

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

APPEAL NO. 15 OF 2016

Date : 28.10.2022

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

In the matter of:

POWER GRID CORPORATION OF INIDA LIMITED

"Saudamini", Plot No.2,
Sector – 29, Gurgaon – 122 001

Appellant(s)

VERSUS

1. CENTRAL ELECTRICITY REGULATORY COMMISSION

3rd and 4th Floor, Chanderlok Building
36, Janpath, New Delhi - 110001

2. NTPC LIMITED.

NTPC Bhawan, Core-7, Scope Complex
7, Institutional Area, Lodhi Road
New Delhi – 110 003

**3. NATIONAL HYDRO POWER CORPORATION
LTD.**

NHPC Office Complex, Lodhi Road
New Delhi – 110 003

4. SATLUJ JAL VIDYUT NIGAM LIMITED

Power Project, Jhakri, Ramour,
District Shimla
Himachal Pradesh – 172 201

5. THDC INDIA LTD.

Bhairath Puram, Tehri
Uttrakhand – 249 001

**6. NUCLEAR POWER CORPORATION OF INDIA
LTD.**

Nabhkiya Bhawan, Anu-Shakti Naar,
Mumbai – 400 094

- ADHPL**
7. Bhilwara Towers, A-12, Sector – 1
Noida – 201 301
- ARAVALI POWER COMPANY PVT. LTD.**
8. Indira Gandhi Super Thermal Power Project,
PO: Jharli, District Jhajjar,
Haryana – 124 103
- JAYPEE KARCHAN HYDRO CORPORATION LIMITED**
9. Sector – 128, Noida – 201 304
- EVEREST POWER PRIVATE LIMITED**
10. 1st Floor, Hall-1, NBCC Tower
Bikaji Cama Place
New Delhi – 110 066
- SHREE CEMENT LIMITED**
11. PO Box No. 33, Bangur Nagar
Beawar – 305 901
District – Ajmer (Rajasthan)
- CHANDIGARH (ELECTRICITY DEPARTMENT)**
12. UT Chandigarh, Sector – 9
Chandigarh – 160 019
- DELHI TRANSCO LIMITED**
13. SLDC Building (Behind Jakir Hussain College)
Tagore Hostel Lane, Minto Road
New Delhi – 110 002
- HARYANA VIDYUT PRASARAN NIGAM LIMITED**
14. Room No. 213, Shakti Bhawan, Sector – 6
Panchkula – 134 109, Haryana
- HIMACHAL PRADESH STATE ELECTRICITY BOARD**
15. Totu, Shimla – 171 011
Himachal Pradesh

POWER DEVELOPMENT DEPARTMENT

Government of J&K, Narwal Bala

16. Gladni – 180 004, Jammu

PSTCL

SLDC Building, 220 kV Sub-Station Ablowal

17. Patiala – 147 001, Punjab

Vidyut Bhawan, Jyoti Nagar

Vidyut Marg, Jaipur – 301 015,

18. Rajasthan

U.P. POWER CORPORATION LIMITED

Electricity Import-Export & Payment Circle

19. 11th Floor, Shakti Bhawan Extension

14-Ashok Mar, Lucknow – 226 01, UP

NORTHERN CENTRAL RAILWAY

Nawab Yusuf Road, Allahabad

20.

UTTARANCHAL POWER CORPORATION LIMITED

21. Kanwali Road, Urja Bhawan

Dehradun – 248 001, Uttrakhand

POWERLINKS TRANSMISSION LIMITED

10th Floor, DLF Tower-A

22. District Centre, Jasola

New Delhi – 110 044

Respondent(s)

Counsel for the Appellant(s) : Mrs. Swapna Seshadri
Ms. Ritu Aporva
Ms. Surbhi Gupta

Counsel for the Respondent(s) : Mr. Sethu Ramalingam for R-1

J U D G E M E N T (Oral)

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

1. The Appellant, *Power Grid Corporation of India* ("PGCIL") is a government company tasked with the responsibility of Inter-State

transmission of electricity in the country, also discharging, at the relevant point of time, functions of Central Transmission Utility, under the Electricity Act, 2003. As part of the functions assigned to it, it was called upon to execute certain projects which included laying of fibre optic communication system in lieu of the existing *Unified Load Despatch and Communication* (“ULDC”) Microwave links in Northern Region for tariff block 2009-14, the infrastructure thereby covered being inclusive of Asset-II (1628.966 km of Fibre Optic Communication system and Asset-III (493.064 km of Fibre Optic Communication system). The Scheduled *Commercial Operation Date* (“COD”) of the said works was 01.10.2012. There was time over-run of 3 months and 6 months, the actual COD being 01.01.2013 and 01.04.2013 respectively.

2. The Appellant had approached the Respondent *Central Regulation Electricity Commission* (“CERC”) by petition (No.240/TT/2013) seeking determination of annual fees and charges for fibre optic communication system in lieu of existing ULDC Microwave links in Northern Region for the 2009-14 period, praying, *inter alia*, for condonation of the time over-run. The Central Commission, by its order dated 01.09.2015, disallowed the said claim for condonation, the said order to that extent being assailed by the appeal at hand.

3. It may be mentioned here that the Appellant had also expressed grievances in this appeal over adoption of cash basis approach on the loans deployed and reduction of *Interest During Construction* (“IDC”) up to the COD of the subject assets. However, at the hearing, the learned counsel for the Appellant submitted that the said issue has since been resolved by the appropriate order subsequently passed satisfying the claim of the Appellant in truing-up exercise.
4. The grounds on which the condonation was requested, and observations of the Central Commission thereupon, as recorded in the impugned order, read as under:

“15. As per the investment approval dated 25.3.2010, the instant assets were to be commissioned within 30 months from the date of investment approval by 24.9.2012 say 1.10.2012. The Asset-I, Asset-II and Asset-III in the instant petition have been commissioned on 1.4.2012, 1.1.2013 and 1.4.2013 respectively. Thus, there is no time over-run in the case of Asset-I but there is time over-run of 3 months and 6 months in the case of Asset-II and Asset-III respectively, in the instant petition.

16. The petitioner submitted the following reasons for delay in the case of Asset II and Asset-III:-

- a. Delay due to late confirmation by UPPTCL: Initially UPPTCL did not agree to participate in the above microwave replacement project due to funding reasons*

as UPPTCL wanted DOT to compensate for the project as Microwave Replacement was necessitated due to vacation of frequency spectrum mandate by DOT. UPPTCL subsequently confirmed its participation in January, 2011 and asked the petitioner to take up the work, i.e. 10 months after the award of the package. Out of 4488 km of the OPGW length, UPPTCL's share was 2039 km (almost 45%) thus causing substantial delay to the project.

b. Delay due to inclusion of PTCUL: Initially PTCUL was not part of the Project but was included in the project as per decision of NRPC in the month of September, 2011.

c. Delay due to heavy foggy condition: During the installation of the OPGW, almost 4 months i.e. from Mid December, 2011 to Mid February, 2012 and Mid December, 2012 to Mid February, 2013 were lost due to heavy foggy conditions. As OPGW installation work is carried out in live line condition, it is not safe to work as lines have tripped on many occasions due to failure of T&P on account of fog.

17. We have considered the submissions of the petitioner and also pursued the letters dated 17.4.2010, 31.4.2010 and 2.1.2011 submitted by the petitioner. As regards the initial refusal of UPPTCL's, it has already been dealt by us in order dated 8.12.2011 in Petition No. 68/2010 wherein it was clarified if the state portion is not being implemented by UPPTCL separately, the same shall be implemented by the petitioner and UPPTCL would be required to share the tariff in proportion to the assets being utilized by it. We have also noted that some portion of UPPTCL optic fibre (235.153km) was commissioned on 1.4.2013. It was made clear in the said order that the timeline for replacement of the digital microwave by optical fibre should be strictly complied with.

18. Asset-II includes State portion of PSEB-304.62 km, BBMB-3.16 km, RRVPNL-451.45 Km, HVPNL-2.884 km and UPPTCL 630.13 km and Asset-III includes State portion of RRVPNL-47.177 km and PSEB-68.029 km also apart from UPPTCL-235.153 km. There is delay in commissioning of

both Asset-II and Asset-III i.e. comprising of RRVNL and PSEB's portions. The petitioner has not submitted any documentary evidence in regard to delay caused in commissioning of optic fibre network of other constituents included in Asset-II and Asset-III. The Commission has further noted that though PTCUL was not a part of the project initially but was included in the project as per the decision of NRPC and the request of PTCUL, by the petitioner. However, the petitioner has not installed optic fibre for PTCUL in the instant petition but only Battery Bank and charger have been considered for existing communication system for PTCUL.

19. As regards the fog in Northern Part of India adversely affecting various services like transportation and communication and that demobilizing and re-mobilizing of manpower due to this intermittent condition at regular intervals also affected the progress of the work for which the petitioner has also submitted the extracts of log book for 58 days maintained by control room indicating the condition of fog in various parts of Northern Region. We are of the view that foggy conditions during winter season is a normal phenomenon in parts of Northern Region and that the impact of fog could not be so much that the work of laying OPGW was held up for entire 2 months, both in 2011-12 and 2012-13. Therefore, we are not inclined to condone the delay of 3 months and 6 months in commissioning of both Asset-II and Asset-III respectively."

5. Having heard the learned counsel for the parties, we find the approach of the Central Commission in dealing with the explanations offered for delay to be incorrect, unjust and unfair.

6. The Central Commission has failed to appreciate that UPPTCL had not been willing to take up the implementation of Microwave

replacement project due to funding reasons since it desired the department of tele-communication to provide the compensation. The survey was thus carried out in the State of Uttar Pradesh by the Appellant without participation by UPPTCL. It was only in January, 2011, good ten months after the award of the package, that UPPTCL took an about turn and confirmed its participation this, *inter alia*, necessitating repetition of the exercise of survey, having the ripple effect of reducing the optimization of manpower, causing delay in implementation of the project, several new links having consequently being introduced compelling a change of plan. It cannot be ignored that the share of UPPTCL to the extent of 2039 km was substantial, it being 45% of the total project length of 4848 kms.

7. It is not in dispute that PTCUL was initially not part of the project. It was included only in March 2011, agreement relating to financial terms having been finalized even later in September, 2011.

8. The Central Commission has unfairly short-shifted the ground of foggy conditions. On facts there was no contest. The observations that impact of fog could not be so much that the work would be held up for entire period of 2 months is rather vague. The Commission failed to take into account the explanation that the assigned work

had to be carried out in “*live line condition*” it being not safe to execute the task in the foggy conditions since line would trip due to failure of the connected systems.

9. For the foregoing reasons, we are unable to uphold the view taken by the Central Commission on the subject of condonation of time over-run of 3 months and 6 months in relation to Asset-II and Asset-III respectively. We vacate the impugned order to such extent and allow the prayer of the Appellant for condonation.
10. The Central Commission is directed to pass consequential orders in light of the above decision.
11. The Appeal is disposed of in above terms.

**PRONOUNCED IN THE OPEN COURT ON THIS 28th DAY OF
OCTOBER, 2022**

**(Sandesh Kumar Sharma)
Technical Member**

**(Justice R.K. Gauba)
Officiating Chairperson**

mk/nr