

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

**Appeal No. 450 of 2019 &
IA No. 2146 of 2019 and IA No. 14 of 2020**

Dated: 31.10.2022

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

In the matter of:

Kanchanjunga Power Company Pvt. Ltd
Through its Authorized Representative
B-37, 3rd Floor, Sector-1, Noida,
Gautam Budh Nagar, (UP)- 291301

...APPELLANT

VERSUS

1. Central Electricity Regulatory Commission
Through its Secretary,
3rd and 4th Floor, Chanderlok Building,
36, Janpath, New Delhi- 110001
2. A. D. Hydro Power Limited
Through its Managing Director,
Bhilwara Towers, A-12,
Sector 1, Noida-201301,
Uttar Pradesh
3. Everest Power Private Ltd.,
Through its Managing Director,
1st House, Bhumian Estate,
Navbahar Bhimian Road, Chhota Shimla,
Shimla-170002, Himachal Pradesh
4. Central Electricity Authority
Through its Secretary,
Sewa Bhavan, Sector -1,
R. K. Puram, New Delhi-110066
5. Ministry of Power, Government of India
Through its Secretary,

Shram Shakti Bhavan,
Rafi Marg, New Delhi-110001

6. Power Grid Corporation of India Ltd,
Through its Managing Director,
Sector 29, Gurgaon,
Haryana-122001
7. Northern Regional Load Despatch Centre
Through its Authorized Representative
Katwaria Sarai,
New Delhi-110016
8. Ministry of Power, Government of Himachal Pradesh
Through its Secretary,
Shimla-171002,
Himachal Pradesh
9. Himachal Pradesh State Electricity Board
Through its Director ,
Khalini, Shimla-171002,
Himachal Pradesh
10. Himachal Pradesh Power Transmission Corporation Ltd
Through its Managing Director,
Khalini, Shimla-171002,
Himachal Pradesh
11. Department of Forests,
Government of Himachal Pradesh
Through its Secretary
Shimla-171002,
Himachal Pradesh

...RESPONDENTS

Counsel for the Appellant(s) : Mr. Sajan Poovayya, Sr. Adv.
Mr. Buddy A. Ranganadhan
Mr. Hemant Singh
Mr. Biju Mattam
Mr. Mridul Chakravarty
Mr. Lakshyajit Singh Bagdwal
Mr. Harshit Singh
Ms. AlchiThapiyal
Ms. Raksha Agarwal

Ms. Sindhuja Rastogi
Ms. Ankita Bafna
Mr. Lavanya Panwar
Mr. Pratibhanu Singh Kharola
Mr. Tushar Srivastava
Ms. Shruti Awasthi
Ms. Soumya Singh
Mr. Karan Govel
Mr. Anirban Mondal
Mr. Sharan Balakrishna
Mr. Anurag Sharma
Mr. Ali Moid

Counsel for the Respondent(s) : Mr. Basava Prabhu Patil, Sr. Adv.
Dr. Seema Jain
Mr. Vimlesh Kumar
Mr. Geet Ahuja
Mr. Dushyant Mahant for R-2

Mr. Gajendra Singh
Mr. Prashant Garg
Ms. Anisha Chopra for R-7

J U D G M E N T

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

1. The Appellant, M/s. Kanchenjunga Power Company Private Limited, has filed the instant Appeal, being aggrieved by the order dated 17.10.2019 (in brief "Impugned Order") passed by the Central Electricity Regulatory Commission in Petition No. 209/MP/2017, wherein the Central Commission has determined the transmission tariff for the 220 kV Transmission Line built by M/s AD Hydro Power Limited, the Respondent No. 2 in contravention to the CERC (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 (hereinafter referred to as the "CERC Sharing Regulations"), the Electricity Act, 2003 (hereinafter referred to as "the Act"), as well as the observations of this Tribunal, and the Hon'ble

Supreme Court, also stating that the recovery of transmission charges towards usage of the transmission line, despite being part of an Inter-State Transmission System, should be done as per the Point of Connection (PoC) mechanism.

PARTIES

2. The Appellant, Kanchanjunga Power Company Private Limited (in short “Appellant” or “KPCPL”), is a company incorporated under the provisions of the Companies Act, 1956, and has set up a 24 MW Small Hydro Electric Project near Village Hallan-II, district Kullu, Himachal Pradesh and is the transmission user of the transmission line in question.

3. The Respondent No. 1, Central Electricity Regulatory Commission (hereinafter “CERC” or “Central Commission”), is a statutory body constituted under Section 76 of the Electricity Act, 2003 and has been vested with the powers to adjudicate disputes under Section 79 of the Electricity Act, 2003 and also responsible for the determination of Tariff for Inter State Transmission System (“ISTS”).

4. The Respondent No.2, A.D Hydro Power Ltd. (in short “ADHPL”), is a generating company in terms of Section 2(28) of the Electricity Act, and has set up the 220 kV D/C Transmission Line (hereinafter referred as “subject Line” or “AD T/L”) from its generating station to sub-station of CTU at Nalagarh.

5. The Respondent No. 3, Everest Power Private Limited (in short “EPPL”), is also a generating company in terms of Section 2 (28) of the Electricity Act, has established a 2X50 MW Malana-II Hydro Electric

Generating Station, which is connected to the transmission system built by Respondent No. 2 for evacuation of its power outside the State of Himachal Pradesh.

6. The Respondent No. 4, Central Electricity Authority (in short “Authority” or “CEA”), is a statutory body established under section 70 of the Act and is vested with the powers to notify Technical Regulations and Planning of the Transmission System of the country.

7. The Respondent No. 5, Ministry of Power (MoP), Government of India (GOI)

8. The Respondent No. 6, Power Grid Corporation of India Limited (in short “PGCIL”), is a company assigned with the functions of Central Transmission Utility (in short “CTU”) under Section 38 of the Electricity Act, 2003 before the CTU is carved out of it.

9. The Respondent No. 7, Northern Regional Load Despatch Centre (in short “NRLDC”), is established under the provisions of the Electricity Act, 2003, and has the jurisdiction over the northern region.

10. The Respondent No. 8 is the Ministry of Power, Government of Himachal Pradesh.

11. The Respondent No. 9, the Himachal Pradesh State Electricity Board (in short “HPSEB”), is the distribution licensee in the state of Himachal Pradesh, and is using the transmission line constructed by the Respondent No. 2 for transmission of power.

12. The Respondent No. 10, Himachal Pradesh Power Transmission Corporation Limited (in short “HPPTCL”), is the transmission licensee in the State of Himachal Pradesh.

13. The Respondent No. 11, is the Department of Forest, Government of Himachal Pradesh.

FACTUAL MATRIX

14. The Appellant, KPCPL and ADHPL have independently set up two different Hydro Electric Projects (“HEPs”) of capacity of 24 MW and 2x96 MW (192 MW) respectively in the State of Himachal Pradesh, and ADHPL has also constructed a 176.50 Km long 220 kV D/C Transmission Line, the subject Line from its generating station to the sub-station of Central Transmission Utility (CTU) at Nalagarh for evacuation of the power generated by it, which is used for evacuation of power by the Appellant from its HEP.

15. For the development of 192 MW Allain Dungan Hydro Electric Plant HEP (“ADHEP”), M/s Rajasthan Spinning & Wheeling Mills Limited (RSWM) executed an Implementation Agreement (“IA”) on 22.02.2001 with the Government of Himachal Pradesh, wherein the Articles 8.4.1 and 8.9 of the said Implementation Agreement would reveal that after supplying the free power component to the Government of Himachal Pradesh (GoHP), the balance power generated by the project can be supplied to any third party, including a consumer situated outside the State of Himachal Pradesh and that for the said sale outside the State, GoHP would provide necessary assistance for evacuation of power through transmission system of HPSEB or of Powergrid.

16. The Respondent No. 4, the Central Electricity Authority vide office memorandum dated 20.08.2002 accorded Techno Economic Clearance (“TEC”) to ADHPL to set up 2x96 MW (192 MW) ADHEP in the State of Himachal Pradesh, along with the 220kV subject Line for evacuation of power from its generating station at Prini to Nalagarh CTU Sub-station, also in the aforesaid office memorandum, it has been recorded that there will be an inter-state flow of power on the subject Line from the generating plant of M/s Rajasthan Spinning & Weaving Mills Limited, to its beneficiary i.e. Delhi Power Supply Co. Ltd. The relevant extract of the aforesaid office memorandum is reproduced herein below:

“M/s RSWM shall obtain consent from POWERGRID for wheeling of power to the beneficiaries i.e. Delhi Power Supply Company Ltd. (erstwhile DVB)

M/s RSWM shall include necessary condition in their agreement with the beneficiaries i.e. Delhi Power Supply Company Limited (erstwhile DVB) regarding installation of 144 MVARs shunt capacitors in their system.”

17. In accordance with TEC, ADHPL vide its letter dated 18.07.2005 made an application to the PGCIL, vested with the function of CTU also at that time, seeking Long-Term Open Access (LTOA/ LTA) at Parbati Pooling point for transfer of its power and in response, PGCIL vide its letter dated 01.08.2005, informed ADHPL the commissioning schedules of various transmission elements, including the Parbati Pooling Point and stated that since the commissioning schedule of the ADHPL’s Plant was ahead of the commissioning schedules of transmission elements, the said schedules need to be reviewed to avoid any mismatch.

18. Subsequently, the PGCIL vide its letter dated 21.07.2006 granted LTA to the Respondent No. 2 at Parbati Pooling Point, even before the said pooling station was not ready.

19. However, anticipating delay in commissioning of 400 KV Parbati II-Kol Dam Transmission Line, CEA vide letter dated 12.10.2006 advised PGCIL to permit ADHPL with connectivity at Nalagarh at 220 kV in view of the delay anticipated in 400 kV Parbati- Koldam Line and switching stations at Panarsa (Parbati Pooling Station).

20. Accordingly, PGCIL vide its letter dated 26.04.2007 granted the change of LTOA to the Respondent No. 2 at Nalagarh, thereafter, ADHPL vide its letter dated 25.06.2007 submitted an application under Section 68 of Electricity Act, 2003 to the Government of India, Ministry of Power for clearance for the subject Line as an “Associated Transmission System” or “ATS” of the Project.

21. It is important to note here that while recommending the approval under section 68 of the Act, CEA vide its letter dated 31.07.2007 clearly made an observation that CEA did not have any objection on the approval of the said transmission line, provided Respondent No. 2 ensures making the capacity also available for power evacuation from other power projects in the said valley out of its 400 MW capacity transmission line.

22. From the advice as given vide the said recommendation, it is quite apparent that since the beginning, the said transmission line was planned to be a regional/ associated transmission system.

23. Subsequently, on 21.08.2007, Ministry of Power granted approval under Section 68 of the Act, to ADHPL for construction of the 220kV D/C subject Line as an associated transmission system of the Project.

24. Pursuant to the above, ADHPL vide its letter dated 18.06.2008 informed CEA and MoP that technically they have no objection if the Everest Power Private Limited ("EPPL") establishes 132/220 kV Sub-station and carry out Loop-In-Loop-Out (LILO) of one circuit of 220 kV D/C subject Line at Chhaur Sub-station at their own cost, subject to other modalities as finalized by it and upon the following condition:

- a. the 132/220 kV sub-station cannot be a dedicated system of EPPL as control of 132/220 kV system after loop in and loop out ("LILO") including the controlling circuit breaker and isolators should be handed over to ADHPL to maintain its system from sending end to receiving end; and
- b. ADHPL will have priority in case of fault on one circuit to transmit its power to Nalagarh Sub-station of PGCIL/ CTU.

25. Thereafter, PGCIL on 14.7.2008 granted long term access on its ISTS to EPPL for injection of power at Nalagarh through LILO of one circuit of subject Line.

26. Subsequently, on 12.08.2010, MoP convened a meeting of ADHPL and EPPL, wherein ADHPL reiterated its terms that it will have (a) the first right to use the transmission capacity, (b) full control of the 220 kV Sub-station EPPL should be given to it, and (iii) EPPL should bear the incremental losses of ADHPL on account of wheeling the power of EPPL.

27. However, CEA, during the meeting submitted as under:
- i. EPPL to proceed for tie up of evacuation of its power through the subject Line and establish a 220/132 kV sub-station;
 - ii. The ADHPL and EPPL to finalize the terms for agreement on sharing the cost of 220 kV line and its Operation & Maintenance Expenses for evacuation of power of EPPL;
 - iii. Proposal, if any agreed, between the ADHPL and EPPL was required to be sent to CEA. If no agreement is arrived at between the them, they should send their respective proposals separately to CEA to sort out the contentious issues;
 - iv. The ADHPL should approach Central Electricity Regulatory Commission regarding sharing of the line with the EPPL.

28. Being aggrieved by the stand taken by ADHPL, EPPL filed Petition No. 259 of 2010 before the Central Commission, alleging abuse of dominant position by ADHPL, the Central Commission vide its order dated 01.06.2011 observing that the line constructed by ADHPL is a part of Inter-State Transmission System (ISTS) in terms of Section 2 (36) of the Electricity Act, 2003, and accordingly, the Central Commission has the jurisdiction to determine the tariff of the said subject Line constructed by ADHPL.

29. This Tribunal vide its judgment dated 02.01.2013, on being approached by ADHPL being aggrieved by the aforesaid order dated 01.06.2011 of the CERC, held that the subject Line is an ISTS asset, inter alia also making observations on the merits of the case with respect to the capital cost, return on equity on investment, sharing of transmission losses, and requirement of licence for transmission of electricity etc.

30. However, the above judgment of this Tribunal was challenged by ADHPL before the Hon'ble Supreme Court in Civil Appeal No. 1793 of 2013, while the said civil appeal was pending, HPPTCL, the Respondent No. 10 herein approached the Hon'ble Supreme Court by filing an interim application seeking evacuation of power of electricity generated by the State-owned generating plants or other generating plants, including the generating plant of Appellant, the Hon'ble Supreme Court vide an order dated 24.08.2015 declined to pass any directions on the application, and directed HPPTCL to approach ADHPL.

31. Pursuant to the directions of the Hon'ble Supreme Court, HPPTCL approached ADHPL and accordingly, entered into an agreement, known as the Interim Power Transmission Agreement (IPTA) for the purpose of evacuation of power from the transmission line of ADHPL, of different generating stations, including the Appellant, subject to the prior consent of ADHPL, accordingly, as a consequence, HPPTCL and the Appellant also entered into a back-to-back IPTA for the purpose of use of the subject Line.

32. On 26.04.2017, vide the final order, the Hon'ble Supreme Court dismissed the civil appeal of ADHPL affirming the decision of this Tribunal vide judgment dated 02.01.2013 with the directions that the transmission line constructed by ADHPL is a part of ISTS in terms of Section 2(36)(ii) of

the Electricity Act, 2003 and as a result of the same, the CERC will have the jurisdiction to decide the issues regarding the subject Line, the relevant extracts from the judgment dated 26.04.2017 of the Hon'ble Supreme Court (in Civil Appeal No. 1795 of 2013 titled *Allain Duhangan Hydro Power Ltd. vs Everest Power Pvt. Ltd. &ors.*) are reproduced as under:

1) *The present appeal is directed against the judgment dated 02.01.2013 passed by the Appellate Tribunal for Electricity, New Delhi (for short the 'Appellate Tribunal') in which it has confirmed the judgment dated 01.06.2011 of the Central Electricity Regulatory Commission (for short the 'Central Commission') which has held that in view of the fact that inter-State transmission of electricity is involved, the Central Commission would have jurisdiction to proceed further with the matter under Section 79 of the Electricity Act, 2003.*

3) *Mr. Tripathi has adverted to a concurrent finding of fact of both the Central Commission and the Appellate Tribunal. The Commission in its judgment dated 01.06.2011 held on facts as follows: -*

“16. We have considered the submissions of the petitioner and Respondent No.1. There is no doubt that as per the Master Plan envisaged by the Central Electricity Authority, the transmission line is required to wheel the power of other generators in the region till the Nalagarh sub-station of Power Grid. Since, the

*petitioner has been permitted by Ministry of Power, Government of India in its sanction letter under section 68 of the Act to wheel its power by LILO of one circuit of Allain Duhangan-Nalagarh transmission line till the Nalagarh sub-station of Power Grid, the portion of the transmission line to be used by EPPL becomes a part of the inter-State transmission system as “inter-State transmission system” under 2(36) of the 2003 Act which includes conveyance within the State which is incidental to inter-State transmission of electricity. Moreover, permission to EPPL in the sanction letter under section 68 of the Act to use the transmission line of ADHPL is deemed to be read into the sanction letter to ADHPL under section 68 of the Act and such permission to ADHPL is conditional to wheeling the power of other generators in the region whose generating stations were included in the planning process of CTU and CEA. **Since the subject transmission line has been planned to evacuate power from the region for injection into the sub-station of Power Grid at Nalagarh, the transmission line is incidental to inter-State transmission system. The Commission which has been vested with the responsibility to regulate inter-State transmission has the jurisdiction to issue directions under section 79(1)(c) of the Act to regulate transmission on the subject transmission line.”***

4) *This was affirmed by the Appellate Tribunal in para 35 as follows:-*

*“35. The definition of the inter-State transmission system under Section 2(36)(ii) includes the conveyance of electricity across the territory of an intervening State as well as within the State which is incidental to such inter-state transmission of electricity. **In the present case as discussed in the previous paragraphs, Allain Dunhangan – Nalagarh line after loop-in-loop-out at Chhaur sub-station of the Respondent No.1 becomes the system incidental to inter-State transmission of electricity from Malana II station of the Respondent No.1. Therefore, the Central Commission shall have jurisdiction to regulate the transmission of electricity on Allain Dunhangan – Nalagarh line after loop-in-loop-out of one of the circuits at Chhaur sub-station.**”*

*“5) **In view of the concurrent finding of fact taking into account Section 2(36)(ii), we find no reason to interfere with the judgment of the Appellate Tribunal and hence the same is upheld. We may only indicate that the said judgment has remanded the matter to the Central Commission to decide the matter on merits having held that it has jurisdiction to proceed further.**”*

(Emphasis Supplied)

33. Also, the review petition, being Review Petition (RP) No. 1365/2017 filed by ADHPL, was rejected by the Hon'ble Supreme Court vide its order dated 12.07.2017, with an observation that when CERC decides the matter on merits, it may do so without regard to the observations made by this Tribunal in its judgment order dated 02.01.2013, the said order is as under:

“ORDER

Having heard Mr. Dushyant Dave, learned senior counsel appearing for the review petitioner, we find that there is no error apparent in our order dated 26th April, 2017.

However, when the Central Electricity Regulatory Commission decides the matter on merits, it may do so without regard to the observations made by the Appellate Tribunal for Electricity in its order dated 02.01.2013.

With these observations, the Review Petition is disposed of.”

34. In compliance to the directions of the Hon'ble Supreme Court, ADHPL filed the Petition No. 209/MP/2017 before the Central Commission for the purpose of determination of transmission tariff of its transmission line, wherein the Appellant as one of the contesting parties contended that the charges/ tariff of the subject transmission line shall be decided in accordance with the CERC Tariff Regulations, and the same shall be shared in accordance with the Point of Connection/ Sharing Mechanism, as provided in the CERC Sharing Regulations, 2010.

35. On 17.10.2019, the Central Commission passed the Impugned Order determining the tariff of the Impugned Line, *inter-alia* deciding that the charges will not be included in the PoC/ Sharing Mechanism.

36. Being aggrieved, the Appellant filed the captioned Appeal assailing the findings in the Impugned Order, separately, ADHPL also filed Appeal No. 410 of 2019, wherein it challenged the findings of the Central Commission pertaining to various tariff components, priority of usage etc.

37. Both the appeals were earlier being heard together by this Tribunal, subsequently, the Appellant approached this Tribunal by way of an application for urgent listing and hearing which heard by this Tribunal on 29.07.2022, wherein the Appellant stated that the issue in the present appeal is limited to the short point of whether the subject transmission line is a part of Inter-State Transmission System (ISTS), and if the same is part of ISTS, then whether the tariff of said line should be included in Point of Connection (POC) mechanism for sharing of transmission charges in terms of the CERC Sharing Regulations, 2010. Therefore, *inter-alia* requesting for the inclusion of its Appeal in the list of Short Matters for Court-1.

38. The above contention of the Appellant was opposed by ADHPL stating that since the present appeal and the appeal filed by it (Appeal No. 410 of 2019) are cross appeals against the same Impugned Order, the appeals cannot be de-tagged, however, after hearing the parties, this Tribunal vide order dated 29.07.2022 taken a conscious decision by directed that the present appeal be included in the list of short matters for Court-1, and the Respondents would be at the liberty to assail the contentions of the Appellant during the hearing of this appeal.

39. The ADHPL, thereby sought detailed deliberations which was allowed and the arguments were heard at length as made by the Appellant and the Respondents in the matter, the submissions made by the Appellant and ADHPL are summarized in the succeeding paragraphs.

40. The Appellant submitted that the subject Line is an ISTS, since its inception, the subject Line was conceptualized and constructed as an ISTS, on account of the following:

- i. ADHPL, on 25.06.2007, itself submitted an application under Section 68 of Electricity Act, 2003 to the Union Ministry of Power for clearance for the 220kV D/C transmission line as an “Associated Transmission System”, and not as dedicated transmission line;
- ii. CEA, by its letter 31.07.2007 advised the Union Ministry of Power to approve the 220kV D/C transmission line, provided that the transmission line would be made available by ADHPL for evacuation of power from other power projects in the valley;
- iii. Union Ministry of Power vide its letter dated 21.08.2007 granted approval to ADHPL for construction of the 220kV D/C transmission line as an “Associated Transmission System”, and not a dedicated transmission line. The said approval was granted under Section 68 of the Electricity Act, 2003;

- iv. A meeting was held by the Chief Secretary, Government of Himachal Pradesh on 19.11.2008, to discuss the construction of the 220 kV D/C transmission line wherein it was agreed by ADHPL itself that its line (subject Line) shall be permitted for use by other entities/ generators/ beneficiaries. This also evidences that the AD Line was never intended to be used as “dedicated”;
- v. The subject transmission line was thereafter being used by EPPL, HPPTCL and KPCPL (the Appellant) for transmission of power;

41. The relevant documents reveals that the subject transmission line of ADHPL was never conceptualized as a “dedicated transmission line”, rather the same was constructed, and the subsequent approvals were granted, on account of the fact that it would be used by other generators/ transmission licensees, as “Associated Transmission System”, for the purpose of evacuation of their respective power, therefore, by virtue of being associated with evacuation of power from other generators, the subject Line was always conceptualized as ISTS.

42. The Appellant also submitted that the EPPL, constructed a “dedicated transmission line” for connecting its power plant to the pooling/ sub-station for which the approval granted by Ministry of Power on 17.06.2008 under Section 68 of the Act, specifically provided that the said approval is for a “Dedicated Transmission line”, whereas, in the approval under Section 68 of the subject Line, it was mentioned that the said line is an Associated Transmission System, therefore, the statutory approval for the subject Line was granted as for an Associated Transmission System,

for the purpose of evacuation of power from the other associated generators/ beneficiaries in the vicinity of ADHEP.

43. In view of the aforesaid fact that the AD Line was being used as an “Associated Transmission System” for more than one generator/ entity, certain disputes arose between one of the said generators, being EPPL, whose power was being transmitted through the AD Line, over what tariff is to be paid for the usage of the said line.

44. As the subject Line is to be used by many generators, various disputes arose between the sharing generators, culminating into a petition filed by EPPL before the Central Commission seeking determination of tariff for the subject Line which finally concluded before the Hon’ble Supreme Court, however, during various proceedings held before different forums, it was repeatedly held that the subject Line is an ISTS Line, as submitted by the Appellant placing reference to the following orders/ judgments passed by the CERC, this Tribunal and by the Hon’ble Supreme Court, concerning the subject Line:

- a. Order dated 01.06.2011 passed by the CERC in Petition No. 259 of 2010;*
- b. Judgment dated 02.01.2013, passed by this Tribunal in Appeal No. 81 of 2011;*
- c. Final order dated 26.04.2017 passed by the Hon'ble Supreme Court in Civil Appeal No. 1795 of 2013; and*
- d. Order dated 12.07.2017 passed by the Hon’ble Supreme Court in Review Petition (RP) No. 1365/2017*

45. The Appellant submitted that it is evident from the findings in the aforesaid orders/ judgments that the subject Line has been throughout held as an ISTS line and also this position was settled by the Hon'ble Supreme Court, it is also settled that the aforesaid line is an integral part of the meshed network of PGCIL/ CTU, additionally, Hon'ble Supreme Court gave relief to ADHPL only to the extent that while determining tariff, i.e., the matter on merits, the Central Commission shall pass orders without regard to the observations made by this Tribunal in the aforementioned judgment dated 02.01.2013.

46. The observations which the Hon'ble Supreme Court referred in the review order, were limited to the manner in which tariff parameters are to be decided. This Tribunal in para 53 of the afore-quoted judgment dated 02.01.2013 made certain observations as to how various tariff parameters namely the *Capital cost of Allain Duhangan – Nalagarh double circuit line, Return on equity on investment, Sharing of transmission losses, Priority in case of outage of a circuit and Control of 132/220 kV Chhaur sub-station,* are to be determined by the Central Commission. As such, the aforesaid review order of the Hon'ble Supreme Court merely held that the Central Commission may pass the tariff order without considering or being influenced by the observations of this Tribunal.

47. From the directions as rendered by the Hon'ble Supreme Court through the aforesaid judgment/ order, it is evident that the Central Commission shall determine the transmission tariff on merits without regard to the observations of this Tribunal in the afore-quoted judgment dated 02.01.2013, however, such a determination is to be made under the powers vested with the Central Commission under Section 79 of the Act, further such powers are available under the specified Regulations as

notified from time to time regarding sharing of transmission tariff by the beneficiaries for ISTS Lines, accordingly we are not convinced by the argument made by ADHPL that the review order of the Hon'ble Supreme Court meant that the subject Line is not an ISTS.

48. It is also noted that even the Central Commission in the Impugned Order has held that *“The line was created as dedicated line but its nature remains unchanged except for the purpose of its utilization as ISTS as observed by the Commission in its order dated 1.6.2011 in Petition No. 259 of 2010, which was affirmed by APTEL and Hon'ble Supreme Court in their judgments”* additionally, observed in para 113 that *“The instant transmission line was initially conceived as a DTL and it was later decided that the same will be used by EPPL and other generating stations to meet their evacuation requirements and the transmission charges shall be shared by them.”*

49. It is also submitted by the Appellant that stated that once a transmission line becomes part of ISTS, then the said line can never become a dedicated line, a “dedicated transmission line” is a line which is exclusively used by only one entity, and that the moment the said line is used by more than one entity, the same ceases to be dedicated. In the present case, EPPL started using the subject Line for evacuation/ transmission of its power from August, 2011, as such it is carrying the power generated by ADHPL when power from EPPL also started to flow/ transmit on the said line, therefore, from August, 2011, in any event, the AD Line cannot be called as a “dedicated transmission line”.

50. It was also submitted by the Appellant that the CERC has enacted the CERC Sharing Regulations, 2010, which provide that for availing “open

access” in ISTS, the transmission charges are levied as per the Point of Connection (POC), therefore, there cannot be a situation whereby certain customers/ generators are levied transmission tariff under POC Mechanism, while the Appellant is subjected to such tariff under a different mechanism, the Central Commission itself observed in the Impugned Order that:

*“43. We have already observed that instant transmission line from Prini (ADHEP) till the Nalagarh Sub-station (PGCIL) is incidental to inter-State Transmission System and the Commission under Section 79(1)(c) of the Act has the jurisdiction to regulate the subject transmission line. **Further, the Commission while determining tariff of the cases covered under Section 62 of the Act follows the tariff regulations framed and notified by it. We are of the view that the tariff of the instant transmission line has to be determined in line with the Commission's applicable Tariff Regulations.**”*

51. Further, added that the CERC Tariff Regulations, 2014, notified by the Central Commission, including for the purpose of determination of transmission tariff, the tariff of the subject Line has been determined as per the aforesaid Regulations, in which Regulation 43 provide that the transmission charges determined under the said Regulations, are to be recovered as per the CERC Sharing Regulations, 2010. The said provision is quoted herein below:

“43. Sharing of Transmission Charges:

(1) The sharing of transmission charges shall be governed by the Sharing Regulations.

(2) The charges determined in this regulation in relation to communication system forming part of transmission system shall be shared by the beneficiaries or long term transmission customers in accordance with the Sharing Regulations:

Provided that charges determined in this regulation in relation to communication system other than central transmission system shall be shared by the beneficiaries in proportion to the capital cost belonging to respective beneficiaries.”

52. The Appellant argued that the Central Commission in the Impugned Order applied the provisions of the CERC Tariff Regulations, 2014 in a piecemeal, or selectively, it should have implemented the said Regulations in entirety while determining the transmission tariff of subject Line, including the aforesaid provision of the applicability of the CERC Sharing Regulations, 2010.

53. On the contrary, ADHPL submitted that separate hearing of this Appeal and Appeal No. 410 of 2019 filed by ADHPL on the request of the Appellant that it would argue this appeal briefly, it may not be same with ADHPL as it will require time to make submissions in reply as the history of the dedicated transmission line from the date of the Implementation Agreement signed in 2001 till date which are part of the appeal no. 410 of 2019, legal provisions applicable will have to be argued before this

Tribunal, therefore, Appeal No 450 of 2019 is not a short matter as far as ADHPL is concerned, also submitted that the Appellant, after taking more than two days of the predecessor Hon'ble Benches earlier to argue its Appeal cannot now logically argue in converse that the Appeal 450 of 2019 is now a short matter.

54. It was also argued by ADHPL that as a matter of course, all the matters challenging the same Impugned Order are always advisable to be heard and decided together to avoid multiplicity of proceedings and contrary views, to avoid wastage of judicial time since same set of Counsels shall be arguing similar arguments for the same Impugned Order. In such a situation, earlier decided matter might operate as a Res Judicata in a proceeding which were, in fact, instituted prior in point of time.

55. We are completely in disagreement with the argument of ADHPL that a court of law has to necessarily hear all the appeals against the same Impugned Order together, this Tribunal while exercising its administrative power had issued a notification dated 01.08.2022 whereby it was decided that the matters which are short in nature shall be taken up for hearing from 1st September. The idea behind issuing the said notification is to adjudicate and dispose of matters, which have been pending since long due to non-functioning of Court-1 due to want of coram. This Tribunal, being a court of law is bound to deliver and administer justice to parties. After hearing the submissions of both Appellant and ADHPL, this Tribunal had taken a considered view that the issue involved in this appeal is short and can be decided without there being a need for substantial long hearings. By including this appeal in the list of short matters, it did not mean that ADHPL would not be granted a substantial opportunity to present its case. In fact,

sufficient time was provided to ADHPL and all the concerned parties in order to make out their case.

56. We are also not agreeable with the arguments put forth by ADHPL, the present appeal, as clearly seen from the submissions of the parties was limited to the issue of the nature of the transmission line constructed by ADHPL, which has already been settled by various judgments and based on the said nature, the applicable mode of recovery of the transmission tariff for the said line, the issue in the present appeal, according to us, did not require a substantial hearing, especially in light of the fact that this Tribunal and the Hon'ble Supreme Court, in the earlier round of litigation has given categorical observations with respect to the nature of the 220 kV D/c transmission line constructed by ADHPL.

57. For the sake of brevity, some of the submissions which are repetition of the facts and already noted in the previous paragraphs shall not be noted here under, the ADHPL submitted that CEA in exercise of its power under section 29 and 4-A of the Electricity Supply Act, 1948 accorded Techno Economic Clearance (TEC) on 20.08.2002 to the ADHPL to set up 192 MW (2*96MW) 'Allain Duhangan Hydro Electric Project' and the 220 KV D/C transmission lines from generating station Allain Duhangan to Nalagarh. Section 18-A of the ESA, 1948 required the generating company to build operate and maintain 'main transmission line connected therewith', Section 2(7) of Electricity Supply Act, 1948 defines "main transmission lines" as high pressure cables and overhead lines transmitting electricity from a generating station to another generating station or to a sub-station. This definition is para material to Section 2(16) of the Electricity Act 2003 which defines "Dedicated Transmission Line", Section 2(12) of Electricity Supply Act, 1948 defines "transmission lines" as all works mentioned in

sub-section 7 used wholly or partially for the purposes of distribution or transmission of energy.

58. We failed to understand the contention of the ADHPL as the decision on whether the subject Line is a dedicated transmission line or whether a ISTS line has already been decided through various orders upto the judgment passed by the Hon'ble Supreme Court of India, the issue under challenge is whether the Central Commission is right in determining the tariff in contravention to its own Regulations.

59. If such issues ought to have been argued, should have been argued earlier, arguing now once the issue has achieved finality after the judgment rendered by the Hon'ble Supreme Court, we find no merit in such an argument.

60. The argument of the ADHPL that "it is evident that the transmission line of ADHPL was never intended or planned to be used for evacuation of power of other generators" is totally irrelevant at this stage when it is already decided and upheld by the Hon'ble Supreme Court also that the subject Line shall be shared and transmission tariff for such sharing shall be determined by the Central Commission.

61. The background of the case as noted in the foregoing paragraphs and also recorded in the judgment / orders passed by this Tribunal and the Hon'ble Supreme Court are reiterated by the ADHPL, which we find no reason to reproduced herewith.

62. It was argued by ADHPL that a Transmission Licence is not required in case of a Dedicated Transmission Line, the Removal of Difficulties, 5th Standing Order on Electricity Act 2003, clarifies that the Transmission

Licence is not required only in case of a Dedicated Transmission Line, the very fact that since 2003 none of the authority required the ADHPL to obtain transmission license itself establishes that the subject line is a Dedicated Transmission line and was never contemplated to be a Commercially Pooled Line in ISTS system to be charged through POC mechanism, also added that this Tribunal in the judgment dated 02.01.2013 was also of the view that ADHPL is not required to take a transmission license as under:

“37. Transmission of electricity is a regulated business according to the Electricity Act, 2003. A dedicated transmission system is out of the regulatory control of the Commission so far as no licence is required for the construction, operation and maintenance of dedicated transmission system and that there is no need for the Commission to regulate transmission of electricity as long as it is used for point to point transmission of power output of generating company. However, if the generating company allows its dedicated transmission system for use for evacuation of power output to another generating company with a view to optimally utilize the transmission corridor and the transmission system capacity as has been the case in the present appeal on payment of transmission charges, the Central Commission would have jurisdiction to regulate transmission of electricity on the dedicated line, for such transmission as is incidental to inter-State transmission of electricity.

54. A question has been raised by the Respondent no. 1 whether the ADHPL would need to take a licence for

transmission in view of the access allowed to the Respondent no. 1. We feel even though the ADHPL is within its own right to obtain transmission licence if it wished so it is not necessary for the ADHPL to take a transmission licence. The ADHPL has already constructed Allain Duhangan-Nalagarh line as its dedicated transmission system for which the Central Government has also granted permission under Section 68. In the new configuration after loop-in-loop-out of one circuit at Chhaur, part of the transmission line is used for conveyance of electricity across the territory of a State which is incidental to inter-State transmission of Appeal No. 81 of 2011 Page 97 of 100 electricity from Malana II for which we have only decided the principles for determination of the transmission charges, losses etc., to be borne by the Respondent no.1.”

(Emphasis supplied)

63. Further added that Generator having a dedicated transmission line cannot be forced to take a transmission licence, section 14 of the Act states that the Appropriate Commission may, on an application made to it under section 15, grant a licence to any person to transmit electricity as a transmission licensee, also, Regulation 6(C) of CERC's (Terms and Conditions for Grant of Transmission License) Regulations 2009, in respect of the “Dedicated Transmission Lines” established by the Generators, categorically states that no person shall be eligible for grant of licence unless it is a generating company which has established the dedicated transmission line, and intends to use such dedicated transmission line as the main transmission line and part of the inter-State transmission system.

64. ADHPL, further submitted that the option to take a licence and become a transmission licensee rest with ADHPL, for such reason cannot be ordered to take a licence by a court, also cannot be forced to convert its private transmission assets to commercially pooled assets in POC mechanism to become a transmission licensee merely because of temporary use of spare capacity of its transmission line for evacuation of power of other generators, the use of the ADHPL's Dedicated Transmission Line by KPCPL at Fozal was agreed as an interim arrangement only so that the small hydro generation is not bottled up. This arrangement was agreed upon in a meeting held on 01.03.2016 under the chairmanship of Member-Power System, CEA, and therefore, usage of subject 220 KV D/C line by other users (KPCPL/HPPTCL) is temporary Appellant has used the instant line for salvaging their situation, now, Appellant is taking a different standpoint for earning commercial gain.

65. The ADHPL further, submitted that the CERC Sharing Regulations, 2010 are inapplicable in the facts of the present case. Regulation 7(1) (c) of Sharing regulations 2010 states that:

“The dedicated transmission lines constructed, owned and operated by the ISTS Licensees shall be considered to be a part of the Basic Network. Dedicated lines constructed, owned and operated by the generator shall not be considered. In the latter case, the generator will be deemed to be connected directly to the ISTS”

66. Further reiterated that the subject Line is a dedicated transmission line of the Generator, it is not part of the basic network and the all the

generators using ADHPL Line are deemed to be connected at CTU Nalagarh and the provision for inclusion of a dedicated transmission line in commercial pool is only if it is operated by a transmission licensee, hence, there is no merit in contention of the Appellant that the transmission charges for the instant line should be payable in terms of the POC mechanism, also, invited our attention to paras 24 and 25 of the reply filed by NRLDC (Respondent No 7 in this appeal) that ADHPL – Nalagarh line should not be included in POC Mechanism.

67. It was also referred by the ADHPL that CERC in the order dated 01.06.2011 agreed that ADHPL Line is a dedicated transmission line although it is used for interstate transmission of power and accordingly held that it has jurisdiction over the issue u/s 79(1)(c) of the Electricity Act, 2003 and the Central Commission has not concluded that the ADHPL's line is part of the "Commercially Pooled ISTS system to be charged through POC/relevant Regulations), in fact Central Commission directed the parties to decide the capital cost mutually taking into consideration approved project cost of the transmission line and the audited expenditure and the benchmark cost of similar line in CTU, therefore, the direction to decide transmission charges 'mutually', in itself establishes that the commission did not hold the subject 220 Kv D/C line as a Commercially Pooled Transmission system of ISTS.

68. The ADHPL also quoted the judgment dated 02.01.2013 stating that this Tribunal has held that the line was conceptualized as DTL and that even the Central Government's approval u/s 68 is for dedicated transmission, the relevant extract is as under:

“24.19 It is perfectly legal for two generating companies to plan in coordination with CEA and Power Grid and construct and operate & maintain their dedicated transmission systems together for optimal utilisation of the transmission corridor with a view to minimize cost of point to point transmission of electricity and minimize the requirement of transmission corridor as long as the dedicated transmission system is used exclusively for evacuation and point to point transmission of power of their generating stations.

24.20. In view of the above provisions of the Act, let us examine the questions raised by us regarding the jurisdiction of the Central Commission and the status of the dedicated transmission system of the ADHPL after allowing interconnection to the dedicated transmission system of the Respondent no.1.

25. Now let us examine the approvals of the Central Government granted to the ADHPL and the Respondent no. 1 under Section 68 of the Act.

.....

26. The examination of all the relevant records would show that Allain Duhangan – Nalagarh 220 kV double circuit line was granted approval by the Central Government as a dedicated transmission line. However, the ADHPL has agreed in the various meeting carried out by the Planning Agencies viz., CEA, CTU, STU, Government of Himachal Pradesh and Ministry of Power, Government of India to

permit utilisation of the spare capacity of its line for evacuation of Malana-II HEP of the Respondent no. 1.

.....

28. We notice from the records of the case that earlier it was planned that both Allain Duhangan and Malana – II Hydel Projects would construct their respective dedicated lines to Parbati Pooling Station from where power would be transmitted through the Inter-State transmission network of Power Grid to the destination of choice of the respective generating companies. On that understanding the ADHPL and the Respondent no.1 started execution of their projects. Respondent no.1 also got long term open access for supply to Punjab State Electricity Board from Parbati Pooling Station of Power Grid. However, due to delay in execution of the Parbati Pooling Station changes were made in the point of injection of power. The ADHPL was first to get the approval under Section 68 for execution of its dedicated transmission line to Nalagarh sub-Station of Power Grid, as its hydel project was ahead of the project of the Respondent no.1. When Respondent no.1 approached the CTU/Power Grid and CEA for alternative transmission arrangements in view of delay in execution of Parbati Pooling Station, they were asked to tie up with the ADHPL and utilize the spare capacity of the ADHPL's transmission line to transmit its power upto Nalagarh.”

(Emphasis supplied)

69. ADHPL also submitted that this Tribunal vide its judgment dated 02.01.2013 has decided that:

- a. After examining all the facts of the case, concluded that the ADHPL Transmission Line was sanctioned as a dedicated transmission line and only the spare capacity was agreed to be used for evacuation of power of EPPL who was using the line earlier. There can be no disputes on the facts which have already been recognized by this Tribunal. Thus, the argument of KPCL that the subject line was originally conceived as ISTS is contrary to facts on record and findings in order dated 2.1.2013 passed by this Tribunal in the earlier round.
- b. That Central Commission had the jurisdiction to adjudicate the matter. It was observed as under:

“38. According to Section 79(1)(f) of the Act, the Central Commission has powers to adjudicate upon disputes involving generating companies in regard to matters concerning with clause a) to d) of the Section 79(1). Clause c) pertains to regulation of inter-State transmission of electricity. According to the ADHPL Section 79(1)(f) is not applicable in the present case as the ADHPL is not a transmission licensee. The present case is typical where there is a dispute between two generating companies relating to use of the dedicated transmission system owned by one of the generating companies which has been used for conveyance of electricity which is incidental to the inter-State transmission of electricity from the other generating station. In our opinion Section 79(1)(f) would also cover

the present dispute between the two generating companies as it relates to inter-State transmission of electricity, which is regulated by the Central Commission under Section 79(1)(c). Therefore, even if the ADHPL is not a transmission licensee, the present dispute will fall under the Section 79(1) (f) of the Act. Accordingly the Central Commission has jurisdiction to adjudicate upon the dispute between the ADHPL and the Respondent no.1.”

c. Concluded in Para 55. Para 55(iii) stated that:

“55(iii) In view of the Loop-in-Loop-out of one of the Allain Duhangan – Nalagarh circuits at Chhaur, part of the line is used for conveyance of electricity across the territory of an intervening State/within the State which is incidental to inter-State transmission of electricity of Malana II of the Respondent no.1. Thus, the transmission of power on this line has to be regulated by the Central Commission. Thus, the Central Commission has the jurisdiction to adjudicate upon the dispute between the Appellant and the Respondent no.1 regarding sharing of transmission charges, losses, etc. by the Respondent no.1 as per Section 79(1)(f) of the Act. Thus, this issue is decided against the Appellant.”

70. ADHPL submitted that the Appellant submission and understanding of the earlier orders passed between the parties is incorrect and is outcome of piecemeal reading of the orders, the issue before this Tribunal was the

jurisdiction of CERC to intervene in the dispute between two generators, this Tribunal therefore held that CERC had the jurisdiction u/s 79(1)(f) of the act which deals with the disputes between two generating companies, and if it has been concluded that the Transmission Line of ADHPL was a “Commercially Pooled Transmission system of ISTS”, it would have ordered ADHPL to move in POC mechanism which was notified and implemented before the date of the dispute arose between ADHPL and EPPL.

71. Also submitted that the Hon’ble Supreme Court decided only the issue of jurisdiction of Central Commission in the matter as the ADHPL filed an appeal before Hon’ble Supreme Court only challenging the jurisdiction which was upheld by this Tribunal. The Hon’ble Supreme Court thereafter held that

“5) In view of the concurrent finding of fact taking into account Section 2(36)(ii) , we find no reason to interfere with the judgment of the Appellate Tribunal and hence the same is upheld. We may only indicate that the said judgment has remanded the matter to the Central Commission to decide the matter on merits having held that it has jurisdiction to proceed further.”

72. It was argued by ADHPL that the Hon’ble Supreme Court therefore only agreed that CERC had the jurisdiction to decide the matter and gave no order regarding the status of the 220 kv D/C line of ADHPL, in Review Order dated 12.07.2017, Hon’ble Supreme Court directed the Central Commission to decide the matter on merits without regard to the observations made by the Tribunal for Electricity in its order dated

02.01.2013, therefore, all the issues except the jurisdiction and status of the transmission line of ADHPL were open to CERC in remand, accordingly, CERC in the Impugned Order has decided all the issues which were open before it and during the second round of litigation that the Appellant made its submissions regarding the includability of subject Line in POC mechanism, in the first round of litigation, no party ever made any such claim before any forum.

73. The Respondent No. 7, Northern Regional Load Despatch Centre (NRLDC), though did not make oral submissions, had filed its reply on merits, it may not be relevant to file these submissions which are reiterations of already recorded facts of the case or are related to capital cost etc which are not under consideration in the instant case.

74. The NRLDC submitted that the 220 kV D/C Allain Duhangan - Nalagarh line was conceived as a dedicated transmission line built by a generator and not a transmission licensee. This line was subsequently Looped in looped Out at Chhaur Substation of EPPL and Phojal Substation of HPPTCL to evacuate the generation of Malana-II HEP of EPPL and other small hydro generators in the valley considering the severe right of way constraints only as an interim arrangement so that hydro generation is not bottled up.

75. In view of abovementioned facts and peculiar circumstances of the case, the transmission charges of 220 kV D/C Allain Duhangan — Nalagarh line should be shared only by the generators using this line and it should not be included in POC mechanism.

76. We find no merit in the submissions of NRLDC.

Analysis & Conclusion

77. After careful examining the documents and hearing the arguments from the Appellant and the Respondents, three main issues which emerge out for our consideration are as follows:

- I. Whether the 220 kV D/c Transmission line constructed by ADHPL is a part of the Inter-State Transmission System (ISTS) or is Dedicated Transmission Line or both?
- II. Whether, the charges for the same are recoverable in terms of the CERC Sharing Regulations, 2010?
- III. Whether ADHPL is required to obtain a Transmission licence for the 220 kV D/C transmission line constructed by it?

78. Let us deal issue I. first as issues II. And III. are inter linked and will be dealt together.

79. In the remand proceedings as directed by the Hon'ble Supreme Court, the Central Commission determined the tariff outside the purview of its own Regulations i.e. CERC Sharing Regulations, 2010 which mandate transmission tariff determination only through the Point of Connection (PoC) mechanism for ISTS. The relevant findings to that effect in the Impugned Order, are as follows:

“113. EPPL has submitted that the transmission charges shall be calculated and allocated in terms of the 2009 Tariff Regulations. The Petitioner has also submitted that

the instant transmission assets should not be included in the PoC pool. We have considered the submissions of the parties. The instant transmission line was initially conceived as a DTL and it was later decided that the same will be used by EPPL and other generating stations to meet their evacuation requirements and the transmission charges shall be shared by them. The instant line is being used by the Petitioner, EPPL and HPPTCL/ KPCPL/ HPSEB for evacuation of their power from their respective generating stations. On the completion of construction of 220 kV Transmission Line by HPPTCL from Chhaur Sub-station to Parbati Pooling Station, EPPL and HPPTCL/ KPCPL/ HPSEB shall evacuate their generation capacities through the said line and stop using the Petitioner's transmission line. Accordingly, the instant transmission line is being shared by Petitioner and other generators and hence we are of the view that the instant transmission line should not be included in the PoC calculations and the transmission charges should be shared by the Petitioner and the other generators in proportion to their installed capacities as under:

- a. The transmission charges from date of start of utilisation of the asset by EPPL till utilisation of the line is started by HPPTCL/KPCPL/HPSEB shall be shared between EPPL and the Petitioner in proportion to the installed capacities of generating stations;*

b. The transmission charges from the date of individual utilisation of DTL by other generators i.e. HPPTCL/KPCPL/HPSEB shall be shared between the Petitioner, EPPL and other generators in proportion to their installed capacities till they stop using the instant transmission line.

80. The Appellant being aggrieved by the aforesaid findings which are in contravention to the directions issued by this Tribunal and the Hon'ble Supreme Court whereby the subject Line has been held as a part of ISTS, argued that once the asset is a part of ISTS, it cannot be termed as a dedicated line, relying on the provisions of the Electricity Act, 2003 and submitted that the same does not contemplate a "dedicated transmission line" which is part of either the Inter-State Transmission System (ISTS) or Intra State Transmission System (In STS) and as per Section 2 (36) of the Act, the subject Line falls under Section 2(36)(ii), also Section 2(16) of the Act, a "dedicated transmission line" can only be developed by a captive generating plant referred in Section 9 of the Act, or a generating station referred in Section 10 of the Act, for point to point transmission of electricity.

81. It is important to note here the various approvals granted for the commissioning of the subject Line, which are as follows:

(a) Application dated 25.06.2007 submitted by ADHPL to the Ministry of Power, Government of India seeking clearance of the subject AD Line under Section 68 of the Electricity Act, 2003.

- (b) Letter dated 31.07.2007 of CEA advising MoP to grant approval to the AD line.
- (c) MoP letter dated 21.08.2007 granting approval under Section 68 of the Electricity Act, 2003 for construction of AD Line.
- (d) Minutes of Meeting dated 19.11.2008 held by Chief Secretary, Government of Himachal Pradesh.

82. We have perused the aforesaid documents/ letters/ minutes. As per the said documents, it is quite clear that the subject Line i.e. 220 kV D/C transmission line constructed by ADHPL was granted an approval for construction, based on the condition that the same would be used by other generators/ beneficiaries in the region, which would be using the said line for the purpose of evacuation and withdrawal of power, and it was never intended to be solely used by ADHPL for evacuation of the power, from its power plant only. This is quite clear from a reading of the letter dated 31.07.2007 of CEA issued to the Ministry of Power, reproduced as under:

“Sub:- Prior approval of the Government under section 68 of the Electricity Act. 2003

MoP vide letter no. 611/4/2007-PG dated 26th June 2006 have submitted the proposal by ADHPL for the requisite approval under section 68 of Electricity Act,2003 for 220kV D/C line from Attain Duhangan to Nalagarh as a part of associated transmission system for

evacuation of power from ADHEP (2x96 for comments of CEA.

The proposal has been examined and this office do not have objection for approval of the line under section 68 of the Electricity Act 2003. However, ADHPL should ensure the following:

i) While finalizing the corridor of the proposed Allain Duhangen - Nefagarh 220 kV D/C line, ADHPL should ensure that their corridor is appropriately co-ordinated with respect to the corridor identified by POWERGRID for the 400kV transmission lines in the area planned for the evacuation of power from Parbati II, Parbati III and Koldam HEPs,

ii) Out of the total 400 MW transmission capacity of the 220kV D/C line, ADHPL would utilize 192 MW for evacuation of ADHPL power and the balance spare transmission capacity of the line would be made available for evacuation of power from other projects in the Parbati/Beas valley viz, Malana-II (100 MW) and Sarni (100MW)."

83. Also, the approval accorded under section 68 of the Act, the said Line was granted approval to be an "Associated Transmission System", as seen from the letter dated 25.06.2007 submitted by ADHPL to MoP, Government of India and the MoP letter dated 21.08.2007, quoted as under:

LETTER DATED 25.06.2007:

“Sub: 220 kV D/C Allain Duhangan- Nalagarh
Transmission Line as **Associated Transmission
System(ATS)** of 2x96 MW Allain Duhangan HER in
Himachal Pradesh

Dear Sir,

M/s AD Hydro Power Ltd. is a joint venture company of M/s Rajasthan Spinning and Weaving Mills Ltd., and M/s SN Power Norway & International Finance Corporation (IFC), a subsidiary of the World Bank.

M/s AD Hydro Power Ltd. is executing a large Hydroelectric Power Project (192 MW) in Distt. Kullu, HP.

The implementation agreement of this project was executed with Govt. of Himachal Pradesh on 22,02.2001 (attached as Ann. I).

Subsequently, Central Electricity Authority granted Techno Commercial Clearance (TEC) for this Project, vide Ref. No. Ref. No. 2/HP/18/96-PAC/8108-39 dated 20.08.2002 (enclosed as Ann. II).

As per this TEC, by CEA, the terminating station for Transmission Line has been mentioned as Nalagarh in Himachal Pradesh.

CEA vide letter No. 8/10/06-SP&PA/428-30 dated 12.10.2006 (attached as Ann. III) had conveyed its recommendation to PGCIL for permitting AD Hydro Power Ltd. to construct its 220 kV Transmission Line from Project to Nalagarh.

The Central Transmission Utility (PGCIL) vide letter No. C/ENG/SEF/00/LTOA dated 26.04.2007 (attached as Ann. IV) has granted Open Access to ADHEP beyond the power delivery point i.e. 400/220 kV Sub-stn, Nalagarh.

*In view of above, it is requested that permission under Section 68, The Electricity Act, 2003, may please be granted to install & keep installed above ground level 220 kV D/C Overhead Transmission Line from Allah Duhangan Project at Prini, Manali to Nalagarh, Distt. Satan, **as ATS** of 2x96 MW Allain Duhangan HEP in Himachal Pradesh.”*

LETTER DATED 21.08.2007 OF THE MINISTRY OF POWER:

“Sub : Prior approval of the Government under Section 68 of the Electricity Act, 2003 220 kV D/C Attain

Duhangan -Nalagarh Transmission Line as Associated Transmission System(ATS) of 2x96 MW Allain Duhangan HEP in Himachal Pradesh.

Sir,

I am directed to refer to AD Hydro Power Limited letter no.P-104/OG--2061dated 25th June,07 on the above subject and to convey prior approval of the Central Government under sub-section (1) of Section 68 of the Electricity Act, 2003 for 220 kV D/C Allain Duhangan - Nalagarh Transmission Line as Associated Transmission System (ATS) of 2x96 MW Allain Duhangan HEP in Himachal Pradesh.

The approval is subject to compliance of (a) the requirement of the relevant provisions of the Electricity Act, 2003, as amended from time to time and the rules and regulations framed there under and (b) the rules governing the overhead lines as specified in the Indian Electricity Rules, 1956 till they are substituted by corresponding rules framed under the Electricity Act, 2003.

This approval is also subject to the following conditions:

- 1. The implementing agency will commence construction of the project within 3 years, unless this term is extended by the Ministry of Power.*

2. Ministry of Power may withdraw the approval before the expiry of the period of 3 years after giving a one-month notice.

3. The implementing agency shall also abide by the provisions of Electricity Act, 2003 concerning electricity trade."

84. We could not find any fact which indicates that subject Line is a "dedicated transmission line" except that it is an "Associated Transmission System" which can either be a "dedicated transmission line" or a "transmission line" in accordance with the nature of the line and also on the basis of its purpose of evacuation and withdrawal of power of other generators/ beneficiaries in the region, therefore, we are of the view that the 220 kV D/C transmission line constructed by ADHPL was never accorded the status of a "dedicated transmission line" except that it was built by the ADHPL without obtaining the Transmission Licence and therefore considered as deemed transmission line.

85. The Central Commission vide its order dated 01.06.2011, while deciding the petition filed by EPPL seeking determination of tariff for the subject Line for the purpose of transmission of electricity, has observed as follows:

"16. We have considered the submissions of the petitioner and Respondent No.1. There is no doubt that as per the Master Plan envisaged by the Central Electricity Authority, the transmission line is required to wheel the power of other generators in the region till the Nalagarh sub-station

of Power Grid. Since, the petitioner has been permitted by Ministry of Power, Government of India in its sanction letter under section 68 of the Act to wheel its power by LILO of one circuit of Allain Duhangan- Nalagarh transmission line till the Nalagarh sub-station of Power Grid, the portion of the transmission line to be used by EPPL becomes part of the inter-state transmission system as “interstate State transmission system” under 2(36) of the 2003 Act which includes conveyance within the state which is incidental to inter-State transmission of electricity. Moreover, permission to EPPL in the sanction letter under section 68 of the Act to use the transmission line of ADHPL is deemed to be read into the sanction letter to ADHPL under section 68 of the Act and such permission to ADHPL is conditional to wheeling the power of other generators in the region whose generating stations were included in the planning process of CTU and CEA. Since the subject transmission line has been planned to evacuate power from the region for injection into the sub-station of Power Grid at Nalagarh, the transmission line is incidental to inter-State transmission system. The Commission which has been vested with the responsibility to regulate inter-State transmission has the jurisdiction to issue directions under section 79(1)(c) of the Act to regulate transmission on the subject transmission line.”

17. The learned Counsel for Respondent No. 1 argued during the hearing of 29.3.2011 that ADHPL has created a redundancy to wheel its own power during outage and it

can share this redundancy with others on its own terms. We are not in agreement with the submission of the Respondent No. 1 for the reason that the redundancy sanctioned in the Techno- economic clearance stands superceded as per the latest Master Plan of CEA which envisaged that the transmission line will be used for other generators in the region. Therefore, Respondent No. 1 has a liability to carry the power generators who would require this line for wheeling their power. Therefore, the Commission being vested with the power of regulation of inter – State transmission of electricity is under a statutory obligation to regulate and facilitate inter- State transmission of power and in discharge of the said function, the Commission is of the view that the applicant has made substantial investment for setting up the generating station which is ready for commercial operation on the basis of the LTOA granted by CTU. Now the liability for making available the transmission line by CTU has been shifted to the Respondent No. 1 in terms of the generating station of EPPL will ultimately go to PSEB and the end consumers of Punjab apart from 12% free power to the State of Himachal Pradesh. Now-scheduling of power from the generating station on account of the dispute between applicant and Respondent No.1 will be a huge national loss especially in the present shortages of electricity. The Commission has been vested with the power to regulate inter-State transmission of electricity which means that the Commission required to ensure free flow of electricity on the inter- State transmission system and for that purpose,

the Commission can issue appropriate directions even in respect of.”

86. Contrary to the submissions made by the ADHPL, from the above order, it is evident that the CERC, has concluded that it has the jurisdiction to regulate transmission on the subject transmission line and the said line is incidental to inter-state Transmission of electricity and is a part of ISTS in terms of Section 2(36)(ii) of the Electricity Act, 2003.

87. This Tribunal vide its judgment dated 02.01.2013 in the Appeal filed by the ADHPL assailing the aforesaid order of CERC, has held as under:

“31. Now let us examine the nature of transmission of power on Allain Duhangan – Nalagarh line after loop-in-loop-out of one circuit at Chhaur.

*32. The dedicated transmission line of the Appellant before interconnection with the dedicated transmission of Malana II at 132/220 kV Chhaur sub-station of the Respondent no.1 comprised point to point connection from the generating station of the Appellant with the substation of Power Grid at Nalagarh. However, loop-in loopout of one of the circuits of Allain Duhangan - Nalagarh line at Chhaur has resulted in dividing that circuit into two line segments viz. 220 kV Allain Duhangan – Chhaur line and 220 kV Chhaur – Nalagarh line. In normal operating conditions, the entire power output of Malana II will be evacuated through 220 kV Chhaur – Nalagarh line. **Thus, with change in the configuration of the circuit, the 220 kV Chhaur –***

Nalagarh line does not remain the point to point transmission system for Allain Duhangan as it carries the power of both Allain Duhangan and Malana II and emanates from Chhaur and not Allain Duhangan. The transmission system beyond Nalagarh is the inter-State transmission system which is used for inter-State transmission of power from Malana II to Punjab as the Respondent no.1 has tied up for supply of its power to Punjab State Electricity Board besides some percentage of free power committed to be supplied to Himachal Pradesh and has obtained open access for the inter-State transmission system for its power injected at Nalagarh. Thus, under normal operating conditions, the line section of Allain Duhangan - Nalagarh circuit between Chhaur and Nalagarh is used for conveyance of electricity across the territory of the State/within the State which is incidental to inter-State transmission of electricity from Malana II.

33. Under condition of outage of Chhaur - Nalagarh circuit, the output of Malana-II would be evacuated through 220 kV Chhaur – Allain Duhangan and Allain Duhangan – Nalagarh direct circuit. Thus, under such outage condition also Chhaur - Allain Duhangan - Nalagarh section is used for conveyance of electricity incidental to inter-State transmission of electricity of Malana II. Similarly, under outage condition of Allain Duhangan – Chhaur section of line, the output of Allain Duhangan – Nalagarh direct circuit would transmit the output of Allain Duhangan HEP and

Chhaur – Nalagarh section would evacuate the power output of Malana-II. Thus, one circuit of Allain Duhangan line would carry exclusive power of Allain Duhangan and the other circuit would be carry output of only Malana II. Under such outage condition also Chhaur - Nalagarh circuit even though a part of the dedicated transmission system of the Appellant is used for conveyance of electricity across the territory/within the State which is incidental to inter State transmission of electricity from Malana II.

34. Thus, it is clear that even though Allain Duhangan – Nalagarh line was a dedicated line of the Appellant some part of the line after loop-in loop-out of one circuit at Chhaur sub-station of the Respondent no. 1 is used as a system incidental to inter-State transmission of electricity from the power plant of the Respondent no.1.

*35. The definition of the inert-state transmission system under Section 2(36)(ii) includes the conveyance of electricity across the territory of an intervening State as well as within the State which is incidental to such inter State transmission of electricity. **In the present case as discussed in the previous paragraphs, Allain Duhangan – Nalagarh line after loop-in-loop-out at Chhaur substation of the Respondent no.1 becomes the system incidental to inter-State transmission of electricity from Malana II station of the Respondent no.1.** Therefore, the Central Commission shall have jurisdiction to regulate the transmission of electricity on*

Allain Duhangan – Nalagarh line after loop-in-loop-out of one of the circuits at Chhaur sub-station.

88. From the above, it is clear that this Tribunal while deciding the nature of the subject Line, has decided that after the configuration of the Loop In-Loop Out (LILO) of one circuit at Chhaur sub-station of EPPL, the said line fails in the configuration of a point-to-point connection. The reference of point-to-point connection is mentioned under Section 2(16) of the Electricity Act, 2003, which is reproduced below:

“Section 2. (Definitions): --- In this Act, unless the context otherwise requires,--

(16) “dedicated transmission lines” means any electric supply-line for point to point transmission which are required for the purpose of connecting electric lines or electric plants of a captive generating plant referred to in section 9 or generating station referred to in section 10 to any transmission lines or sub-stations or generating stations, or the load centre, as the case may be;”

89. It is thus clear that a transmission line is considered as a “dedicated transmission line’ only in case there is a ‘point-to-point’ transmission of electricity and prior to the LILO for evacuation of power of EPPL, there was a point-to-point connection from ADHEP to substation at Nalagarh, however, after the configuration of the above LILO of one circuit at Chhaur sub-station of EPPL, there was no point-to-point connection, therefore, subject Line cannot be classified as a “dedicated transmission line and after loop-in-loop-out at Chhaur substation of EPPL, the transmission line in

question becomes the system incidental to inter-State transmission of electricity, as held by this Tribunal vide order dated 02.01.2013.

90. The said judgment dated 02.01.2003 rendered by this Tribunal was challenged by the ADHPL in Civil Appeal No. 1795 of 2013, the Hon'ble Supreme Court disposed the Appeal vide judgment dated 26.04.2017, quoted again as under for the sake of clarity:

“1) The present appeal is directed against the judgment dated 02.01.2013 passed by the Appellate Tribunal for Electricity, New Delhi (for short the 'Appellate Tribunal') in which it has confirmed the judgment dated 01.06.2011 of the Central Electricity Regulatory Commission (for short the 'Central Commission') which has held that in view of the fact that inter-State transmission of electricity is involved, the Central Commission would have jurisdiction to proceed further with the matter under Section 79 of the Electricity Act, 2003.

3) Mr. Tripathi has adverted to a concurrent finding of fact of both the Central Commission and the Appellate Tribunal. The Commission in its judgment dated 01.06.2011 held on facts as follows: -

“16. We have considered the submissions of the petitioner and Respondent No.1. There is no doubt that as per the Master Plan envisaged by the Central Electricity Authority, the transmission line is required to

wheel the power of other generators in the region till the Nalagarh sub-station of Power Grid. Since, the petitioner has been permitted by Ministry of Power, Government of India in its sanction letter under section 68 of the Act to wheel its power by LILO of one circuit of Allain Duhangan-Nalagarh transmission line till the Nalagarh sub-station of Power Grid, the portion of the transmission line to be used by EPPL becomes a part of the inter-State transmission system as “inter-State transmission system” under 2(36) of the 2003 Act which includes conveyance within the State which is incidental to inter-State transmission of electricity. Moreover, permission to EPPL in the sanction letter under section 68 of the Act to use the transmission line of ADHPL is deemed to be read into the sanction letter to ADHPL under section 68 of the Act and such permission to ADHPL is conditional to wheeling the power of other generators in the region whose generating stations were included in the planning process of CTU and CEA. **Since the subject transmission line has been planned to evacuate power from the region for injection into the sub-station of Power Grid at Nalagarh, the transmission line is incidental to inter-State transmission system. The Commission which has been vested with the responsibility to regulate inter-State transmission has the jurisdiction to issue directions under section 79(1)(c) of the Act to regulate transmission on the subject transmission line.”**

4) *This was affirmed by the Appellate Tribunal in para 35 as follows:-*

*“35. The definition of the inter-State transmission system under Section 2(36)(ii) includes the conveyance of electricity across the territory of an intervening State as well as within the State which is incidental to such inter-state transmission of electricity. **In the present case as discussed in the previous paragraphs, Allain Dunhangan – Nalagarh line after loop-in-loop-out at Chhaur sub-station of the Respondent No.1 becomes the system incidental to inter-State transmission of electricity from Malana II station of the Respondent No.1. Therefore, the Central Commission shall have jurisdiction to regulate the transmission of electricity on Allain Dunhangan – Nalagarh line after loop-in-loop-out of one of the circuits at Chhaur sub-station.**”*

*“5) **In view of the concurrent finding of fact taking into account Section 2(36)(ii), we find no reason to interfere with the judgment of the Appellate Tribunal and hence the same is upheld. We may only indicate that the said judgment has remanded the matter to the Central Commission to decide the matter on merits having held that it has jurisdiction to proceed further.**”*

91. As already noted in the foregoing paragraphs, it is quite clear that the Hon'ble Supreme Court upheld the findings of this Tribunal to the effect that the subject Line is part of ISTS and once the Hon'ble Supreme Court has upheld the said status, we find no merit in the contentions of the ADHPL as the issue cannot be re-opened.

92. The reliance of the ADHPL on the review order dated 12.07.2017 passed by the Hon'ble Supreme Court as reproduced in the foregoing paragraphs that the Hon'ble Supreme Court directed that Central Commission may not take into consideration the observations of this Tribunal judgment dated 02.01.2013, and as such the question as to whether the 220 kV D/c transmission line constructed by ADHPL is ISTS had to be decided afresh.

93. We decline the above contentions of the ADHPL, the above judgment is reproduced here under:

*“Having heard Mr. Dushyant Dave, learned senior counsel appearing for the review petitioner, **we find that there is no error apparent in our order dated 26th April, 2017.***

*However, when the Central Electricity Regulatory Commission **decides the matter on merits**, it may do so without regard to the observations made by the Appellate Tribunal for Electricity in its order dated 02.01.2013.*

With these observations, the Review Petition is disposed of.”

94. From the above, there cannot be any other interpretation made except that the Hon'ble Supreme Court has categorically recorded that there is no error apparent in its order dated 26.04.2017 and therefore, when there is no error apparent in the findings, it means that the previous order stands, and thus the same would be legal and binding and as such, the findings of the Hon'ble Supreme Court in para 5 of its order dated 26.04.2017 that "In view of the concurrent finding of fact taking into account Section 2(36)(ii), we find no reason to interfere with the judgment of the Appellate Tribunal and hence the same is upheld", makes it clear that the subject Line is a part of ISTS.

95. It is again to direct that this Tribunal judgment dated 02.01.2013 decided two issues, one is regarding the nature of the subject Line that it is an ISTS, which stands settled now and the issue is on the merits of the case pertaining to determination of tariff of said subject Line and other procedural aspects, which are recorded in para 51 read with para 53 & 54 of the judgment dated 02.01.2013, on which, the Hon'ble Supreme Court directed the Central Commission that such findings on merits may not be taken into consideration during determination of tariff and also the requirement of obtaining a transmission license.

96. In view of the above, we are of the firm opinion that it is the aforesaid observations made in paragraphs 53 and 54 on merits in the earlier judgment of this tribunal, which were to be considered afresh, therefore, we do not find any merit in the reliance and interpretation made by ADHPL on the aforementioned review order of the Hon'ble Supreme Court.

97. We, therefore, declare that the subject Line is part of ISTS as recorded in the findings of this Tribunal judgment dated 02.01.2013 and upheld by the Hon'ble Supreme Court.

98. As concluded above, the submission of the ADHPL that the order of the Hon'ble Supreme Court was only limited to the finding that Central Commission under Sec 79(1)(c) will have the jurisdiction, but the line is dedicated, and not ISTS is rejected as is devoid of any merit.

99. Also, the jurisdiction is vested with Central Commission only in the event Section 79 (1) (c) and (d) of the Act is attracted, wherein it is provided that determination of tariff of a transmission line can only be done by the Central Commission if the said line is undertaking inter-state transmission of power, therefore, we opine that the jurisdiction of the Central Commission is attracted only because the Hon'ble Supreme Court has held the subject Line is part of ISTS in terms of Section 2 (36) (ii) of the Act.

100. We, therefore, decline to accept the argument of the ADHPL that even though jurisdiction was vested with the Central Commission, the subject Line continues to be a dedicated line.

101. Our attention was also invited by the ADHPL to the Clause 14.4 of the Detailed Procedure for "Grant of Connectivity to projects based on Renewable Sources to Inter-state Transmission System", which provides as under:

"14.4 The Connectivity grantee or its legal assignee may share its dedicated transmission infrastructure with any other entity for optimum utilization. In such cases, the Connectivity grantee shall be required to perform duties

of “Lead Generator” in terms of Connectivity Regulations and shall enter into an Agreement with the other entity(ies) to undertake all operational and commercial responsibilities in following the provisions of the Indian Electricity Grid Code and other regulations of the Commission, such as grid security, metering, scheduling and dispatch, collection and payment or adjustment of transmission charges, deviation charges, congestion and other charges etc.”

102. It was submitted by the ADHPL that the Central Commission has specified the provision for sharing of transmission charges of a dedicated transmission line, however, it cannot be agreed since the subject Line is not recognized as a “dedicated transmission line” as concluded in the preceding paragraphs.

103. It is relevant to refer to the decision rendered by this Tribunal in a judgment dated 21.10.2020 passed in Appeal No. 16 of 2020 titled *Odisha Power Generation Corporation Limited vs. Central Electricity Regulatory Commission & Ors.*, wherein it was held that:

“8.6 Further, it is noted that an Inter-state transmission system is planned by the CTU/ PGCIL, as provided in Section 38 of the Act. The said provision does not mandate that an ISTS line can be constructed as a dedicated transmission line. Once a transmission line is held to be part of inter-state transmission system (ISTS), then it cannot be dedicated. In the present case, the subject line has been constructed by the Respondent No. 3, who is an inter-state transmission licensee, meaning thereby that the

said asset is part of ISTS, and therefore, the same cannot be termed as dedicated.

.....

8.8 *It is the case of Respondent No. 3 that the 7th Amendment of the Connectivity Regulations aligns with the provisions of the Electricity Act, 2003 that a dedicated transmission line shall only be constructed by a generating company or by its contractor. It is opined that the said submission is in line with the interpretation of the Electricity Act, 2003 i.e. dedicated transmission lines cannot be built for an ISTS network built under the supervision and coordinated planning of the CTU/ PGCIL. The role of CTU/ PGCIL/ Respondent No. 2 is to only provide specifications for construction of the dedicated line, but not to construct them. **In other words, once an asset becomes part of ISTS, then the same cannot be treated as dedicated.***

104. Therefore, once a Transmission Line asset becomes a part of ISTS, then the same cannot be treated as dedicated, as in the present case, the subject Line has been declared to be a part of ISTS in terms of Section 2 (36)(ii) of the Electricity Act, 2003 by this Tribunal which is also upheld by Hon'ble Supreme Court, it shall hold the status of that of an ISTS and cannot be termed as dedicated anymore.

105. In view of the conclusions made above, it is directed the subject Line is a part of ISTS, which cannot be simultaneously termed as "dedicated transmission line".

106. As issue I. is settled, issues II. And III. are taken together.

107. It was argued before us by the Appellant that since the subject Line is a part of ISTS therefore, the transmission tariff *inter-alia* the transmission charges are required to be determined in accordance with the CERC Sharing Regulations, 2010, which lays down the mechanism for such determination under through Point of Charge (“PoC”) methodology for the levy and collection of such transmission charges, which in turn is shared amongst all the users of ISTS.

108. Secondly, it was also argued by the Appellant that the subject line is a Deemed ISTS and becomes part of the Yearly Transmission Charge as contemplated under the provisions of the said Regulations.

109. On the contrary, the ADHPL vehemently opposed the above contention of the Appellant stating that for the applicability of the Sharing Regulations, 2010, there has to be licence for transmission of electricity. And without the same, PoC charges are not applicable, also submitted the subject Line is being used by the Appellant and other beneficiaries, as a temporary arrangement, therefore, there arises no occasion for levy of PoC charges for the use of the aforesaid line.

110. After hearing the arguments, we find it appropriate to refer to the relevant provisions of the CERC Sharing Regulations, 2010, which are produced as below:

“2. Definitions.

(i) Basic Network shall mean the power system of the country at voltage levels 132 kV and above and 110 kV where generators are connected, HVDC transmission network and all Generator and loads connected to it;

.....

(k) ‘Deemed Inter State Transmission System (Deemed ISTS)’ means such transmission system which has regulatory approval of the Commission as being used for inter-state transmission of power and qualified as ISTS for the purpose of these Regulations unless otherwise specified;

.....

(l) ‘Designated ISTS Customer or DIC’ means the user of any segment(s) or element(s) of the ISTS and shall include generator, State Transmission Utility, State Electricity Board or load serving entity including Bulk Consumer and any other entity or person directly connected to the ISTS and shall further include any intra-State entity who has obtained Medium Term Open Access or Long Term Access to ISTS.

[Provided that where the ISTS charges were being billed to the distribution companies or any designated agency in the State for purchasing power before implementation of these regulations, the distribution companies order the designated agency, as the case may be, shall be treated as Designated ISTS Customer in that State for the purpose of preparation of Regional Transmission Account (RTA) by Regional Power Committees and for the purpose of billing and collection by the CTU:

Provided further that after implementation of these regulations, the States may designate any agency as Designated ISTS Customer for the above purpose.]”

(y) ‘Yearly Transmission Charge (YTC)’ means the Annual Transmission Charges for the existing and new transmission assets of inter-state transmission licensees, deemed ISTS licensees, owners of inter-state transmission lines connecting two states and owners of non-ISTS lines certified by Regional Power Committees for inter-state transmission of power, determined by the Appropriate Commission under Section 62 of the Act or adopted by the Appropriate Commission under Section 63 of the Act or as otherwise provided under these Regulations

Provided that in case of non-ISTS lines, the asset-wise tariff determined by the respective State Commissions or approved by the Central Commission based on the approved Annual Revenue Requirement of STU, shall be used:

Provided further that transmission charges received by the STU under these regulations shall be adjusted in the Annual Revenue Requirement of the concerned STU approved by the respective State Commission.”

SCOPE OF THE REGULATIONS

3. Yearly Transmission Charges, revenue requirement on account of foreign exchange rate variation, changes in interest rates etc. as approved by the Commission and Losses shall be shared amongst the following categories of Designated ISTS Customers who use the ISTS:-

(a) Generating Stations (i) which are regional entities as defined in the Indian Electricity Grid Code (IEGC) or (ii) are

having LTA or MTOA to ISTS and are connected either to STU or ISTS or both

(b) State Electricity Boards/State Transmission Utilities connected with ISTS or designated agency in the State (on behalf of distribution companies, generators and other bulk customers connected to the transmission system owned by the SEB/STU/ intra-State transmission licensee);

(c) Any bulk consumer directly connected with the ISTS; and

(d) Any designated entity representing a physically connected entity as per clauses (a), (b) and (c) above.

“7. Process to determine Point of Connection Transmission Charges and Losses allocations

(1) The process to determine the allocation of transmission charges and losses shall be as under, as per the timelines set out subsequently in Chapter 7 of these regulations:

(b) The Basic Network shall not contain any electricity system, electrical plant or line below 132 kV except where generators are connected to the grid at 110 kV. Power flow into a lower voltage system from the voltage levels indicated in the definition of the Basic Network shall be considered as load at that sub-station. Power flow from a lower voltage system into the electricity systems at the voltage levels shall be considered as generation at that sub-station;”

111. From the above quoted provisions, it is clear that the subject Line fulfills the criteria to be included in the basic network of an ISTS, for the purpose of including the same under the PoC mechanism, also as per Regulation 3(b), the Yearly Transmission Charges under the CERC Sharing Regulations, 2010 are applicable upon the Designated ISTS Customers such as the “State Electricity Boards/State Transmission Utilities connected with ISTS or designated agency in the State (on behalf of distribution companies, generators and other bulk customers connected to the transmission system owned by the SEB/STU/ intra-State transmission licensee)”, as such in the present case, the Appellant being connected with the ISTS line i.e. the subject Line, through the HPPTCL, which is an STU, the Appellant is a Designated ISTS Customer.

112. Regarding the submission made by the ADHPL that it is a Generator having a “dedicated transmission line”, as such, cannot be forced to take a transmission license, it is under section 15 read with section 14, the Appropriate Commission can grant a Licence to any person to transmit electricity as a transmission licensee only, and as per Regulation 6(C) of CERC’s (Terms and Conditions for Grant of Transmission License) Regulations 2009, in respect of the “dedicated transmission lines” established by the Generators, no person shall be eligible for grant of license unless it is a generating company which has established the dedicated transmission line, and intends to use such dedicated transmission line as the main transmission line and part of the inter-State transmission system. Therefore, the option to take a license and become a transmission licensee vest with ADHPL and ADHPL cannot be ordered by a court to take a license or forced to convert its private transmission assets to commercially pooled assets in POC mechanism to become a

transmission licensee merely because of temporary use of spare capacity of its transmission line for evacuation of power of other generators.

113. We decline to agree to the above as from definition of Deemed Inter-State Transmission System (Deemed ISTS) in terms of Regulation 2(k) of the CERC Sharing Regulations, 2010 referred above, such transmission system which has regulatory approval of the Commission as being used for inter-state transmission of power becomes as Deemed ISTS and once read the regulatory order dated 01.06.2011 of the Central Commission, wherein it was held that the subject Line is being used as a part of ISTS, therefore, ADHPL being the owner of Deemed ISTS, becomes a Deemed ISTS Licensee within the meaning of 'Yearly Transmission Charge or YTC' as referred above and accordingly this Tribunal vide its judgment dated 02.01.2013 held that ADHPL is not required to take a license.

114. In view of above, it is held that the transmission tariff for usage of the subject Line has to be determined and levied in accordance with Point of Connection (PoC) mechanism provided under Regulation 3(b) of the CERC Sharing Regulations, 2010, and the PoC mechanism will be applicable for recovery of transmission charges, from the date from which EPPL or any other generator or STU (or State Electricity Board) on behalf of generators gets connected to the transmission line of ADHPL, in terms of the CERC Sharing Regulations, 2010.

ORDER

For foregoing reasons as stated supra, we are of the considered view that the Appeal No. 450 of 2019 filed by M/s Kanchenjunga Power Company Private Limited has merit and is allowed, the order dated 17.10.2019 passed by the Central Electricity Regulatory Commission

("Central Commission") in Petition No. 209/MP/2017 is set aside to the extent as challenged in the aforesaid Appeal and directed above.

The Central Commission is directed to pass necessary consequential orders in light of the observations and conclusions recorded by us.

Needless to say that the issue having persisted for long, we would expect the Central Commission to pass the fresh order in terms of above directions expeditiously, not later than three months from the date of this judgment.

The captioned Appeal is disposed of accordingly, including all pending IAs, if any.

Pronounced in the Open Court on this 31st Day of October, 2022.

(Sandesh Kumar Sharma)
Technical Member

(Justice R.K. Gauba)
Officiating Chairperson

REPORTABLE/NON-REPORTABLE
pr/mkj