

**APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI
(APPELLATE JURISDICTION)**

Appeal No. 333 of 2022

Dated : 07.10.2022

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

In the matter of:

**Tamil Nadu Generation and Distribution Corporation Limited,
10th Floor, NPKRR Maaligai,
144, Anna Salai,
Chennai- 600002**

...Appellant

Versus

**1. Central Electricity Regulatory Commission
3rd & 4th Floor, Chanderlok Building,
36, Janpath, New Delhi – 110001.**

**2. GMR Energy Trading Limited,
Building No. 302, New Shakti Bhawan,
New Udaan Bhawan Complex,
Opposite IGI Airport, Terminal – 3,
New Delhi – 110037**

**3. GMR Warora Energy Limited,
Building No. 302, New Shakti Bhawan,
New Udaan Bhawan Complex,
Opposite IGI Airport, Terminal – 3,
New Delhi – 110037**

... Respondents

**Counsel on record for the Appellant(s) : Ms. Anusha Nagarajan
Ms. Akanksha Bhola
Mr. Rahul Ranjan**

**Counsel on record for the Respondent(s) : Mr. Hemant Singh
Mr. Buddy A. Ranganadhan
Mr. Biju Mattam
Mr. Supriya Rastogi Agarwal**

Mr. Lakshyajit Singh Bagdwal
Mr. Chetan Kumar Garg
Mr. Robin Kumar
Ms. Ankita Bafna
Mr. Harshit Singh
Mr. Lavanya Panwar
Mr. Alchi Thapliyal for R -2 & 3

J U D G M E N T

PER HON'BLE MR. SANDESH KUMAR SHARMA, TECHNICAL MEMBER

1. The Appellant herein, is a Government Company engaged in the business of Generation and Distribution in the State of Tamil Nadu, has challenged the order dated 04.02.2022 ("Impugned Order") passed by the Central Electricity Regulatory Commission ("CERC" or "Central Commission") in Petition No. 114/MP/2019 whereby the CERC has held that the Appellant is liable to make payment to the Respondent no. 2 for capacity charges irrespective of the grid constraint between November 2015 and March 2016, along with the late payment surcharge.

2. The Appellant i.e. M/s. Tamil Nadu Generation and Distribution Corporation Limited (in short "TANGEDCO"), wholly owned by the State Government, is a company registered under the Companies Act, 1956 and is the successor of the erstwhile Tamil Nadu Electricity Board, vested with the functions of electricity generation and distribution in the state of Tamil Nadu.

3. The Respondent No. 1 is the Central Electricity Regulatory Commission which passed the Impugned Order dated 04.02.2022.

4. The Respondent No. 2 and 3, GMR Energy Trading Limited ("GMR Trading"), engaged in the business of trading licensee under the Act and

GMR Warora Energy Limited (“GWEL”), owns a 2x300 MW Thermal Power Station at Warora, respectively, are companies registered under the Companies Act, 1956, and are part of GMR Group of companies.

5. The Appellant, on 27.11.2013, signed a Power Purchase Agreement (‘PPA’) with GMR Trading for a period of 15 years, from 01.06.2014 to 30.09.2028, for the purchase of electricity up to the contracted capacity of 150 MW, which was to be supplied from GWEL’s Thermal Power Plant in Maharashtra, for such an arrangement GMR Trading and GWEL entered into an Agreement dated 01.03.2013 for Sale of Power, by way of which, the GWEL agreed to sell 150 MW of power from its Thermal Power Plant to the GMR Trading for the purpose of further sale to the Appellant.

6. During the period of the contract, in the months of November, 2015 and December, 2015, the availability of power was affected due to certain grid disturbance/ grid constraints, resulting into present dispute between the TANGEDCO and GMR Trading regarding the cumulative availability of power during that period.

7. The Appellant has claimed that no party under the contract has any liability in case of disruption in supply due to grid constraint, whatsoever, on the contrary GMR Trading has submitted that the Appellant is liable to pay tariff as per the PPA against the availability as declared by it, even if there is a disruption due to grid constraint and only in case of *Natural Force Majeure* event, the Appellant can be exempted from paying the tariff under the provision of clause 9.7.1 of the PPA.

8. The relevant clauses of the PPA are reproduced here under for reference:

“4.4 Purchase and sale of Available Capacity and Scheduled Energy

4.4.1 Subject to the terms and conditions of this Agreement, the Seller undertakes to sell to the Procurer, and the Procurer undertakes to pay Tariff for all of the Available Capacity up to the Contracted Capacity and corresponding Scheduled Energy.

...

“9 ARTICLE 9: FORCE MAJEURE

9.1 Definitions

9.1.1 In this Article, the following terms shall have the following meanings:

9.2 Affected Party

9.2.1 An affected Party means the Procurer or the Developer whose performance has been affected by an event of Force Majeure.

9.3 Force Majeure

9.3.1 A 'Force Majeure' means any event or circumstance or combination of events and circumstances including those stated below that wholly or partly prevents or unavoidably delays an Affected Party in the performance of its obligations under this Agreement, but only if and to the extent that such events or circumstances are not within the reasonable control, directly or indirectly, of the Affected Party and could not have been avoided if the Affected Party had taken reasonable care or complied with Prudent Utility Practices:

Any restriction imposed by PGCIL/RLDC/SLDC in scheduling of power due to breakdown of transmission /grid constraint shall be treated as Force Majeure without any liability on either side (Non availability of open access is treated as Force Majeure).

i. Natural Force Majeure Events

act of God, including, but not limited to lightning, drought, fire and explosion (to the extent originating from a source external to the site), earthquake, volcanic eruption, landslide, flood, cyclone, typhoon, tornado, or exceptionally adverse weather conditions which are in excess of the statistical measures for the last hundred (100) years,

ii. Non-Natural Force Majeure Events

1. Direct Non-Natural Force Majeure Events attributable to the Procurer

a) Nationalization or compulsory acquisition by any Indian Governmental Instrumentality (under the State Government(s) of the Procurer or the Central Government of India) of any material assets or rights of the Seller; or

b) the unlawful, unreasonable or discriminatory revocation of, or refusal to renew, any Consents, Clearances and Permits required by the Seller to perform its obligations under the RFP Documents or any unlawful, unreasonable or discriminatory refusal to grant any Consents, Clearances and Permits required for the development/ operation of the Power Station, provided that a Competent Court of Law declares the revocation or

refusal to be unlawful, unreasonable and discriminatory and strikes the same down.

c) any other unlawful, unreasonable or discriminatory action on the part of an Indian Government Instrumentality (under the State Government(s) of the Procurer or the Central Government of India) which is directed against the supply of power by the Seller to the Procurer, provided that a Competent Court of Law declares the action to be unlawful, unreasonable and discriminatory and strikes the same down.

2. Direct Non-Natural Force Majeure Events not attributable to the Procurer

a) Nationalization or compulsory acquisition by any Indian Governmental Instrumentality. (other than those under the State Government of the Procurer) of any material assets or rights of the Seller; or

b) the unlawful, unreasonable or discriminatory revocation of, or refusal to renew, any Consents, Clearances and Permits required by Seller to perform its obligations under the RFP Documents or any unlawful, unreasonable or discriminatory refusal to grant any Consents, Clearances and Permits required for the development/ operation of the Power Station, provided that a Competent Court of Law declares the revocation or refusal to be unlawful, unreasonable and discriminatory and strikes the same down.

c) any other unlawful, unreasonable or discriminatory action on the part of an Indian Government Instrumentality (other than those under the State Government(s) of the

Procurer or the Central Government of India) which is directed against the supply of power by the Seller to the Procurer, provided that a Competent Court of Law declares the action to be unlawful, unreasonable and discriminatory and strikes the same down.

3. Indirect Non-Natural Force Majeure Events

a) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action; or

b) radioactive contamination or ionising radiation originating from a source in India or resulting from another Indirect Non Natural Force Majeure Event mentioned above excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Power Station by the Affected Party or those employed or engaged by the Affected Party.

c) Industry wide strikes and labor disturbances having a nationwide impact in India.

9.4 Force Majeure Exclusions

9.4.1 Force Majeure shall not include

(i) any event or circumstance which is within the reasonable control of the Parties and (ii) the following conditions, except to the extent that they are consequences of an event of Force Majeure:

a. Unavailability, late delivery, or changes in cost of the plant, machinery, equipment, materials, spare parts, Fuel or consumables for the Power Station;

- b. Delay in the performance of any contractor, sub-contractor or their agents excluding the conditions as mentioned in Article 9.2;*
- c. Non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment;*
- d. Strikes or labour disturbance at the facilities of the Affected Party;*
- e. Insufficiency of finances or funds or the agreement becoming onerous to perform; and*
- f. Non-performance caused by, or connected with, the Affected Party's:*
 - i. Negligent or intentional acts, errors or omissions;*
 - ii. Failure to comply with an Indian Law; or*
 - iii. Breach of, or default under this Agreement or any other RFP Documents.*

9.7.1 *Subject to this Article 9:*

- (a) no Party shall be in breach of its obligations pursuant to this Agreement except to the extent that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure Event;*
- (b) every Party shall be entitled to claim relief in relation to a Force Majeure Event in regard to its obligations, including but not limited to those specified under Article 4.7;*
- (c) For the avoidance of doubt, it is clarified that no Tariff shall be paid by the Procurer for the part of Contracted Capacity or part thereof affected by a Natural Force Majeure Event affecting the Developer, for the duration of such Natural*

Force Majeure Event affecting the Developer. For the balance part of the Contracted Capacity, the Procurer shall pay the Tariff to the Seller, provided during such period of Natural Force Majeure Event affecting the Developer, the balance part of the Power Station is declared to be Available for scheduling and dispatch as per ABT for supply of power by the Seller to the Procurer;

In case of a Natural Force Majeure Event affecting the Procurer no Tariff shall be paid by the Procurer to the Seller for the duration of such Natural Force Majeure Event affecting the Procurer;

(e) If the average Availability of the Power Station is reduced below Normative Availability for over two (2) consecutive months or for any non consecutive period of four (4) months both within any continuous period of 12 months, as a result of a Direct Non Natural Force Majeure Event attributable to the Procurer, then, with effect from the end of such two (2) consecutive months or four (4) non consecutive months and for so long as the daily average Availability of the Power Station of the Developer continues to be reduced below Normative Availability as a result of a Direct Non Natural Force Majeure Event attributable to the Procurer, the Seller may elect through a written notice to the Procurer, to deem the Availability to be equal to Normative Availability from the end of such two (2) consecutive months or four (4) non consecutive months, regardless of its actual - Available Capacity. In such a case, the Procurer shall be liable to make payment of Capacity Charges

calculated on such deemed Normative Availability, after the cessation of the effects of Direct Non Natural Direct Force Majeure Event attributable to the Procurer in the form of an increase in Capacity Charge.”

9. As per clause 9.3.1 as quoted above, there shall not be any liability on either of the parties i.e. the Appellant and the Respondent no. 2 (GMR Trading) in case, any restriction is imposed by PGCIL/RLDC/SLDC in scheduling of power due to breakdown of transmission /grid constraint, which shall be treated as *Force Majeure* event and even the non-availability of open access shall also be treated as *Force Majeure*.

10. Undisputedly, in the event of any *Force Majeure* event including the grid constraint or non-availability of open access, the Appellant shall be exempted from any liability including the financial liability.

11. The Appellant submitted that, by way of dispute notice dated 29.01.2016, it has informed GMR Trading of the error committed while raising invoices for November, 2015 and December, 2015, stating that the effects of the grid constraints of 22.11.2015, 27.11.2015, 03.02.2015, 12.12.2015, and 26.12.2015 have not been accounted for, in compliance to the provision of the PPA as these constitute *Force Majeure* events, due to which there was no liability on either side. As GMR Trading had not taken these constraints into account while raising invoices for these months, there was a difference in monthly incentive calculation of INR 1,27,375/- and INR 11,09,469/- for November 2015 and December 2015 respectively.

12. The Appellant further submitted that GMR Trading vide its response dated 10.03.2016 to the dispute notice, accepted that the grid constraints

affecting the available capacity constituted *Force Majeure* events under the provisions of the PPA, and agreed to account for the grid constraints while calculating the monthly incentive for the months of November 2015 and December 2015.

13. Thereafter, another dispute notice was issued by the Appellant on 31.03.2016 against the invoices of November 2015, December 2015, January 2016, and February 2016, having found discrepancies in these invoices during reconciliation, citing that SRLDC has imposed certain restrictions while scheduling the power due to transmission constraints in the months of November 2015, December 2015, and January 2016, an event recognised as *Force Majeure* event and accordingly, the Appellant, in accordance with Clauses 9.3.1 and 9.7.1© of the PPA deducted the amount corresponding to the energy restricted due to the constraints, another dispute was raised on 21.04.2016, as GMR Trading has not accepted to follow the revised method of calculation intimated in the 31.03.2016 notice.

14. Pursuant to the dispute notice dated 31.03.2016, for the first time, GMR Trading vide its letter dated 02.05.2016, claimed that these grid constraints are not a *Natural Force Majeure* event, and therefore, the Appellant cannot be released from its obligation to pay tariff, and is liable to pay the full invoice amount, however, again agreeing that grid constraints constitute *Force Majeure* under the PPA.

15. As pleaded before us by the Appellant, GMR Trading has retracted its stand taken vide its response dated 10.03.2016 to the dispute notice, wherein it has accepted that the grid constraints affecting the available capacity constitute *Force Majeure* events and agreed to account for the grid constraints while calculating the monthly incentive for the months of

November 2015 and December 2015.

16. The ongoing disputed resulted into filing of the Petition No. 114/MP/2019 by GMR Trading on 05.02.2019 before the CERC seeking payment of the amount claimed in response dated 13.05.2016, that is, INR 8,98,941,158/- along with interest, and seeking a declaration to the effect that the bill disputes raised by the Appellant were illegal and void.

17. The Appellant submitted that that the prayers made in the Petition by the Respondents before CERC were premised on the assumption that the grid constraints did not exempt the Appellant from its obligation of making tariff payments, even though they constituted *Force Majeure*, as the Respondents had shown willingness to provide energy at the full contracted capacity and it was the Appellant that had been unable to schedule it.

18. The Appellant filed its Reply to the above Petition on 29.11.2019, highlighting that the grid constraint was a natural *Force Majeure* event, as the Appellant could not get the contracted quantum of power at its delivery point for reasons beyond its control, in any event, grid constraints are also independently recognized as *Force Majeure* which do not give rise to any liability on either side. The Appellant further asserted that as the available capacity had been admittedly reduced during the period of grid constraints, the Appellant's liability to pay for tariff was also limited to the power it availed.

19. Subsequently, in accordance with the direction of the CERC dated 12.10.2021, the Appellant filed its written submissions on 28.10.2021 iterating the submissions made in the Reply, and further highlighting that tariff is payable in proportion to the power made available.

20. The Appellant further, submitted that CERC vide the Impugned Order has not duly considered the its submissions and restricted its analysis to the limited question of whether grid constraint amounts to a natural *Force Majeure* event under the PPA, and further did not address the other issues raised by the Appellant, accordingly, allowed the Petition filed by GMR Trading observing that grid constraint is not a natural *Force Majeure* event and GMR Trading is entitled to the relief prayed for in the Petition and hence the captioned Appeal assailing the said Impugned Order.

21. In the Impugned Order, CERC has held as under:

*“17. We, thus, note that the dispute that was raised by the Respondent vide bill dispute notice no.1/2016 related to calculation of incentive during the period of grid constraint, while vide bill dispute notice no. 2/2016 and bill dispute notice no.3/2016, **the Respondent also contended that it was not liable to pay tariff for the period of grid constraint by relying on provisions of Article 9.7.1(c) read with Article 9.3.1 of PPA.** Moreover, vide bill dispute notice no. 2/2016, the Respondent also raised disputes related to bills for the months of November 2015 and December 2015. **While the Petitioner No. 1 had agreed to revise the bills vide its letter dated 10.03.2016 in response to bill dispute notice no.1/2016 (relating to calculation of incentives), it refused to revise the bills in response to bill dispute notice no. 2/2016 and bill dispute notice no. 3/2016 as those related to payment of tariff and not only calculation of incentives.***

18. We note that Article 9.3.1 of PPA provides that:

“In case of a Natural Force Majeure Event affecting the Procurer, no Tariff shall be paid by the Procurer to the Seller for the duration of such Natural Force Majeure Event affecting the Procurer”.

We also note that natural Force Majeure Events as per PPA are:

“act of God, including, but not limited to lightning, drought, fire and explosion (to the extent originating from a source external to the site), earthquake, volcanic eruption, landslide, flood, cyclone, typhoon, tornado, or exceptionally adverse weather conditions which are in excess of the statistical measures for the last hundred (100) years”.

*19. The Respondent has contended that it is not liable to pay tariff in case of grid constraint claiming the same to be a Force Majeure event. **However, as we have noted in paragraph 18 above, as per Article 9.3.1 of PPA, no tariff is payable by the Respondent only for natural Force Majeure events and the definition of natural Force Majeure event does not include grid constraint.***

20. We further note that Article 9.3.1 of PPA provides as under:

“any restriction imposed by PGCIL/RLDC/SLDC in scheduling of power due to breakdown of transmission /grid constraint is a Force Majeure and does not cast liability on either side”.

*21. **We are of the considered view that when there is a specific provision in PPA that declares that grid constraint is a Force Majeure event, the contention of the Respondent that grid***

constraint is a natural Force Majeure event is not tenable. The Supreme Court in Civil Appeal No.11133 of 2011 (M/s Adani Power (Mundra) Ltd. Vs Gujarat Electricity Regulatory Commission and Ors.) vide judgement dated 02.07.2019 has observed as under:

“32. We further find that the Commission as well as the Appellate Tribunal has lost sight of one another important principle of law. This Court in the case of J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. State of Uttar Pradesh, reported in AIR 1961 SC 1170, while construing the provisions of Clause 5(a) and Clause 23 of the U.P. Industrial Disputes Act and the U.P. Government Order issued under the U.P. Industrial Disputes Act, has observed thus:

“(10) Applying this rule of construction that in cases of conflict between a specific provision and a general provision the specific provision prevails over the general provision and the general provision applies only to such cases which are not covered by the special provision, we must hold that cl. 5(a) has no application in a case where a special provisions of cl. 23 are applicable.”

33. The said principle has been reiterated by this Court in its judgment in the case of Maharashtra State Board of Secondary and Higher Secondary Education and Ors. Vs. Paritosh Bhupeshkumar Sheth and Ors. reported in (1984) 4 SCC 27. Para 20 of the said judgment reads thus:

“20. We consider that the above approach made by the High Court is totally fallacious and is vitiated by its failure to follow the well established doctrine of interpretation that the provisions contained in a statutory enactment or in rules/regulations framed thereunder have to be so

construed as to be in harmony with each other and that where under a specific section or rule a particular subject has received special treatment, such special provision will exclude the applicability of any general provision which might otherwise cover the said topic

34. Xxxx”

22. In view of above, the contention of the Respondent that grid constraint is a natural Force Majeure event and that it is not liable to pay tariff for that period, is rejected. That being the case, relief contemplated in Article 9.7.1(c) of PPA is not available to the Respondent since such relief is only for natural Force Majeure events.

23. The Petitioner has also claimed late payment surcharge as envisaged under article 8.3.5 of the PPA. Article 8.3.5 reads as under:

‘8.3.5 In the event of delay in payment of a Monthly Bill by the Procurer beyond its Due Date, a Late Payment Surcharge shall be payable by such Procurer to the Seller at the rate equal to SBI-PLR per annum, on the amount of outstanding payment, calculated on a day-to-day basis (and compounded with monthly rest), for each day of the delay. The Late Payment Surcharge shall be claimed by the Seller through the Supplementary Bill.’

24. *In view of the above discussion, we are inclined to set aside the bill dispute notices dated 31.03.2016 and 21.04.2016 issued by the Respondent and accordingly, both the bill dispute notices are hereby set aside. Consequently, we hold that the Respondent is liable to make payment for capacity charges as per schedule 4 of PPA corresponding to the contracted capacity of 150 MW or declared capacity, whichever is lower, for the period from November 2015 to March 2016 irrespective of grid constraint and is also liable to pay late payment surcharge for the unpaid amount in terms of Article 8.3.5 of PPA. The Respondent is directed to make the payment along with late payment surcharge within one month of issuing of the Supplementary Bill incorporating the late payment surcharge by the Petitioner.*

25. *Having decided the matter against the Respondent, we find that there is no need to deal with contention of the Petitioners that the Respondent's claims are also time-barred as the Respondent did not issue bill dispute notices within the stipulated period of 30 days as required under Article 8.6.2 of PPA.*

26. *In terms of above, Petition No. 114/MP/2019 is disposed of."*

22. From the Impugned Order as reproduced above, it is clear that the order passed by CERC is totally unjust and unreasonable. The "Force Majeure" (clause 9) covers only two categories namely the "Natural Force Majeure Events" (clause 9.3.1(i)) and the "Non Natural Force Majeure Events" (9.3.1(ii)), and another list which provides the list of events under "Force Majeure Exclusions" (clause 9.4), it is only under the category of "Natural Force Majeure Events" that the phrase "including but not limited to"

has been inserted with a specific purpose, whereas the other two lists are exhaustive and only lists the events that are included.

23. It is noted that the *Force Majeure* is defined as “**any event or circumstance or combination of events and circumstances including those stated below that wholly or partly prevents or unavoidably delays an Affected Party in the performance of its obligations under this Agreement, but only if and to the extent that such events or circumstances are not within the reasonable control, directly or indirectly, of the Affected Party and could not have been avoided if the Affected Party had taken reasonable care or complied with Prudent Utility Practices:**”

24. From the above, *Force Majeure* events includes all such events or circumstances which are not within the reasonable control, directly or indirectly, of the Affected Party and could not have been avoided if the Affected Party had taken reasonable care or complied with Prudent Utility Practices and also the events which are listed in the clause 9 of the PPA.

25. The word “grid constraint” is certainly an event which is not under the reasonable control of the either party and is also not listed under any of the three categories as covered under the “*Force Majeure*”, i.e. the “*Natural Force Majeure Events*” or the “*Non Natural Force Majeure Events*” or the “*Force Majeure Exclusions*”.

26. It is also noted that the *Natural Force Majeure* events are defined as “*act of God, including, but not limited to lightning, drought, fire and explosion-----*”. The phrase “including but not limited to” has a very wider meaning and the clause itself is, therefore, an ‘**inclusive**’ clause.

27. Further, “grid constraint” has been included under “*Force Majeure Events*”, as a special event included for this contract. The two categories clearly provide that it cannot be included under “*Non Natural Force Majeure Events*” category as the list covered under it is exhaustive. Further, the list under the “*Force Majeure Exclusions*” is also exhaustive and as such, “grid constraint” cannot be included in the list of exclusions and therefore, has to be included under the categories as per clause 9.3 which is not exhaustive but inclusive.

28. It is already concluded that the list of events under “*Non Natural Force Majeure Events*” category is exhaustive as such once included under the “*Force Majeure Events*”, it falls under the category i.e. “*Natural Force Majeure Events*”.

29. When there is a statutory definition, it can be exhaustive as well as inclusive. “*Exhaustive*” classification means that all the items are enumerated and none is left for imagination whereas “*Inclusive*” definition, gives a general description or the name of what is covered by the definition and thereafter by a specific inclusion mentions certain items that may not be strictly inside the scope of the general description.

30. It is undisputed fact that the phrase “*Including but not limited to*” is an idiomatic expression commonly used in contracts, the phrase means that the definition is pertinent to examples cited and other uncited examples, which are similar in purpose and have a well-suited match to the intent of the definition. Therefore, the legal interpretation of the phrase “included but not limited” is that it is a “inclusive clause”.

31. For the above reasons, it is opined that “grid constraint” can best be or

only be placed under the “*Natural Force Majeure Events*” under the provisions of the PPA signed between the Appellant and GMR Trading.

32. Further, the word “liability” is one of the most and momentous word in the field of law, meaning thereby the legal responsibility for one’s acts or omissions. It is clear from the plain reading of clause 9 of the PPA that the provision “*Any restriction imposed by PGCIL/RLDC/SLDC in scheduling of power due to breakdown of transmission /grid constraint shall be treated as Force Majeure without any liability on either side*” has been included with a very specific purpose and has a very wider scope, thereby exempting the procurer or the seller i.e. the Appellant and the GMR Trading from any form of contractual responsibility obligated upon them. It certainly includes financial liability also in the form of Tariff, and such a provision cannot be denied by other provision which is not in contradiction to it.

33. The clause 9.7.1 is an additional clause which provides that in case of occurrence of “*Natural Force Majeure Event*”, affecting the Procurer, shall exempt the procurer from making payment for the Tariff during the duration of such an event, however, clause 9.3.1 relieves the procurer as well as the seller from any contractual liability, in case of restrictions imposed by PGCIL/RLDC/SLDC in scheduling of power due to grid constraint irrespective of whether it affects either of the two.

34. In the above facts and circumstances, we find that the CERC, in the Impugned Order, has fallen in error by rejecting the contention of the Appellant that grid constraint is a *Natural Force Majeure* event and that it is not liable to pay tariff for that period, as such, we are unable to uphold the impugned decision.

ORDER

For foregoing reasons as stated supra, we are of the considered view that the appeal filed by the Appellant i.e. TANGEDCO has merit and is allowed. The Impugned Order dated 04.02.2022 passed by Central Electricity Regulatory Commission (CERC) in Petition No. 114/MP/2019 is set aside.

The issue is remitted to the Central Commission with a direction to consider it afresh, in the light of the observations made in the foregoing paragraphs and consequential relief should be granted to the Appellant as per clause 9.3.1 read with clause 9.7.1.

PRONOUNCED IN THE OPEN COURT ON THIS 07TH DAY OF OCTOBER, 2022.

**(Sandesh Kumar Sharma)
Technical Member**

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

REPORTABLE / ~~NON-REPORTABLE~~

pr/mkj