ground of delay in approvals granted by the Respondent-Commission so far as 400 kV receiving station and Vikrholi-Khargar transmission line.
- (vi) The Respondent-Commission passed deemed closure of the scheme in the impugned order after referring to several approvals granted which were not adhered to by the Appellant.
- (vii) The 2<sup>nd</sup> Respondent also contends that MERC specifically recorded that the Appellant – TPCL not only failed to provide any time frame but also failed to submit a closure/review report. Therefore, the Respondent-Commission was justified

in opining that TPC-T has now revised completion date as March 2022 for both the schemes.

- (viii) In terms of observations made by MERC in the Order dated 12.09.2018, the Appellant was not only warned on several occasions but also it knew that the Appellant failed to demonstrate whether it would be in a position to complete the scheme. The Appellant till date did not even seek formal extension of time limit and the Appellant itself admitted that it would not be able to complete the scheme within the applicable time frame for the Financial Year 2018-2019. In other words, to wait till March 2019 to pass the impugned order is nothing but empty formality since the Appellant at any stretch of imagination would not have completed the scheme.
- (ix) The Appellant was given sufficient opportunity of hearing in rectification proceedings i.e., case No. 3 of 2019. In the Order dated 29.01.2019, the Respondent-Commission has in detail described how the Appellant failed to commission the scheme in question but has compelled BEST undertaking to procure more expensive power.

- (x) The 2<sup>nd</sup> Respondent further contends that prudence requires the project proponent to take coercive action, if there was any delay in granting approval/consent or permission by statutory authorities. The Appellant failed to take such action before any appropriate judicial or quasi-judicial forum.
- (xi) In the absence of any contract to grant protection, the Appellant cannot seek such protection and further, the Appellant is unfairly trying to take protection from the so-called force majeure clause which is provided in the ongoing tender process which admittedly does not apply to TPCL scheme approved under Capex scheme.
- (xii) The 2<sup>nd</sup> Respondent also referred to (2001) 2 SCC 326 in the case of State of West Bengal v. Niranjan Singha to contend that even if the Appellant had diligently undertaken its obligations, since public interest is involved in the controversy, and in terms of transparent and competitive bidding process is more economical, therefore, to prevent such delay has proceeded towards such path where public interest is protected.

- (xiii) The 2<sup>nd</sup> Respondent placed reliance in *Matha Technologies v. District Health and Family Welfare Officer* in WP No. 21645/2016 to contend that in pursuance of directions of Respondent-Commission, 2<sup>nd</sup> Respondent has embarked upon tariff based competitive bidding process as prescribed by Ministry of Power in which process, the Appellant also participated.
- (xiv) Further, in the impugned order, the Respondent-Commission has provided for reimbursement of actual expenses incurred by the Appellant towards the scheme in question, till date, by the successful bidder in the TBCB process.
- (xv) 2<sup>nd</sup> Respondent further contends that comparison with similarly situated projects as contended by the Appellant cannot be accepted since negative equity cannot be pressed into service.
- (xvi) With the above averments, 2<sup>nd</sup> Respondent contends that deemed closure of the project as observed in the impugned order is justified.

## **OUR REASONING AND CONCLUSION:**

50. Admittedly, in terms of guidelines for In-Principle Clearance of Proposed Investment Scheme which came to be introduced by the Maharashtra Electricity Regulatory Commission in the year 2005, the scheme in question came into existence. The relevant background for the guidelines in question is as under:

- *The Electricity Act, 2003 has given State Electricity Regulatory Commissions wide-ranging powers and flexibility to regulate the power sector.*
- *Under Section 61, the Commission has the power to specify the terms and conditions for the determination of tariff and in doing so it is required to be guided by the factors which would encourage competition, efficiency, economical use of the resources, good performance and optimum investments so that generation, transmission, distribution and supply of electricity is conducted on commercial principles and the consumer's interest is safeguarded. Under the proviso to Regulation 4.1 of the Tariff Regulations, the need to link tariff adjustments to increases in the productivity of capital employed is also to be kept in view.*
- *While Capital Investment is required to be made by Licensees for various purposes like the creation of new infrastructure to meet load growth, to meet statutory requirements, to strengthen the existing system and increase its efficiency, replace old/ obsolete assets, any*

*such capital investment increases the capital base and consequently the reasonable return thus affecting the tariff to consumers. It is therefore necessary to ensure that such capital investment schemes being proposed are necessary and justified, and do not impose an unnecessary burden on consumers by way of tariff.*

- *During the Tariff Determination processes undertaken so far, various objectors raised the issue of the prudence of the capital investment being made by Licensees.*
- *After examining all aspects in this regard, the Commission directed Licensees Tata Power Company (TPC) and Reliance Energy Limited (REL) to submit details in respect of all proposed Capital Investments exceeding Rs. 10 crores for approval to the Commission.*
- *.....*

**51.** Clause - III of the Scheme refers to “Methodology”. The relevant portion is as under:

**A) Submission of Three-Year Capital Investment Plan:**

- The Licensees shall submit a 3-year Rolling Capital Investment Plan outlining the major schemes proposed for each Financial Year. The capital investment plans should be internally consistent and reconcilable with other relevant proposals and supporting information presented in the submission such as demand projections, network reliability and design criteria.

**B) Capital Investment Schemes :**

- For the purpose of these guidelines, a Capital Investment Scheme means any non-recurring capital expenditure programme for the acquisition, construction or improvement of a permanent facility in a particular sector (i.e. Generation, Transmission, Distribution, General, etc.) or a geographical region.
- The Scheme shall be planned considering a 3-5 year investment horizon for Generation and transmission related investments, and a 1-3 year horizon for Distribution-related investments.
- The scope of investments included in each Scheme shall be any of the following:
  - (i) Works of a similar or related nature  
For example: New Receiving Stations proposed at different locations within the licence area must be clubbed together and presented as a Scheme for New Receiving Stations, Schemes for modernization / augmentation of the Transmission cables must be presented together, Information Technology Schemes, SCADA and Communication Equipment at the region/State level, Schemes for Major Replacement of Old Equipment etc.

**52.** From these guidelines it is clear that based on the feasibility reports which exceed Rs.10 Crores must be submitted which should include a proposal for least cost plan, must outline the scope and objectives of the proposed scheme along with necessary information

documents to substantiate the proposed scheme or the plan, so that the same could be assessed at the time of in-principle clearance.

**53.** The evaluation of the feasibility report was to be done by two stage approval process. One is in-principle clearance and other is the final approval during the tariff determination process and/or ARR review. When application for in-principle clearance of the proposed capital investment scheme is made, the proposer/licensee will be expected to indicate clearly and separately **(a) the Scope and (b) the Objectives** of the proposed Scheme. The application should cover all the aspects mentioned in these guidelines and should explain how the Scheme measures up to the evaluation criteria. In this stage, the Scheme would be given clearance considering primarily its scope and objective, while keeping in view the criteria.

**54.** During tariff determination process, the Commission must keep in mind the following aspects in terms of guidelines:

- To what extent the scope and objectives given at the time of In-Principle Clearance have been achieved.
- What is the actual expenditure incurred by the Licensee, as against the amount considered while granting In-Principle



Clearance with justification for significant variations, particularly on the higher side.

- Actual benefits and results achieved or to be achieved
- The Capital Investment Scheme Proposals will be, inter alia, subjected to the following evaluation and filtering mechanism:
  - 1) Statutory/Safety Requirement
  - 2) Need for the Investment
    - a. Demand Side Requirement
    - b. Technical Justification
    - c. Urgency
    - d. Prudence of the Investment

**55.** Guideline (IV) refers to time frame for submission of feasibility report. In principle the CAPEX scheme evolved by the Respondent-Commission proposed 3 to 5 years investment horizon so far as generation and transmission related investments and 1 to 3 year horizon for distribution related investments. The scheme in question pertains to transmission and in terms of guidelines it must have been completed within 3 to 5 years.

56. The 2<sup>nd</sup> Respondent, subsequent to restructuring of Maharashtra Electricity Board and the 2<sup>nd</sup> Respondent MSETCL coming into existence with effect from 24.01.2005, apparently describes itself as a transmission utility primarily in the business of transmission of electricity which came to be notified by the State Government Resolution No. Reform 1004/S.No.8885/Energy-5, dated 17.02.2005. Therefore, the 2<sup>nd</sup> Respondent-STU is established in terms of Section 131 of the Act, which is expected to discharge its duties and functions in terms of Section 39 of the Act and Regulations framed by the Respondent-Commission and the State Grid Code accordingly.

57. The scheme in question comprises the following three components.

<b><i>Name of the Transmission Scheme/Project</i></b>	<b><i>Target Completion Date</i></b>
<i>400 kV GIS Receiving Station at Vikhroli</i>	<i>March, 2015</i>
<i>400 kV Kharghar-Vikhroli transmission line</i>	<i>March, 2019</i>
<i>(LILO) of 400 kV Talegaon-Kalwa Line at 400 kV Vikhroli Receiving Station</i>	<i>March, 2022</i>

58. The Appellant contends that prudent business proposal and practice would mean that no asset could be kept idle, therefore, they did not make effort so far as the construction of receiving station since

corresponding receiving lines were not ready on account of various delays in getting approvals/clearances. The Appellant undertook the scheme in question knowing fully well that the scheme has to plan 3 to 5 year investment horizon. Neither the 1<sup>st</sup> Respondent nor the 2<sup>nd</sup> Respondent gave option to the Appellant to postpone construction of receiving station till corresponding transmission lines were ready. Once the target of completing the project within 3 to 5 years was envisaged and agreed to by the Appellant, it is irrelevant whether Respondents were aware that unless transmission lines are ready, construction of substation is purposeless. The obligation is upon the Appellant the project proponent, to plan its work and how it should be completed. One cannot deny the fact that a prudent business person is expected to assess reasonable time required for getting required statutory approvals/clearances/consents. This must be envisaged at the time of submitting the proposals itself. Equally, prudence in the business requires the project proponent to think of possible obstacles/obstructions while carrying out the scheme in question. This includes possible steps one has to take to get such clearances/approvals/consents, therefore could we appreciate the stand of the Appellant that once it applied for such approvals/consents/clearances, it is left to the concerned institutions/authorities to grant such permissions/consents/approvals at their own time pace? Was it possible for the Appellant to take positive

steps to get such required approvals/sanctions/consents by taking positive steps in a better manner?

**59.** In this background, we must see at what pace the Appellant herein got itself involved in getting transmission scheme in question completed at an early date or was it possible for the Appellant to do much better than what it has done till date? That part of impugned order is now arising for our consideration when the Respondent Commission took up Mid Term Review for truing up of ARR for FY 2015-16 under the MYT Regulation, 2011, truing up of ARR for FY 2016-17 and Provisional truing up of ARR for 2017-18. It also had sought for approval of Revised ARR for FY 2018-19 and FY 2019-20 in terms of MYT Regulations, 2015. After admitting the MTR Petition on 15.06.2018, the Respondent-Commission directed the Appellant herein to publish the same in terms of Section 64 of the Electricity Act, 2003

**60.** The Appellant contends that no suggestions or objections whatsoever were received opposing these petitions of MTR and MYT when public notice was issued. Just because no one from public side raised objection, it does not mean that the Respondent-Commission has to act blindly, totally agreeing with the Appellant without making any prudence check to verify whether the stand of the Appellant was justified

or not. The answer would be Respondent-Commission cannot act in that passion as it is vested with a pious responsibility to regulate the entire process of generation, transmission and distribution as envisaged under the Act. It should act as a neutral person to protect the interest of all the stakeholders including consumers at large. During these ARR proceedings, revised ARR came to be sought when the 2<sup>nd</sup> Respondent made complaint of delay of the Vikhroli transmission scheme in question. The Respondent-Commission passed two orders, one on 12.09.2018 and another on 29.01.2019 on the Petition filed by the Appellant.

**61.** According to the Appellant, the following table indicates particulars of work and dates of approvals so also target completion dates in terms of each DPR, which reads as under:

<b>"S.NO.</b>	<b>PARTICULARS</b>	<b>DATE(S)</b>
<b>VIKHROLI RSS</b>		
(i)	<i>Date of Submission of DPR for Approval of MERC</i>	<i>May 2009</i>
(ii)	<i>Date of Approval of the DPR by MERC</i>	<i>June 2011</i>
(iii)	<i>Target Completion Date as per DPR</i>	<i>FY 2014-2015</i>
<b>VIKHROLI TRANSMISSION LINE</b>		
(iv)	<i>Date of Submission of DPR for Approval of MERC</i>	<i>March 2009</i>
(v)	<i>Date of Approval of the DPR by MERC</i>	<i>October 2011</i>
(vi)	<i>Original Target Completion Date as per DPR</i>	<i>FY 2014-2015</i>
(vii)	<i>Revised Submission of DPR for Approval of MERC (Revision -I)</i>	<i>February 2013</i>

	<i>(Revisions were in consultation with STU – single ckt line was revised to constructed as double ckt line. Conductors configurations were also revised)</i>	
(viii)	<i>Revised Approval of the DPR by MERC (Revision – I)</i>	<i>February 2014</i>
(ix)	<b><i>Revised Target Completion Date as per the Revised DPR</i></b>	<b><i>FY 2016-2017</i></b>
(x)	<i>Revised Submission of DPR for Approval of MERC (Revision -II)</i> <b><i>Revisions were in consultation with STU – revision from Air Insulated Switchgears to Gas Insulated Switchgears)</i></b>	<i>April 2015</i>
(xi)	<i>Revised Approval of the DPR by MERC (Revision – II)</i>	<i>October 2015</i>
(xii)	<b><i>Revised Target Completion Date as per the Revised DPR</i></b>	<b><i>FY 2018-19</i></b>
<b><i>TALEGAON – KALWA LILO LINE</i></b>		
(xiii)	<i>Date of Submission of DPR for Approval of MERC</i>	<i>22.07.2015</i>
(xiv)	<i>Date of Approval of the DPR by MERC</i>	<i>22.11.2017</i>
(xv)	<b><i>Original Target Completion Date as per DPR</i></b>	<b><i>FY 2021-22”</i></b>

**62.** Appellant also brought on record the consents and clearances under different enactments, rules and regulations required for the project for Vikhroli transmission scheme.

- *“Section 68 of Electricity Act, 2003 by GoM*
- *Section 164 of Electricity Act, 2003 by GoM*
- *CRZ clearance*
- *Stage-I and Stage-II forest clearance*
- *Hon’ble High Court approval to work in designated mangroves area*
- *No Objection Certificate Application System (NOCAS) for transmission tower*

- *Clearance from AAI under Shielding benefit*
- *Clearance from AAI, including towers requiring aeronautical study linked to Navi Mumbai International Airport (NMIA) flight path,*
- *National Green Tribunal (NGT) Approval,*
- *Approval related to the Flamingo Sanctuary from Government of Maharashtra*
- *Kharghar Hill Crossing with requirement of additional hill cutting to avail of shielding benefit of aviation clearance*
- *Approval from MMB for Vashi creek crossing, and*
- *Clearance from National Board for Wildlife*
- *Building construction approvals from MCGM and City and Industrial Development Corporation (CIDCO)”*

**63.** They also narrate problems faced by the Appellant during execution of the scheme in question which added to the delay, which are as follows:

- *“The Appellant applied for statutory approvals such as Section 164 and Section 68 approvals under Electricity Act, 2003; Mangrove Assessment Survey, and CRZ Demarcation Survey, etc.*
- *The route approved by GoM included mangrove area, which as per the CRZ Notification, required to be specifically assessed by the government authorized agencies. Appellant acting as a prudent utility arranged for Mangrove Assessment Survey through*

*a well-known agency in the field of Mangrove Conservation i.e. Bombay Natural History Society much prior to receiving even Section 68 and Section 164 approval. Immediately after Mangrove Assessment Survey and CRZ Demarcation Survey, applications were filed for CRZ clearance and Forest Clearance dated 25.03.2013 and 28.10.2013 respectively.*

- The route approved by GoM ran across an area which is in the influence zone of NMIA which was notified in 2011 was announced as site for new airport at Navi Mumbai. This required the Appellant to apply for approval from Airport Authority of India.*
- The Government of Maharashtra in August, 2015 announced certain areas identified under the route as reserved flamingo areas. This further led to delay in execution of the transmission scheme since the right to construct over the area was subjected to specific approval in this regard to be obtained from Government of Maharashtra. After persistent follow-up the right to construction was received in May, 2018.*
- The Ministry of Environment and Forest specifically directed that projects where the identified area includes both forest and non-forest land, will not commence work on non-forest land until and unless Forest Clearance is received from appropriate authorities.”*

**64.** The Appellant also brings on record the details of statutory approval/consent and clearances taken by them, which are as follows:



“S.NO.	DATE	PARTICULARS	REMARKS
1.	30.07.2011	Applied for “Construction Commencement Certificate for Ghatkopar Switching Sub-Station” from Municipal Corporation of Greater Mumbai.	
2.	29.10.2011	Applied for “Construction Commencement Certificate for Vikhroli Receiving Sub-Station” from Municipal Corporation of Greater Mumbai.	
3.	18.04.2012	Request to IRS Chennai for CRZ demarcation survey of Ghatkopar Plot.	Post Oct 2011 approval, the GOI approved agencies were contacted & accordingly order was placed with after analysis of offers
4.	31.05.2012	Order placement for CRZ demarcation survey of Ghatkopar Plot	Post Oct 2011 approval, the GOI approved agencies were contacted & accordingly order was placed with after analysis of offers
5.	12.06.2012	IRS Chennai's schedule for CRZ Demarcation of Ghatkopar RSS Plot	
6.	25.06.2012	Letter to Municipal Corporation of Greater Mumbai for expediting drawing approval by CFO	
7.	13.07.2012	Chief Fire Officers provided NOC for Vikhroli Building and Ghatkopar Building.	

8.	03.08.2012	<i>Receipt of CRZ Demarcation report from IRS Chennai.</i>	
9.	14.08.2012	<i>Application for CRZ clearance for 400 kV Ghatkopar RSS submitted by the Appellant.</i>	
10.	13.09.2012	<i>Letter to Municipal Corporation of Greater Mumbai for expediting drawing approval by CFO</i>	
11.	03.11.2012	<i>The Appellant submitted a Presentation to MCZMA for CRZ clearance to 400 kV Ghatkopar RSS.</i>	
12.	19.11.2012	<i>Letter to EEBP for switching station &amp; Receiving station building</i>	
13.	07.12.2012	<i>Appellant made RI Payment for laying down of cables.</i>	
14.	19.01.2013	<i>CRZ clearance for 400 kV Ghatkopar RSS was issued by MCZMA</i>	
15.	26.08.2013	<i>Intimation of commencement of site activities at Ghatkopar Sub-Station</i>	
16.	03.12.2013	<i>LOI issued to Gannon Dunkerley &amp; Co. Ltd</i>	
17.	31.01.2014	<i>The Appellant wrote a Letter to MC for expediting IOD &amp; CC for Ghatkopar.</i>	
18.	26.04.2014	<i>Appellant submitted Aviation Application for Vikhroli Receiving Station.</i>	
19.	27.06.2014	<i>Appellant submitted Aviation Application for Ghatkopar Sub-Station.</i>	
20.	28.07.2014	<i>Appellant intimated the State Police Administration regarding the laying down of cables.</i>	
21.	04.08.2014	<i>Aviation Approval for Vikhroli Receiving Station.</i>	
22.	19.09.2014	<i>Aviation Approval for Ghatkopar Switching Station.</i>	
23.	22.01.2015	<i>MCGM demarcated the Plot at Vikhroli</i>	

24.	12.06.2015	Received "Construction Commencement Certificate for Vikhroli Receiving Sub-Station Building" from Municipal Corporation of Greater Mumbai.	<b>Time taken by the Authority is 1414 days.</b>
25.	04.10.2016	IOD communicated by Municipal Corporation of Greater Mumbai for Ghatkopar Sub-Station.	
26.	26.03.2018	STU suggested to optimise the cost by conversion of Kharghar GIS to AIS & elimination of Ghatkopar switching station	
27.	14.09.2018	The Appellant at the behest of STU submitted revised DPR for technical validation as per STU's suggestion	

**DATES & EVENTS FOR VIKHROLI TRANSMISSION LINES**

<b>S.NO.</b>	<b>PARTICULARS</b>	<b>DATE(S)</b>
(i)	Date of Submission of DPR for Approval of MERC	March 2009
(ii)	Date of Approval of the DPR by MERC	October 2011
(iii)	<b>Original Target Completion Date as per DPR</b>	<b>FY 2014-2015</b>
(iv)	Revised Submission of DPR for Approval of MERC <b>(Revision -I)</b> <i>(Revisions were in consultation with STU – single ckt line was revised to constructed as double ckt line. Conductors configurations were also revised)</i>	February 2013
(v)	Revised Approval of the DPR by MERC (Revision – I)	February 2014
(vi)	<b>Revised Target Completion Date as per the Revised DPR</b>	<b>FY 2016-2017</b>
(vii)	Revised Submission of DPR for Approval of MERC <b>(Revision -II)</b> <i>Revisions were in consultation with STU – revision from Air Insulated Switchgears to Gas Insulated Switchgears)</i>	April 2015
(viii)	Revised Approval of the DPR by MERC (Revision – II)	October 2015
(ix)	<b>Revised Target Completion Date as per the Revised DPR</b>	<b>FY 2018-19</b>

**DETAILS OF STATUTORY APPROVALS / CONSENTS / CLEARANCES**

<b>S.NO.</b>	<b>DATE</b>	<b>PARTICULARS</b>	<b>REMARKS</b>
<b>SECTION 68 AND 164 APPROVALS</b>			
1	22.11.2011 to	The Appellant shortly after receiving	

	04.08.2012	<i>approval of the Original DPR applied for Section 68/164 of the Electricity Act, 2003 Approval which was received after about <u>257 days</u>.</i>	
<b>COASTAL REGULATION ZONE CLEARANCE</b>			
2	07.10.2011 to 22.01.2013	<i>The Appellant upon receipt of the Approval of the Original DPR in October 2011, promptly started Mangrove Assessment Survey which was completed in <u>473 days</u>.</i>	<i>This activity was undertaken by the Appellant in parallel to it seeking Section 68/164 approval.</i>
3	18.04.2012 to 18.03.2013	<i>The Appellant started Coastal Zone Demarcation Survey which was completed in <u>335 days</u>.</i>	<i>This activity was undertaken by the Appellant in parallel to it seeking Section 68/164 approval.</i>
4	25.03.2013 to 07.04.2014	<i>The Appellant submitted its application for seeking CRZ Clearance to MCZMA. The MCZMA issued its recommendations to Expert Appraisal Committee (EAC) after <u>379 days</u>.</i>	<i>This activity was undertaken on completion of all pre-requisites i.e. Section 68 &amp; 164, Mangrove Assessment Survey &amp; CRZ Demarcation survey.</i>
5	06.11.2016	<i>The recommendations received from MCZMA were internally forwarded to EAC and final CRZ Clearance was received <u>after 1323 days</u> from the date of submission of application to MCZMA.  <b>(Note: therefore, there is a cumulative time taken of 2510 days i.e. of about 84 months due delay in receiving CRZ Clearance)</b></i>	<i>EAC sought the Appellant to evaluate alternate technologies for transmission towers and submit the report after getting the same validated dated by PGCIL which took almost 10 months.</i>
<b>FOREST CLEARANCE</b>			
6	12.06.2012 to 10.10.2013	<i>The Appellant initiated Differential Geo Positioning System (DGPS) survey for obtaining geodigitised</i>	<i>Mangrove Assessment Survey was another major requirement for this</i>

		<i>maps for the transmission route to enable it to prepare the Forest Clearance application. The same was received <u>after 486 days.</u></i>	<i>clearance, which was being done in parallel. The additional time may also be attributable to revision in scope of work. Initially the transmission lines were made to accommodate Dehrand Power Plant, which was later removed.</i>
7	28.10.2013 to 07.07.2016	<i>The Appellant submitted application to seek forest clearance before Deputy Conservator of Forest (DCF) and the Stage – I clearance was received after a <u>984 days.</u></i>	<i>Submission of application can only be initiated after Section 68/164 Approval along with geo-digitalised maps.</i>
8	14.11.2016 to 08.11.2018	<i>The Appellant submitted the compliance report under Stage – I clearance to obtain Stage – II clearance which was received after <u>725 days.</u></i>  <i>(Note: therefore, there is a cumulative time taken of 2195 days i.e. of about 74 months for receiving Forest Clearance)</i>	<i>Total towers needed Forest Clearance were 42 nos.</i>
<b>MANGROVE AREA CLEARANCE FROM HON. BOMBAY HIGH COURT</b>			
9	24.11.2018 to 20.12.2018	<i>The Appellant upon receipt of the Forest Clearance (Stage – II) submitted an Notice of Motion in the ongoing proceedings before the Hon'ble High Court of Bombay for seeking clearance for construction on mangrove area. However, the Hon'ble High Court vide its order dated 20.12.2018 (after 27 days) directed the Appellant to file a</i>	<i>Submission of the fresh writ petition is pending to be filed in light of the findings of MERC in the Impugned Order dated 12.09.2018</i>

		<i>separate petition since the main matter has been disposed off by the Hon'ble High Court. <u>Total Towers being affected due to such approval is 20 nos.</u></i>	
<b>MUMBAI MARITIME BOARD'S APPROVAL</b>			
10	06.11.2013 to 20.01.2014	<i>The Appellant applied for bathymetry survey from MMB which was received after <u>76 days.</u></i>	<i>Bathymetry survey is important to measure depth of a water body and as well as to map the underwater features of a water body.</i>
11	24.01.2014 to 21.08.2014	<i>The Appellant after receiving bathymetry survey on 20.01.2014 applied for MMB's Approval which was received after <u>210 days.</u></i>  <i>(Note: therefore, cumulative time taken was 286 days.)</i>	
<b>DECLARATION OF FLAMINGO SANCTUARY</b>			
12	06.08.2015	<i>The Government of Maharashtra declared certain areas under Flamingo Sanctuary. This affected the area identified by the Appellant for construction of its Transmission Line.</i>	<i>This affected 6 nos. of towers.</i>
13	05.10.2015 to 22.05.2018	<i>The Appellant applied to the authority seeking exclusion of the Appellant's transmission project area which was received after <u>961 days.</u></i>	
<b>AVIATION CLEARANCES</b>			
14	23.10.2013 to 16.09.2014	<i>The Appellant submitted its application on NOCAS (No Objection Certificate Application System) operated by Airport Authority of India (AAI) seeking clearance for construction on area around site for Navi Mumbai Airport. The same affects construction of all towers (68</i>	<i>Approval of Section 68/164 and Mangrove Survey and CRZ survey along with the route survey verified by authorised surveyors is a pre-</i>

		<i>nos.) of the Appellant. The NoC was received <u>after 329 days.</u></i>	<i>requisite for aviation approval.  Approval of 28 towers received in February 2014 and balance 14 in September 2014. Rejection of 26 towers for height reduction.</i>
15	<i>27.10.2014 to 14.10.2015</i>	<i>The Appellant submitted its Application for Shielding benefit &amp; Aeronautical Study (AS) which was cleared by the authorities after <u>353 days.</u></i>	<i>After presentations in July 2014 &amp; October 2014 to Appellate Committee requesting approval under shielding benefit &amp; follow up letters in January 2015, AAI indicated that shielding calculations are under revision and Appellant should submit with revised shielding calculations. The same were submitted in April 2015. After presentation in May 2015 &amp; June 2015, approval for 24 towers received in October 2015. Two (02) towers were not cleared since dependent on operating norms of Navi Mumbai Airport.</i>
16	<i>01.10.2016 to 22.11.2018</i>	<i>The Appellant after undertaking construction survey and feasibility, re-applied for Shielding benefit &amp; Aeronautical Study for 9 Towers. The authority cleared 6 towers remaining to be cleared once operating norms for Navi Mumbai Airport are issued.</i>	<i>As per the recently received MoM of the authority, operating norms for Navi Mumbai Airport are likely to be issued by March</i>

		<p><i>The said clearance has come after <u>783 days</u>.</i></p> <p><i>(Note: time taken was 1465 days.)</i></p>	<p><i>2019. Thereafter, the Appellant will take 2-3 months to undertake construction”</i></p>
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**65.** It is seen from the records that initially the scheme was commenced with the objective of strengthening Mumbai transmission network/increased transfer capacity of Mumbai transmission system, which allows import of additional power i.e., 800 to 1000 MW through competitive bidding route. This additional power being brought into Mumbai from external sources was to meet growing electricity demand of Mumbai. In this context, the Respondents have submitted that Mumbai city being a financial capital and business hub of India, the transmission scheme in question would assist various infrastructural projects, and if the same is not commissioned/completed on time, the existing capacity of the corridor will not be sufficient to bring more power into the system. This adds to the problem of growing demand of power. The existing power purchase agreements of embedded generating units of Mumbai including the Appellant have expired. One of the Units of the Appellant was shut down due to unavailability of fuel. The existing increased power demand of Mumbai cannot be met with the existing power supply unless power is brought into the city of Mumbai from outside. This seems to be the background why 400 kV Vikhroli



substation was conceptualized, which would enable the 2<sup>nd</sup> Respondent-State Utility and the Powergrid to get about 1000 MWs power. Apart from meeting the existing increased demand, one has to think of having reliable and continuous supply of power. Because of this increased demand, if the proper network/infrastructure is created, the power system within the state definitely stabilizes. It is with this object the substation and Kharghar Vikhroli transmission line came to be approved. So far as 400 kV GIS receiving station is concerned, the Commission approved the same on 02.06.2011. The expected completion was envisaged as FY 2015. The completion schedule proposed by the Appellant was approved by the Commission.

**66.** By letter dated 03.10.2011, the Respondent-Commission approved DPR for construction of 400 kV Kharghar Vikhroli transmission line in order to provide input power to Vikhroli EHV substation. Expected completion was FY 2015. Therefore, basic scheme of substation receiving and transmission line of Vikhroli as stated above was envisaged as combined project to meet the power demand of Mumbai. As a matter of fact, the scheme was recommended by the 2<sup>nd</sup> Respondent-STU. The year of commission of both the above said elements as proposed by the Appellant was 2015. However, the Appellant sought revised approval assuring that both substation and

transmission line would be completed in the FY 2018-19 as sought in the revision dated 05.02.2014 and again on 20.10.2015.

**67.** However, according to the Respondents in spite of revised approval time i.e. FY 2018-19 is over, no ground work of any nature was taken up by the Appellant and there is no certainty when they would carry out and when they would complete.

**68.** The third element i.e., LILO of 400 kV Talegaon – Kalwa Line at proposed 400 kV Vikhroli receiving station was actually approved on 10.11.2017, and this line as per the submissions of Respondent-Commission is entirely different from first two works/elements i.e., 400 kV GIS receiving station at Vikhroli and 400 kV Kharghar-Vikhroli transmission line. This third element viz., Talegaon-Kalwa line was proposed as second source of Vikhroli substation and alternate to 400 kV Kharghar-Vikhroli line in case of emergency. In other words, it is standby source of power. Therefore, the year of completion of this scheme was approved as FY 2021-22 since this is only a standby arrangement connected to 400 kV Vikhroli project.

**69.** According to the 2<sup>nd</sup> Respondent-STU, because of the inordinate delay caused by the Appellant, the 2<sup>nd</sup> Respondent had to propose TBCB route since that would envisage transparency both in economics

and factuals. The urgency for completion of 400 kV Vikhroli scheme, was to help the large number of consumers and to decongest the pressure of demand. That was the need of the hour.

**70.** The 2<sup>nd</sup> Respondent has narrated the genesis when the scheme in question was proposed and its importance as under:

- a) *The city of Mumbai being a financial capital and business hub of India, the power load growth of the city is ever increasing due to upcoming infrastructural projects. The existing transmission capacity corridor for bringing power to Mumbai city from Respondent No. 2 network is not sufficient to safely meet the growth of power load in the city.*
- b) *To meet the said requirement a Power purchase Agreement (PPA) of the embedded generating units of Mumbai system was executed between the Appellant and Respondent No.2. But as the same has expired and the Ld. Commission has gave extension to the Appellants existing PPA upto March, 2024 however, due to economic shut down of unit no. 6 of the Appellant due to unavailability of fuel and hence for meeting the increased power load for the city of Mumbai, it is inevitable to export power from a system situated outside the city and it is for this purpose availability of 400KV Vikhroli substation is highly essential.*
- c) *The 400 KV Vikhroli substation which will bring about 1,000 MW of power from Respondent No. 2 and PGCIL network in Mumbai city will provide a reliable power supply to meet the future upcoming demand of power load and will facilitate exporting of cheaper power by Mumbai Distribution utilities (BEST, ARML-D & TPC-D) from outside Mumbai for the benefits of the*

*Consumers residing in the area and would further support stabilization of power system network in the city of Mumbai.*

- d) *The Respondent No.2 approved the 400 KV Vikhroli substation project of the Appellant in the year 2009 with scheduled commissioning in 2014-15. However, due to frequent revisions by the Appellant the said project was delayed time and again from its scheduled date of Commissioning.*
- e) *The Appellant has not done any tangible work on ground except acquisition of land for 400KV Vikhroli Project infact, the 400KV Vikhroli substation along with 400KV Kharghar-Vikhroli was there in the approved scope since the year 2011 and still no tangible work was seen which could lead to completion of the project within the scheduled time. The Appellant however has been seeking extensions and is extending the time line for completion of the said project but has failed to comply with the same every time.*
- f) *Further, it was seen from system studies that 500 MW Thermal unit at Trombay needs to be on bar till commissioning of 400/220 KV Vikhroli substation whereas the Appellant informed that the project would be finally completed by March 2021-22, thereby causing a delay of 8more than years. Therefore, the Respondent No.2 recommended that the project should be considered under TBCB route for timely development of an efficient infra state transmission system under section 39(2)(c) of the Electricity Act 2003, which would ensure timely completion of the project.*
- g) *The Ld. Commission accepted the said suggestion and disposed of the case No. 204 of 2017 by giving a specific observation against the Appellant. That due to inordinate delay in completion of the said scheme by the Appellant, the scheme was treated as deemed closed by the Commission and the Commission thereby directed Respondent No.2 to take up the*

*scheme under TBCB route and submit its report within a period of one month.”*

**71.** The Respondent-Commission, in the impugned order on the issue of deemed closure of 400 kV Vikhroli transmission scheme, has observed as under:

*7.12.2 During Mid Term Review Petition of second control period (i.e. FY 2012-13 to FY 2015-16), TPC-T had stated that the approvals required are at various stages and include clearances from MoEF, Forest authorities and Airport Authority of India. The land required for the Receiving/Switching station and bays is in the final stages of possession. The major contracts have either been placed or are in advanced stage of finalization. The work will be initiated after all relevant approvals. TPC-T had not projected any capitalization for the scheme. TPC-T had proposed revised timelines for the scheme completion as FY 2017/ FY 2018.*

*7.12.3 During MYT Petition for the third control period ((i.e. FY 2015-16 to FY 2019-20), TPC-T claimed preliminary expenses of Rs. 6.15 Cr. for the scheme, however, TPC-T failed to provide any time-frame for the completion of the scheme. The Commission directed TPC-T to submit closure/review report for this scheme.*

*7.12.4 The Commission notes that TPC-T, in present position has not submitted review/ closure report for the scheme stating that statutory approvals are in progress. TPC-T has stated Commencement Certificate has been received for Vikhroli building. Allocation of 511 Sq. Mtr. has been approved by Municipal Commissioner and awaiting improvement committee*

*approval. Work will be taken up after receiving all the statutory approval for GIS building at Ghatkopar and depending upon progress of work in 400 kV Kharghar- Vikhroli transmission line which will be taken up after obtaining permission for working in mangrove area from High Court. TPC-T also stated that the commissioning of 400 kV receiving station will have to be aligned with completion of 400 kV Kharghar Vikhroli Transmission line, for readiness of source. Further there were various mandatory statutory permissions which were required to be obtained before initiating the actual work in 400 kV Kharghar-Vikhroli Transmission Line. Currently the Stage II Forest Clearance and Aviation Approval for balance two towers for 400 kV Kharghar-Vikhroli lines are pending which are being actively pursued.*

*7.12.5. As regards the 400 kV Kharghar Vikhroli line, the Commission notes that initial DPR had been approved by the Commission in October, 2011 with target date of completion as March, 2015. Also, thereafter TPC-T had submitted the revised DPR twice and the Commission had given its approval in September, 2013 (target completion date as March, 2017) and March, 2015 (target completion date as March, 2019). As per recent submissions of TPC-T, it is seen that TPC-T has now revised completion date as March, 2022 for both these scheme.*

*7.12.6 Also, the Commission notes that while providing its comments in Case No. 176 of 2017 (BEST's Petition regarding power procurement under competitive bidding) STU had stated that to meet 'N-1' and 'N-2' contingencies, system requires support of embedded 500 MW thermal unit at Trombay on bar till commissioning of 400 kV receiving station at Vikhroli. STU highlighted the scheme of 400 kV Receiving station at Vikhroli as an essential scheme which requires implementation for*

*strengthening of Mumbai Corridor. STU had made its observation that this scheme is getting inordinately delayed and suggested to take up this scheme under Tariff Based Competitive Bidding (TBCB) route.*

*7.12.7 The Commission observed even after substantial period of time, there is absolutely no progress on the scheme and TPC-T has been repeatedly citing the reasons of pending statutory permissions. The proposed 400 kV Receiving station at Vikhroli would be the first 400 kV receiving Station within Mumbai and if commissioned, would help in resolving the transmission constraints of bringing the power to Mumbai from outside of the Mumbai.*

*7.12.8 Based on TPC-T's submissions in the present Petition, the Commission further notes, TPC-T had envisaged imminent load requirement and exponential increase in the power requirement due to large scale development in residential and commercial properties (especially in Godrej area) at Vikhroli and around area. In actual, the predicted load growth has not come up in the area.*

*7.12.9 Considering above, the Commission noted that STU has observed that there is an inordinate delay in completion of this scheme and suggested to take up this scheme under Tariff Based Competitive Bidding (TBCB) route. The Commission is concerned about the approach adopted by TPC-T for execution of the scheme. This scheme is being treated as deemed closed by the Commission and the Commission directs STU to take a review of such critical schemes and propose a way forward. STU is directed to submit its report to the Commission on review of TPC-T's proposed 400 kV Vikhroli Receiving Station within a month.*

**72.** The above observation of the Respondent-Commission clearly indicates the pace at which the Appellant was executing the 400 kV Vikrohli scheme, which was being followed up by the Commission having in mind the growing power demand of consumers of Mumbai and the need to transmit into Mumbai the additional power from outside. It is also seen from the records as observed by the Respondent-Commission based on the submissions of the 2<sup>nd</sup> Respondent-STU that many other schemes which were delayed by the Appellant apart from the scheme in question were pointed out to the Appellant by the Commission from time to time. The Commission vide order dated 30.06.2016 in Case No. Case No. 22 of 2016, a Petition of the Appellant for Truing-up of ARR for FY 2014-15, Provisional Truing-up for FY 2015-16 and approval of ARR for the MYT Third Control Period from FY 2016-17 to FY 2019-20 has clarified the delay in execution of other schemes by the Appellant.

**73.** Case No. 3 of 2019 came to be filed before the Commission by the Appellant seeking permission of the Commission to continue execution of 400 kV Vikhroli scheme in question for strengthening Mumbai transmission system. This came to be dismissed on 29.01.2019 by making the following observations:



*“ STU’s belated Reply filed on 28 January,2019 is summarized as under:*

*6.1 As per the system studies carried out by STU, 400/220 kV Vikhroli project scheme is required for strengthening of Mumbai Transmission as it will facilitate 800-1000 MW of power import into Mumbai from grid at 400 kV level.*

*6.2 400 kV schemes are most critical to bring outside power into Mumbai City, which will strengthen transmission corridor of Mumbai. Also it will help to cater growing power demand of Mumbai in near future. Thus, it is imperative to execute such transmission system improvement schemes in an expeditious manner.....*

*10. The genesis of the case lies in various in-principle approvals of 400 kV Vikhroli Projects by the Commission as proposed by TPC-T and as per recommendation by STU. The objective of this scheme was to strengthen Mumbai Transmission Network and thereby import additional nearly 800 to 1000 MW power into Mumbai from external sources in order to meet growing electricity demand. The details of the schemes which have been approved by the Commission are summarized as under:*

- a) The Commission on 2 June,2011 had approved the scheme for establishment of 400 kV GIS Receiving Station at Vikhroli amounting to Rs. 846.19 Crore with expected completion in FY 2015-16. The completion schedule was approved by the Commission as proposed by TPC-T.*
- b) The Commission vide letter dated 3 October, 2011 had approved the DPR for construction of Single Circuit, 400 kV Kharghar-Vikhroli Transmission Line amounting to Rs. 115.22 Crore with expected completion in FY2015.*
- c) The scheme of 400 kV Kharghar-Vikhroli Transmission Line was revised by TPCT for inclusion of GIS bays and was accordingly approved by the Commission on 5 February, 2014 amounting to*

*Rs. 386.57 Crore. The Commission, once again, vide its letter dated 20 October, 2015 had approved revised scheme for construction of 400 kV Multi Circuit Kharghar-Vikhroli Transmission Line amounting to Rs. 455.39 Crore. The increase in cost was mainly due to consideration of GIS bays instead of AIS ones, change in scope, Interest During Construction and increase in cost of material etc. As per the revised approval, the scheme was expected to be completed in FY2018-19.*

- d) DPR of LILO of 400 kV Talegaon-Kalwa Line at proposed 400 kV Vikhroli Receiving Station was approved by the Commission on 10 November, 2017 amounting to Rs. 311.97 with expected completion in FY 2021-22 .*

*11. It is amply clear that in the past , the Commission had approved 400 kV Vikhroli Project from time to time for various components as proposed by TPC-T and on the recommendation of STU expecting that the project will help to meet out the demand of Mumbai by augmenting the Available Transfer Capacity (ATC) for Mumbai . However, for one reason or the other, there has been inordinate delay in execution resulting in substantial increase in cost of the scheme. As on date, still the schedule for projected completion of the scheme and cost of the project are dependent on clearances from Aviation Department Government of India, Municipal Corporation of Greater Mumbai, environment clearance from High Court etc. and therefore, the commencement of the project is still uncertain.*

*12. The Commission, considering two grid disturbances that occurred in November 2010 which severely affected the power supply to Mumbai Metropolitan Region (MMR) including part of South Mumbai area, appointed a committee headed by Dr. S.A Khaparde, IIT Bombay, to review the existing power supply position in the MMR including its planning to provide for adequate capacity both in terms of generation and transmission infrastructure so as to cater to the*

*projected future load demands. The Commission has continuously pressed for strengthening of Mumbai Transmission System since the year 2010 a post grid disturbance which severely affected the supply position of Mumbai. The committee had submitted report on grid disturbance submitted in June, 2011. As a follow up of the Report , the Commission had constituted a Standing Committee headed by Shri Uttam Zalte in September, 2011, comprising of representatives of STU/MSETCL, TPC, Rlnfra, WRLDC, MSLDC and outside experts to review the situation and suggest remedial measures to overcome the existing transmission bottlenecks in MMR. Based on the standing Committee report submitted in January,2012 , the Commission under Section 86 (2) of the EA, 2003, had given advice to the Government of Maharashtra on Transmission Infrastructure Development Plan for MMR and implementation Issues to be addressed. The advice include the following major issues:*

- a) Growing demand supply gap in the MMR region:*
- b) Time delay in execution of transmission projects:*
- c) Competitive bidding route for selection of Implementing Agency and appointment of Bid Process Co-ordinator etc.*

*13. The Commission has approved various schemes for strengthening of Mumbai Transmission system such as construction of new lines/substations and up-gradation of existing line/ substations. Among the various approved schemes by the Commission, 400 kV Vikhroli Transmission project is the most crucial scheme to enhance ATC of Mumbai, which is inordinately delayed (about 8 years) by TPC-T.*

*14. Hence , the Commission vide its Order dated 23 Sepetember,2017 in Case No. 25 & 26 of 2017 , Petition of Brihanmumbai Electric Supply & Transport (BEST) Undertaking for approval of Power Procurement Plan for FY 2018-19 to FY 2027-28*

*had observed the slow progress Transmission projects which are critical for Mumbai Transmission Strengthening . Hence, the Commission has recorded the following in the Order:*

*“41.8 In this context, the Commission has grave concerns and is deeply dissatisfied at the slow progress of the various planned Transmission Schemes, particularly those which are expected to have large impacts, being developed by the Transmission Licensees to enhance the transmission capacity of Mumbai and which would enable more power to be brought into Mumbai. On 14 September, 2017, the Commission has asked MSETCL and TPC-T for the status and progress of these transmission projects in a certain format, with details of any bottlenecks. The Commission will review the position separately with the STU and the concerned Transmission Licensees shortly.”*

*15. Further, the Commission in MTR Order dated 12 September, 2018 in Case No. 204 of 2017, observed that even after substantial delay and increase in cost of the project, there was no tangible progress in execution of scheme. TPC-T has only submitted the trail of the correspondence with nothing to show on ground except the reasons that were delaying the project without any concrete and credible plan to meet the timeline. Project monitoring has not been rigorous and the timelines for seeking clearances were not adhered to with effective liaison and follow up. -----*

*16. Further, while deciding BEST Undertaking’s Petition for approval of power procurement through Competitive Bidding in Case No. 249 of 2018, transmission constrains has caused a difficulty in allowing cheaper power to flow in the Mumbai. The relevant part of Commission’s Order dated 2 January, 2019 in Case No. 249 of 2018 is reproduced below:*

*11.4 “In pursuance to the Commission’s Order dated 27 February, 2018 in Case No. 176 of 2017, BEST carried out re-tendering*

through DEEP portal during April to June, 2018. The results of this Bidding process as submitted by BEST are as follows;

<b>Bids</b>	<b>Time</b>	<b>Bidder</b>	<b>Capacity MW</b>	<b>*Rate Rs. Per Unit</b>
<i>Bid I</i>	RTC	<i>Manikaran Power Ltd.</i>	100	3.94
		<i>MSEDCL</i>	200	3.94
<i>Bid II</i>	7:00 to 24:00 hrs	<i>MSEDCL</i>	200	5.20
<i>Bid III</i>	9:00 to 19:00 hrs	<i>Tata Power Co. Ltd</i>	250	4.21

11.5 STU and SLDC in its joint report dated 7 August, 2018 have recommended that power from Bid I & Bid II can flow in, subject to having Unit 5 of TPC-G on bar, implying that BEST has to have a share in Unit 5 along with other utilities so that Unit 5 can be kept running. According to them, transmission system is in critical state and without embedded generation, it is difficult to survive and this situation will be mitigated only when the over delayed 400 / 220 KV Vikhroli Substation is commissioned.

.....

12. The Commission notes that both the earlier Tariff Policy of 2005 and the current Policy of 2016 favors competitive bidding under Section 63 of the EA, 2003 for procurement of power. Accordingly, the Commission had directed BEST to actively explore alternative sources that may be cheaper. Accordingly, through competitive bidding, BEST is able to get bidder for 300 MW power at the rate of Rs. 3.94 per kWh which is lower than its existing power procurement rates. However, due to transmission constraints all of this power cannot flow into Mumbai without running Unit-5 of TPC-G at Technical Minimum. Running Unit-5 at Technical Minimum is not cost effective option and would lead to

*increase in generation rate which will vitiate cost saving that may accrue due to cheaper 300 MW power under Bid-I.*

13. *Under these circumstances, there is no other option left for the Commission than to see possibility of extending the existing PPA between BEST and TPC-D. As per BEST's submission, procuring power from TPC-G under existing PPA will cost around Rs. 4.63 per unit. Further, TPC-G and BEST have agreed to extend existing PPA for 5 more years. As there is no other option to source power into the Mumbai and after considering importance of having reliable and continuous power supply to Mumbai City, the Commission allows BEST to extend its existing PPA of 676.69 MW with TPC-G under Section 62 of the Electricity Act, 2003, for period of five more years from 1 April, 2019 to 31 March, 2024.....*
14. *However, in order to avoid such futile exercise of bringing cheaper power to Mumbai even after five years of extension, the Commission directs Managing Director of MSETCL (STU) to take review of the progress of transmission system of Mumbai and its implementation on monthly basis. MSETCL should submit progress report of execution of these transmission projects on quarterly basis to the Commission. Without strengthening of Mumbai transmission system, it would be difficult to meet the growing electricity demand of Mumbai city and its suburbs. Therefore, considering importance of the issue, the Government of Maharashtra (Energy Department) needs to support transmission project implementing agencies in getting approval from various Government Authorities.”*

*Thus, the Commission noted that with the prevailing transmission constraint situation in Mumbai, it has caused a financial burden on*

*Mumbai consumers by restricting flow of cheaper power (200 MW) i.e. Rs. 3.94 /kWh as against BEST Undertaking's existing average power purchase cost from TPC-G i.e. Rs. 4.34/ kWh.-----*

19. *Existing transmission lines importing power to Mumbai are critically loaded and cannot carry additional power required for Mumbai. Hence, to increase ATC, thrust was on erection of 400 kV Vikhroli Substation and Kharghar-Vikhroli line by TPC T. Due to inordinate delay in execution of 400 kV Vikhroli Project, the consumers of Mumbai are compelled to rely on costly regulated power generation from TPC-G Trombay generation and AEML's Dahanu plant though cheaper power is available in the market. Further, delay in increase of ATC of Mumbai Transmission would jeopardize the power security of Mumbai.*
  
20. *The purpose of the Commission's ruling in the Case No. 204 of 2017 was to expedite the execution of the crucial 400 kV Vikhroli Transmission project. The Commission continued its efforts from 2010 considering importance of strengthening Mumbai Transmission. Availability of power to Mumbai and option of importing power from external sources will be defeated if execution of such scheme is further delayed. Hence, the Commission vide Order dated 12 Septemebr,2018 considering these facts and suggestion of STU to take the scheme under Tariff Based Competitive Bidding (TBCB) route had duly considered 400 kV Vikhroli Project of TPC and treated it as a deemed closed project. In the MTR Order the Commission also directed STU to take a review of such critical schemes and propose a way forward and directed it to submit its report to the Commission on review of TPC-T's proposed 400 kV Vikhroli Receiving Station within a month. The Commission notes that STU vide its submission dated 28 January 2019 stated that 400 kV schemes are most critical to bring outside power into Mumbai City and it is imperative to execute such transmission system in an expeditious manner.*

*The Commission also notes that the GoM's (Industry Energy and Labour Department) Resolution dated 4 January, 2019 regarding TBCB in Transmission which has been notified though belated.*

21. *The Commission in its Order dated 23 September, 2017 in Case No.25 & 26 of 2017, 12 September, 2018 in Case No. 204 of 2017 and 2 January, 2019 in Case No. 249 of 2018 has clearly pointed out that 400 kV Vikhroli substation scheme has been substantially delayed by TPC-T. The Commission at every count has given priority to strengthening of Mumbai Transmission thereby protecting power security of Mumbai. Contrary to this TPC-T has miserably failed to commence the implementation of 400 kV Vikhroli project even after 8 years of its approval thereby putting Mumbai power security at great risk. As planning authority of Maharashtra Transmission, STU has also not bothered to ensure implementation of the project recommended by it and kept silence all along as if it is no where concerned. Had TPC-T executed the scheme as per schedule proposed (i.e. 2015- 16), the scheme could have been in service of consumers without jeopardizing the supply of power to Mumbai and without substantial increase in capital cost-----*
23. *In view of the foregoing, the Commission does not find any merit in the submission made by TPC-T. Also there is no defect or error apparent on the face of the record and no ground has been made to amend / rectify Commission's order dated 12 Septemebr,2018 which would satisfy the requirements of Regulation 95 of the MERC (Conduct of Business) Regulations, 2004. Hence, the Commission is not inclined to withdraw the directions given in the MTR Order dated 12 September, 2018. Hence , the following Order*



**ORDER**

a) Case No. 3 of 2019 is dismissed.

b) STU is directed to submit its recommendations regarding execution of the 400 kV Vikhroli Transmission Project under TBCB as per GoM's Resolution dated 4 January, 2019 within 15 days from the date of this Order. STU should also setup a credible mechanism for continuous monitoring of the project to ensure that the project remains on track to avoid any further delay----- ”

**74.** From the reply of the Respondent-Commission, it is noticed that subsequent to the impugned order, major activities had taken place regarding 400 KV Vikhroli transmission scheme in question, which are as under:

- “a) GoM's (Industry Energy and Labour Department) has notified the Resolution on 4 January, 2019 regarding TBCB.
- b) In compliance to the Commission's Order date 29 January, 2019 in Case No. 3 of 2019 STU vide its letter dated 12 February, 2019 has confirmed to the Principal Secretary, GoM to execute 400 kV Vikhroli Transmission scheme under TBCB.
- c) The Commission on 12 February, 2019 has held the meeting of the ST1), Transmission and Distribution Licensees to review the Mumbai Transmission Strengthening schemes including 400 kV Vikhroli and formation of credible mechanism to monitor the progress of the schemes.

d) *The Commission vide its letter dated 26 February, 2019 has directed to STU to setup a following Committee for reviewing the progress of all planned critical schemes related to power supply to Mumbai region:*

1. *Shri Shailesh Kumar Sharma, Principal Chief Engineer, CEA - Chairman of the Committee);*
2. *Director, Projects, MSETCL----- Member of the Committee;*
3. *Dr. S.A.Soman / Dr. A.M. Kulkarni, Professor (Elect. Engg.), IIT, Mumbai,- (Member of the Committee)*
4. *Chief Engineer, SLDC -- (Member of the Committee);*
5. *Chief Engineer (STU), Member Secretary/Convener of the Committee*

*Invitee:- .*

1. *Representative from MSETCL*
2. *Representative from TPC-T*
3. *Representative from MSETCL”*

**75.** The Ministry of Power has proposed TBCB process with specific objectives which are as under:

g) *“The Ministry of Power (MoP) has issued framed guidelines for Tariff Based Competitive Bidding (TBCB) under the provisions of Section 63 of the Electricity Act,*

*2003. The specific objectives of these guidelines are as follows:*

- Promote competitive procurement of transmission services.*
- Encourage private investment in transmission lines.*
- Facilitate transparency and fairness in procurement processes;*
- Facilitate reduction of information asymmetries for various bidders;*
- Protect consumer interests by facilitating competitive conditions in procurement of transmission services of electricity;*
- Enhance standardization, reduce ambiguity and hence time for materialization of projects; and*
- Ensure compliance of standards, norms and codes for transmission lines while allowing flexibility in operation to the transmission service providers.”*

**76.** The above facts and subsequent events after the impugned order clearly indicate that the department of energy has acted upon the directions of the Respondent-Commission by taking cognizance of importance of 400 kV Vikhroli scheme and proceeded to implement the scheme under TBCB process.

**77.** The contention of the Appellant that if the implementation of scheme under TBCB is allowed, it would further delay the scheme in question is not acceptable to us, since in the TBCB process the scheme has to be executed on timely basis, which also optimises the cost of the project thereby reducing the financial burden on the consumers. The Appellant, right from 2011 till date, has not taken any active steps to achieve the completion of the project, which helps the consumers of Mumbai. Now, at this stage, the Appellant claims that it has put in lot of efforts and is ready to complete the project. The Appellant was also permitted to participate in the TBCB process. Therefore, the observation of the Commission pertaining to delay in implementing the scheme in question by 8 years cannot be found fault with. In the above paragraphs several observations on facts are made how the Appellant moved at snail's pace to start and implement the project. The TBCB process is in conformity with the tariff policy notified by the Ministry of Power, Government of India. As far as the so called efforts and the expenditure made, if any, by the Appellant, the Respondent-Commission has made observations that the said amount spent/claimed by the Appellant has to be refunded to the Appellant since it is part of conditions of the bid in question.

**78.** Whether this would cause prejudice to the interest of the Appellant in any manner? Except obtaining certain approvals/consents and clearances, on the ground admittedly no concrete work as such was commenced. The cause for such non-compliance/non-commencement of work is not getting approvals on time. List of dates of approvals/clearances clearly goes to show that for construction of sub-station, the license was sanctioned in the year 2011 itself. On the ground of non-completion of transmission line as obstacle to put up receiving station is the excuse put-forth by the Appellant for laying the foundation stone for construction of GIS substation. If the construction of certain number of towers could not be undertaken on time, there was no reason why the construction of other towers could not be undertaken. If the statutory authorities could not grant approvals/consents/clearances within reasonable time, definitely the Appellant could have taken serious steps to pursue the matter by approaching higher authorities of the statutory authority which had to grant such approval or through judicial process. Apparently, the Appellant has not resorted to any of such recourse. The Respondent-Commission had time and again reminded the Appellant to complete the project in time, but the Appellant till the date of impugned order in September 2018 and the review order in

January 2019 has not made any progress except for some approvals, which could not be appreciated by the Respondent-Commission.

**79.** Admittedly, there was no contract of any nature between the Appellant and the 2<sup>nd</sup> Respondent-STU. The time for completion of the contract was March 2019, which is also at the instance of the Appellant. The deemed closure of the scheme in question was September 2018 i.e., six months prior to the scheduled completion date. Apparently, the time for completion of the scheme was undertaken by the Appellant itself up to March 2015, and later on, at its instance, it was extended up to March 2019. When the proceedings, in which the impugned order came to be passed in September 2018, was taken up, the inordinate delay in commissioning of the scheme in question came to the notice of the Commission. Leave alone the completion of the scheme in March 2019, except acquisition of land and some paper work like obtaining certain permissions/consents, no development/commencement of work was made on ground, that is to say actual construction of the infrastructure was not even commenced. Therefore, the Appellant, admittedly, was not in a position to complete the scheme by 31<sup>st</sup> March 2019. In that context, the Respondents were contending that the Appellant could not have sought enforcement of the contract or enlargement of time for

completion of the scheme in question, in view of Section 55 of the Indian Contract Act.

**80.** The next question is “***was it necessary to wait till March 2019 to pass the impugned order in question***”?

**81.** Since the Appellant would not have completed the project before March 2019, as it had not even laid foundation stone for commencement of infrastructure, it would have been futile exercise to wait up to March 2019 since it would have been an empty formality as the scheme in question was the need of the hour. The Respondent-Commission therefore, was justified in taking the call at the right time.

**82.** Even if 400 kV Talegaon-Kalwa (LILO) line is to be completed by March 2022 as already noted above, this Talegaon-Kalwa line was only a standby line/emergency line for 400 kV Kharghar Vikhroli transmission line. Therefore, 400 kV Talegaon-Kalwa line being part of Kharghar Vikhroli scheme, the Respondent Commission was justified in closing the entire scheme by passing deemed closure of the scheme as such.

**83.** The Appellant also contended that the delay for obtaining approvals/consents was beyond the control and indirectly sought protection under force majeure. Apparently, there is no agreement

between the parties and further there is no question of force majeure clause being invoked by the Appellant, since the scheme in question was not approved under CAPEX scheme.

**84.** It may not be out of place to mention that since there is scarcity of power in Mumbai city and the Kharghar-Vikhroli transmission line and the substation being not completed, importing power from outside through open access (at much lesser tariff than the tariff of the Appellant) is not possible. Therefore, it is quite possible that the delay in completing the project on time would benefit the Appellant more, since power has to be purchased from them as it is one of the embedded generating plant.

**85.** It is pertinent to note the observations made by the Apex Court in the case of ***West Bengal v. Niranjan Singha*** ((2001) 2 SCC 326). It was a case where there was denial of extension of period of agency by the Government and invited fresh bids pertaining to collection of toll/taxes from vehicles. The Agent who sought extension of agreement approached the High Court contending that inviting fresh bids was arbitrary since the Government contract in his favour could be extended by one year and he had such legitimate expectation. The contention of



the writ petitioner was in terms of Clause 5 of the agreement between the parties, which reads as under:

*“5. After expiry of one year the term may be extended provided that one month before expiry of such one year the agent shall by registered letter request the Executive Engineer concerned for such extension and provided that payment up to the date of such application have been received by the Executive Engineer regularly and there have been no default of any of the terms and conditions herein contained. The decision as to whether there has been any default or not on the part of the agency shall rest with the Executive Engineer, and shall be binding on the agent.”*

**86.** The writ petitioner requested the Executive Engineer concerned for extension of agency for a period of one year based on Clause 5. The State of West Bengal contended that the extension of period of agency is a matter of discretion with them and no vested right accrued to the writ petitioner. The single Judge of the High Court directed the Respondent authorities in the writ petition for consideration of representation of agency for extension of period of agency. When Writ Petition was allowed upholding the claim of the Respondent, an appeal came to be filed before the Division Bench. The Division Bench opined that it was not a case of renewal of agency, but the conditions imposed for extension of period of agency had to be fulfilled. Aggrieved by the same, state of West Bengal approached the Hon'ble Supreme Court. While observing the various aspects of the case in hand, the Apex Court

referred to the decision in ***Food Corporation of India vs. Kamdhenu Cattle Feed Industries*** ((1993) 1 SCC 71) and opined that the said decision does not lead to any principle which detracts from what the Apex Court opined in the Judgment of **Niranjan Singha's case**. Their Lordships opined that the doctrine of "legitimate expectation" is only an aspect of Article 14 of the Constitution in dealing with the citizens in a non-arbitrary manner, therefore it does not by itself give rise to an enforceable right but in testing the action taken by the Government authority whether arbitrary or otherwise it would be relevant. They further opined as under with regard to fresh bids.

*"In a case where the agency is granted for collection of toll or taxes, as in the present case, it can be easily discerned that the claim of the respondent for extension of the period of the agency would not come in the way of the Government if it is economically more beneficial to have a fresh agreement by enhancing the consideration payable to the Government. In such an event, it cannot be said that the action of the Government inviting fresh bids is arbitrary. Moreover, the respondent can also participate in the tender process and get his bid considered. Hence, we do not think that the view taken by the High Court can be justified."*

**87.** By applying the above principle one has to see "whether in the case on hand since public interest is involved, the procedure now adopted i.e., TBCB process, would be more economical and beneficial apart from being transparent"? Since the terms of bid provided specific

clauses ensuring completion of responsibilities/liabilities by contracting parties, and failure of same resulting in liquidated damages by making time as essence of the contract, one can expect prevention of delay. Admittedly, the Appellant is also permitted to participate in the ongoing tender process.

88. The 2<sup>nd</sup> Respondent relies upon a decision in ***Matha Technologies vs. District Health and Family Welfare Officer*** in WP No. 21645 of 2016 before the Karnataka High Court. In this case, pursuant to the tender process, the writ petitioner executed a contract for supplying man power to the Respondent department. In terms of the said contract, the contract would be valid till such time direct recruitment of certain group of employees is undertaken by the Respondent department thereunder. The contention of the writ petitioner was that *de hors* any such direct recruitment the contract remained valid and the Respondent department could not have called a fresh tender in respect of the work carried on by him under the contract. It was contended that unless the subsisting contract between him and the Respondent department was terminated, the Respondent department could not have floated fresh tender, in that context, the High Court held as under:

*"4. In light of the contentions put forth, though the petitioner contends that the agreement is in force and therefore the tender notification cannot be issued, when a*

*transparent process for engaging the workmen has been resorted to by the respondent, the tender process in any event cannot be interfered by this Court. If at all there is breach of the earlier agreement, the agreement itself provides that the petitioner would be entitled to raise the dispute as provided therein. Therefore, to the said extent, the petitioner would have the liberty of availing his remedies in accordance with law. Liberty is also reserved to the petitioner to participate in the tender process ..."*

**89.** The Appellant contended that similar projects by other entities have not been deemed to be closed, though they were completed with inordinate delay, therefore, the deemed closure of the scheme in question is illegal. Appellant contends that while proceeding to issue deemed closure of the scheme in question pertaining to the Appellant, the Respondent-Commission did not mention anything about other projects, where similar delays are suffered by state transmission utilities like Koradi II – Butibori, LILO of Tarapur-Borivli at Boisar II, LILO of Lonikhand (MSETCL)-Kalwa at Navi Mumbai, Wardha-Aurangabad (on 1200 kV), Boisar-Wada 220 kV D/C line of MSETCL, Babhaleshwar-Kudus, Jejuri Hinjewadi-I and II. The Appellant also brings on record that several other schemes like link lines and upgradation were executed with delay of six years or more but the Respondent-Commission did not take any action against such entities.

<b>“Sr. No.</b>	<b><i>Scheme as per STU plan 2010-11</i></b>	<b><i>Proposed Completion as per STU plan</i></b>	<b><i>Remarks</i></b>
1	<i>Conversion of existing 220 KV corridor from Kharghar-Boisar with High Ampacity conductor and strengthening of this corridor(MSETCL)</i>	<i>April, 2012</i>	<i>Completed in FY 2017-18</i>
2	<i>Conversion of 220 kV Kharghar – Kalwa – Borivali – Boisar D/C line with New Twin Moose Conductor.</i>	<i>April, 2012</i>	<i>Completed in FY 2017-18</i>
3	<i>220 kV Kharghar – Borivali - Boisar D/C line with New Twin Moose Conductor</i>	<i>April, 2012</i>	<i>Completed in FY 2017-18”</i>

**90.** It is well settled that negative equality cannot be pressed into service by the Appellant, as held in the case of ***Union of India vs. International Trading Co.*** ((2003) 5 SCC 437), the Hon’ble Supreme Court observed as follows:

*“13. [...] It is not necessary to deal with that aspect because two wrongs do not make one right. A party cannot claim that since something wrong has been done in another case direction should be given for doing another wrong. It would not be setting a wrong right, but would be perpetuating another wrong. In such matters there is no discrimination involved. The concept of equal treatment on the logic of Article 14 of the Constitution of India (in short “the Constitution”) cannot be pressed into service in such cases. What the concept of equal treatment presupposes is existence of similar legal foothold. It does not countenance repetition of a wrong action to bring both wrongs on a par. Even if hypothetically it is accepted that a wrong has been committed in some*

*other cases by introducing a concept of negative equality the respondents cannot strengthen their case. They have to establish strength of their case on some other basis and not by claiming negative equality.”*

**91.** After narrating the conduct of the Appellant in implementing the scheme in question, the Respondent-Commission has observed in the impugned order that in terms of ‘Request for Proposal’ by the 2<sup>nd</sup> Respondent the successful bidder of the project shall have to pay the pre-development expenditure met by the Appellant, in order to reimburse the Appellant. It has further safeguarded the interest of the Appellant by stating that even if any deviation in the pre-development expenditure of Rs.135.44 Crores by the Appellant, it shall be incorporated as part of its regulated business in its upcoming tariff petition. By making these directions, the Respondent-Commission has balanced the equalities based on the facts and circumstances.

**92.** According to the Respondents, in the light of several PPAs coming to an end, the projects under the PPAs of embedded entities have to be continued though the consumers of Mumbai have to pay higher tariff when compared to energy charges, if power is imported from outside. For importing power into Mumbai, 400 kV Vikhroli transmission system is of utmost importance. The whole issue, now, is based on the touchstone of public interest (consumers). It is well settled that the

individual interest must yield to public interest. Since the Respondent Commission has made proper directions to reimburse the pre-development expenditure met by the Appellant and the Appellant is also a participant in the bid, we are of the opinion that no prejudice of any nature, as such, is caused to the Appellant and the direction of the Respondent-Commission to proceed with TBCB process for implementation of 400 kV Vikhroli transmission scheme is in the interest of large number of consumers of Mumbai. Therefore, viewed from any angle, we are of the opinion that the impugned order in question with regard to relief 'g' does not warrant any interference. Accordingly, the Appeal so far as it relates to relief 'g' is dismissed. Hence the issue taken up for consideration at relief 'g' is answered against the Appellant. In the light of relief 'g' being answered against the Appellant, we direct the 2<sup>nd</sup> Respondent to issue LOI in favour of the successful bidder. No order as to costs.

**93.** Pronounced in the open court on this the 23<sup>rd</sup> September, 2019.

**S.D. Dubey**  
**[Technical Member]**

**Justice Manjula Chellur**  
**[Chairperson]**

Dated: 23<sup>rd</sup> September, 2019

**REPORTABLE/~~NON-REPORTABLE~~**