

**COURT-II**  
**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY**  
**(Appellate Jurisdiction)**

**Appeal No. 63 of 2020**

**Dated: 9<sup>th</sup> March, 2021**

**Present: Hon'ble Mr. Ravindra Kumar Verma, Technical Member**  
**Hon'ble Mr. Justice R.K. Gauba, Judicial Member**

**In the matter of:**

**Power Grid Corporation of India Limited** .... **Appellant(s)**  
**"Saudamini", Plot No.2,**  
**Sector-29, Gurgaon -122 001**

**Versus**

- 1. Central Electricity Regulatory Commission,**  
**3rd& 4th Floor, Chanderlok Building,**  
**36, Janpath, New Delhi-110001** .... **Respondent No.1**
- 2. Assam Electricity Grid Corporation Limited,**  
**Bijulee Bhawan, Paltan Bazar,**  
**Guwahati-781001, Assam** .... **Respondent No.2**
- 3. Meghalaya Energy Corporation Limited,**  
**(Formerly Meghalaya State Electricity Board)**  
**Short Round Road, "Lumjingshai"**  
**Shillong-793001, Meghalaya** .... **Respondent No.3**
- 4. Power Department, Government of Arunachal**  
**Pradesh, Vidyut Bhawan, Itanagar-791111,**  
**Arunachal Pradesh** .... **Respondent No.4**
- 5. Power and Electricity Department,**  
**Government of Mizoram,**  
**Aizawl, Mizoram** .... **Respondent No.5**

6. **Manipur State Power Distribution Company Limited, (Formerly Electricity Department, Govt. of Manipur) Electricity Complex, Patta No. 1293 Under 87(2), Khwai Bazar, Keishampat, District-Imphal West, Manipur-795001** .... Respondent No.6
7. **Department of Power, Government of Nagaland Kohima, Nagaland** .... Respondent No.7
8. **Tripura State Electricity Corporation Limited, VidyutBhawan, North Banamalipur, Tripura (W) Agartala-799001, Tripura** .... Respondent No.8
9. **ONGC Tripura Power Corporation Limited (OTPC), 6th Floor, A Wing, IFCI Towers, New Delhi – 110019** .... Respondent No.9
- 10 **National Thermal Power Corporation Limited (NTPC Limited), NTPC Bhawan, SCOPE Complex, Institutional Area, Lodhi Road, New Delhi - 110003** .... Respondent No.10

**Counsel for the Appellant (s) : Mr. Anand K. Ganesan,  
Ms. Swapna Seshadri  
Ms. Ritu Apurva**

**Counsel for the Respondent (s) :**

### **ORDER**

**PER HON'BLE MR. RAVINDRA KUMAR VERMA, TECHNICAL MEMBER**

1. This matter has been taken up by video conference mode on account of pandemic conditions, it being not advisable to hold physical hearing.

2. The instant appeal has been filed by Powergrid Corporation of India Limited (hereinafter referred to as the “**Appellant**”) against the order dated 20.11.2019 (hereinafter referred to as the “**impugned Order**”) passed by the Central Electricity Regulatory Commission (“**the Central Commission**”) wherein the Central Commission limited the Incidental Expenses During Construction (“IEDC”) to 5% of the hard cost. The Appellant is aggrieved mainly due to the fact that whereas the Central Commission has condoned the delay of 1630 days out of total 1853 days in Asset 1 and 2 and total delay of 2018 days in asset 3 A and total delay of 1997 days in Asset no. 3 B but, has limited the IEDC to 5% of the hard cost.
3. The Appellant presented the instant appeal before this Tribunal on 06.01.2020. On 22.02.2020, notice was issued to the Respondents and the matter was listed for completion of pleadings before Registrar’s Court. The Respondents were asked to file their respective replies, if any. We observed from the record of proceedings before the Registrar Court that three opportunities were granted to the Respondents to file their respective replies, however, none of the Respondents filed the reply. It is also noted that none of the Respondents have entered appearance in any of the proceedings before this Tribunal.
4. The Appellant submitted that in view of the fact that there is no response on the part of the Respondents, the matter may be heard and decided *ex parte*. Accordingly, we have taken up the matter for final hearing today itself.

5. We have heard the learned counsel Ms. Swapna Seshadri appearing for the Appellant at length. The main argument of the Appellant is that the very same issue of restricting the IEDC had been challenged in Appeals Nos. 95 & 140 of 2018 before this Tribunal. This Tribunal vide Judgment dated 02.12.2019 held that the Central Commission has not considered the IEDC for the reference assets correctly in line with provisions of its own Tariff Regulations, 2014 which cannot be sustained in the eyes of law. The question raised in the present Appeal is similar to the question considered by this Tribunal in Appeal No. 95 & 140 Of 2018. The operative part of the judgment dated 02.12.2019 passed by this Tribunal reads as under:-

*“7.16 In light of the above, we are of the considered opinion that Central Commission has not considered the IEDC for the reference assets correctly in line with provisions of its own regulations which cannot be sustained in the eyes of law. In catena of judgments of Hon’ble Supreme Court and this Tribunal, it has been held that the Regulations framed by the Commissions are binding for all stakeholders including the Commission itself. The Regulations framed under the Act, in no way, mandate the Central Commission to restrict the IEDC to 5% of the original estimated hard cost.*

*7.17 Accordingly, we hold that IEDC should be computed only on actual basis after due prudence check based on the data submitted by the Appellant in accordance with the Tariff Regulations.*

6. The learned counsel appearing for the Appellant has also taken us to the relevant Regulation 11 (b)(2) and Regulation 12 of the CERC (Terms and Conditions of Tariff) Regulations, 2014 and the same are given below:-

*“11. Interest during construction (IDC), Incidental Expenditure during Construction (IEDC)*

*(A) Interest during Construction (IDC): .....*

*B) Incidental Expenditure during Construction (IEDC):*

*(1) .....*

*(2) In case of additional costs on account of IEDC due to delay in achieving the SCOD, the generating company or the transmission licensee as the case may be, shall be required to furnish detailed justification with supporting documents for such delay including the details of incidental expenditure during the period of delay and liquidated damages recovered or recoverable corresponding to the delay:*

*Provided that if the delay is not attributable to the generating company or the transmission licensee, as the case may be, and is due to uncontrollable factors as specified in regulation 12, IEDC may be allowed after due prudence check:*

*Provided further that where the delay is attributable to an agency or contractor or supplier engaged by the generating company or the transmission licensee, the liquidated damages recovered from such agency or contractor or*

*supplier shall be taken into account for computation of capital cost.”*

7. We have also noted that the facts in both cases i.e. Appeal No. 95 and 140 of 2018 and this instant appeal at hand i.e. Appeal No. 63 of 2020 are similar but for the only difference that whereas in case of earlier appeal the entire delay was condoned, however, in case of the instant appeal only part delay has been condoned.
8. The learned counsel appearing for the Appellant has also taken us to the para No. 36 of impugned order as under:-

*“36. The Petitioner has claimed IEDC for the instant assets and submitted Auditor Certificates in support of the same. The IEDC claimed is beyond the percentage of hard cost of 5% as indicated in the FR abstract cost estimate and therefore, the same has been restricted to 5% of the hard cost, subject to true up.”*

9. We have also gone through the Abstract Cost Estimate of Feasibility Report (FR) wherein at Item No. H, J and K, the percentage of 5% of the total cost shown at F has been assumed. The learned counsel appearing for the Appellant submitted that this 5% figure has been taken on the basis of internal guidelines framed by the company on the basis of their experience in similar matters during the last 25 years.
10. We are of the opinion that the observations made by the Central Commission wherein they have limited the payment of IEDC to 5% is

not in accordance with the Regulations, is wrong and bad in law. However, since the entire delay period has not been condoned, therefore, there is a case where in the Central Commission can adjudicate on the proportional payment corresponding to the part delay condoned out of the total delay.

11. Having regard to the facts and circumstances of the case as stated above, Appeal filed by the Appellant is allowed. The Impugned Order dated 20.11.2019 passed by the Central Electricity Regulatory Commission 337/TT/2018 is hereby set aside. We direct the Central Commission to consider the matter afresh in light of observations and bearing in mind the principles laid down in the judgment dated 02.12.2019 passed by this Tribunal in Appeal Nos. 95 of 2018 & 140 of 2018 and pass fresh consequential order in accordance with law. The Appellant may approach the Central Commission at the time of truing up for implementation of this order.
12. The appeal is disposed of in above terms.

**(Justice R.K. Gauba)**  
**Judicial Member**  
*mk*

**(Ravindra Kumar Verma)**  
**Technical Member**