

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

APPEAL NO. 109 OF 2021

Dated: 15.09.2022

**Present: Hon'ble Mr. Justice R.K. Gauba, Officiating Chairperson
Hon'ble Mr. Sandesh Kumar Sharma, Technical Member**

In the matter of:

PUNJAB STATE TRANSMISSION CORPORATION LTD.

PSEB Head Office,
The Mall, Patiala,
Punjab-147001

... Appellant (s)

VERSUS

- 1 CENTRAL ELECTRICITY REGULATORY COMMISSION**
Through its Secretary
Chanderlok Building, 36, Janpath,
New Delhi - 110001
- 2 POWER GRID CORPORATION OF INDIA**
Through its Managing Director
"Saudamini", Plot No. 2, Sector 29
Gurgaon – 122001
- 3 RAJASTHAN VIDYUT PRASARAN NIGAM LTD.**
Through its Chairman & Managing Director
Vidyut Bhawan, Janpath,
Jyothi Nagar,
Jaipur, 302005, Rajasthan
- 4 AJMER VIDYUT VITRAN NIGAM LIMITED**
Through its Chairman & Managing Director
400 kv GSS Building (Ground Floor),
Ajmer Road, Heerapura,
Jaipur -302019, Rajasthan
- 5 JAIPUR VIDYUT VITRAN NIGAM LIMITED**
Through its Chairman & Managing Director
400 GSS Building (Ground Floor),
Ajmer Road, Heerapura,
Jaipur -302019, Rajasthan

- 6 **JODHPUR VIDYUT VITRAN NIGAM LIMITED**
Through its Chairman & Managing Director
400 GSS Building (Ground Floor),
Ajmer Road, Heerapura,
Jaipur -302019, Rajasthan
- 7 **HIMACHAL PRADESH STATE ELECTRICITY BOARD**
Through its Chairman & Managing Director
Vidyut Bhawan, Kumar House Complex Building II,
Shimla – 171 004, Himachal Pradesh
- 8 **PUNJAB STATE ELECTRICITY BOARD**
Through its Chairman & Managing Director
The Mall,
Patiala – 147 001, Punjab
- 9 **HARYANA POWER PURCHASE CENTRE**
Through its Chairman & Managing Director
Shakti Bhawan, Sector-6,
Panchkula-134 109, Haryana
- 10 **POWER DEVELOPMENT DEPTT.**
Through its Chairman & Managing Director
Govt. of Jammu and Kashmir,
Mini Secretariat,
Jammu-180001, Jammu & Kashmir
- 11 **UTTAR PRADESH POWER CORPORATION LIMITED**
Through its Chairman & Managing Director
Shakti Bhawan, 14, Ashok Marg,
Lucknow – 226 001, Uttar Pradesh
- 12 **DELHI TRANSCO LIMITED**
Through its Chairman & Managing Director
Shakti Sadan, Kotla Road,
New Delhi – 110 002
- 13 **BSES YAMUNA POWER LIMITED**
Through its Chairman & Managing Director
BSES Bhawan,
Nehru Place,
New Delhi -110019
- 14 **BSES RAJDHANI POWER LIMITED**
Through its Chairman & Managing Director
BSES Bhawan,
Nehru Place,
New Delhi -110019

- 15 **NORTH DELHI POWER LIMITED**
Through its Chairman & Managing Director
Power Trading and Load Dispatch Group,
Cennet Building,
Pitampura,
New Delhi – 110 034
- 16 **CHANDIGARH ADMINISTRATION**
Through its Secretary
Sector-9,
Chandigarh -160009
- 17 **UTTARAKHAND POWER CORPORATION LIMITED**
Through its Chairman & Managing Director
Urja Bhawan,
Kanwali Road,
Dehradun -248001, Uttarakhand
- 18 **NORTH CENTRAL RAILWAY**
Through its Chairman & Managing Director
Allahabad -211011
- 19 **NEW DELHI MUNICIPAL COUNCIL**
Through its Secretary
Palika Kendra,
Sansad Marg,
New Delhi – 110 002
- 20 **HIMACHAL PRADESH POWER TRANSMISSION CORPORATION LIMITED**
Through its Chairman & Managing Director
HIMFED Bhawan,
Panjari, Respondents
Shimla-171005, Himachal Pradesh

Counsel for the Appellant (s) : Mr. Anand K. Ganesan
Mr. Amal Nair
Ms. Sugandh Khanna
Ms. Kritika Khanna

Counsel for the Respondent (s): Mr. Sri Venkatesh
Mr. Bharath Gangadharan
Mr. Siddharth Nigotia
Mr. Kartikay Trivedi
Mr. Ashutosh Shrivastav for R-2
Mr. Swagata Bose for R-12

J U D G M E N T

PER HON'BLE MR. JUSTICE R.K. GAUBA, OFFICIATING CHAIRPERSON

1. The Appellant, *Punjab State Transmission Corporation Limited* (hereinafter referred to as 'PSTCL') is a transmission licensee engaged in the business of *intra-state* transmission of electricity in the State of Punjab, it being designated as the *State Transmission Utility* ('STU'), the unbundled entity of the erstwhile Punjab State Electricity Board. The second respondent *Power Grid Corporation of India Limited* ('PGCIL'), on the other hand, is designated as the *Central Transmission Utility* ('CTU') engaged at the relevant point of time in functions relating to *inter-state* transmission of electricity. The PGCIL is stated to have undertaken the development and setting up of various inter-state transmission assets, as part of the transmission network and for augmentation of the transformer in the Northern Region, this including an asset described as 'Asset-3', 220 kV, 2 nos. line bays at Jalandhar sub-station (hereinafter referred to as 'Subject Asset'). Indisputably, the jurisdiction for determination of tariff in relation to such inter-state transmission assets vests with the first respondent, *Central Electricity Regulatory Commission* (hereinafter referred to variously as 'CERC' or 'Central Commission').

2. On a petition (no. 158/TT/2018) presented by PGCIL, under Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 and Central Electricity Regulatory Commission (Terms and Conditions for determination of Tariff) Regulations, 2014, the Central

Commission, by its Order dated 21.11.2019, determined the tariff for transmission from anticipated/actual *Commercial Operation Date* ('COD') to 31.03.2019 in respect of certain transmission assets including 'subject asset' i.e. Asset-3, holding the appellant PSTCL liable to bear the same till commissioning of associated 220 kV downstream network of the appellant. PSTCL feeling aggrieved has come up by appeal at hand contending that the impugned order is in gross violation of law, no *requirement* for such asset as is the subject matter of dispute having been communicated by it, there being no contractual liability or occasion for PSTCL to be treated as entity in default so as to shift the burden of transmission charges from the intended beneficiaries i.e. the distribution licensees operating in several States of Northern Region (Rajasthan, Himachal Pradesh, Punjab, Haryana, Jammu & Kashmir, Uttar Pradesh, Delhi, Chandigarh, Uttarakhand besides North Central Railway, the having been impleaded as third to twentieth respondents).

3. The appeal is resisted by second respondent (PGCIL) contending that the subject asset was proposed as part of the augmentation scheme and an agreement had been reached for its establishment by the PGCIL, the appellant being a party to such decision, this having been confirmed by the latter being a member of *Northern Regional Power Committee* ('NRPC'). It is the contention of PGCIL that the proposition that the liability to pay the transmission charges shall have to fall on entity which causes the delay resulting in a transmission system which is ready but not put to

use due to non-availability of upstream /downstream system is well settled, the Central Commission having followed the same while rightly fastening the liability in the present case on the appellant.

4. Before coming to the controversy at hand, it is proper to note that the activity in the nature of transmission of electricity is subject to licensing and regulatory control of the appropriate regulatory commission established by the Electricity Act, 2003. The subject of inter-state transmission of electricity, as indeed intra-state transmission, is governed by the provisions contained in Part-V of the Electricity Act. PGCIL was concededly notified to be the CTU designated by the Central Government during the relevant period, its functions having been prescribed by section 38, they including the responsibility to undertake not only transmission of electricity through inter-state transmission systems but also towards 'planning and coordination' in relation thereto, taking along the State Transmission Utilities (STUs), Central and State Governments, generating companies, Regional Power Committees (RPCs), Central Electricity Authority and other licensees (transmission, distribution licensees, *et al*). As part of its statutory functions, PGCIL would take steps to ensure development of efficient, coordinated and economical system of inter-state transmission lines (Section 38).

5. The Central Electricity Authority ('CEA') is a body constituted by the law (Section 70), it being envisaged by virtue of Section 73, essentially

given an advisory role on matters relating, *inter alia*, to National Electricity Policy ('NEP'), system and perspective plans for development of electricity system, coordinating the activities of the planning agency for the optimal utilization of resources to sub-serve the interests of national economy and to provide reliable and affordable electricity for all consumers, specifying the technical standards on subjects such as construction of electrical plants, safety requirement, grid standards, etc. it also provides, when called upon to do so, advice to the State Governments, licensees or generating companies on technical matters and carries out investigations for purposes of generation, transmission or distribution promoting research in matters connected thereto.

6. As noted earlier, the CTU undertakes the planning and coordination of inter-state transmission arrangements factoring in the views, *inter alia*, of RPC, as envisaged in Section 2 (55), it being a Committee established, region wise, by resolution of the Central Government "for facilitating the integrated operation of the power systems in that region". The RPC is conferred with the jurisdiction, by virtue of Section 29(4) to "agree on matters concerning the stability and smooth operation of the power system" in the region for which it is constituted. Admittedly, the RPC for Northern Region ('NRPC') comprises of representatives of the generating companies, transmission licensees, distribution licensees, trading licensees in the States of Delhi, Haryana, Himachal Pradesh, Jammu & Kashmir, Punjab, Rajasthan, Uttar Pradesh, Uttaranchal and the Union Territory of

Chandigarh, besides representatives of Northern Regional Load Despatch Centre ('NRLDC'), the functions entrusted to it including "planning" relating to inter-state /intra-state transmission system with CTU/STU.

7. The subject asset ("Asset-3") was admittedly planned for establishment by PGCIL in terms of proposals placed before the Standing Committee on Power System Planning of Northern Region in its 30th meeting held on 19.12.2011, under the aegis of the CEA. Concededly, the appellant was duly represented in the said meeting. The relevant part of the minutes of the said meeting read as under:

"Requirement of 400/220 kV ICTs at other locations as per 2016-17 studies

In addition to above, studies have been carried out in the time frame of 2016-17 to work out the requirement of ICTs at other locations also. From the studies requirement of augmentation of ICTs has been observed at various locations in Northern region. After detailed deliberations following transformer augmentation capacity, in addition to above was agreed:

<i>400kv S/s</i>	<i>Aug. proposed</i>	<i>220KV Line bays to be provided</i>
<i>Samba</i>	<i>3x105 MVA</i>	<i>---</i>
<i>Gurgaon</i>	<i>1x500 MVA</i>	<i>---</i>
<i>Mandaula</i>	<i>1x500 MVA</i>	<i>---</i>
<i>Hamirpur</i>	<i>3x105 MVA</i>	<i>2 nos</i>
<i>Jalandhar</i>	<i>1x500 MVA</i>	<i>2 nos</i>
<i>Panchkula</i>	<i>1x500 MVA</i>	<i>---</i>

It was also agreed that 220 kV bays would be provided as per the requirement of, STU. It was decided that respective STU would inform its requirement of 220 kV bays to POWERGRID at least 2 years in advance.

Members agreed to the above proposal."

[Emphasis supplied]

8. Clearly, the members of the Standing Committee had agreed *in principle*, the execution of the consequent work by the CTU (PGCIL) being subject to the respective STU (PSTCL, for purposes of Asset-3 – at Jalandhar), communicating its ‘*requirement*’ at least two years “*in advance*’.

9. The proposal approved *in principle* by the Standing Committee on Power System Planning of Northern Region came up before the NRPC in its 25th meeting held on 23rd & 24th February, 2012. The minutes of the said meeting of NRPC were circulated on 19.03.2012, the part relevant for the present discussion bearing in the Section D (items for NRPC only), the resolution adopted reading thus:

“Item D 1.1 to D 1.18

Member Secretary, NRPC requested POWERGRID to briefly explain and apprise Members of NRPC about the new transmission schemes discussed and agreed during the 30th Standing Committee Meeting of NR constituents held on 19/12/2011. POWERGRID explained that the schemes as given in Agenda were discussed and agreed in the Standing Committee Meeting and had been put up to NRPC for approval. POWERGRID also stated that in addition the schemes agreed in the SCM, the connectivity & Long Term Access to the various applicants was also agreed. Chairman, NRPC enquired about the observations of members on the schemes proposed by POWERGRID.

RRVPNL stated that connectivity and LTA to various IPPs were being granted through LILO of various ISTS transmission lines and suggested that connectivity & LTA should be given through direct dedicated lines instead of LILO. This aspect be taken up by the Member (PS), CEA for issuing suitable guidelines in such matter. The representative of PGCIL agreed to discuss the matter with Member (PS) with respect to grant of LTOA to future projects.

Regarding installation of 125 MVAR Bus Reactor at Koteshwar, THDC stated that the same should be implemented as ISTS. After deliberations, it was agreed to provide this reactor as ISTS scheme.

Regarding agenda item D. 1.8 on evacuation of power from Malana-II, POWERGRID informed that certain observations from the stakeholders had been received recently and proposed to drop the agenda. Same was agreed.

After deliberations following transmission proposals were concurred by NRPC.”

10. The proposals which had been ‘*concluded*’ by NRPC included the proposal for ‘Augmentation of Transformation Capacity and provision of additional 220 kV bays in Northern Region’, the subject asset being mentioned at serial no. 12 as “Jullandhar” with existing transformation capacity of 2x315 MVA, it being proposed to be augmented to ‘1x500’ MVA with ‘220 kV line Bays’. It appears that the minutes of the 25th meeting of NRPC were ‘*confirmed*’ by the Members in the 26th meeting on 09.08.2012. Indisputably, PGCIL went ahead with the development work in relation to the subject asset, its case being that the investments were approved by its Board of Directors in the 30th meeting held on 27.03.2014, the Board Resolution being dated 16.05.2014.

11. There is no reference by PGCIL, or for that matter by the appellant, to any communication exchanged on the subject between the contesting parties post confirmation of the resolution by NRPC on 09.08.2012. The first communication relied upon by PGCIL in its letter dated 28.12.2016 addressed to the appellant, the relevant part thereof reads as under:

“This has reference to the 30th meeting of the standing Committee on Power System Planning of Northern Region held on dated 20.01.2012 at New Delhi. As per the minutes, one number 500 MVA ICT at PWERGRID, Jalandhar sub-station had to install along with two numbers 220 KV spare bays for lines. The said ICT has been commissioned in June’2016 and bays are ready for charging. For transmission of Power through these bays M/s PSTCL has to construct two numbers lines, which are to be terminated at 400/22KV POWERGRID, Kartarpur substation. Till now, we have not received any information from your side regarding construction of lines.

In this regard, you are requested please intimate the status of construction of lines on priority basis, as the bays are ready.”

12. Noticeably, by the above letter, dated 28.12.2016, PGCIL had referred to the decisions taken by the Standing Committee on Power System Planning of Northern Region held on 19.12.2011 (as per minutes circulated on 20.01.2012) only, there being no reference to the resolutions of NRPC in the meeting held on 23.02.2012 on 09.08.2012.

13. Be that as it may, the appellant took exception to the communication dated 28.12.2016 of PGCIL, responding by its letter dated 16.02.2017 which reads as under:

“Reference is invited to your letter no, N2JAL/SS/PSTCL/2016 dated 28-12-2016 (received on 31-1-2017)

In this connection it is intimated that:

- i) Corresponding to the installed capacity at 400 kV PGCIL Jalandhar grid (2X315+1X500) MVA, there are total eight number of existing 220 kV circuits having 215 MVA each as its power carrying capacity. It is quite adequate for the evacuation of power from this grid.*

ii) As per the load flow studies of 2017-22, as well as the current paddy loadings, the majority of the power flow is towards 200 kV Kartarpur/220 kV Kotla Jangan side. And keeping in view of this, as well as right of way constraint/ space availability of 220 kV bays at 220 kV Kartarpur, augmentations of existing 400 kV Jalandhar – 220 kV Kartarpur – 220 kV Kotla Jangan with suitable HTLS conductor have already been planned.

In view of above, there seems to be no requirement of additional 220 kV D/c link from 400 kV Kartarpur for the time being. However it shall be kept in view for future planning.

This issues with the approval of competent Authority.”

14. Admittedly, PSTCL reiterated its position that there was no requirement of augmentation by development of the subject asset, in the 41st meeting of NRPC held on 28.02.2018.

15. Having developed the subject asset, and other assets which were part of the augmentation proposal, the appellant approached the Central Commission by petition seeking approval of the transmission tariff, filing it on 23.03.2018, it appears PSTCL was not made a party to the initial proceedings. The CERC, vide its Order dated 20.08.2018, directed its impleadment as respondent. It is the case of PGCIL that, in compliance, it had submitted a amended memo of parties and affidavit of service on PSTCL on 30.08.2018, PSTCL statedly having chosen not to file any reply.

16. While the above-mentioned petition was pending consideration before the Central Commission, the subject asset (Asset-3 at Jalandhar) was ‘charged at no load basis’ statedly due to associated downstream

network having not been available by the appellant. A charging certificate to this effect is stated to have been later issued by NRLDC in favour of PGCIL on 16.04.2019.

17. By the impugned order, rendered on 21.11.2019, the Central Commission found the appellant to be in default on account of non-availability of associated downstream network and thus while determining the transmission charges, in respect of subject asset fastening the liability in such respect on the appellant from 25.03.2019 onwards till the downstream network is commissioned.

18. Though it is one of the grounds taken in the appeal by PSTCL that the impugned order violates the principle of natural justice, it (PSTCL) not having been impleaded as a party respondent, the order having been passed without notice or affording of opportunity of hearing to the appellant, at the hearing the learned counsel for PSTCL submitted that such ground is not pressed for consideration, it being the contention of the appellant that the order even otherwise cannot be upheld on merits in absence of any contractual arrangement between the parties.

19. Admittedly, there is no formal contract executed by the PGCIL with the appellant *vis-à-vis* the development of the subject asset and its utilization. The case of PGCIL plainly is that an agreement had been reached between the parties for purposes of the subject asset by the resolution adopted in the 25th meeting of NRPC held on 23rd & 24th

February, 2012, which was confirmed in the 26th meeting, held on 09.08.2012. The plea is that though in terms of the resolution adopted in the 30th meeting of the Standing Committee for Northern Region held on 19.12.2011, the proposal was to be acted upon after the 'requirement' had been communicated by the STU, no such condition was attached to the concurrence to the proposal before NRPC. The CTU (PGCIL) relies on decisions of this tribunal by judgments dated 27.03.2018 and 18.01.2019 in the matters of *Punjab State Power Corporation Limited (PSPCL) v. Patran Transmission Company Limited (PTCL) & Ors.* (Appeal no. 390 of 2017) and *Nuclear Power Corporation of India Limited v. Central Electricity Regulatory Commission & Ors.* respectively and CERC by Orders dated 21.09.2016 and 04.01.2017 in the matters of *RAVP Transmission Company Limited v. PGCIL* (Petition no. 43/MP/2016) and *Patran Transmission Company Limited v. Haryana Power Purchase Centre* (Petition no. 155/MP/2016) respectively to the effect that liability must fall on the party which has caused the delay in availability of downstream system, the transmission system developed by the CTU being ready.

20. In our considered view, the decisions of this tribunal by judgments dated 14.09.2020 and 09.05.2022 in the matters of *NRSS XXXI (B) Transmission Ltd v. CERC & Ors.* (Appeal no. 17 of 2019) and *Himachal Pradesh State Electricity Board v. Central Electricity Regulatory Commission* (Appeal no. 343 of 2018) respectively are the complete answer to the dispute at hand.

21. In the case of *NRSS XXXI (B) Transmission Ltd* (supra), it was held as under:

“8.18 Thus, the question before us is whether liability of IDC and IEDC of the assets of Respondent No 2 can be imposed on the Appellant when the Commission has condoned the delay in commissioning of its transmission assets on account of force majeure event and allowed extension of COD of its transmission system within the terms of the TSA dated 02.01.2014.

8.19 Admittedly, the Appellant implemented the project under TBCB route as per the TSA dated 02.01.2014. The Appellant is entitled to extension of commercial operation date under Article 11 of the TSA (force majeure), if the project implementation is affected due to force majeure event (s). We are of the opinion that once the Commission allows extension of COD of the transmission elements/system under the terms of the TSA, it revokes all the tacit or explicit agreements made by the parties or system planning authorities regarding scheduled commercial operation dates of transmission elements. The Scheduled Commercial Operation date is accordingly shifted to actual COD. Thus, the decision of the Commission to impose liability of IDC and IEDC of PGCIL bays on the Appellant for delay in commissioning of the transmission system is completely contradictory to relief granted to the Appellant under the provisions of force majeure of the contract by way of extension of COD.

...

8.24 The Commission in the impugned order and order dated 29.03.2019 has decided that even if the COD of the transmission licensee has been extended on account of Force Majeure event, the licensee has to pay transmission charges for upstream/downstream assets for the period of delay. Therefore, the bidder has to mandatorily consider this scenario while submitting the bid. We fail to understand rationale behind this as to how a transmission licensee can submit a reasonable bid when it is not aware of the liability pertaining to anticipated duration of such delay and the cost of the upstream/down-stream assets before submitting the bid. The same is equally applicable for the delay on achievement of COD on account of force majeure events

by the projects implemented/being implemented through Regulated Tariff Mechanism (RTM). The infrastructure projects involving huge investments must not be part to such regulatory uncertainties that too, without remedy.

8.25 Admittedly, the Commission does not issue the directions for sharing of transmission charges in such cases as per the Sharing Regulations framed under Section 178 of the Act but by exercising regulatory power under Section 79 of the Act. Therefore, such transmission charges in absence of a contract, are more in the nature of ‘damages’ for delay in commissioning of assets and cannot be qualified as sharing of transmission charges. However, breach of contract is a pre-condition to claim ‘damages’ under Section 73 and Section 74 of the Indian Contract Act, 1872. In this context, it is undisputed that there exists no contract between the licensees implementing the interlinked transmission systems in such cases. Therefore, it is not prudent on part of the Commission to impose such liability on the transmission licensees without entering into a contract/IA. Further, it is relevant to note that transmission system, being a meshed network it cannot be the first time that the commission was dealing with the issue of mismatch in commissioning of transmission system in Petition No. 43/MP/2016 which culminated into principles being issued vide order dated 21.09.2016.”

22. In *Himachal Pradesh State Electricity Board (supra)*, this tribunal observed thus:

“29. The CERC Regulations on Sharing of Transmission Charges clearly spelt out the mechanism to be followed for determination of share of each beneficiary i.e. LTTC, presently under PoC mechanism. There is no mention of downstream or upstream network matching condition under which specific LTTC can be penalized.

...

34. From, the above, it is clear that the decision of the CERC upheld by the Tribunal was based on the condition that the Central Commission under its Regulatory powers has laid down a principle as the relevant regulation does not have any provision for recovery of transmission charges, once the ISTS system is put to use. However, the LTTCs, the beneficiaries have indicated that the TSA and

the relevant Regulations have necessary provisions and there is no difficulty in implementing the provisions contained therein. Further, this Tribunal has observed that:

35. We are of the opinion that the said judgment is not relevant here as there is no difficulty in implementing the CERC Sharing Regulations to the extent of recovery of charges as also agreed by the beneficiaries including the Respondent no. 1. As per the Hon'ble Supreme Court's judgment dated 15.3.2010 as quoted above, that if any regulations are framed by the Central Commission under Section 178 of the Act then the decision of the Central Commission has to be in accordance with the said regulations.

36. Therefore, the regulatory powers can be used only if no express provision is available in implementing the contract. It is seen that the Central Commission has decided that no such provision exists even when it is pointed out by all the parties that there are enough provisions existing for the implementation of the contract and the recovery of the charges.”

23. The appellant is not a beneficiary for use of the transmission system, it being the STU in the State of Punjab. The transmission services agreement is entered into by the CTU (PGCIL) with the beneficiaries only, who would be the users liable to pay transmission charges, recovery of such charges being regulated by the provisions of sharing Regulations which are binding.

24. In view of the above, the reliance on other decisions cited by PGCIL is misplaced. The decision of this tribunal rendered on 27.03.2018 in the case of *Patran* (supra) does not further the case of the appellant. Contrary to what is propagated before us, the following observations in the said decision negate the claim of PGCIL:

“(vii) It is clear that the liability to pay transmission charges by the Appellant to the Respondent No. 1 from SCOD till downstream system is commissioned does not arise from the Regulations of the Central Commission. The most relevant decision of the Central Commission matching to the circumstances of the present case is its order dated 21.9.2016 in Petition No. 43/MP/2016 where the principles were laid down clearly that the entity due to which system developed through TBCB route cannot be put to use is liable to pay the transmission charges from SCOD till commissioning of the upstream/ downstream system/terminal bays. The Transmission System in question has also been developed through TBCB route. In the present case as per the principles laid down by the Central Commission it appears that PSTCL is the defaulting party and should have been made liable to pay the said transmission charges. However, we find that there is no contractual relation between the Respondent No. 1 and PSTCL. The contractual relation between the Appellant and the Respondent No. 1 is the TSA, which lays down the rights and obligations of the parties. The Article 4.2 of the TSA deals with the obligations of the LTTCS in implementation of the project. The Article 4.2 of the TSA deals with the obligations of the LTTCS in implementation of the project. The relevant portion is reproduced below: ...”

25. The decision in *Patran* (supra) recognizes the principle that charges cannot be imposed without a contractual arrangement.

26. We do not accept the arguments of PGCIL that the resolution adopted in the 25th meeting of NRPC constitutes an agreement between the parties. The said resolution on the basis of deliberations in the meeting held on 23.02.2012 and 24.02.2012 was only to record ‘concurrency’ of NRPC with the transmission proposals that had been agreed earlier in the 30th Standing Committee meeting on Power System Planning of Northern Region. The qualifying clause in the said earlier resolution that the

approval *in principle* was subject to the 'requirement of STU' being communicated would also apply to the concurrence by NRPC. It is not in dispute that PGCIL did not receive any confirmation of the requirement from the appellant. PGCIL itself did not ascertain requirement by any communication addressed to the appellant before obtaining investment approval from its Board of Directors on 16.05.2014 or before commencement of the execution of the work. As noted earlier, the first communication from its office, after development of the asset, was sent on 28.12.2016, the focus being to elicit information regarding construction of downstream lines. As noted earlier, the reference in the said communication was not on the NRPC resolution but on the resolution before the Standing Committee wherein the STU had expressed its agreement subject to it communicating its requirements later.

27. From the chronology of events, it is clear that PGCIL went ahead with the development of the work assuming that there was a requirement of the asset for purposes of the appellant. This assumption, without confirmation by the STU, was unfounded. In these circumstances, it cannot be said that there was an agreement reached between the parties (PGCIL on one hand and PTCL on the other) for development of the subject asset. In this view, as indeed in absence of any contract binding the parties to the dispute herein, the liability towards transmission charges cannot be fastened on the STU (PSTCL), not the least on the ground that it had been remiss in development of the downstream system.

28. For the above reasons, the appeal succeeds. The impugned order to the extent thereby liability to pay transmission charges in respect of Asset-3: 220 kV, 2 nos. Line bays at Jalandhar Sub-station has been placed at the door of the appellant is hereby set aside and vacated.

29. The appeal is disposed of in above terms.

PRONOUNCED IN THE OPEN COURT ON THIS 15TH DAY OF SEPTEMBER, 2022.

(Sandesh Kumar Sharma)
Technical Member

(Justice R.K. Gauba)
Officiating Chairperson

vt