

MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION, BHOPAL

Subject: In the matter of Petition u/s 86(1)(c), 86(1)(f) & 86(1)(k) of the Electricity Act, 2003, along with Regulation 45 of MPERC (Conduct of Business) Regulations 2016 read with Article 4.4, 11, 16, etc of the Transmission Service Agreement ("TSA") dated 21.01.2023, seeking an extension of the Scheduled Commercial Operation Date ("SCOD") on account of Force Majeure events & consequential reliefs arising therefrom.

Petition No. 10 of 2026 and IA Nos. 5, 6 & 10 of 2026

ORDER

(Hearing through Hybrid mode)

(Date of Order: 23rd June 2026)

M. P. Power Transmission Package - I Limited

2nd Floor, Niryat Bhawan, Rao Tularam Marg,
Vasant Vihar, New Delhi - 110057

- **Petitioner**

V/s

1. Managing Director

M.P. Power Management Co. Ltd., Jabalpur

2. Chief Executive Officer

REC Power Development and Consultancy Limited
Core-4, SCOPE Complex, 7, Lodhi Road, New Delhi

3. Additional Chief Secretary

Energy Department, Govt. of MP, Mantrallaya, Bhopal

4. Managing Director

M.P. Power Transmission Company Ltd., Jabalpur

- **Respondents**

Shri Purusharth Singh, Advocate, Ms Ayushi Saxena, Advocate and Shri Akshaya Kumar Pradhan, GM appeared on behalf of the Petitioner.

Shri Alok Shanker, Advocate and Shri Niranjana Sanodiya, Manager MPPMCL appeared on behalf of Respondents No. 1 and 3.

Shri Rajeev Adlakha, SE and Shri Abhinav Anand, AE appeared on behalf of Respondent No. 4.

The subject petition has been filed by M/s M. P. Power Transmission Package-I Limited, a wholly owned subsidiary of M/s Megha Engineering and Infrastructure Limited ("MEIL"), under sections 86(1)(c), 86(1)(f) & 86(1)(k) of the Electricity Act, 2003, along with Regulation 45 of MPERC (Conduct of Business) Regulations 2016 read with Article 4.4, 11, 16, etc of the Transmission Service Agreement ("TSA") dated 21.01.2023, executed between the Petitioner and Long Term Transmission Customers (LTTCs) represented by Respondent No.1 MP Power Management Company Limited (MPPMCL), seeking an extension of the Scheduled Commercial Operation Date ("SCOD") on account of Force Majeure events & consequential reliefs arising therefrom.

2. The Petitioner has broadly submitted as under:

- i. *The Petitioner M.P. Power Transmission Package-I Limited, is a wholly owned subsidiary of M/s Megha Engineering and Infrastructure Ltd (“MEIL”). It is a transmission licensee, authorized by the Commission to implement the Project. The Petitioner was acquired by MEIL, pursuant to MEIL being selected as a successful bidder through the tariff based competitive bidding (TBCB) to establish the transmission system for development of intra - state transmission network in the State of Madhya Pradesh on **Build, Own, Operate and Transfer (BOOT)** basis.*
- ii. *MEIL was identified as the successful bidder having quoted the lowest levelized transmission tariff amongst short-listed bidders. In furtherance thereof, RECPDCL vide its letter dated 22.11.2022 communicated that the offer of MEIL was accepted and was declared as a successful bidder. Subsequently, a Letter of Intent (hereinafter referred to as “LOI”) dated 29.11.2022 was issued in favour of MEIL by REPDCL for development of intra-state transmission system along with the details of quoted annual transmission charges as Rs 1474.69 million.*
- iii. *Subsequently, a Share Purchase Agreement dated 21.01.2023 (hereinafter referred to as “SPA”) was executed by MEIL vide which the Petitioner acquired 100% equity in M.P. Power Transmission Package-I Limited. On 21.01.2023 itself, the Petitioner executed the TSA with the identified Long-term Transmission Customers - MPPMCL acting on behalf of MPPKVVCL, MPMKVVCL and MPPaKVVCL. With the execution of TSA, the Petitioner completed all procedural requirements as contemplated under the bid documents.*
- iv. *As per Schedule 2 of the TSA, the SCOD for the Project shall be 24 months from the Effective Date. As per the provisions of Article 2.1 of the TSA, the Effective Date for this Agreement falls on 21.01.2023 and correspondingly the SCOD is due on 21.01.2025.*
- v. *However, despite best and diligent efforts, the Petitioner has suffered several uncontrollable impediments and challenges in implementing the Project. These challenges have arisen on account of occurrence of certain Force Majeure events and therefore, the Petitioner is entitled to an extension in the SCOD of its Project under Article 11 read with Article 4.4.2 of the TSA. Due to Force Majeure events the Petitioner suffered delay inter alia under the following broad heads:*
 - a. *Delay in grant of government approvals including approval under Section 164 of Electricity Act, 2003.*
 - b. *Patwari strike*
 - c. *ROW issues, including local agitations and hindrances post-sale deed execution*
 - d. *Land acquisition issues*
 - e. *Non-grant / Delay in ‘right of way’ clearance from Collector/ District Magistrate*
 - f. *Delay in grant of NOC for crossing of BPCL pipeline*
 - g. *Delay due to heavy rainfall.*

- vi. *The Petitioner seeks declaration of these as Force Majeure, extension of SCOD on a day-for-day basis until cessation of impacts, waiver of liquidated damages, and consequential relief.*
- vii. *The Petitioner had earlier filed Petition No. 41 of 2024, which was disposed of by this Commission vide its Order dated 01.10.2024 on the ground that the petition was premature, as the Project was still under execution, the Force Majeure events had not fully ceased and the dispute had not crystallized. The Commission granted liberty to the Petitioner to approach the Commission afresh after the issues got crystallized upon completion of the Project.*
- viii. *The Petitioner filed a Review Petition No. 80 of 2024. The Review Petition was dismissed by the Commission vide its Order dated 16.06.2025, reiterating that the original petition was premature and that there was no error apparent on the face of the record. However, the Commission again recorded that the Petitioner is at liberty to file a fresh petition once the cause of action crystallizes.*
- ix. *Since the issuance of the aforesaid orders, the following material changes in fact have occurred, giving rise to a fresh, independent issues and crystallized cause of action:*
- a. *The original SCOD of 21.01.2025 has long expired in all the element;*
 - b. *Respondent No. 1 vide its letter dated 07.11.2025 has threatened to levy liquidated damages and initiated / threatened coercive steps including invocation of the Contract Performance Guarantee;*
 - c. *The dispute between the parties regarding existence, duration and effect of Force Majeure events now stands fully crystallized.*
- x. *In view of the liberty granted by the Commission in its Orders dated 01.10.2024 and 16.06.2025, and in view of the completely fresh cause of action that has now arisen wherein the SCOD of all the 18 elements has expired on 21.01.2025, the Petitioner is constrained to approach the Commission once again by way of the present petition for adjudication of its legitimate claim for extension of SCOD on account of Force Majeure events, waiver of liquidated damages, and grant of consequential reliefs.*
- xi. *In accordance with the LoI and Clause 2.21 of the RFP documents, MEIL furnished the Contract Performance Guarantee dated 19.01.2023 in favor of MPPMCL for an aggregate value of Rs. 28.90 Crores, which was submitted to MPPMCL on 20.01.2023. The Contract Performance Guarantee (“CPG”) was valid till 21.04.2025. Subsequently, the CPG was extended by the Petitioner on 15.04.2025 and the same is valid till 21.04.2026.*
- xii. *Subsequently, a Share Purchase Agreement dated 21.01.2023 (hereinafter referred to as “SPA”) was executed by MEIL vide which the Petitioner acquired 100% equity in M.P. Power Transmission Package-I Limited. On 21.01.2023 itself, the Petitioner executed the TSA with the identified Long-term Transmission Customers - MPPMCL acting on behalf of MPPKVVCL, MPMKVVCL and MPPaKVVCL. With the execution of TSA, the Petitioner completed all procedural requirements as contemplated under the bid documents.*

xiii. In terms of the TSA, the SCOD of the Projects is detailed below:

S. No.	Transmission Element	SCOD (in months) from Effective Date
1.	400/220/132/33kV GIS Substation at Mandideep (District-Raisen)	24
2.	220/132/33kV substation at Bisonikala (District-Hoshangabad)	24
3.	220/132/33kV Substation at Khargone (District-Khargone)	24
4.	132/33kV substation at Sodalpur(District-Harda)	18
5.	132/33kV substation at Jawarjod (District-Sehore)	18
6.	132/33kV substation at Pathari (District-Raisen)	18
7.	132/33kV substation at Badi (District-Raisen)	18
8.	132/33kV substation at Semrahat (District-Guna)	18
9.	132/33kV GIS substation at HOD Bhopal (District-Bhopal)	24
10.	220/33kV substation at Shahpur (District-Betul)	24
11.	132/33kV substation at Chhapiheda (District-Rajgarh)	18
12.	132/33kV substation Bhatpachlana (District-Ujjain)	18
13.	132/33kV substation at Dhodhar (District-Ratlam)	18
14.	132/33kV substation at Pipalgaon (District-Khargone)	18
15.	132/33kV substation at Ambaja (District-Alirajpur)	18
16.	132/33kV substation at ChoubaraDheera (District-Dewas)	18
17.	132/33kV GIS substation at Pithampur Sector-III (District-Dhar)	24
18.	System Strengthening Works Bahadurpur - Badgaon 132kV DCSS line	18

xiv. A bare perusal of the afore-quoted provisions of the TSA makes the following abundantly clear:

- a. The Effective Date of the TSA is 21.01.2023.
- b. In terms of Article 4.4.2 of the TSA, in case the project is not commissioned by the SCOD, on account of any Force Majeure event as per Article 11 the SCOD shall be extended on a day to day basis for the period of such FM event. Article 4.4.3 states that if the parties have not agreed within 30 days after the performance of the party has ceased to be affected by the relevant circumstances any party may raise the dispute to be resolved in terms of Article 16 of the TSA. As per article 16.3 of the TSA all disputes shall be adjudicated by the state commission.
- c. As per Article 11.3 a Force Majeure means an event or circumstances or combination of events that wholly or partly prevents or unavoidably delays performance of any party of its obligations and are not within reasonable control directly or indirectly of the affected party.
- d. As per Article 11.5 the affected party is required to give notice of FM to the other party as soon as reasonably practicable but not later than 7 days after the date on which such party knew or should reasonably have known of the commencement if the event of FM.

- xv. *The Petitioner had obtained approval under Section 68 of the Electricity Act 2003 on 13.01.2023 from the appropriate authorities for laying of the Transmission Lines comprising of the Project.*
- xvi. *On 27.09.2023, the Commission passed an order in Petition no. 2 of 2023 granting Transmission License to the Petitioner. Subsequently, on 09.10.2023, the Commission issued the Transmission License. The License is for a period of 25 years in accordance with provisions under section 15(8) of the Electricity Act 2003.*
- xvii. *On 10.10.2023, the Commission passed an order in Petition No. 1 of 2023 for “adoption of Transmission Charges with respect to the Transmission System to be constructed / implemented by M. P. Power Transmission Package-I Limited” whereby the Commission adopted the transmissions charges Rs. 1474.69 million for the Project.*
- xviii. *Without this Transmission License, the Petitioner could not have proceeded with substantial physical work on the Project, such as detailed construction activities, procurement of materials for installation, or commencement of tower erection and stringing. The Petitioner was limited to preliminary and intangible activities, such as land identification, etc. The process of obtaining the Transmission License took approximately **8 months** from the Effective Date of the TSA, during which the Petitioner was unable to undertake on-ground execution, contributing to the overall delays.*
- xix. *After the signing of the TSA, the Petitioner commenced its works for compliance with the obligations under the TSA. The very first date when the work actually began was on 04.03.2023 in selected elements. In compliance with one of the TSA terms, the Petitioner has been issuing Monthly Progress Reports to MPPMCL.*
- xx. *The Petitioner submits that various Force Majeure events occurred which have hindered and prevented the Petitioner from performing its obligations under the TSA. Therefore, the Petitioner is an ‘Affected Party’ within the meaning of Article 11.2 of the TSA. Upon the occurrence of a Force Majeure event, the Petitioner is entitled to claim relief for such Force Majeure events after complying with the procedure prescribed under the TSA. In view thereof, the Petitioner stands entitled to claim an extension of SCOD on account of Force Majeure in terms of Article 4.4 read with Article 11 of the TSA. The table below provides details of the days of extension sought on various Force Majeure issues corresponding to each Element of the Project:*

S. No.	Issues	Elements	Delay in Days
Delay in grant of Government approval			
1.	Delay in receiving National highway crossing approvals for construction of Transmission Lines	ELEMENT 4 132kV Sodalpur-Sultanpur Transmission Line	235 days
		ELEMENT 11	699 days

		132kV Khujener – Chappiheda Transmission Line	
		ELEMENT 14 132kV Kasarwad – Pipalgaon Transmission Line	733 days
2.	Delay in issuance of State Highway crossing approvals from M.P. Road Development Corporation Limited for construction of Transmission Lines	ELEMENT 2, 4 132 kV Seonimalwa – Harda Transmission Line 132kV Bisonikala – Sodulpur Transmission Line	189 days
		ELEMENT 6 132 kV Gairatgunj – Pathari Transmission Line	237 days
3.	Delay in receiving Railway crossing approvals for construction of Transmission Lines.	ELEMENT 2 132 kV Seonimalwa – Harda Transmission Line	514 days
		ELEMENT 4 132kV Bisonikala – Sodulpur Transmission Line	512 days
4.	Delay in obtaining authorization under Section 164 of Electricity Act, 2003.	04.01.2024	207 days
5.	Delay in securing Forest Approval towards construction of transmission line.	ELEMENT 6 132kV DCDS Gairatgunj – Pathari Transmission Line	431 days
Patwari Strike			
6.	Interference in completion of work due to Patwari Strike	All Elements [ELEMENT 1 TO ELEMENT 18]	33 days
ROW issues			
7.	Delay in construction of Transmission lines due to agitation by locals	ELEMENT 1 132/ 220 kV Mandideep LILO Transmission Line	833 days (Ongoing) (till 31.12.2025)
		ELEMENT 2 132kV Bisonikala – Sodulpur Transmission Line 132kV Seonimalawa – Harda LILO 220kV Satpura – Handia LILO 220kV Itarsi – Handia, under Narmadapuram	289 days (Ongoing) (till 31.12.2025)
		ELEMENT 4	690 days

		132kV Sodulpur – Sulatanpur Transmission Line	
		ELEMENT 5 132kV DCDS TL / LILO Astha - Sonkatch	654 days (Ongoing) (till 31.12.2025)
		ELEMENT 7 132kV Bareli - Badi Transmission Line	610 days (Ongoing) (till 31.12.2025)
		ELEMENT 8 132kV TL Ashoknagar – Semarhat 132kV TL Semarhat – Aron	590 days (Ongoing) (till 31.12.2025)
		ELEMENT 11 132kV Khujener – Chappiheda Transmission Line	527 days (Ongoing) (till 31.12.2025)
		ELEMENT 14 132kV Kasarwad – Pipalgaon Transmission Line	532 days (Ongoing) (till 31.12.2025)
		ELEMENT 15 132/33kV substation, Ambaja, District: Alirajpur	489 days (Ongoing) (till 31.12.2025)
		ELEMENT 16 132kV Sonkatch – Chaubaradheera Transmission Line	722 days (Ongoing) (till 31.12.2025)
		ELEMENT 18 132 kV Bahadurpur – Badgaon Transmission line	609 days (Ongoing) (till 31.12.2025)
8.	Hindrances by locals post execution of Sale Deed	ELEMENT 6 132/33kV substation, Pathari, District: Gairatganj, Raisen	519 days (till 10.02.2025)
		ELEMENT 7 132/33kV substation, Badi, District: Raisen	923 days (Ongoing) (till 31.12.2025)
		ELEMENT 10 220kV LILO/ TL Satpura TPS-Itarsi	721 days (Ongoing) (till 31.12.2025)

		ELEMENT 12 132kV DCSS Transmission Line LILO of Badnagar – Orange Bercha	590 days (till 25.02.2025)
Land Issue			
9.	Delay in identification of land	ELEMENT 3 220/132/33kV AIS substation, Khargone, District : Khargone	1034 days (Ongoing) (till 31.12.2025)
10.	Delay in allotment of Nazul land	ELEMENT 9 132/33kV GIS S/s at HOD Bhopal	1011 days (Ongoing) (till 31.12.2025)
		ELEMENT 17 132/33kV GIS S/s at Sector-III Pithampur	1011 days (Ongoing) (till 31.12.2025)
11.	Delay in completion of Project due to non-availability of land	ELEMENT 15 132/33kV substation, Ambaja, District: Alirajpur	323 days
12.	Non-timely partition of land by the Revenue Department	ELEMENT 6 132/33kV substation, Pathari, District: Gairatganj, Raisen	289 days
Non grant/ delay in 'Right of Way' clearance from Collector/ District Magistrate			
13.	Non-grant/ delay in grant of approval from Collector/ District Magistrate	ELEMENT 1, 6, 7 Gairatganj – Pathari 132 kV DCDS Badi – Shahganj 132 kV DCSS Bareli - Badi 132kV DCSS LILO – Hoshangabad- Adampur 220kV (S/S Mandideep) LILO Mandideep - Bhopal 220kV (S/S Mandideep) LILO Mandideep – Bagroda 132kV LILO Itarsi – Bhopal 400kV (S/S Mandideep)	67 days
		ELEMENT 2 132kV Bisonikala – Sodalpur Transmission Line 132kV Seonimalawa – Harda LILO 220kV Satpura – Handia LILO	410 days

		220kV Itarsi – Handia, under Narmadapuram	
		ELEMENT 4 132kV Bisonikala – Sodalpur Transmission Line 132kV Sodalpur – Sultanpur Transmission Line	43 days
		ELEMENT 5 132kV DCDS TL / LILO Astha - Sonkatch	198 days
		ELEMENT 8 132kV TL Ashoknagar – Semarhat 132kV TL Semarhat - Aron	139 days
		ELEMENT 10 220kV LILO/ TL Satpura TPS-Itarsi	109 days
		ELEMENT 11 Khujner – Chhapiheda – Nalkheda 132kV DCSS line	63 days
		ELEMENT 12 132kV DCSS Transmission Line LILO of Badnagar – Orange Bercha	377 days
		ELEMENT 13 132kV DCSS Jaoro – Daloda Transmission LILO/ Line	Not Granted (Ongoing) (till 31.12.2025)
		ELEMENT 14 32kV Khasrawas – Pipalgaon Transmission Line	281 days
		ELEMENT 15 132kV Barwani – Kukshi Transmission Line (District – Dhar)	145 days
		ELEMENT 16 132kV DCSS TL from Sonkatch to Choubaradhira	71 days
		ELEMENT 18 132kV TL Bahadurpur – Badgaon	91 days

14.	<i>Delay in grant of NOC for crossing of BPCL pipeline</i>	ELEMENT 8 132kV TL Ashoknagar – Semarhat 132kV TL Semarhat - Aron	310 days (Ongoing) (till 31.12.2025)
15.	<i>Delay due to heavy rainfall</i>	ELEMENT 1 ELEMENT 2 ELEMENT 4 ELEMENT 6 ELEMENT 7 ELEMENT 8 ELEMENT 10 ELEMENT 11 ELEMENT 12 ELEMENT 13 ELEMENT 14 ELEMENT 15 ELEMENT 16 ELEMENT 18	211 days

xxi. *The Petitioner submits that, in strict compliance with Article 11.5 of the TSA, it has diligently issued notices to MPPMCL upon becoming aware of the occurrence and continuing impact of Force Majeure events. These notices included full particulars of the events, their effects on the Petitioner's performance, and the remedial measures proposed. Along with issuing specific Force Majeure notices under the TSA under each issue and for each element, the Petitioner has also marked copies of major communications to relevant authorities (such as Collectors, District Magistrates, and other governmental bodies discussing the impediments faced) to MPPMCL as part of its ongoing correspondence under Article 11 of the TSA. This ensured MPPMCL was kept fully informed of the evolving issues at all stages, demonstrating the Petitioner's transparency and diligence in mitigating the impacts.*

xxii. *On 03.05.2024, the Petitioner issued a comprehensive notice seeking extension of SCOD, followed by multiple specific and supplementary notices in each issues. The relevant extracts of the letter dated 03.05.2024 is extracted below:*

“We herewith submitting out plea to accord extension of time by reviewing the merits of our submissions for further extension of COD as per the below element wise schedule:

<i>S. No.</i>	<i>Element No.</i>	<i>Scheduled COD (SCOD)</i>	<i>Request for extension of SCOD</i>
1.	<i>E4,E5,E6,E7,E8,E11, E12,E13,E14,E15, E16 & E18</i>	<i>20.07.2024</i>	<i>20.07.2025</i>
2.	<i>E1, E2, E3 and E10</i>	<i>20.01.2025</i>	<i>20.01.2026</i>
3.	<i>E9 and E17</i>	<i>20.01.2025</i>	<i>24 months from the date of handing over of encumbrance free land to MPPTPIL from the Govt. of Madhya Pradesh.</i>

This may be kindly treated as a formal notice under Article 11, Article 12 and Article 12 of the Transmission Service Agreement and is without prejudice to all our rights.”

xxiii. *Despite these timely intimations, MPPMCL rejected the Force Majeure claims vide its letter dated 24.07.2024 and subsequently issued threats of liquidated damages vide letters dated 23.07.2024 and 07.11.2025. These rejections and threats have fully crystallized the dispute between the parties as contemplated under Article 4.4 read with Article 16 of the TSA.*

Grounds for seeking extension of SCOD because of Force Majeure events:

Delay in grant of Government approvals

I. Delay in receiving National highway crossing approval for construction of Transmission Lines:

xxiv. *The Petitioner respectfully submits that the construction of certain elements of the Project has been materially delayed due to inordinate and uncontrollable delays in the grant of requisite approvals from the National Highways Authority of India (“NHAI”) and the National Highways - Public Works Department (“NH-PWD”) for overhead crossings of national highways. These delays, which far exceed the reasonable timeframe of two months anticipated under the applicable guidelines, constitute Force Majeure events under Article 11 of the TSA, as they are circumstances beyond the Petitioner's reasonable control that have unavoidably hindered the timely performance of its obligations. The Petitioner is accordingly entitled to a day-for-day extension of the SCOD. The details of the delays attributable to each affected element are summarized in the table below:*

S. No.	Transmission Element	Date of application	Date of grant of approval	Number of days (Delay)
1.	ELEMENT 4 132kV Sodalpur-Sultanpur Line	16.11.2023	08.07.2024	235 days
2.	ELEMENT 11 132kV Khujener – Chappiheda Transmission Line	03.06.2023	02.05.2025	699 days
3.	ELEMENT 14 132kV Kasarwad – Pipalgaon Transmission Line	03.06.2023	05.06.2025	733 days

The aforesaid delays represent the period from the date of application to the date of final approval, minus the expected reasonable timeframe of 60 days as per Clause 4 of the Guidelines dated 22.11.2016 issued by the Ministry of Road Transport and Highways, Government of India. The details of fact and chronology of each element are as under:

Element 4:

- xxv. *It is submitted that the Petitioner executed TSA with MPPMCL on 21.01.2023. Post execution of the TSA, the Petitioner initiated the process of identifying land for construction of Sub Station within 3kms radius of the coordinates provided under Schedule 1 of TSA. It is imperative to note that the transmission line alignment could be finalised only upon finalisation of the linked Substation. The 3km radius fell under the agricultural land area. The Petitioner made efforts to contact the farmers, however, the majority of farmers expressed their unwillingness to part with their land. Despite best efforts, it was difficult to locate a land from single owner, with the requisites under the RFP. The process of identifying and sourcing of a suitable land consumed a lot of time of the Petitioner. The Petitioner was finally able to identify the land and complete the registration process on 02.06.2023. It is only after the said processes that the Petitioner applied for national highway crossing approval in November, 2023. Despite the Petitioner having submitted its application for national highway crossing approval in November 2023, long time has been taken by NHAI in responding to the Petitioner's application. The Petitioner has lost significant amount of working time in liaising with NHAI to have the NOC expedited.*
- xxvi. *The Petitioner issued various communications to the officials of NHAI and followed-up through telephonic communications and in-person meetings to expedite the approval process. Additionally, the functioning of government departments came to sort of standstill for certain period due to imposition of Model Code of Conduct on account of MP State Assembly Elections (around 2 months 21.10.2023 till around mid-December, 2023) and due to imposition of Model Code of Conduct on account of Lok Sabha Elections (around 1.5 months, 16.03.2024 to 06.06.2024).*
- xxvii. *The Petitioner submits that NHAI's ongoing delay in grant of necessary NOC within reasonable timelines is beyond Petitioner's control.*
- xxviii. *NHAI responded to the Petitioner's application for approval for the first time only on 03.06.2024. Before 03.06.2024, the Petitioner kept following up with NHAI through its letters dated 13.03.2024, 29.05.2024 and 30.05.2024. Further, the conditional approval was granted in July, 2024. This delay has led to a substantial loss of working time, prevented the Petitioner from performing its obligations under the TSA and therefore, the same constitutes as a Force Majeure event, which is still ongoing, under Article 11.3 of the TSA. The Petitioner duly intimated CGM, MPPMCL of the occurrence of the aforesaid Force Majeure event vide its notices dated 03.05.2024, 30.05.2024 and has further marked a copy to MPPMCL as part of major communications being circulated to the relevant authorities, in compliance with Article 11 of the TSA. However, MPPMCL has not provided any response to the said force majeure notice to date. The Petitioner submits that NHAI's delay in grant of the necessary NOC within reasonable timelines was unanticipated and beyond the Petitioner's control. Accordingly, the Petitioner prays that the said grounds be considered for grant of extension in SCOD.*

Element 11:

- xxix. *The Petitioner had submitted its application for highway crossing as early as in June 2023, the time was taken by NH-PWD in responding to the Petitioner's approval and grant of highway crossing clearances. The Petitioner has been following up with NH-PWD seeking grant of highway crossing approval. The Petitioner has lost significant amount of working time in liaising with NH-PWD to have the NOC expedited.*

The Sub-Divisional Officer (PWD) responded to the Petitioner's proposal for the first time only on 14.05.2024 directing it to submit the amount for license charges and bank guarantee. Despite the Petitioner having complied with NH-PWD's requirements by submitting the requisite amounts, the final approval was granted by NH-PWD on 02.05.2025. This delay is leading to a substantial loss of working time, prevented the Petitioner from performing its obligations under the TSA and therefore, the same constitutes as a Force Majeure event under Article 11.3 of the TSA.

Element 14:

- xxx. *The Petitioner submits that the route for construction of transmission lines crosses the National Highway – 347c connecting Khargon - Kasrawad Road between KM Stone 2-3. Accordingly, to construct the transmission line over the aforesaid intersection with the highway, the Petitioner was required to obtain necessary approval from NH – Public Works Department. However, the Petitioner submits that the construction of the transmission line is delayed due to delay in grant of necessary approval from NH-PWD for construction of the transmission line over the intersection with the highway.*

The Executive Engineer (PWD) responded to the Petitioner's proposal for the first time only on 25.06.2024 directing it to submit the amount for license charges and bank guarantee. Despite the Petitioner having complied with NH-PWD's requirements, the final approval was granted by NH-PWD on 05.06.2025. This delay is leading to a substantial loss of working time, prevented the Petitioner from performing its obligations under the TSA and therefore, the same constitutes as a Force Majeure event under Article 11.3 of the TSA.

II. Delay in issuance of State Highway crossing approvals from M.P. Road Development Corporation Limited for construction of Transmission Lines.

- xxxi. *The construction of certain elements of the Project has been materially delayed due to inordinate and uncontrollable delays in the grant of requisite approvals from the MP Road Development Corporation Ltd. ("MPRDCL") for overhead crossings of state highways. These delays, which significantly exceed the reasonable timeframe of three months anticipated by the Petitioner constitute Force Majeure events under Article 11.3 of the TSA, as they are circumstances wholly beyond the Petitioner's reasonable control that have unavoidably hindered the timely performance of its obligations. The details of the delays attributable to each affected element are summarized in the table below:*

S. No.	Transmission Element	Date of application	Date of grant of approval	Number of days (Delay)
1.	ELEMENT 2, 4 132 kV Seonimalwa – Harda Transmission Line 132kV Bisonikala – Sodalpur Transmission Line	12.12.2023	18.06.2024	189 days
2.	ELEMENT 6 132kV Gairatgunj – Pathari Transmission Line	31.10.2023	24.06.2024	237 days

Clause 4 of Madhya Pradesh Rajmarg Niyam, 2014 provide that application for permissions have to be decided by the State Authority in a period of 3 months from its receipt. However, the grant of the said approval by MPRDCL has been unreasonably and unavoidably delayed for no fault of the Petitioner. The said delay in grant of state highway crossing approval by MPRDCL constitutes a Force Majeure event under the TSA entitling the Petitioner to appropriate extension in the SCOD.

III. Delay in receiving Railway crossing approvals for construction of Transmission Lines

xxxii. *The construction of certain elements of the Project has been materially delayed due to inordinate and uncontrollable delays in the grant of requisite approvals from the West Central Railway, Bhopal (“WCR Bhopal”) for overhead crossings of railway lines. These delays, which far exceed the reasonable timeframe of 64 days anticipated under the Joint Procedure Order for Granting Permission to Overhead Power Line Crossings over Railway Tracks issued by the Ministry of Railways, Government of India, dated 30.01.2017, constitute Force Majeure events under Article 11.3 of the TSA, as they are circumstances beyond the Petitioner's reasonable control that have unavoidably hindered the timely performance of its obligations. The Petitioner is accordingly entitled to a day-for-day extension of the SCOD under Article 4.4.2 read with Article 11 of the TSA. The details of the delays attributable to each affected element are summarized in the table below:*

S. No.	Transmission Element	Date of application	Date of grant of approval	Number of days (Delay)
1.	ELEMENT 2 132 kV Seonimalwa – Harda Transmission Line	20.05.2023	15.10.2024	514 days
2.	ELEMENT 4 132kV Bisonikala – Sodalpur Transmission Line	22.05.2023	15.10.2024	512 days

The aforesaid delay in grant of railway line crossing approval by WCR Bhopal is beyond the Petitioner's reasonable control. This constitutes as a Force Majeure event under Article 11.3 of the TSA. The Petitioner duly intimated the MPPMCL of the occurrence of the aforesaid Force Majeure event vide its notices dated 03.05.2024, 30.05.2024 and has further marked a copy to MPPMCL as part of major communications circulated to the relevant authorities, in compliance with Article 11 of the TSA. However, MPPMCL has not issued any response to the said force majeure notice to date. Accordingly, this may be considered for granting an extension in SCOD as prayed for in the prayer.

IV. Delay in obtaining authorization under Section 164 of Electricity Act, 2003

xxxiii. Timely implementation and the development of the Project is adversely affected as the scheduled commercial operation date of various transmission elements is 18 months/ 24 months (depending upon the element) from the effective date of the TSA. The Petitioner is facing difficulty due to delay in grant of the statutory approval from Energy Department, Government of Madhya Pradesh under Section 164 of the Electricity Act conferring powers of the Telegraph Authority for implementation of the transmission projects.

S. No.	Issue	Date of application	Date of grant of approval	Number of days (Delay)
1.	Delay in grant of approval under Section 164 of Electricity Act, 2003	04.01.2024	29.07.2024	207 days

xxxiv. It is a settled principle of law that delay in obtaining Government's approval under Section 164 of the Act conferring power of Telegraph Authority is to be construed as force majeure. The Hon'ble Appellate Tribunal for Electricity in **Appeal No. 139 of 2013 and Appeal No. 140 of 2013** framed the following issue for its consideration:

“Whether the authorisation under Section 164 of the 2003 Act by the appropriate government to a Transmission Licensee conferring powers of the Telegraph Authority under Indian Telegraph Act 1985 for laying a Transmission Line is a necessary requirement and failure of the appropriate government to issue such authorisation would amount to force majeure?”

“36. To sum up. In the light of above discussion, we are of the view that the power of Telegraph Authority under 164 of the 2003 Act is essential for laying transmission line both from prior consent of land-owner as well as from telephonic or telegraph message point of views. Hence, the delay in obtaining the Central Government's approval in conferring power of the Telegraph Authority is to be construed to be a force majeure.

37. In view of the above, the impugned orders are set aside. Both the Appeals are allowed. However, there is no order as to costs.”

xxxv. After being engaged in the long-drawn approval process with the concerned authorities for grant of the approval, the Petitioner received approval from the Energy Department under Section 164 of the Electricity Act, 2003 on 29.07.2024 i.e. 207 days from the date of the application i.e. 04.01.2024. Such delay caused a substantial loss of working time and delay in completion of the overhead transmission line.

V. Delay in securing Forest Approval towards construction of transmission line

xxxvi. In terms of Rule 6 of Forest (Conservation) Amendment Rules, 2004, the Petitioner ought to have received the requisite forest approval within a reasonable period of 210 days from the date of application. The Petitioner submitted its application seeking forest approval to MOEF&CC on 04.03.2023. However, the grant of the said approval was unreasonably delayed for no fault of the Petitioner for a period of approx. 14 months i.e. from March 2023 until May, 2024. The above delay of around 14 months in grant of forest approval by various Forest Officials constitutes a Force Majeure event under the TSA entitling the Petitioner to appropriate extension in the SCOD.

S. No.	Transmission Element	Date of application	Date of grant of approval	Number of days (Delay)
1.	ELEMENT 6 132kV DCDS Gairatgunj – Pathari Transmission Line	04.03.2023	Granted on 08.05.2024	431 days

The Petitioner submitted its application seeking forest approval to MOEF&CC on 04.03.2023. However, the grant of the said approval was unreasonably delayed for no fault of the Petitioner for a period of approx. 14 months i.e. from March 2023 until May, 2024. The above delay of around 14 months in grant of forest approval by various Forest Officials constitutes a Force Majeure event under the TSA entitling the Petitioner to appropriate extension in the SCOD.

VI. Patwari Strike

xxxvii. In terms of Schedule 1 of TSA, the Petitioner was required to carry-out construction of new substation by identifying a suitable land within the radius of 3km. Accordingly, the Petitioner had to identify the land in about 3kms for construction of substation. The Petitioner had to identify the land of about 5.5 acres for 132 kV, 15 acres of land for 220kV and 21 acres of land for 400kV. The Petitioner faced difficulties in locating the land with specific dimensions and specifications.

The Petitioner had identified the land and was in the process of initiating land acquisition, 19,000 Patwari's (Staff of Revenue Department) went on a pen down strike from 27.08.2023 to 29.09.2023 (33 days) seeking hike in salary and perks. These Patwaris oversee land mutation and caste certificate issuance process. The prolonged Patwari strike in Madhya Pradesh, resulted in significant delay in completing necessary documentary compliances related to acquisition of land, their registry and mutation & land diversion process, which ultimately caused delay in completion of the transmission elements on time.

VII. ROW issues raised by Locals and land owners

Delay in construction of Transmission lines due to agitation by locals

xxxviii. The Petitioner respectfully submits that the timely implementation of the Project has been materially impeded by severe and uncontrollable agitations from local landowners and residents at various sites across the State of Madhya Pradesh. These agitations have manifested in repeated obstructions to construction activities, demands for excessive compensation beyond government-prescribed norms, calls for re-routing or repositioning of approved transmission lines, threats to workers, damage to materials, and illegal encroachments. Such events, which are wholly beyond the Petitioner's reasonable control and could not have been mitigated despite diligent efforts, constitute Force Majeure events under Article 11.3 of the TSA and have unavoidably delayed the Petitioner's performance of its obligations. The Petitioner is accordingly entitled to a day-for-day extension of the SCOD under Article 4.4.2 read with Article 11 of the TSA for the affected elements. The details of the delays attributable to these agitations for each affected element are summarized in the table below:

S. No.	Transmission Element	Number of Days Delay
1.	ELEMENT 1 132/ 220 kV Mandideep LILO Transmission Line	833 days (till 31.12.2025) [Ongoing]
2.	ELEMENT 2 132 kV Seonimalwa – Bisonikala Transmission Line	289 days (till 31.12.2025) [Ongoing]
3.	ELEMENT 4 132kV Sodulpur – Sultanpur Transmission Line	690 days (till 12.08.2025)
4.	ELEMENT 5 132kV DCDS TL / LILO Astha - Sonkatch	654 days [Ongoing] (till 31.12.2025)
5.	ELEMENT 7 132kV Bareli - Badi Transmission Line	610 days [Ongoing] (till 31.12.2025)
6.	ELEMENT 8 132kV TL Ashoknagar – Semarhat 132kV TL Semarhat - Aron	590 days (till 31.12.2025) [Ongoing]
7.	ELEMENT 11 132kV Khujener – Chappiheda Transmission Line	527 days (till 31.12.2025) [Ongoing]
8.	ELEMENT 14 132kV Kasarwad – Pipalgaon Transmission Line	532 days (till 31.12.2025) [Ongoing]
9.	ELEMENT 15 132/33kV substation, Ambaja, District: Alirajpur	489 days (till 31.12.2025) [Ongoing]
10.	ELEMENT 16 132kV Sonkatch – Chaubaradheera Transmission Line	722 days (till 31.12.2025) [Ongoing]
11.	ELEMENT 18 132kV Bahadurpur – Badgaon Transmission Line	609 days (till 31.12.2025) [Ongoing]

xxxix. *The Petitioner executed TSA with MPPMCL on 21.01.2023. Post execution of the TSA, the Petitioner initiated the process of identifying Sub Station within 3 kms radius of the coordinates provided under Schedule 1 of TSA. Thereafter, the Petitioner commenced with the process of route survey of the transmission line followed by tower survey marking the profile. The identification of land and the processes thereafter took substantial amount of time. Thereafter, letter was written to the DM/Collector for requisite permissions. Post the grant of such permission, since the work has been started, the Petitioner has been facing severe local interference, which has led to severe delays.*

xl. *It is submitted that the work pertaining to the construction of transmission line was obstructed due to severe agitations by local villagers. The agitating villagers made undue and unreasonable demands from the Petitioner in order to permit the Petitioner to continue construction activities at the site. Further, in Element 16, the agitating villagers have illegally encroached and obstructed the land which belongs to Government of M.P. and have made life threatening remarks to the staff at the site, in the presence of Tehsildar, Sonkatch. The Petitioner mitigated by undertaking the following:*

- a. *Offering and paying compensation as per revenue assessments*
- b. *Obtaining NOC's wherever possible from landowners*
- c. *Negotiating directly with landowners*
- d. *Seeking administrative and police assistance repeatedly*
- e. *Lodging FIRs for threats/ damages (eg, FIR No. 0329 lodged on 01.06.2024 for Element 16)*
- f. *Responding to legal notices and appearing in court cases.*

VIII. Hindrance by locals post execution of Sale Deed

xli. *The implementation of the Project has been materially delayed due to unforeseen and uncontrollable hindrances caused by local individuals (including previous landowners and their relatives) after the legal transfer of land ownership through executed sale deeds. These hindrances include baseless objections, disputes over land mutation, demands for cancellation of the sale, and physical obstructions to construction activities. Such actions, which are beyond the Petitioner's reasonable control and could not have been anticipated or fully mitigated despite diligent efforts (including negotiations, payments, and seeking authority intervention), constitute Force Majeure events under Article 11.3 of the TSA. They qualify as non-natural circumstances that have unavoidably delayed the Petitioner's obligations. The Petitioner is accordingly entitled to a day-for-day extension of the SCOD under Article 4.4.2 read with Article 11 of the TSA for the affected elements. The details of the delays attributable to these hindrances for each affected element are summarized in the table below:*

S. No.	Transmission Element	Number of days Delay
1.	ELEMENT 6 132/33kV substation, Pathari, District: Gairatganj, Raisen	519 days (till 10.02.2025)

2.	<i>ELEMENT 7 132/33kV substation, Badi, District: Raisen</i>	<i>923 days (till 31.12.2025) [Ongoing]</i>
3.	<i>ELEMENT 10 220kV LILO/ TL Satpura TPS-Itarsi</i>	<i>721 days (till 31.12.2025) [Ongoing]</i>
4.	<i>ELEMENT 12 132kV DCSS Transmission Line LILO of Badnagar – Orange Bercha</i>	<i>590 days (till 25.02.2025)</i>

IX. Land issues

A. Delay in identification of land

xlii. The construction of Element 3 (220/132/33 kV AIS Substation at Khargone, District Khargone) has been materially delayed due to inordinate and uncontrollable difficulties in identifying suitable land within the prescribed 3 km radius of the coordinates provided under Schedule 1 of the TSA. This delay, which remains ongoing as on 19.12.2025, constitutes a Force Majeure event under Article 11 of the TSA, as it is a circumstance wholly beyond the Petitioner's reasonable control that has unavoidably prevented timely performance of its obligations. The Petitioner is accordingly entitled to a day-for-day extension of the Scheduled Commercial Operation Date (SCOD) for Element 3 under Article 4.4.2 read with Article 11 of the TSA. The details of the delay are summarized below:

<i>S. No.</i>	<i>Transmission Element</i>	<i>Number of Days (Delay) (Ongoing) [From 04.03.2023 till 31.12.2025]</i>
<i>1.</i>	<i>ELEMENT 3 220/132/33kV AIS substation, Khargone, District : Khargone</i>	<i>1034 days</i>

The difficulty arose because the coordinates provided by RECPDCL are located within an urban area and a substantial amount of land was required for construction of substation.

The delay in identification of suitable land is unavoidable, unforeseeable, and beyond the Petitioner's reasonable control. It has directly prevented the commencement of substation construction, constituting a Force Majeure event under Article 11 of the TSA. Accordingly, the Petitioner prays that this ground be considered for grant of an extension in the SCOD for Element 3 on a day-for-day basis until a suitable parcel is secured and construction can resume.

B. Delay in allotment of nazul land

xliii. The timely commissioning of Elements 9 and 17 of the Project has been materially impeded by the inordinate and uncontrollable delay in the allotment of Nazul land (government-owned land) by the concerned authorities of the Government of Madhya Pradesh. As per the RFP and Schedule 1 of the TSA, the Petitioner was required to construct new substations on government land to be provided within a 3 km radius of specified coordinates. Despite timely applications and repeated

follow-ups, the land has not been allotted in an encumbrance-free manner, resulting in substantial loss of productive time. This delay, entirely attributable to governmental processes and beyond the Petitioner's reasonable control, constitutes a Force Majeure event under Article 11.3 of the TSA. The Petitioner is accordingly entitled to a day-for-day extension of the SCOD under Article 4.4.2 read with Article 11 of the TSA.

- xliv. These delays, entirely attributable to inter-departmental governmental processes and beyond the Petitioner's reasonable control, constitute Force Majeure events under Article 11.3 of the TSA (as direct non-natural Force Majeure events involving unreasonable delay or refusal in granting consents/clearances by an Indian Governmental Instrumentality). The Petitioner is accordingly entitled to a day-for-day extension of the SCOD under Article 4.4.2 read with Article 11 of the TSA. The details of the delays for the affected elements are summarized in the table below:

S. No.	Transmission Element	Date of application	Number of Days Delay (till 31.12.2025) [Ongoing]
1.	ELEMENT 9 132/33kV GIS S/s at HOD Bhopal	15.03.2023	1023 days
2.	ELEMENT 17 132/33kV GIS S/s at Sector-III Pithampur	15.03.2023	1023 days

- xlv. For Elements 9 & 17, the Petitioner was required to carry-out construction of transmission lines on the land allocated by Government of Madhya Pradesh. Accordingly, the Petitioner applied for allocation of such land in March, 2023, however, the same has not be allocated to the Petitioner yet. The Petitioner lost more than a year due to delays in grant of approvals and handing over of the site by the concerned government department. Despite timely applications and repeated follow-ups, the land allotment process remains incomplete and encumbered. The said delay constitutes a Force Majeure event under Article 11 of the TSA. Specifically:

For **Element 9** - The land has been identified and partially processed (including approvals for transfer), but encumbrance-free possession has not been handed over to the Petitioner

For **Element 17** – Proper and suitable encumbrance-free land has not yet been identified or allotted, despite partial proposals and deposits.

C. Delay in completion of Project due to non-availability of land

- xlvi. Element 15 of the Project had to be constructed on land lying in Ambaja Village, Alirajpur Tehsil, Alirajpur District in the State of Madhya Pradesh. However, the construction of the 132/33kV substation, Ambaja, District: Alirajpur has been affected due to non-availability of suitable land for construction of the 132/33kV substation, Ambaja, District: Alirajpur. Most of the available lands belonged to Scheduled Tribes (ST), mostly farmers, which raised heavy objections in providing lands for construction of transmission elements. Consequently, the Petitioner sought intervention of District Magistrate for identification and allocation of the

referred ST land for construction of 132/33kV substation at Ambaja. Despite the same, the Petitioner faced immense difficulties in locating the land, for there was only little support from the authorities.

It is further submitted that as per the RfP, Para 1.6.2, the BPC i.e., RECPDCL is responsible for initiating the process of acquisition of land for location specific substations, however, there has been no support whatsoever.

S. No.	Transmission Element	Number of Days Delay
1.	ELEMENT 15 132/33kV substation, Ambaja, District: Alirajpur	323 days

The Petitioner submits that, being diligent, it itself began the process for searching of suitable land for construction of the Ambaja substation immediately upon the execution of TSA in January, 2023. However, the Petitioner has lost significant amount of time due to difficulty arising in finding a suitable land as proposed by RECPDCL.

The BPC i.e., RECPDCL also failed in providing much assistance for identification of land, despite such representation for facilitation given by it in the RfP. Despite best efforts, the Petitioner was not able to find suitable private land even after approaching around 700 farmers near Ambaja. The Petitioner issued communications to the Office of the Collector stating its difficulty and requested intervention to get the land followed by completion of all administrative and revenue department's formalities. The Petitioner was finally granted with the land for setting up of sub-station on 31.01.2024.

D. Non-timely partition of land by the Revenue Department

xlvii. Element 6 of the Project was to be constructed in land identified in Babai Village, Gairatganj Tehsil, Raisen.

S. No.	Transmission Element	Number of days of Delay
1.	ELEMENT 6 132/33kV substation, Pathari, District: Raisen	289 days

The Petitioner had initially submitted an application before the Tehsildar on 29.11.2023. The file was forwarded by Tehsildar to Patwari, Babai for processing the partition of the aforesaid land in the land revenue records. The Petitioner followed-up with the Tehsildar for status of the partition of land in the land revenue records, but failed to get a positive response from the concerned department. Later in April, 2024, the Office of Tehsildar confirmed that the application of the Petitioner was not traceable and advised to re-apply. The Petitioner re-submitted its application before the Court of Tehsildar on 15.04.2024, seeking partition/division of land and updation of the same in the land revenue records. The Tehsildar, vide its order dated 25.06.2024, directed the partition of land on favour of the Petitioner and the same was updated in the revenue records.

The Petitioner submits that the abovementioned delays were unavoidable and prevented the Petitioner from performing its obligations under the TSA.

X. Non – Grant / Delay in ‘Right of Way’ clearance from Collector / DM

xlvi. The Project has to be constructed at various locations being at all the elements in the State of Madhya Pradesh. However, the construction of these elements (except Element 9 and Element 17) of the Project has been affected due to delay in grant of permission by Collector/ District Magistrate.

S. No.	Transmission Element	Date of Application to DM	Date of approval granted by DM	Number of days of delay
1.	ELEMENT 1, 6, 7 Gairatganj – Pathari 132 kV DCDS Badi – Shahganj 132 kV DCSS Bareilly - Badi 132kV DCSS LILO – Hoshangabad-Adampur 220kV (S/S Mandideep) LILO Mandideep - Bhopal 220kV (S/S Mandideep) LILO Mandideep – Bagroda 132kV LILO Itarsi – Bhopal 400kV (S/S Mandideep)	17.07.2023	21.09.2023	66 days
2.	ELEMENT 2 132kV Bisonikala – Sodalpur Transmission Line 132kV Seonimalawa – Harda LILO 220kV Satpura – Handia LILO 220kV Itarsi – Handia, under Narmadapuram	17.07.2023	29.08.2024	409 days
3.	ELEMENT 4 132kV Bisonikala – Sodalpur Transmission Line 132kV Sodalpur – Sultanpur Transmission Line	17.07.2023	28.08.2023	43 days
4.	ELEMENT 5 132kV DCDS TL / LILO Astha – Sonkatch	31.08.2023	15.03.2024	198 days
5.	ELEMENT 8	29.07.2023	14.12.2023	139 days

	132kV TL Ashoknagar – Semarhat 132kV TL Semarhat – Aron			
6.	ELEMENT 10 220kV LILO/ TL Satpura TPS-Itarsi	18.03.2024	04.07.2024	109 days
7.	ELEMENT 11 Khujner – Chhapiheda – Nalkheda 132kV DCSS line	28.03.2024	29.05.2024	63 days
8.	ELEMENT 12 132kV DCSS Transmission Line LILO of Badnagar – Orange Bercha	08.07.2023	18.07.2024	377 days
9.	ELEMENT 13 132kV DCSS Jaoro – Daloda Transmission LILO/ Line	11.02.2024	Not granted	
10.	ELEMENT 14 32kV Khasrawas – Pipalgaon Transmission Line	25.09.2023	02.07.2024	281 days
11.	ELEMENT 15 132kV Barwani – Kukshi Transmission Line (District – Alirajpur)	19.02.2024	12.07.2024	145 days
12.	ELEMENT 16 132kV DCSS TL from Sonkatch to Choubaradhira	31.08.2023	10.11.2023	71 days
13.	ELEMENT 18 132kV TL Bahadurpur – Badgaon	13.09.2023	13.12.2023	91 days

In terms of Clause (ii) of approval granted to the Petitioner by Energy Department (Government of Madhya Pradesh) dated 13.01.2023 under Section 68 of Electricity Act 2003, the Petitioner was responsible to obtain 'Right of Ways' (ROW) clearance from District Magistrate, concerned department and land owners at its own cost. It is submitted that despite the Petitioner having submitted its letter seeking permission to carry out the construction and transmission line work, the time has been taken by Office of District Magistrate in granting relevant permission to start construction of transmission lines. The Petitioner has lost significant amount of working time in liaising with Collector and District Magistrate Office to have the permission from Collector/ District Magistrate expedited.

XI. Delay in Grant of clearance for crossing of BPCL pipeline

xlix. The construction of transmission lines at Element 8 has been materially delayed due to the inordinate and uncontrollable delay in obtaining the No Objection Certificate (“NOC”) from Bharat Petroleum Corporation Limited (“BPCL”) for overhead crossing of the Bina-Kota pipeline. This delay, which remains ongoing, constitutes a Force Majeure event under Article 11 of the TSA, as it involves an unreasonable delay by an Indian Governmental Instrumentality (BPCL, a public sector undertaking) in granting necessary clearances required for Project development. The Petitioner is accordingly entitled to a day-for-day extension of the SCOD under Article 4.4.2 read with Article 11 of the TSA. The details of the delay for the affected element are summarized in the table below:

S. No.	Transmission Element	Date of Application to DM	Date of approval	Number of days of delay [Ongoing till 31.12.2025]
1.	ELEMENT 8 132kV TL Ashoknagar – Semarhat 132kV TL Semarhat – Aron	25.02.2025	Not granted	

XII. Delay due to heavy rainfall

l. The heavy rainfall and resultant flooding halted critical construction activities, including foundation work for towers/substations and transportation of materials. Waterlogged conditions at the Project sites posed safety risks to workers and equipment, necessitating suspension of operations. The Petitioner was unable to carry out essential tasks due to the extreme weather conditions. In view of these risks, and in strict adherence to safety protocols and statutory obligations, the Petitioner was compelled to temporarily suspend construction operations at several location. The table shows the element of the project affected by the rainfall:

S. No.	Elements	Period	Number of days of delay
1	Element 1 400/220/132/33 kV GIS Substation at Mandideep	23.06.2024 to 04.10.2024 (104 days)	211 days
2	Element 2 220/132/33 kV substation at Bisonikalan		
3	Element 4 132/33 kV substation at Sodulpur		
4	Element 6		

	132/33 kV substation at Pathari	<p style="text-align: center;">And</p> <p style="text-align: center;">20.06.2025 to 04.10.2025 (107 days)</p>	
5	Element 7 132/33 kV substation at Badi		
6	Element 8 132/33 kV substation at Semrahat		
7	Element 10 220/33 kV substation at Shahpur		
8	Element 11 132/33 kV substation at Chhapiheda		
9	Element 12 132/33 kV substation at Bhatpachlana		
10	Element 13 132/33 kV Substation at Dhodhar		
11	Element 14 132/33 kV substation at Pipalgaon		
12	Element 15 132/33 kV substation at Ambaja		
13	Element 16 132/33 kV substation at Choubaradheera		
14	Element 18 132 kV Badarpur-badgaon DCSS Line		

li. *It is submitted that the occurrence of natural calamities has been consistently recognized as a Force Majeure event in the electricity sector. In this context, reference is made to the judgment of the **Hon'ble Appellate Tribunal for Electricity dated 27.04.2011 in Maharashtra State Power Generation Co. Ltd. v. MERC (Appeal No. 72 of 2010)**, wherein it was held that unprecedented excess rainfall and flooding constitute Force Majeure, exempting parties from liability for resultant delays. Applying these principles to the present case, it is undeniable that the unprecedented excess rainfall and flooding qualify as Force Majeure under Article 11 of the TSA, and the Petitioner cannot be held liable for the delay caused thereby.*

XIII. Force Majeure notices issued to MPPMCL under the TSA:

lii. *The Petitioner has demonstrated exemplary diligence by issuing timely and detailed Force Majeure notices commencing from 03.05.2024, supplemented by regular updates and copies of correspondence with authorities. MPPMCL's persistent*

denials (culminating in the formal rejection dated 24.07.2024 and the post-SCOD threat dated 07.11.2025) have rendered the parties' disagreement on the existence, duration, and consequences of the Force Majeure events irrevocable, fully crystallizing the dispute for adjudication under Article 16 of the TSA. The Petitioner has acted bona fide throughout, mitigating impacts to the extent possible while keeping MPPMCL fully apprised, thereby satisfying all procedural prerequisites under the TSA.

XIV. Wrongful levy of liquidated damages:

liii. The threat of imposition of liquidated damages by MPPMCL, as communicated vide its letters dated 23.07.2024 and 07.11.2025, is wholly wrongful, arbitrary, and contrary to the express provisions of the TSA. The delays in achieving the SCOD for various elements of the Project are solely attributable to Force Majeure events as detailed in the petition, which entitle the Petitioner to an extension of the SCOD on a day-for-day basis under Article 4.4.2 read with Article 11 of the TSA. Consequently, no liability for liquidated damages arises under Article 6.4 of the TSA, and any attempt to levy or recover the same is liable to be declared null and void.

liv. MPPMCL, vide its letter dated 23.07.2024, asserted applicability of liquidated damages under Article 6.4.1 of the TSA for failure to achieve COD, without addressing the Force Majeure notices issued by the Petitioner or acknowledging the uncontrollable nature of the delays. Further, MPPMCL vide its letter dated 07.11.2025, calculated liquidated damages at Rs. 83.55 Crores (excluding Elements 9 and 17) and threatened forfeiture of the Contract Performance Guarantee under Article 6.4.4 of the TSA, along with recovery of extra payments incurred due to delays. This letter ignored the subsisting Force Majeure events and the Petitioner's prior intimations.

MPPMCL's actions violate Article 4.4.3 of the TSA, which requires mutual agreement on SCOD extension within 30 days post-cessation of Force Majeure, failing which the dispute is to be resolved by this Hon'ble Commission under Article 16.3. MPPMCL has bypassed this mechanism by unilaterally rejecting Force Majeure claims (vide letter dated 24.07.2024, denying 27 notices) and imposing LD without adjudication. This is arbitrary and contravenes principles of natural justice and the TSA's dispute resolution framework.

The Petitioner has used reasonable efforts to mitigate effects per Article 11.6 (e.g., repeated follow-ups, alternative arrangements), as evidenced by communications marked to MPPMCL. MPPMCL's failure to respond substantively to these notices further vitiates its claim for LD.

XV. Current status of project elements

lv. It is submitted that several elements of the Project have achieved Commercial Operation Date, notwithstanding the ongoing Force Majeure events affecting the overall timeline. Specifically:

- Element 18: Transmission Line (TL) achieved COD on 27.10.2025;
- Element 16: Transmission Line (TL) achieved COD on 17.11.2025;

- Element 16: Substation (SS) achieved COD on 21.11.2025;
- Element 5: Transmission Line (TL) and (SS) achieved COD on 09.12.2025.

lvi. *These elements have commenced commercial operations, and the petitioner is entitled to receive Monthly Transmission Charges in respect thereof without any deduction on account of liquidated damages. In terms of Article 6.2.2 of the TSA, subject to extension of their respective SCODs due to subsisting Force Majeure events. It is further submitted that some of the remaining elements are at advanced stages of completion but continue to be impacted by the Force Majeure Events detailed herein.*

XVI. Jurisdiction

lvii. *It is submitted that Section 86 of the Act, inter alia, empowers the Commission to regulate intra-state transmission of electricity and adjudicate disputes involving transmission licensees. Admittedly, the Petitioner is a transmission licensee engaged in intra-state transmission of electricity and the issues raised in the present Petition relate to the existence, duration, and consequences of Force Majeure events under the TSA, which directly impacts the Petitioner's obligations as a transmission licensee. Furthermore, Article 16 of the TSA explicitly provides that "All disputes shall be adjudicated by the State Commission." This contractual stipulation unequivocally vests exclusive jurisdiction in the Commission for resolution of all disputes arising under the TSA, including the present controversy regarding Force Majeure relief and SCOD extension. The Petitioner is entitled to invoke the Commission's adjudicatory jurisdiction under the combined operation of Section 86(1)(f) and Article 16 of the TSA. Thus, the Commission is empowered to condone the delay in commissioning the Project due to occurrence of various Force Majeure events and grant the Petitioner appropriate relief in terms of Article 11 of the TSA; and mould appropriate relief in exercise of regulatory powers in view of the unique circumstances faced by the Petitioner.*

3. With the above submission, the Petitioner prayed as under:

- i. Admit and allow the present Petition;
- ii. Declare that the following events are in the nature of Force Majeure events as per Articles 4.4.2 and 11 of the TSA affecting the Scheduled Commercial Operation Date of the Project.
- iii. Grant an extension of Scheduled Commercial Operation Date (SCOD) as claimed for in the Petition until the adverse impact of Force Majeure impact has ceased to impede the work as under:
 - a. Continuing delay in construction of transmission lines due to agitation by locals at Element 1 (833 days calculated till 31.12.2025)
 - b. Continuing delay in construction of transmission lines due to agitation by locals at Element 2 (289 days calculated till 31.12.2025)
 - c. Continuing delay in construction of transmission lines due to agitation by locals at Element 5 (654 days calculated till 31.12.2025)

- d. Continuing delay in construction of transmission lines due to agitation by locals at Element 7 (610 days calculated till 31.12.2025)
 - e. Continuing delay in construction of transmission lines due to agitation by locals at Element 8 (590 days calculated till 31.12.2025)
 - f. Continuing delay in construction of transmission lines due to agitation by locals at Element 11 (527 days calculated till 31.12.2025)
 - g. Continuing delay in construction of transmission lines due to agitation by locals at Element 14 (532 days calculated till 31.12.2025)
 - h. Continuing delay in construction of transmission lines due to agitation by locals at Element 15 (489 days calculated till 31.12.2025)
 - i. Continuing delay in construction of transmission lines due to agitation by locals at Element 16 (722 days calculated till 31.12.2025)
 - j. Continuing delay in construction of transmission lines due to agitation by locals at Element 18 (609 days calculated till 31.12.2025)
 - k. Continuing delay in construction of substation due to hindrance after execution of sale deed at Element 7 (923 days calculated till 31.12.2025)
 - l. Continuing delay in construction of transmission lines due to hindrance after execution of sale deed at Element 10 (721 days calculated till 31.12.2025)
 - m. Continuing delay in construction of transmission lines due to delay in identification of land at Element 3 (1034 days calculated till 31.12.2025)
 - n. Continuing delay in allotment of Nazul Land at Element 9 and 17 (1023 days for each Element calculated till 31.12.2025)
 - o. Continuing delay due to non-grant of approval from Collector/ District Magistrate for Element 13 (690 days calculated till 31.12.2025)
 - p. Continuing delay due to delay in grant of NOC for crossing of BPCL Pipeline for Element 8 (310 days calculated till 31.12.2025)
- iv. Grant an extension of Scheduled Commercial Operation Date (SCOD) as claimed for in the Petition on account of Force Majeure events as under:
- a. Extension of 235 days in receipt of approvals from NHAI for construction of T/L associated with Element 4 over the intersection with National Highway 47
 - b. Extension of 699 days in Element 11 and 733 days in Element 14 in receipt of approvals from National Highway Public Works Department for construction of T/L associated over the intersection with National Highway 752C and 347C.
 - c. Extension of 189 days due to delay in receipt of approval from MP Road Development Corporation for construction of T/L associated with Element 2, 4
 - d. Extension of 237 days in receipt of approvals from MP Road Development Corporation for construction of T/L associated with Element 6 over the intersection with State Highway 62
 - e. Extension of 514 days in receipt of approval from West Central Railway, Bhopal for construction of T/L associated with Element 2 over the intersection with railway lines connecting Pagdhal – Timarni Stations at mast no. 695/25- 695/27
 - f. Extension of 512 days in receipt of approvals from West Central Railway, Bhopal for construction of T/L associated with Element 4 over the intersection with railway lines connecting Pagdhal – Timarni Stations at mast number 688/15- 688/16
 - g. Extension of 207 days for Delay in receipt of authorization under Section 164 of Electricity Act, 2003

- h. Extension of 431 days due to delay in grant of forest approval for construction of T/L associated with Element 6
- i. Extension of 33 days due to interference in completion of work on account of Patwari Strike for all Elements
- j. Extension of 690 days in Element 4 for right of way issues in construction of transmission lines related to local agitation
- k. Extension of 519 days (calculated till 10.02.2025) in Element 6 for delay in construction of substation due to hindrance after execution of sale deed
- l. Extension of 590 days (calculated till 25.02.2025) in Element 12 for delay in construction of substation due to hindrance after execution of sale deed
- m. Extension of 323 days due to delay in completion of construction of Transmission Line associated with Element 15 on account of non-availability of land.
- n. Extension of 289 days due to non timely partition of land associated with Element 6
- o. Extension of 67 days due to delay in grant of approval from Collector/ District Magistrate associated with Element 1,6,7
- p. Extension of 410 days due to delay in grant of approval from Collector/ District Magistrate associated with Element 2
- q. Extension of 43 days due to delay in grant of approval from Collector/ District Magistrate associated with Element 4
- r. Extension of 198 days due to delay in grant of approval from Collector/ District Magistrate associated with Element 5
- s. Extension of 139 days due to delay in grant of approval from Collector/ District Magistrate associated with Element 8
- t. Extension of 109 days due to delay in grant of approval from Collector/ District Magistrate associated with Element 10
- u. Extension of 63 days due to delay in grant of approval from Collector/ District Magistrate associated with Element 11
- v. Extension of 377 days due to delay in grant of approval from Collector/ District Magistrate associated with Element 12
- w. Extension of 281 days due to delay in grant of approval from Collector/ District Magistrate associated with Element 14
- x. Extension of 145 days due to delay in grant of approval from Collector/ District Magistrate associated with Element 15
- y. Extension of 71 days due to delay in grant of approval from Collector/ District Magistrate associated with Element 16
- z. Extension of 91 days due to delay in grant of approval from Collector/ District Magistrate associated with Element 18
- aa. Extension of 211 days due to impact on the Project site due to heavy rainfall associated with Elements 1, 2, 4, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16 and 18

- v. Direct that the Petitioner ought not be made liable in any manner for the delays caused in Project's implementation due to the aforesaid Force Majeure Events

- vi. Direct that no Liquidated Damages may be imposed on the Petitioner (*for all the elements that have achieved COD and are yet to achieve COD, including Element 5, Element 16 and Element 18 that have achieved COD*) for the delays caused in

Project's implementation due to the aforesaid Force Majeure Events under the TSA or otherwise.

- vii. Declare that as relief for force majeure events the Petitioner is entitled to receive compensation by way of increase in monthly transmission charges on account of increase in the Interest During Construction (IDC) and Incidental Expenses During Construction (IEDC), for the corresponding force majeure period exceeding one hundred and eighty (180) ;
- viii. Declare that, for the elements that have achieved Commercial Operation Date (namely Element 18 TL on 27.10.2025, Element 16 TL on 17.11.2025, Element 16 SS on 21.11.2025, and Element 5 TL & SS on 09.12.2025), the Petitioner is entitled to receive Monthly Transmission Charges without any deduction on account of liquidated damages, in terms of Article 6.2.2 of the TSA;
- ix. Grant an extension of the Scheduled Commercial Operation Date for Element 5, Element 16 and Element 18, that have achieved COD, on a day-to-day basis for the period of subsisting Force Majeure events, to regularize their commissioning and absolve the Petitioner from any liability for delays attributable thereto;

4. The petitioner has also filed three IAs in which, the Petitioner prayed as under:

i. IA No. 5 of 2026:

Allow the present application and list the captioned petition along with accompanying application for interim relief on urgent basis for hearing, subject to convenience of the Commission.

ii. IA No. 6 of 2026:

- a. Allow the present application;
- b. Pass an ex-parte ad interim order directing MPPMCL and their agents, representatives, attorneys, servants etc. from taking any action in terms of its letter dated 07.11.2025;
- c. Pass an ex-parte ad interim order restraining MPPMCL and their agents, representatives, attorneys, servants etc. from taking any action towards the encashment of Applicant's Contract Performance Guarantee dated 19.01.2023 (renewed on 15.04.2025) for an amount of Rs. 28.90 Crores in terms of the TSA during the pendency of the present Petition before the Commission;
- d. Direct that no Liquidated Damages may be imposed on the Petitioner (*for all the elements that have achieved COD and are yet to achieve COD, including Element 5, Element 16 and Element 18 that have achieved COD*) for the delays caused in Project's implementation due to the aforesaid Force Majeure Events under the TSA or otherwise until the final disposal of the Petition;
- e. Pass an order directing Respondents to maintain status quo till the final disposal of the Petition

iii. IA No. 10 of 2026:

- a. Allow the present petition;
- b. Direct that the Scheduled Commercial Operation Date (SCOD) for Elements 9 and Element 17 shall be reckoned 24 months from the date of actual allotment and handover of encumbrance-free Nazul land;
- c. Grant consequential relief by way of adjustment in Project cost arising out of the aforesaid delay;
- d. Permit the Petitioner the right to claim the incremental cost of the project at the appropriate time.
- e. Restrain Respondent No. 1 from taking any coercive action, including invocation/ encashment of the Contract Performance Guarantee, in respect of Element 9 and Element 17 till the final disposal of the captioned petition;
- f. Pass any other or further order(s) as the Commission may deem fit and proper in the facts and circumstances of the case and in the interest of justice.

Procedural History:

Hearings:

5. At the motion hearing held on 27/02/2026, the Petition was admitted. The Petitioner was directed to serve copy of the petition and IAs on all Respondents within 3 days and report compliance to the Commission. The Respondents were directed to file their replies within two weeks, thereafter. The Petitioner was at liberty to file rejoinder within a week, thereafter, with a copy to the other side. It was directed that no coercive action be taken by the Respondent No.1 till next date of hearing. The matter was fixed for hearing on 28/04/2026.
6. At the hearing held on 28/04/2026, the Commission observed the following:
 - i. The Petitioner filed IA No. 10 of 2026 by Affidavit dated 23/04/2026 and also filed note of submissions dated 27/04/2026.
 - ii. Ld. Counsel of the Petitioner stated that they have not received any reply from Respondents and requested for short date in the matter.
 - iii. Ld. Counsel of Respondent No. 1 submitted that by Affidavit dated 17/04/2026 it has already submitted reply on maintainability of the subject petition. He was directed to serve copy of the aforesaid reply to the Petitioner. He also confirmed that he has received copy of IA No. 10 of 2026.
 - iv. The representatives of Respondent No. 4 submitted that they have already submitted reply to the petition on 10/04/2026.

- v. The Commission has also received letter dated 27/04/2026 from Respondent No. 3 requesting that the Respondent No. 1 shall represent it in the subject petition.
- B. Considering the aforesaid, the Petitioner & Respondents were directed to serve copy of their submissions to all other parties in the matter. The Respondent No. 1 was directed to submit its reply on merits of the Petition and all IAs as well within a week. The Petitioner was allowed to file rejoinder, if any within a week thereafter, latest by 12/05/2026, with a copy to all Respondents.
- C. As requested by the Petitioner, Interim Relief granted vide daily order dated 27/02/2026 was continued till next date of hearing. The Petition was listed for hearing and arguments on 19/05/2026.
7. At the hearing held on 19/05/2026, the Commission observed the following:
- i. The Respondent No. 1 (MPPMCL) by Affidavit dated 12/05/2026 submitted its reply on maintainability and merits of the issues raised in IA No. 10/2026 filed by Petitioner.
 - ii. The Petitioner by Affidavit dated 12/05/2026 submitted its rejoinder on reply dated 17/04/2026 filed by MPPMCL on maintainability of the Petition.
 - iii. The Respondent No. 1 (MPPMCL) by another Affidavit dated 12/05/2026 submitted its reply on merits of the Petition.
 - iv. The Petitioner by Affidavit dated 18/05/2026 submitted its rejoinder on reply dated 12/05/2026 filed by MPPMCL on merits of the Petition.
- B. During hearing, Ld. Counsel for the Petitioner and Respondent concluded their arguments. Ld. Counsel for the Respondent No.1 sought one weeks' time to file written submission. As requested, the Respondent No.1 was granted one weeks' time to file written submission.
- C. The Interim Relief granted vide Commission's daily order dated 27/02/2026 was continued till issue of final Order in this petition. The case was reserved for Order.

Details of reply, rejoinder and written submissions:

8. Respondent No.1 (MPPMCL) by Affidavit dated 17/04/2026 broadly submitted as under:
- i. The Petitioner had filed Petition No. 41 of 2024 which was disposed of vide Commission's Order dated 01/10/2024. The Petitioner had filed Review Petition No. 80 of 2024 which was disposed of vide Commission's Order dated 16/06/2025. As argued earlier, admittedly the Project is not commissioned and in the instant petition also the Petitioner has not been able to indicate a date by when the Petitioner may be able to achieve commissioning of the Project. Therefore, the present petition is not maintainable in the present circumstances and should be dismissed *in limine*.

- ii. The Petitioner has submitted that the petition is maintainable because:
 - a. Original SCOD has lapsed;
 - b. Vide letter dated 07.11.2025, MPPMCL has threatened to levy LDs and take coercive action;
 - c. Dispute qua duration and impact of FM events stands crystallized.
- iii. It is submitted that all of the above reasons are baseless and untrue and would be dealt with separately hereunder.

Claim for Liquidated Damages

- iv. The Petitioner has alleged that vide letter dated 07.11.2025, MPPMCL levied LDs on the Petitioner and threatened encashment of performance bank guarantee in the event the LDs were not paid. The above is patently false and misleading. The present petition has been filed on 20.01.2026 which is more than 2 months after the alleged letter claiming liquidated damages was sent by MPPMCL.
- v. Further, it was only on 27.02.2026 i.e. more than 3 months after the receipt of LD letter, that the Commission was pleased to direct no coercive steps to be taken. In the meantime, MPPMCL neither sent any reminder letters for LDs nor made a claim on the performance guarantee. Even upon bare perusal of the letter dated 07.11.2025 it is evident that vide the said letter the computation of LD was communicated to the Petitioner, but no demand for payment was made.
- vi. It is submitted that nothing in the said letter can be termed as demand for liquidated damages and threat for encashment. Clearly the present petition is premature and liable to be dismissed with costs.

Original SCOD and crystallized claims

- vii. It is submitted that the present petition has been filed in terms of the liberty granted in Petition 41 of 2024 as modified by order in Petition 80 of 2024. The order passed by the Commission clearly provided that delay in commissioning due to reasons beyond the control of the Petitioner could be determined only after the project achieves commissioning. Clearly the SCOD of the original project cannot be cited for adjudication of alleged events of force majeure and alleged impacts thereof. It is submitted that the no enquiry into the delay in commissioning can be said to have crystallized merely because the Original SCOD has lapsed.
- viii. It is submitted that even as per the submission of the Petitioner only Element 5, 16 and 18 have achieved commissioning and alleged events of force majeure are continuing.
- ix. The present reply is limited to maintainability of the instant petition. In the event the Commission holds the present petition maintainable the answering respondent reserves the right to file a detailed reply on merits of the claims in the present petition.

9. Respondent No. 3 (Energy Department, Government of MP, Bhopal) vide letter No. 2833 – 2834 dated 27/04/2026 addressed to MPPMCL with copy to MPERC submitted that MPPMCL shall present reply on its behalf also.
10. Respondent No. 4 (MPPTCL Jabalpur) vide letter No. 305 dated 10/04/2026 submitted that it stands by the response filed by MPPMCL (the beneficiary of the Projects being developed by the Petitioner). However, MPPTCL reserves its rights to make further submissions, if deemed necessary.
11. By Affidavit dated 12/05/2026 the Petitioner filed rejoinder to the reply dated 17/04/2026 submitted by MPPMCL. It has broadly submitted as under:
 - i. The submissions/averments made by the Respondent No. 1 in its Reply are denied for being unsustainable, unjustifiable and devoid of merits. The Reply filed by Respondent No. 1 is confined solely to the objections on the maintainability of the Petition and deliberately refrains from addressing the substantive merits of the Force Majeure claims raised by the Petitioner. This is a clear attempt to delay the adjudication of the legitimate claims of the Petitioner.
 - ii. It is submitted that subsequent to the passing of the order dated 16.06.2025 in Review Petition No. 80 of 2024, the following material changes in circumstances have occurred, giving rise to a fresh and crystallized cause of action, which did not exist at the time of the earlier proceedings:
 - a. **Lapse of SCOD:** The original SCOD for all 18 elements of the Project, which was 21.01.2025, has long since expired. This is a significant supervening fact that renders the dispute ripe for adjudication.
 - b. **Quantification and Threat of Liquidated Damages:** Respondent No. 1, vide its letter dated 07.11.2025, has not only quantified the purported liquidated damages to the tune of a staggering Rs. 83.55 Crores but has also issued a clear and unequivocal threat of coercive action, including the “initiation of forfeiture proceedings for the Performance Bank Guarantee”. This action by Respondent No. 1 has moved the dispute from a potential or future conflict to a present and tangible one.
 - c. **Formal Rejection of Force Majeure Claims:** Respondent No. 1, vide its letter dated 23.07.2024 and 24.07.2024, has formally and categorically rejected all the Force Majeure notices issued by the Petitioner. This formal rejection has created a clear and irreconcilable disagreement between the parties regarding the existence, duration, and impact of the Force Majeure events, thereby crystallizing the dispute in terms of Article 4.4.3 of the TSA.
 - d. **Several elements** (Element 5, Element 16 TL & SS, and Element 18) have already achieved Commercial Operation Date, thereby making the dispute live, quantifiable and ripe for adjudication.

- iii. It is submitted that a dispute crystallizes when the right to sue becomes vested. The Respondent's letter dated 07.11.2025, quantifying liquidated damages at a staggering Rs. 83.55 Crores, and its prior formal rejection of all Force Majeure notices on 24.07.2024, created a definitive and present dispute. The rights of the parties, particularly the Petitioner's right to contest the illegal rejection and the threatened penalty, became concrete on these dates.
 - iv. It is the contention of Respondent No. 1 that letter dated 07.11.2025 communicates the computation of liquidated damages to the Petitioner, but no demand for payment was made to the Petitioner. Such contentions of Respondent No. 1 are vehemently denied. The attempt by Respondent No. 1 to downplay its letter dated 07.11.2025 as a mere "computation" and not a "demand" is a disingenuous and specious argument.
 - v. It is submitted that the aforesaid statement is not a mere intimation but a clear ultimatum. The quantification of liquidated damages at Rs. 83.55 Crores, coupled with the threat to invoke the Contract Performance Guarantee, creates an immediate and grave financial risk for the Petitioner. The Petitioner cannot be expected to wait for the axe to fall and the bank guarantee to be encashed before seeking justice. The threat itself is the cause of action.
 - vi. It is further submitted that several elements of the Project (Elements 5, 16, and 18) have already achieved COD. For these elements, the dispute is not just crystallized but is of immediate consequence. A direction by the Commission is urgently required to receive full transmission charges for these operational elements.
 - vii. The very purpose of a dispute resolution mechanism is to adjudicate disagreements as and when they arise and become concrete. The disagreement here is concrete i.e. the Petitioner claims Force Majeure, and the Respondent No. 1 denies it and threatens penalties. This is a classic, crystallized dispute fit for adjudication under Section 86(1)(f) of the Electricity Act, 2003, read with Article 16 of the TSA.
 - viii. In light of the foregoing submissions, it is respectfully submitted that the preliminary objections raised by Respondent No. 1 are baseless, aimed at delaying the proceedings, and should be dismissed with costs. The Petition is maintainable, and the dispute is ripe for adjudication on merits.
12. Respondent No. 1 (MPPMCL) by Affidavit dated 12/05/2026 on maintainability and merits of the IA No. 10 of 2026, broadly submitted the following:
- i. The prayers in the application and the main petition are substantially similar and it is settled law that interim prayer in an application cannot be same as the final prayer. It is therefore submitted that the instant application is not maintainable and is liable to be summarily dismissed.
 - ii. The rights and obligations of the parties to the TSA are governed solely by the TSA and there is no question of any legitimate expectation in contractual sphere. Without prejudice it is submitted that, MPPMCL made best efforts to

acquire the land at the earliest to hand over the same to the petitioner. The status of land required for the project is as under:

- (a) Element 9: Land has been identified and is in possession of MPPMCL. A joint inspection of the site was also undertaken by the parties. The Petitioner had requested removal of trees on the site before the same is handed over to the Petitioner. While removal of trees does not appear to be an obligation of MPPMCL, however in the interest of the project, the answering respondents is taking steps to get the trees removed. Pursuant to which, the Petitioner would be directed to deposit the requisite fee and execute the documents for handing over of the site.
 - (b) Element 17: Land has been identified and acquired by the State and possession has been handed over to the Energy Department by MPIDC. After joint inspection of the site, the petitioner has already deposited the charges for the same and steps for execution of agreement and handing over of the site are being processed.
- iii. There is no dispute that land for Element 9 and 17 are to be provided through MPPMCL. It is however submitted that no liquidated damages has even been levied for delay in commissioning Element 9 and 17.
 - iv. While all efforts were made to acquire the land at the earliest however due to reasons beyond the control of MPPMCL, the handing over of land to the Petitioner has been delayed.
 - v. The Commission may in its discretion taking into account the scope of work grant reasonable time from the date of handing over possession of the Element 9 and 17 for completion of works in relation to the respective elements.
 - vi. It is submitted that rights and obligations of the parties herein are governed by the TSA. The Petitioner has not been able to demonstrate any provision in the TSA which entitles revision of tariff for any of the alleged events i.e. (a) “fundamental breach of the TSA” or (b) events of force majeure or (c) Article 4 of the TSA. It is submitted Hon’ble SC and APTEL in multiple judgments has laid down that since the claim for force majeure is in terms of the contract between the parties the relief for alleged events of force majeure would also have to be in terms of the contract between the parties. In the absence of any provision entitling revision of tariff for delay even when attributable to LTTC, cannot lead to a revision of tariff. It is in any event submitted the above is based on sound logic. The procurement of equipment by the Petitioner for various elements of the Project would not have been staged, order for the entire requirements would have been placed together and therefore the delay in grant of land can have no direct correlation with the increase in cost of the project.
 - vii. In any event, even assuming without conceding that there may have been cost escalation due to delay in grant of land, there can be no generic determination in the absence of actual costs incurred by the Petitioner against the audited

original cost estimates. It is submitted that in terms of the TSA financing of the project is entirely the responsibility of the Petitioner.

viii. It is submitted that there is no basis for seeking enhanced cost and the present application is devoid of merits and must be dismissed.

13. Respondent No. 1 (MPPMCL) by another Affidavit dated 12/05/2026, broadly submitted the following on merits of the petition:

- i. The Petitioner has alleged that it was impacted by the following events of force majeure:
 - (a) *Delay in grant of government approvals including approval under Sec. 164 of Electricity Act, 2003.*
 - (b) *Patwari strike*
 - (c) *ROW issues, including local agitations and hindrances post-sale deed execution*
 - (d) *Land acquisition issues*
 - (e) *Non-grant/ Delay in 'right of way' clearance from Collector/ DM.*
 - (f) *Delay in grant of NOC for crossing of BPCL pipeline*
- ii. Before analysing individual claims separately, it is important to refer to law on the subject. It is a settled law that the relief claimed qua the force majeure provision in a contract must flow from the relief envisaged by the parties in case of occurrence of such events. It is submitted in this regard, that a party cannot be allowed to claim reliefs over and beyond what is envisaged in a contract. In such an event, sanctity of contract which by itself would be the basis for claim of force majeure would be disturbed. The Hon'ble Supreme Court of India in **Energy Watchdog v. CERC, ((2017) 14 SCC 80)** has in detail laid down the law governing force majeure clauses in India. It is clear from the aforesaid judgement that the relief flowing from such force majeure clauses must be one that is an express or at the least implied clause in a contract. It has also been held that there has to be a "contemplation of parties" evident from contract which is paramount in nature.
- iii. The Hon'ble Appellate Tribunal for Electricity in its judgement in **Fatehgarh Bhadla Transmission Company Limited v. Central Electricity Regulatory Commission & Ors. (Appeal No. 153 of 2019)** has categorically held and observed that any relief that is sought by the Petitioner for an event of force majeure has to be in terms of the TSA only. Accordingly, the relief that may be prayed for upon occurrence of event of force majeure as well as the very question of an occurrence of event falling under the purview of force majeure must be examined in terms of the contract entered into between the parties.
- iv. It is submitted that from a bare perusal of Clause 11.3 reproduced hereinabove, it is clear that the force majeure event would only be such when and only to the extent that the said event is beyond the control of the Affected Party and in terms of the law laid down by the SC must be such an event which substantially alters

the original understanding of the parties at the time of entering of the TSA. The Delhi High Court in a recent judgment held that for an event to qualify as event of force majeure it must not just be beyond the control of the affected party but also must be unforeseen. Accordingly, from the perusal of the provisions of the TSA and the law laid down on the issue of force majeure, that 'hindrance', obstruction created by land owners', 'ROW issues', 'routine delays by government authorities' are issues that are likely to normally arise in implementation of any transmission project and do not alter the original bargain of the parties. It is submitted on the contrary, the entire risk of financing of the project, obtaining consents for the project, risk of ROW has been specifically allocated to the TSP. Thus, the petitioner cannot be allowed to treat the same as an event of force majeure and consequently pay for extension of SCOD of the project.

- v. In any event, the TSA (Clause 4.4.2) specifically provides that the maximum possible extension in commissioning of a project available to a party for any event of force majeure is 180 days. Therefore, there is no question of extension beyond the said period. Further since the relief for force majeure event would have to be in terms of the provision of the TSA, there can be no monetary relief that can be claimed by the Petitioner for any force majeure events.
- vi. Commission was required to adjudicate another petition (Petition No 78 of 2024 Decided on 29.12.2025) by another intra-state transmission licensee where the Commission interpreted the provisions of the transmission services agreement which is similar to that executed between the Petitioner and the answering respondent.
- vii. It is submitted that in terms of the law laid down by the Supreme Court entire agreement would have to be read as a whole to understand the intent of the parties. It is submitted Article 4.4.2 and Article 11 would have to be read together to understand the remedies available upon occurrence of an event of force majeure.
- viii. Article 11 of the TSA is a generic provision and applies both to construction period and operation period and therefore there is no inconsistency between the provision of Article 11 and Article 4 whereby Article 11 mandates that the TSP shall not be in breach of its obligations in the event it is prevented from performing those as a result of an event of force majeure and Article 4.4.2 which caps the maximum extension available upon occurrence of event of force majeure during the construction period.
- ix. It is submitted that the Petitioner has achieved commissioning of only four elements of the eighteen elements required to be constructed by the Petitioner. It is submitted that since the delay is continuing it is impossible to comment on the duration of force majeure for such elements.

Delay in grant of Approvals

- x. It is submitted that the bald generic statements without giving any details what steps were taken for mitigating the impact of alleged events of force majeure such as:
 - a. Delay in grant of approval for National Highway crossing;
 - b. Delay in grant of approval for State Highway crossing;
 - c. Delay in grant of approval for railway crossing;
 - d. Delay in grant of approval under section 164 of the Electricity Act;

- xi. It is settled law that a licensee is entitled to start work in terms of the Works of Licensee Rules and is not required to wait for approval under Section 164 and therefore delay in grant of Section 164 approval can not be termed as an event of force majeure.

- Forest Clearance:**
- xii. The Petitioner has alleged delay in grant of approval for diversion of forest in Element No.6. The Petitioner has submitted that the minimum time required taken for grant of forest clearance should have been 210 days, however it would be incorrect to assume that each day after the 210th day would be an event of force majeure. As pointed out herein above, the law laid down by the SC is that an event of force majeure must be such that it fundamentally alters the bargain between the parties and does not include routine delays in grant of approvals from the government. Further, it cannot be disputed that the estimate that approximately 210 days would be required for grant of forest clearance assumes that the applicant is diligent and does not delay the grant of forest clearance. Further, estimated timeline is upto the date of grant of Stage-II forest clearance and does not include the timeline for tree cutting approval. Therefore, it is baseless to assume that the tree cutting approval was also required to be issued within the estimated time of 210 days.

- xiii. Further, in the instant event also, the FM notice was issued at a belated stage and this does not satisfy the requirement under the TSA and applicable law.

Patwari Strike

- xiv. The Petitioner has made generic bald statements such as all elements required to be developed by the Petitioner were impacted by Patwari strike for 33 days (27.08.2023 to 29.09.2023) affected the works of the Petitioner. It is a matter of common knowledge that a TSP merely utilises right of way to lay transmission towers and wires, there is no direct or indirect impact of strike by Patwari in the works of the Petitioner. It is submitted that as per the TSA a notice for an event of force majeure is required to be given in 7 days of date of event, however the alleged notice was only given on 30.05.2024 which is more than 9 months after the alleged event of force majeure. Clearly the averment was an after-thought and in terms of law laid down by the Hon'ble SC on force majeure.

Heavy Rainfall

- xv. The Petitioner has claimed incessant rain as an event of force majeure for all elements (Other than 3, 5, 9 and 17) for a uniform period of 211 days. The same are split as 104 days between 23.06.2024 to 04.10.2024 and 20.06.2025 to

04.10.2025. It is submitted that no details of impact on individual element either in the present petition or in the force majeure notice has been provided. Admittedly no notice for alleged event of force majeure of excess rainfall was ever given.

- xvi. It is submitted that above average monsoon is not an event of force majeure as per the TSA and the Petitioner is required to demonstrate that the weather condition was 'excess of the statistical measures for the last hundred (100) years'. Monsoon rains cannot be considered as a event of force majeure as a matter of routine. Even looking at the alleged dates complained-off it was a predictable monsoon rain between end of June and first week of October which is routine to the State of Madhya Pradesh.

ROW Issues

- xvii. As per the TSA, procuring ROW is strictly the obligation of the TSP. There is nothing on record to show that alleged hinderance caused by the landowners were of a magnitude which is not routine to any transmission project. Since it is settled law that routine risks associated with the contract cannot be termed as events of force majeure, the above do not appear to satisfy the tests laid down by courts for determination that an event would qualify as event of force majeure.
 - xviii. It is submitted that the alleged events of force majeure are an attempt to avoid liability to pay liquidated damages, are purely an afterthought and thus the present petition is devoid of any merits and must be dismissed.
14. By Affidavit dated 18/05/2026, the Petitioner submitted rejoinder on the reply dated 12/05/2026 filed by Respondent No. 1 on merits of the Petition. It reiterated some issues which have been mentioned in this Order and so have not been repeated here for brevity. It broadly submitted the following additional points:
- i. The submissions/averments made by the Respondent No. 1 in its Reply are denied for being unsustainable, unjustifiable and devoid of merits.
 - ii. The Respondent No. 1, vide its reply, has primarily contended that Article 4.4.2 of the TSA imposes an absolute and inflexible cap of 180 days on any extension of SCOD due to Force Majeure. In this regard, it is submitted that the MPPMCL's interpretation of the provisions of the TSA, particularly Article 4.4.2, is fundamentally flawed and contrary to the plain and unambiguous language of the Agreement. That MPPMCL erroneously contends that the extension of the SCOD due to a Force Majeure event is capped at a maximum period of one hundred and eighty (180) days. That this assertion is a misreading of the contractual terms.
 - iii. It is submitted that a plain and harmonious reading of the actual wording of Article 4.4.2 reveals that there is no such 180-day cap in the clause. Article 4.4.2 provides for a full day-for-day extension for the entire duration of the Force Majeure Event.

- iv. MPPMCL's attempt to introduce a 180-day limit is an impermissible attempt to unilaterally re-write the contract. Such an interpretation is contrary to the settled principle that parties and courts must adhere strictly to the express terms of the agreement.
- v. The protective clause of Article 11.7(a) contains no time limitation. Interpreting Article 4.4.2 as imposing a non-existent 180-day ceiling would render Article 11.7(a) meaningless and lead to a commercially absurd result.
- vi. It is further submitted that MPPMCL's reliance on the Commission's adjudication in Petition No. 78 of 2024 (dated 29.12.2025) is entirely misplaced. That the extension provisions in the Transmission Service Agreement governing Petition No. 78 of 2024 are materially and substantially different from the specific and unambiguous wording of Article 4.4.2 in the present TSA. That each contract must be interpreted based on its own distinct terms and conditions, and a precedent from a different contractual framework, with divergent Force Majeure and extension clauses, cannot be blindly applied to the present case. That the explicit language of Article 4.4.2 in the instant TSA, providing for a 'day-to-day' extension for the entire period of the Force Majeure Event, distinguishes it fundamentally from any other agreement that might have stipulated a maximum extension period.
- vii. MPPMCL's blanket assertion that the delays in grant of statutory approvals, the statewide Patwari strike, widespread ROW agitations, land acquisition issues, and exceptionally heavy rainfall are merely "routine risks" associated with any transmission project is factually incorrect and legally untenable.
- viii. MPPMCL's assertion that the entire risk of clearances, Right of Way (ROW), and site suitability rests solely with the TSP is an oversimplification of the contractual obligations. While the Petitioner acknowledges its primary responsibility for execution, **Article 5.1.3 of the TSA explicitly mandates that the Long Term Transmission Customers (including the Respondent No. 1) shall assist and support the TSP in obtaining the Consents, Clearances and Permits required for the Project by providing letters of recommendation to the concerned Indian Governmental Instrumentality.** The Petitioner submits that the lack of timely and effective assistance from MPPMCL in navigating complex bureaucratic hurdles and resolving local issues significantly exacerbated the delays, thereby making MPPMCL partially accountable for the prolonged impact of these Force Majeure events. The Respondent cannot simply absolve itself of its contractual obligation to assist, especially when the Petitioner has diligently pursued all necessary clearances.
- ix. The Petitioner has further placed voluminous contemporaneous documentary evidence on record for each Force Majeure event, including official government communications, court filings, police complaints, FIRs, and IMD meteorological reports. MPPMCL has offered only bald denials without producing a single document to controvert the evidence. In such circumstances, the Commission is fully empowered to examine the evidence on record and grant appropriate relief.

- x. The Petitioner issued its first comprehensive Force Majeure notice on 03.05.2024, followed by over two dozen specific notices and regular Monthly Progress Reports detailing the ongoing events. Respondent No.1 was therefore at all times fully aware of the Force Majeure events, including the Patwari strike, ROW agitations, delays in statutory approvals, and heavy rainfall. In these circumstances, any technical objection regarding the exact date of formal intimation is wholly without substance and amounts to an afterthought.
 - xi. It is submitted that Article 11.7(b) of the TSA explicitly entitles “every Party to claim relief for a Force Majeure Event affecting its performance.” The term “relief” is deliberately wide and is not confined to mere time extension. When read harmoniously with Article 11.7(a), which provides that “no Party shall be in breach of its obligations pursuant to this Agreement to the extent that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure Event,” it becomes clear that the TSA intends to fully protect the affected Party from all adverse consequences of Force Majeure events. Since Article 4.4.2 grants a day-for-day extension of SCOD for the entire period of the Force Majeure Event, it is a logical and equitable corollary that the Petitioner cannot be financially penalized by being made to bear the increased cost of capital (IDC) and incidental expenses (IEDC) arising directly out of events beyond its reasonable control. Denying such relief would render the contractual protection illusory.
 - xii. The Petitioner is fully entitled to a declaration of its entitlement to compensation for increased IDC and IEDC for the Force Majeure periods, in addition to the day-for-day extension of SCOD and waiver of Liquidated Damages as prayed for in the Petition.
 - xiii. The Petitioner submits that the present Petition is not an attempt to avoid liability but a genuine plea for relief against unforeseen and uncontrollable circumstances that have severely impacted the project's timeline and costs. That the Petitioner seeks a fair and equitable resolution from the Commission, considering the factual matrix and the legal provisions.
 - xiv. The Petitioner respectfully prays that the Commission be pleased to adjudicate upon the nature of the aforesaid events, declare the events set out in the present Petition as Force Majeure events in terms of Articles 4.4.2 and 11 of the TSA, and consequently grant extension of the SCOD corresponding to the period during which such Force Majeure events and their continuing effects impeded the execution of the Project.
15. At the last hearing held on 19/05/2026, the case was reserved for Order and liberty was granted to parties to file final written submissions, if any within one week. The Petitioner by Affidavit dated 26/05/2026 while reiterating some issues in its Petition and previous submissions, broadly submitted as under:
- A. i. The delays were caused by Force Majeure events, entitling the Petitioner to extension of SCOD under Article 11 read with Article 4.4.2 of the TSA, including:

- a. delay in government approvals, including under Section 164 of the Electricity Act, 2003;
- b. Patwari strike;
- c. ROW issues and local agitations;
- d. land acquisition issues;
- e. delay in ROW clearance from authorities;
- f. delay in NOC for BPCL pipeline crossing; and
- g. heavy rainfall.

ii. The original Scheduled Commercial Operation Date (“SCOD”) for all 18 elements of the Project, i.e., 21.01.2025, has already expired. The expiry of the SCOD itself constitutes a significant supervening event and has rendered the disputes between the parties ripe for adjudication. Prior to the expiry of SCOD, the Petitioner had continuously kept Respondent No. 1 informed regarding the various Force Majeure events and delays affecting the implementation of the Project.

iii. However, despite the detailed disclosures and documentary material furnished by the Petitioner, Respondent No. 1, vide its letters dated 23.07.2024 and 24.07.2024, formally rejected all the Force Majeure notices issued by the Petitioner. The said rejection gave rise to a clear, direct, and irreconcilable dispute between the parties regarding the existence, duration, scope, and impact of the Force Majeure events and the Petitioner’s entitlement to extension of SCOD under the TSA. The formal rejection of the Petitioner’s claims by Respondent No. 1 constituted a definitive denial of the Petitioner’s contractual rights and thereby crystallized the disputes in terms of Article 4.4.3 of the TSA.

B. The Petitioner in reply to the issues raised by the Respondent No. 1, broadly submitted as under:

i. Several elements of the Project have already achieved Commercial Operation Date (“COD”). Consequently, the disputes between the parties are no longer hypothetical or premature in nature but have become live, quantifiable, and capable of adjudication. The rights and liabilities of the parties have now become concrete and determinable.

ii. It is a settled principle that a dispute crystallizes once the right to sue becomes vested and enforceable. In the facts of the present case, the Petitioner’s right to seek adjudication arose immediately upon Respondent No. 1 formally rejecting the Petitioner’s Force Majeure claims and subsequently quantifying liquidated damages while threatening coercive contractual action. The Respondent’s letters dated 23.07.2024, 24.07.2024, and 07.11.2025, therefore, collectively constitute definitive and unequivocal acts giving rise to a complete and subsisting cause of action in favour of the Petitioner.

iii. It is the contention of Respondent No. 1 that the disputes raised in the present Petition cannot be adjudicated until the entire Project achieves commissioning. The said contention is commercially impractical, contrary to the express provisions of the TSA, and legally unsustainable. The

interpretation sought to be advanced by Respondent No. 1 would defeat the very object and purpose of the dispute resolution mechanism contained under the TSA and would render the contractual remedies available to the Petitioner illusory in nature.

- iv. A bare perusal of Article 4.4.3 of the TSA clearly demonstrates that the occurrence of a dispute is triggered once the parties fail to mutually agree upon the extension of SCOD arising out of Force Majeure events. The said provision nowhere prescribes that the Project must first achieve full commissioning before disputes relating to extension of SCOD can be raised or adjudicated. On the contrary, the contractual scheme under Article 4.4.3 specifically contemplates that once disagreement arises between the parties regarding deferment of SCOD, either party is entitled to invoke the dispute resolution mechanism under Article 16 of the TSA.
- v. The provision unequivocally establishes that the trigger for the invocation of dispute resolution is the disagreement between the parties regarding the extension of SCOD and not the eventual commissioning of the entire Project. In the present case, such disagreement has not only arisen but has become absolute and irreconcilable. The Petitioner has consistently asserted that the delays affecting the Project are attributable to Force Majeure events beyond its control and has accordingly sought extension of SCOD under Articles 4.4.2 and 11 of the TSA. However, Respondent No. 1 has categorically rejected all the Force Majeure notices issued by the Petitioner vide letters dated 23.07.2024 and 24.07.2024 and has further proceeded to quantify liquidated damages amounting to Rs. 83.55 Crores vide letter dated 07.11.2025 while threatening coercive action, including forfeiture of the Performance Bank Guarantee. Therefore, the disputes between the parties have fully crystallized and are squarely amenable to adjudication by the Commission.
- vi. The Respondent No. 1, vide its reply, has primarily contended that Article 4.4.2 of the TSA imposes an absolute and inflexible cap of 180 days on any extension of SCOD due to Force Majeure. In this regard, it is submitted that the MPPMCL's interpretation of the provisions of the TSA, particularly Article 4.4.2, is fundamentally flawed and contrary to the plain and unambiguous language of the Agreement. That MPPMCL erroneously contends that the extension of the SCOD due to a Force Majeure event is capped at a maximum period of one hundred and eighty (180) days. That this assertion is a misreading of the contractual terms.
- vii. It is submitted that MPPMCL's reliance on a strict and narrow interpretation of Article 4.4.2 fails to consider the holistic intent of the TSA and the overarching regulatory powers of the Commission under Section 86(1)(f) of the Electricity Act, 2003. While Article 4.4.2 provides for automatic day-for-day extension for the period of the Force Majeure Event, this provision must be read in conjunction with Article 11.7(b), which entitles "each Party shall be entitled to claim relief for a Force Majeure Event affecting its performance in relation to its obligations/roles under Articles 3.3.4, 4.4.2 and 6.3.1 of this Agreement." The term "**relief**" is not restricted to mere time extension but it

encompasses all necessary measures, including appropriate financial compensation, to mitigate the adverse impact of Force Majeure and ensure the project's viability.

- viii. MPPMCL's narrow and selective reading of Article 4.4.2 is contrary to established principles of contractual interpretation that require all clauses of an agreement to be read together and given harmonious effect. The Petitioner is entitled to full protection under Article 4.4 read with Article 11.7(a) and the consequential reliefs prayed for in the Petition.
- ix. It is submitted that MPPMCL's reliance on the Commission's adjudication in Petition No. 78 of 2024 (dated 29.12.2025) is entirely misplaced. That the extension provisions in the Transmission Service Agreement governing Petition No. 78 of 2024 are materially and substantially different from the specific and unambiguous wording of Article 4.4.2 in the present TSA. That each contract must be interpreted based on its own distinct terms and conditions, and a precedent from a different contractual framework, with divergent Force Majeure and extension clauses, cannot be blindly applied to the present case. That the explicit language of Article 4.4.2 in the instant TSA, providing for a 'day-to-day' extension for the entire period of the Force Majeure Event, distinguishes it fundamentally from any other agreement that might have stipulated a maximum extension period.
- x. MPPMCL's assertion that the entire risk of clearances, Right of Way (ROW), and site suitability rests solely with the TSP is an oversimplification of the contractual obligations. While the Petitioner acknowledges its primary responsibility for execution, *Article 5.1.3 of the TSA explicitly mandates that the Long Term Transmission Customers (including the Respondent No. 1) shall assist and support the TSP in obtaining the Consents, Clearances and Permits required for the Project by providing letters of recommendation to the concerned Indian Governmental Instrumentality. The Petitioner submits that the lack of timely and effective assistance from MPPMCL in navigating complex bureaucratic hurdles and resolving local issues significantly exacerbated the delays, thereby making MPPMCL partially accountable for the prolonged impact of these Force Majeure events.* The Respondent cannot simply absolve itself of its contractual obligation to assist, especially when the Petitioner has diligently pursued all necessary clearances.
- xi. The contention of Respondent No. 1 that the Petitioner's claims for financial compensation (including increased Interest During Construction (IDC) and Incidental Expenses During Construction (IEDC) go beyond the relief envisaged in the TSA is misconceived and proceeds on a narrow, selective and self-serving reading of the contract.
- xii. It is submitted that Article 11.7(b) of the TSA explicitly entitles "every Party to claim relief for a Force Majeure Event affecting its performance." The term "relief" is deliberately wide and is not confined to mere time extension. When read harmoniously with Article 11.7(a), which provides that "no Party shall be in breach of its obligations pursuant to this Agreement to the extent that

the performance of its obligations was prevented, hindered or delayed due to a Force Majeure Event,” it becomes clear that the TSA intends to fully protect the affected Party from all adverse consequences of Force Majeure events. Since Article 4.4.2 grants a day-for-day extension of SCOD for the entire period of the Force Majeure Event, it is a logical and equitable corollary that the Petitioner cannot be financially penalized by being made to bear the increased cost of capital (IDC) and incidental expenses (IEDC) arising directly out of events beyond its reasonable control. Denying such relief would render the contractual protection illusory.

- xiii. The Commission, in exercise of its wide regulatory and adjudicatory powers under Sections 86(1)(c), 86(1)(f) and 86(1)(k) of the Electricity Act, 2003, is fully empowered to grant appropriate financial relief, including compensation for increased IDC and IEDC, to ensure the financial viability of the Project and to prevent the Petitioner from suffering unmitigated losses on account of genuine Force Majeure events. Granting such relief is also in the larger public interest, as it ensures the timely and viable development of critical intra-state transmission infrastructure without imposing unjust financial burden on the Petitioner.
 - xiv. In view of the foregoing, the Petitioner is fully entitled to a declaration of its entitlement to compensation for increased IDC and IEDC for the Force Majeure periods, in addition to the day-for-day extension of SCOD and waiver of Liquidated Damages as prayed for in the Petition.
- C. The Petitioner also submitted issue wise submissions, which are similar to those elaborated in preceding paragraphs of this Order and therefore are not repeated here for brevity. The Petitioner requested the Commission to adjudicate upon the events, declare the events set out in the Petition as Force Majeure events in terms of Articles 4.4.2 and 11 of the TSA, and consequently grant extension of the SCOD corresponding to the period during which such Force Majeure events and their continuing effects impeded the execution of the Project.
16. By Affidavit dated 03/06/2026, Respondent No. 1 (MPPMCL) submitted its written submissions, in which it reiterated some issues already submitted by it in previous filings and hence not repeated here for brevity. It broadly submitted as under:
- i. The present petition has been purportedly in terms of the liberty granted by the Commission in Petition No 41 of 2024 disposed-off vide order dated 01.10.2024. It is submitted that the order of the Commission was clear and unambiguous and the present petition does not appear to be satisfying the criteria specified in the said order. Thus, the instant petition is not maintainable and liable to be dismissed with a specific direction that the petition for reliefs as prayed in the instant petition can only be filed after all the elements have achieved commercial operation. The detailed submission with respect to maintainability have been made in the reply of maintainability are not being repeated herein.

- ii. Notwithstanding the objection on maintainability of the instant petition, MPPMCL also submitted reply on merits of each of the alleged heads of force majeure event claimed by the Petitioner.
- iii. The Petitioner has alleged that various approvals required from Governmental Authorities were delayed and same are events of force majeure qua each of their respective element in the TSA. For any event to qualify as force majeure it must not just be beyond the control of the parties, it must also be unforeseeable. The Delhi High Court in NTPC Vidyut Vyapar Nigam Ltd. v. Precision Technik Pvt. Ltd., ((2018) SCC OnLine Del 13102) categorically held that bureaucratic delays in our country are foreseeable and cannot be claimed as a force majeure event.
- iv. **Forest Clearance:**

While there is estimate of time taken in grant of forest clearance by MOEF& CC; however, time taken beyond such estimate would not automatically become an event of force majeure. In order to satisfy whether such an event is force majeure or not the Petitioner would have to demonstrate that there was no delay attributable to it, the delay that happened in grant of the clearance was unforeseeable. Thereafter, the petitioner would be required to also demonstrate that TSA provisions were complied with to invoke the event of force majeure. The Petitioner has not identified steps that it took between June 2023 to November 2023; further the demand for compensatory afforestation made on 08.01.2024 was only paid on 22.02.2024 after more than 40 days. Clearly, the Petitioner was not diligent and therefore, there is no basis for claiming the alleged delay in grant of forest clearance as an event of force majeure. The application for grant of forest clearance was made on 04.03.2023 and was granted on 08.05.2024- it appears that the Petitioner has claimed entire duration as event of force majeure and not just period over and above 210 days. Clearly the entire claim is baseless and in any event exaggerated.
- v. **Relief for Events of Force Majeure**

Without prejudice to the submission that the claims are baseless, exaggerated and thus liable to be rejected, it is submitted that since admittedly only four elements have been commissioned till date, therefore the prayers seeking declaration of revised SCOD and consequential reliefs cannot be granted at this stage. It is submitted that courts and tribunals cannot be expected to undertake academic exercise and merely seek a declaration as the petitioner would have to initiate fresh proceedings to claim reliefs after the project has been commissioned.
- vi. It is submitted that only after the performance has ceased to be affected by alleged events of force majeure that the TSP can request for revision of SCOD and only in the event of disagreement approach the Commission. Clearly, in terms of Article 4.4.3 also the instant petition is premature and thus liable to be dismissed.
- vii. The present petition is not maintainable at this stage and is liable to be dismissed with the instruction to comply with the directions in final order in Petition No 41 of 2024 as modified by the order in the review petition and complete the construction of the Project at the earliest.

Commission’s observations, findings and Analysis:

17. The Commission has examined the pleadings, submissions, and documents placed on record by the Petitioner and the Respondents. It is observed that Respondent No. 2, REC Power Development and Consultancy Limited (REC PDCL), which was the Bid Process Coordinator (BPC), has not filed any reply in the present Petition. Upon consideration of the rival contentions advanced by the parties on the issues of maintainability as well as merits of the Petition, the Commission is of the view that the matter warrants a holistic examination. Such examination cannot be confined merely to the execution of the Transmission Service Agreement (TSA) and the subsequent grant of Transmission License to the Petitioner, but must also take into account the broader regulatory framework governing the Project, including the provisions of the Tariff Policy, 2016 and the Revised Guidelines notified on 10.08.2021 by the Government of India under section 63 of the Electricity Act, 2003 which constituted the basis for development of the subject transmission project. The relevant facts and proceedings in this matter are as under:

- i. By Order dated 27.09.2023 in Petition no. 2 of 2023, the Commission approved grant of Transmission License to the Petitioner for development of the subject transmission project.
- ii. By Order dated 10.10.2023 in Petition no. 1 of 2023, the Commission approved the adoption of Transmission Charges with respect to the Transmission System to be constructed / implemented by M. P. Power Transmission Package-I Limited, whereby the Commission adopted the annual transmissions charges of Rs. 1474.69 million for the Project.
- iii. By Order dated 01/10/2024, the Commission disposed of the Petition No. 41 of 2024 filed by the Petitioner seeking extension of Scheduled Commercial Operation Date (SCOD) on account of Force Majeure events and consequential reliefs arising therefrom. The Commission’s analysis and findings mentioned in the aforesaid Order are briefly reproduced as under:

“12.A. Issue No. 1: Does the Act provides discretion to SERC to refer this matter for Arbitration even if it is not provided separately and /or distinctively in the Agreement executed by both the parties?”

Commission’s Findings:

12.A. viii. Therefore, the Commission finds that the provision of section 86(1)(f) of the Act, provides discretionary powers to the Commission to adjudicate upon the disputes between licensees or to refer the disputes for arbitration. The Judgments cited provide clarity in the matter and the Commission has the discretion to refer this matter for arbitration irrespective of the fact that the TSA executed by both the parties does not have separate and distinct provision in this regard.”

“12.B. Issue No. 2: Is the time ripe to take up the purported dispute at this stage for referring it to arbitration?”

Commission's Findings:

13.i. The Commission finds that the petition and the prayers relate to works in progress and the actual issues have not yet been crystalized. The petition at this stage is premature & not ripe warranting Commission's interference. Some of the events cited in the petition are still continuing while some approval is granted to the Petitioner in the month of July 2024. As such the Petitioner has filed the subject petition much in advance. The Commission finds that since the project has not been completed and is still under implementation, it would not be appropriate for the Commission to hear the matter any further at this stage.

*13.ii. The Commission would like to grant **liberty to the Petitioner** to file an appropriate petition before the Commission, after completion of the project and/or crystallization of the issues, as per the TSA. Meanwhile, the Petitioner shall make sincere endeavors to complete the project at the earliest, as per TSA, in-accordance with the provisions of the Electricity Act, 2003. **Both the Petitioner and the Respondents are directed to act and respond to each other as per provisions of TSA in respect of implementation of the project.** Accordingly, the Petition is disposed of.”*

The aforementioned paragraphs show that the Commission directed the Petitioner and the Respondents to act as per the TSA and granted liberty to the Petitioner to file appropriate petition after completion of the project and/or crystallization of the issues, as per the TSA.

- iv. Subsequently, by Order dated 16/06/2025, the Commission disposed of the Review Petition No. 80 of 2024 filed by the Petitioner seeking review of Order dated 01/10/2024 in P. No. 41 of 2024. The Commission's analysis and findings mentioned in that Order are briefly cited as under:

“ 19. iii. The Commission finds that Petitioner has not submitted any convincing grounds of having error apparent in the findings mentioned at paragraph No. 13 (i & ii) of the impugned Order. Since the findings were based on facts as submitted by both the parties, the case of not having heard on this issue is also not made out. The Petitioner may use the liberty already granted to it in the impugned Order to file a fresh Petition based on the latest status of the project, in accordance with the TSA. The Petitioner cannot attribute a subsequent event retrospectively to the status of project as on the date of impugned order and then assail the order as having an error apparent.

*iv. Further, **both the Petitioner & the Respondents have prayed that the Commission may review its decision and decide to itself adjudicate the matter under section 86(1)(f) of the Act.***

v. For sake of clarity, the Commission clarifies that paragraph No. 12(A)(viii) of the impugned Order dated 01/10/2024 only mentioned about the discretion provided under section 86(1)(f) of the Electricity Act, 2003. The Commission does not intend to review this portion of the Order, as well.

vi. Before parting with this and for removal of doubt, the Commission hereby clarifies that it shall itself adjudicate upon the dispute between the Petitioner and the Respondents at relevant point of time on receipt of appropriate Petition”.

A plain reading of the afore-cited paragraphs demonstrate that the Commission has clarified that it shall itself adjudicate upon the dispute at relevant point of time on receipt of appropriate petition.

18. Issue: Maintainability of the subject Petition:

i. Petitioner’s submissions:

The Petitioner has broadly submitted as under:

The following material changes in fact have occurred, giving rise to a fresh, independent issues and crystallized cause of action, which did not exist at the time of the earlier proceedings:

a. **Lapse of SCOD:** The original SCOD for all 18 elements of the Project, which was 21.01.2025, has long since expired. This is a significant supervening fact that renders the dispute ripe for adjudication.

b. **Quantification and Threat of Liquidated Damages:** Respondent No. 1, vide its letter dated 07.11.2025, has not only quantified the purported liquidated damages to the tune of a staggering Rs. 83.55 Crores but has also issued a clear and unequivocal threat of coercive action, including the “initiation of forfeiture proceedings for the Performance Bank Guarantee”. This action by Respondent No. 1 has moved the dispute from a potential or future conflict to a present and tangible one.

c. **Formal Rejection of Force Majeure Claims:** Respondent No. 1, vide its letter dated 23.07.2024 and 24.07.2024, has formally and categorically rejected all the Force Majeure notices issued by the Petitioner. This formal rejection has created a clear and irreconcilable disagreement between the parties regarding the existence, duration, and impact of the Force Majeure events, thereby crystallizing the dispute in terms of Article 4.4.3 of the TSA.

d. **Several elements** (Element 5, Element 16 TL & SS, and Element 18) have already achieved Commercial Operation Date, thereby making the dispute live, quantifiable and ripe for adjudication.

Thus, the dispute between the parties regarding existence, duration and effect of Force Majeure events now stands fully crystallized. It is a settled principle that a dispute crystallizes once the right to sue becomes vested and enforceable.

ii. Respondent’s submissions:

The Respondent has broadly submitted as under:

The present petition has been purportedly filed in terms of the liberty granted by this Commission in Petition No 41 of 2024 disposed-off vide order dated 01.10.2024. It is submitted that the order of this Commission was clear and unambiguous and the present petition does not appear to be satisfying the criteria specified in the said order. Thus, the instant petition is not maintainable and liable to be dismissed with a specific direction that the petition for reliefs as prayed in the instant petition can only be filed after all the elements have achieved commercial operation.

iii. Commission's Observations:

The Commission vide daily Order dated 27/02/2026 on motion hearing had observed that the petitioner has filed the subject Petition and IAs seeking an extension of the Scheduled Commercial Operation Date ("SCOD") on account of Force Majeure events & consequential reliefs arising therefrom. The petitioner submitted that effective date of TSA was 21/01/2023 and correspondingly SCOD was due on 21/01/2025. The Respondent No. 1 has given impugned letter dated 07/11/2025 regarding Liquidated damages and coercive action. The petitioner requested that Respondent No.1 be restrained from taking coercive action. **Having heard the petitioner, the petition was admitted.**

Accordingly, the Commission had admitted the Petition and directed the respondents to submit their replies on merits of the Petition and listed it for hearing. Subsequent hearings were held accordingly. The afore-cited daily Order does not mention that the reply was sought on maintainability or that again motion hearing will be held on maintainability.

Therefore, upon scrutiny and prudence check, the Petition was found maintainable and hence was accordingly admitted during motion hearing. Therefore, this Order shall now deal with merits of the issues raised in the Petition and IAs.

Moreover, the Commission has observed that both Petitioner and Respondent have submitted that till date only 4 elements have achieved COD and others are pending i.e. the project is a work in progress. Both have submitted that **many issues like exact days of delay, force majeure events, LD, relief, etc, will crystalize after COD of the Project. Therefore, the Commission has decided the Petition on principles only** and has directed all parties to make efforts to complete the Project as soon as possible as per provisions of the TSA.

19. Issue: Precedence regarding another Petition:

i. Respondent's submission:

Respondent No. 1 submitted that the Commission was required to adjudicate another petition (Petition No 78 of 2024 decided on 29.12.2025) by another intra-state transmission licensee where this Commission interpreted the provisions of the transmission services agreement which is similar to that executed between the Petitioner and the answering respondent. It is submitted that Article 4.4.2 and Article 11 would have to be read together to understand the remedies available upon occurrence of an event of force majeure. Article 4.4.2 caps the maximum extension available upon occurrence of event of force majeure during the construction period.

ii. Petitioner's rejoinder:

The Petitioner broadly submitted that MPPMCL's reliance on the Commission's adjudication in Petition No. 78 of 2024 (dated 29.12.2025) is entirely misplaced. The extension provisions in the TSA governing that Petition are materially and substantially different from the specific and unambiguous wording of Article 4.4.2 in the present TSA. Each contract must be interpreted based on its own distinct terms and conditions, and a precedent from a different contractual framework, with divergent Force Majeure and extension clauses, cannot be blindly applied to the

present case. That the explicit language of Article 4.4.2 in the instant TSA, providing for a 'day-to-day' extension for the entire period of the Force Majeure event, distinguishes it fundamentally from any other agreement that might have stipulated a maximum extension period.

iii. Commission's Observations:

- a. The Commission has issued Order dated 29/12/2025 in Petition No. 78 of 2024 which pertains to TSA dated 05/02/2021, which was based on **Old Guidelines dated 13/04/2006** prior to notification of revised Guidelines dated 10/08/2021. That project was on Built, Own, Operate and **Maintain (BOOM)** basis.
- b. However, the present Petition No. 10 of 2026 pertains to TSA dated 21/01/2023 which is based on **revised Guidelines dated 10/08/2021** notified by the Government of India. This project is on Built, Own, Operate and **Transfer (BOOT)** basis.

- c. The Commission is of the considered view that understanding the difference is important for all parties especially the Respondents and it is worthwhile to highlight the following:

Section 63 of the Electricity Act, 2003 provides that:

“Notwithstanding anything contained in section 62, the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government”.

- d. The Ministry of Power, Government of India notified Resolutions dated 10/08/2021 with subjects:
1. Guidelines for Encouraging Competition in Development of Transmission Projects and
 2. Tariff based Competitive-bidding Guidelines for Transmission Service.
- These Guidelines were issued under the provisions of Section 63 of the Electricity Act, 2003 for procurement of transmission services for transmission of electricity. These two revised Guidelines are **together** to be followed in all cases since 10/08/2021.

- e. Some of the salient features of these Guidelines, which are relevant here, are as under:

Guidelines for Encouraging Competition in Development of Transmission Projects:

*“17. The selection of developer for identified projects would be through tariff based competitive bidding through e-reverse bidding for transmission services according to the guidelines issued by the Ministry of Power under Section 63 of the Electricity Act, 2003. The projects shall be awarded on Build, Own, Operate and **Transfer** mode.*

For intra-state transmission projects, the project assets along with substation land with rights, right of way and clearances shall compulsorily be transferred to an agency as decided by the State Government after expiry of contract period of project, at zero cost and free from any encumbrance and liability. The contract period for the intra state transmission projects

may be 35 years or any period as fixed by the LTTCs or BPC as per the relevant regulations of the Appropriate Commission. The STU (being the planning agency), in the year which is three (3) years prior to the expiry of the project, will examine the need of upgradation of the system or renovation and modernization of the existing system depending on technological options and system studies at that time. The project may then be awarded to successor bidder selected through a competitive bidding process for renovation and modernization, if required, and operation and maintenance after contract period of project. In case, any cost is incurred by STU towards examining the need of upgradation or renovation and modernization of the existing system and transfer of assets, the same may be recovered from successor selected bidder”.

Tariff based Competitive-bidding Guidelines for Transmission Service:

“10.1. In case of any dispute regarding TSA or tariff, the same will be subject to jurisdiction of the Appropriate Commission under the provisions of the Electricity Act, 2003”.

- f. The Commission observed that the Revised Guidelines dated 10/08/2021 are conceptually different from the old Guidelines dated 13/04/2006. The basic structure has changed from BOOM basis to BOOT basis. This “**Transfer**” word is a paradigm shift because it means that after 35 years from COD, the ownership of the project will shift back from the Petitioner to the Respondents.
 - g. The Commission further observed that due to this shift in principle, the TSA which is a part of the Standard Bidding Documents is different from the old TSA. (The main provisions of the TSA are reproduced in other parts of this Order and hence, are not repeated here).
 - h. Thus, the Commission observed that the subject Project is the **first project in the State under revised Guidelines dated 10/08/2021**. Therefore, there is **no precedence in the State for this project**.
20. The TSA dated 21/01/2023 was signed between the parties and this matter is related to the said TSA. Hence it is pertinent to mention some relevant Articles of the TSA as under for reference:
- i. Article 1 of TSA regarding “Definitions” mentions as under:

*“**Commercial Operation Date**” or “**COD**” shall mean the date as per Article 6.2;*

*“**Element**” shall mean each Transmission Line or each circuit of the Transmission Lines (where there are more than one circuit) or each bay of Sub-station or switching station or HVDC terminal or inverter station of the Project, including ICTs, Reactors, SVC, FSA, etc. forming part of the Intra-State Transmission System, which will be owned, operated and maintained by the concerned Licensee, and which has a separate Scheduled COD as per Schedule 2 of this Agreement and has a separate percentage for recovery of Transmission Charges on achieving COD as per Schedule 5 of this Agreement;*

“Scheduled COD” in relation to an Element(s) shall mean the date(s) as mentioned in Schedule 2 as against such Element(s) and in relation to the Project, shall mean the date as mentioned in Schedule 2 as against such Project, subject to the provisions of Article 4.4 of this Agreement, or such date as may be mutually agreed among the Parties;

ii. Article 4 & 5 of TSA regarding “Development of Project” mentions as under:

4.1 TSP's obligations in development of the Project:

Subject to the terms and conditions of this Agreement, the TSP at its own cost and expense shall observe, comply with, perform, undertake and be responsible:

a. for procuring and maintaining in full force and effect all Consents, Clearances and Permits, required in accordance with Law for development of the Project;

b. for financing, constructing, owning and commissioning each of the Element of the Project for the scope of work set out in Schedule 1 of this Agreement in accordance with:

- (i) The Electricity Act and the Rules made thereof;***
- (ii) The Grid Code;***
- (iii) The CEA Regulations applicable, and as amended from time to time, for Transmission Lines and sub-stations:***
 - The Central Electricity Authority (Technical Standards for Connectivity to the Grid) Regulations, 2007;***
 - Central Electricity Authority (Technical Standards for construction of Electrical Plants and Electric Lines) Regulations, 2010;***
 - Central Electricity Authority (Grid Standard) Regulations, 2010;***
 - Central Electricity Authority (Safety requirements for construction, operation and maintenance of Electrical Plants and Electrical Lines) Regulation, 2011;***
 - Central Electricity Authority (Measures relating to Safety and Electricity Supply) Regulation, 2010;***
 - Central Electricity Authority (Technical Standards for Communication System in Power System Operation) Regulations, 2020.***
- (iv) Safety/ security Guidelines laid down by the Central Government and State Government;***
- (v) Prudent Utility Practices, relevant Indian Standards and the Law;***

not later than the Scheduled COD as per Schedule 2 of this Agreement;

c. for entering into a Connection Agreement with the concerned parties in accordance with the Grid Code.

d. for owning the Project throughout the term of this Agreement free & clear of any encumbrances except those expressly permitted under Article 15 of this Agreement;

e. to co-ordinate and liaise with concerned agencies and provide on a timely basis relevant information with regard to the specifications of the Project that may be required for interconnecting the Project with the Interconnection Facilities;

f. for providing all assistance to the Arbitrators as they may require for the performance of their duties and responsibilities;

g. to provide to the Long Term Transmission Customer and STU, on a monthly basis, progress reports with regard to the Project and its execution (in accordance with prescribed form) to enable the Long Term Transmission Customer and STU to monitor and co-ordinate the development of the Project matching with the Interconnection Facilities.

h. to comply with Ministry of Power order no. 25-11/6/2018 – PG dated 02.07.2020 as well as other Guidelines issued by Govt. of India pertaining to this;

i. to procure the products associated with the Transmission System as per provisions of Public Procurement (Preference to Make in India) orders issued by Ministry of Power vide order No. 11/5/2018 - Coord. dated 28.07.2020 for transmission sector, as amended from time to time read with Department for Promotion of Industry and Internal Trade (DPIIT) orders in this regard (Procuring Entity as defined in above orders shall deemed to have included Selected Bidder and/ or TSP).

Also, to comply with Department of Expenditure, Ministry of Finance vide Order (Public Procurement No 1) bearing File No. 6/18/2019- PPD dated 23.07.2020, Order (Public Procurement No 2) bearing File No. 6/18/2019-PPD dated 23.07.2020 and Order (Public Procurement No. 3) bearing File No. 6/18/2019-PPD. dated 24.07.2020, as amended from time to time, regarding public procurement from a bidder of a country, which shares land border with India;

j. to submit to Long Term Transmission Customer information in the prescribed format [To be devised by Long Term Transmission Customer] for ensuring compliance to Article 4.1(i) above.

k. to comply with all its obligations undertaken in this Agreement.

4.2 Roles of the Long Term Transmission Customer in implementation of the Project:

4.2.1 Subject to the terms and conditions of this Agreement, the Long Term Transmission Customer shall be the holder & administrator of this Agreement and shall inter alia:

- a) appoint an Independent Engineer within 90 days of the Effective Date*
- b) provide letters of recommendation to the concerned Indian Governmental Instrumentality, as may be requested by the TSP from time to time, for obtaining the Consents, Clearances and Permits required for the Project;*
- c) coordinate among TSP and upstream/ downstream entities in respect of Interconnection Facilities; and*
- d) monitor the implementation of the Agreement and take appropriate action for breach thereof including revocation of guarantees, cancellation of Agreement, blacklisting etc.*
- e) provide all assistance to the Arbitrators as required for the performance of their duties and responsibilities; and*
- f) perform any other responsibility (ies) as specified in this Agreement.*

4.3 Time for Commencement and Completion:

- a. *The TSP shall take all necessary steps to commence work on the Project from the Effective Date of the Agreement and shall achieve Scheduled COD of the Project in accordance with the time schedule specified in Schedule 2 of this Agreement;*
- b. *The COD of each Element of the Project shall occur no later than the Scheduled COD or within such extended time to which the TSP shall be entitled under Article 4.4 hereto.*

4.4 Extension of Time:

4.4.1 In the event that the TSP is unable to perform its obligations for the reasons solely attributable to the Long Term Transmission Customer, the Scheduled COD shall be extended, by a 'day to day' basis, subject to the provisions of Article 13.

*4.4.2 In the event that an Element or the Project cannot be commissioned by its Scheduled COD on account of any Force Majeure Event as per Article 11, the **Scheduled COD shall be extended, by a 'day for day' basis, for a period of such Force Majeure Event.** Alternatively, if deemed necessary, the Long Term Transmission Customer may terminate the Agreement as per the provisions of Article 13.4 by giving a Termination Notice to the TSP, in writing, of at least seven (7) days, with a copy to Government of Madhya Pradesh, STU and the Lenders' Representative in order to enable the Lenders to exercise right of substitution in accordance with Article 15.3 of this Agreement.*

4.4.3 If the Parties have not agreed, within thirty (30) days after the affected Party's performance has ceased to be affected by the relevant circumstances, on how long the Scheduled COD should be deferred by, any Party may raise the Dispute to be resolved in accordance with Article 16.

5. Construction of the Project

5.1 TSP's Construction Responsibilities;

5.1.1 The TSP, at its own cost and expense, shall be responsible for designing, constructing, erecting, testing and commissioning each Element of the Project by the Scheduled COD in accordance with the Regulations and other applicable Laws specified in Article 4.1 of the Agreement.

5.1.2 The TSP acknowledges and agrees that it shall not be relieved from any of its obligations under this Agreement or be entitled to any extension of time or any compensation whatsoever by reason of the unsuitability of the Site or Transmission Line route(s).

*5.1.3 The TSP shall be responsible for obtaining all Consents, Clearances and Permits related but not limited to road/ rail/ river/ canal/ power line/ crossings, Power and Telecom Coordination Committee (PTCC), defense, civil aviation, right of way/ way-leaves and environment & forest clearances from relevant authorities required for developing, financing, constructing, maintaining/ renewing all such Consents, Clearances and Permits in order to carry out its obligations under this Agreement in general and shall furnish to the Long Term Transmission Customer such copy/ies of each Consents, Clearances and Permits on demand. **Long Term Transmission Customer shall provide letters of recommendation to the concerned Indian Governmental Instrumentality, as may be requested by the TSP from time***

to time, for obtaining the Consents, Clearances and Permits required for the Project.

5.1.4 *The TSP shall be responsible for:*

- a. *acquisition of land for location specific substations, switching stations or HVDC terminal or inverter stations;*
- b. *final selection of Site including its geo-technical investigation;*
- c. *survey and geo-technical investigation of line route in order to determine the final route of the Transmission Lines;*
- d. *seeking access to the Site and other places where the Project is being executed, at its own risk and costs, including payment of any crop, tree compensation or any other compensation as may be required.*

5.1.5 *In case the Project involves any resettlement and rehabilitation, the **resettlement and rehabilitation package will be implemented by the State Government authorities**, for which the costs is to be borne by the TSP and no changes would be allowed in the Transmission Charges on account of any variation in the resettlement and rehabilitation cost. The TSP shall provide assistance on best endeavor basis, in implementation of the resettlement and rehabilitation package, if execution of such package is in the interest of expeditious implementation of the Project and is beneficial to the Project affected persons.*

5.2 *Appointing Contractors:*

5.2.1 *The TSP shall conform to the requirements as provided in this Agreement while appointing Contractor(s) for procurement of goods & services.*

5.2.2 *The appointment of such Contractor(s) shall neither relieve the TSP of any of its obligations under this Agreement nor make the Long Term Transmission Customer liable for the performance of such Contractor(s).*

5.3 **Monthly Progress Reporting:**

*The TSP shall provide to the STU, Long Term Transmission Customer & Independent Engineer, on a monthly basis, progress reports along with likely completion date of each Element with regard to the Project and its execution (in accordance with prescribed form). **The Long Term Transmission Customer / STU shall monitor the development of the Project for its timely completion for improving and augmenting the electricity system as a part of its statutory responsibility.***

5.4 *Quality of Workmanship:*

The TSP shall ensure that the Project is designed, built and completed in a good workmanship using sound engineering and construction practices, and using only materials and equipment that are new and manufactured as per the MOP and following approved FQP for erection, testing & commissioning and complying with Indian/ International Standards such that, the useful life of the Project will be at least thirty five (35) years from the COD of the Project.

The TSP shall ensure that all major substation equipment/ component (e.g. transformers, reactors, Circuit Breakers, Instrument Transformers (IT), Surge Arresters (SA), Protection relays, clamps & connectors etc.), equipment in terminal stations of HVDC Installations including Thyristor/ IGBT valves, Converter Transformers, smoothing reactors, Transformer bushings and wall bushings, GIS bus ducts, lowers and gantry structures and transmission towers or poles and line materials (conductors, earthwire, OPGW, Insulator, accessories for conductors, OPGW & earthwires, hardware fittings for Insulators, aviation lights etc), facilities and system shall be designed, constructed and tested (Type test, Routine tests, Factory Acceptance Test (FAT) in accordance with relevant CEA Regulations and Indian Standards. In case Indian Standards for any particular equipment/ system/ process is not available, IEC/ IEEE or equivalent International Standards and Codes shall be followed.

- iii. Article 6 of TSA regarding “Connection and Commissioning of the Project” mentions as under:

6.2 Commercial Operation:

6.2.1 An Element of the Project shall be declared to have achieved COD twenty four (24) hours following connection of the Element with the Interconnection Facilities pursuant to Article 6.1 or seven (7) days after the date on which it is declared by the TSP to be ready for charging but is not able to be charged for reasons not attributable to the TSP subject to Article 6.1.2.

Provided that an Element shall be declared to have achieved COD only after all the Element(s), if any, which are pre-required to have achieved COD as defined in Schedule 2 of this Agreement, have been declared to have achieved their respective COD.

6.2.2 Once any Element of the Project has been declared to have achieved deemed COD as per Article 6.2.1 above, such Element of the Project shall be deemed to have Availability equal to the Target Availability till the actual charging of the Element and to this extent, TSP shall be eligible for of the Monthly Transmission Charges applicable for such Element.

6.4 Liquidated Damages for Delay in achieving COD of Project:

6.4.1 If the TSP fails to achieve COD of any Element of the Project or the Project, by the Element’s/ Project’s Scheduled COD or such Scheduled COD as extended under Articles 4.4.1 and 4.4.3, then the TSP shall pay to the Long Term Transmission Customer, a sum equivalent to 3.33% of Monthly Transmission Charges applicable for the Element of the Project [in case where no Elements have been defined, to be on the Project as a whole]/ Project, for each day of delay up to sixty (60) days of delay and beyond that time limit, at the rate of five percent (5%) of the Monthly Transmission Charges applicable to such Element/ Project, as liquidated damages for such delay and not as penalty, without prejudice to any rights of the Long Term Transmission Customers under the Agreement.

6.4.2 *The TSP's maximum liability under this Article 6.4 shall be limited to the amount of liquidated damages calculated in accordance with Article 6.4.1 for and up to six (6) months of delay for the Element or the Project.*

Provided that, in case of failure of the TSP to achieve COD of the Element of the Project even after the expiry of six (6) months from its Scheduled COD, the provisions of Article 13 shall apply.

6.4.3 *The TSP shall make payment to the Long Term Transmission Customer of the liquidated damages calculated pursuant to Article 6.4.1 within ten (10) days of the earlier of:*

the date on which the applicable Element achieves COD; or

the date of termination of this Agreement.

The payment of such damages shall not relieve the TSP from its obligations to complete the Project or from any other obligation and liabilities under the Agreement.

6.4.4 *If the TSP fails to pay the amount of liquidated damages to the Long Term Transmission Customer within the said period of ten (10) days, the Long Term Transmission Customers shall be entitled to recover the said amount of the liquidated damages by invoking the Contract Performance Guarantee. If the then existing Contract Performance Guarantee is for an amount which is less than the amount of the liquidated damages payable by the TSP to the Long Term Transmission Customers under this Article 6.3 and the TSP fails to make payment of the balance amount of the liquidated damages not covered by the Contracted Performance Guarantee, then such balance amount shall be deducted from the Transmission Charges payable to the TSP. The right of the Long Term Transmission Customer to encash the Contract Performance Guarantee is without prejudice to the other rights of the Long Term Transmission Customer under this Agreement.*

6.4.5 *For avoidance of doubt, it is clarified that amount payable by TSP under this Article is over and above the penalty payable by TSP under Article 5.5.6 of this Agreement.*

- iv. Article 11 of TSA regarding "Force Majeure" mentions as under:

11 FORCE MAJEURE

11.2 Affected Party

11.2.1 *An Affected Party means any Party whose performance has been affected by an event of Force Majeure.*

11.2.2 *Any event of Force Majeure shall be deemed to be an event of Force Majeure affecting the TSP only if the Force Majeure event affects and results in, late delivery of machinery and equipment for the Project or construction, completion, commissioning of the Project by Scheduled COD and/or operation thereafter;*

11.3 Force Majeure

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

(a) Natural Force Majeure Events:

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

ii. epidemic/ pandemic notified by Indian Government Instrumentality.

(b) Non-Natural Force Majeure Events:

i. Direct Non-Natural Force Majeure Events

- *Nationalization or compulsory acquisition by any Indian Government Instrumentality of any material assets or rights of the Affected Party; or*

- *The unlawful, unreasonable or discriminatory revocation of, or refusal to renew, any Consents, Clearances and Permits required by the Affected Party to perform their obligations/ roles under the RFP Project Documents or any unlawful, unreasonable or discriminatory refusal to grant any other Consents, Clearances and Permits required for the development/ operation of the Project, provided that a Competent Court of Law declares the revocation or refusal to be unlawful, unreasonable and discriminatory and strikes the same down; or*

- *any other unlawful, unreasonable or discriminatory action on the part of an Indian Government Instrumentality which is directed against the Project, provided that a Competent Court of Law declares the action to be unlawful, unreasonable and discriminatory and strikes the same down.*

ii. Indirect Non-Natural Force Majeure Events

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

- *radioactive contamination or ionising radiation originating from a source in India or resulting from any other Indirect Non-Natural Force Majeure Event mentioned above, excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Site by the Affected Party or those employed or engaged by the Affected Party; or*

- *Industry wide strikes and labour disturbances, having a nationwide impact in India.*

11.4 Force Majeure Exclusions

11.4.1 Force Majeure shall not include (i) any event or circumstance which is within the reasonable control of the Parties and (ii) the following conditions, except to the extent that they are consequences of an event of Force Majeure:

(a) Unavailability, late delivery, or changes in cost of the machinery, equipment, materials, spare parts etc. for the Project;

(b) Delay in the performance of any Contractors or their agents;

(c) Non-performance resulting from normal wear and tear typically experienced in transmission materials and equipment;

(d) Strikes or labour disturbance at the facilities of the Affected Party;

(e) Insufficiency of finances or funds or the Agreement becoming onerous to perform; and

(f) Non-performance caused by, or connected with, the Affected Party's:

i. negligent or intentional acts, errors or omissions;

ii. failure to comply with an Indian law; or

iii. breach of, or default under this Agreement or any Project Documents.

(g) Any error or omission in the survey report provided by BPC during the bidding process.

11.5 Notification of Force Majeure Event

11.5.1 The Affected Party shall give notice to the other Party of any event of Force Majeure as soon as reasonably practicable, but not later than seven (7) days after the date on which such Party knew or should reasonably have known of the commencement of the event of Force Majeure. If an event of Force Majeure results in a breakdown of communications rendering it unreasonable to give notice within the applicable time limit specified herein, then the Party claiming Force Majeure shall give such notice as soon as reasonably practicable after reinstatement of communications, but not later than one (1) day after such reinstatement.

Provided that such notice shall be a pre-condition to the Affected Party's entitlement to claim relief under this Agreement. Such notice shall include full particulars of the event of Force Majeure, its effects on the Party claiming relief and the remedial measures proposed. The Affected Party shall give the other Party regular reports on the progress of those remedial measures and such other information as the other Party may reasonably request about the Force Majeure.

11.5.2 The Affected Party shall give notice to the other Party of (i) the cessation of the relevant event of Force Majeure; and (ii) the cessation of the effects of such event of Force Majeure on the performance of its rights or obligations under this Agreement, as soon as practicable after becoming aware of each of these cessations.

11.7. Available Relief for a Force Majeure Event

Subject to this Article 11

(a) no Party shall be in breach of its obligations/ roles pursuant to this Agreement except to the extent that the performance of its obligations/ roles was prevented, hindered or delayed due to a Force Majeure Event;

(b) each Party shall be entitled to claim relief for a Force Majeure Event affecting its performance in relation to its obligations/ roles under Articles 3.3.4, 4.4.2 and 6.3.1 of this Agreement.

(c) For the avoidance of doubt, it is clarified that the computation of Availability of the Element(s) under outage due to Force Majeure Event, as per Article 11.3 affecting the TSP shall be as per Appendix II to III of Madhya Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Transmission Tariff) (Revision-IV) Regulations, 2020, as on Bid Deadline. For the event(s) for which the Element(s) is/are deemed to be available as per Appendix II to III of Madhya Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Transmission Tariff) (Revision-IV) Regulations, 2020, then only the Transmission Charges, as applicable to such Element(s) , shall be payable as per Schedule 4, for the duration of such event(s).

(d) For so long as the TSP is claiming relief due to any Force Majeure Event under this Agreement, the Long Term Transmission Customer may, if it so desires, from time to time on one (1) day notice, inspect the Project and the TSP shall provide the Long Term Transmission Customer's personnel with access to the Project to carry out such inspections.

*(e) For avoidance of doubt, the TSP acknowledges that for extension of Scheduled COD a period up to one hundred eighty (180) days due to Force Majeure event, no compensation on the ground such as interest cost, incident expenditure, opportunity cost will be made to the TSP. **However, if Scheduled COD is extended beyond a period of one hundred eighty (180) days due to Force Majeure event, the TSP will be allowed to recover the interest cost during construction corresponding to the period exceeding one hundred eighty (180) days by adjustment in the Transmission Charges in accordance with Schedule 9.***

v. Article 12 of TSA regarding “Change in Law” mentions as under:

12. Change in Law

12.1.1 Change in Law means the occurrence of any of the following after the Bid Deadline resulting into any additional recurring / non-recurring expenditure by the TSP or any savings to the TSP:

- *the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, subject to the provisions under Article 12.1.2;*
- *a change in the interpretation or application of any Law by any Indian Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of Law;*
- *the imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier;*
- *a change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits;*
- *any change in the licensing regulations of the State Commission, under which the Transmission License for the Project was granted if made applicable by such State Commission to the TSP;*
- *change in wind zone; or*
- *any change in tax or introduction of any tax made applicable for providing Transmission Service by the TSP as per the terms of this Agreement.*

12.1.2 Notwithstanding anything contained in this Agreement, Change in Law shall not cover any change:

- a. Taxes on corporate income; and*
- b. Withholding tax on income or dividends distributed to the shareholders of the TSP.*

12.2. Relief for Change in Law

12.2.1 During Construction Period, the impact of increase/decrease in the cost of the Project in the Transmission Charges shall be governed by the formula given in Schedule 9 of this Agreement.

12.2.2 During the Operation Period:

During the operation period, if as a result of Change in Law, the TSP suffers or is benefited from a change in costs or revenue, the aggregate financial effect of which exceeds 0.30% (zero point three percent) of the Annual Transmission Charges in aggregate for a Contract Year, the TSP may notify so to the Long Term Transmission

Customer and propose amendments to this Agreement so as to place the TSP in the same financial position as it would have enjoyed had there been no such Change in Law resulting in change in costs or revenue as foresaid.

12.2.3 For any claims made under Articles 12.2.1 and 12.2.2 above, the TSP shall provide to the Long Term Transmission Customer documentary proof of such increase/ decrease in cost of the Project/ revenue for establishing the impact of such Change of Law.

In cases where Change in Law results in decrease of cost and it comes to the notice of Long Term Transmission Customer that TSP has not informed Long Term Transmission Customer about such decrease in cost, Long Term Transmission Customer may initiate appropriate claim.

12.3 Notification for Change in Law

12.3.1 If the TSP is affected by a Change in Law in accordance with Article 12.1 and wishes to claim relief for such Change in Law under this Article 12, it shall give notice to the Long Term Transmission Customer of such Change in Law as soon as reasonably practicable after becoming aware of the same.

12.3.2 The TSP shall also be obliged to serve a notice to the Long Term Transmission Customer even when it is beneficially affected by a Change in Law.

12.3.3 Any notice served pursuant to Articles 12.3.1 and 12.3.2 shall provide, amongst other things, precise details of the Change in Law and its estimated impact on the TSP.”

12.4 Payment on account of Change in Law

12.4.1 The payment for Change in Law shall be through a separate Bill. However, in case of any change in Monthly Transmission Charges by reason of Change in Law, as determined in accordance with this Agreement, the Bills to be raised by the Long Term Transmission Customer after such change in Transmission Charges shall appropriately reflect the changed Monthly Transmission Charges.

vi. Article 13 of TSA regarding “Events of Default and Termination” mentions as under:

13.4 Termination due to force majeure

13.4.1 In case the Parties could not reach an agreement pursuant to Article 3.3.4 and 4.4.2 of this Agreement and the Force Majeure Event or its effects continue to be present, the Long Term Transmission Customer shall have the right to cause termination of the Agreement. In case of such termination, the Contract Performance Guarantee shall be returned to the TSP as per the provisions of Article 6.5.1.

13.4.2 In case of termination of this Agreement, the TSP shall provide to the Long Term Transmission Customer the full names and addresses of its Contractors as well as complete designs, design drawings, manufacturing drawings, material specifications

and technical information, as required by the Long Term Transmission Customers within thirty (30) days of Termination Notice.

13.6 Revocation of the Transmission License

13.6.1 The State Commission may, as per the provisions of the Electricity Act, 2003 revoke the Transmission License of the Licensee. Further, in such a case, the Agreement shall be deemed to have been terminated.

vii. Schedule 9 of TSA mentions as under:

Methodology for determining the Relief Under Force Majeure Event & Change in Law during Construction Period

The relief in the form of revision in tariff due to Force Majeure Event leading to extension of Scheduled COD for a period beyond one hundred eighty (180) days and/ or Change in Law during the construction period shall be as under:

$$\Delta T = [(P \times d)] \div [1 - (1 + d)^{-n}]$$

Where,

ΔT = Change in Transmission Charges for each year

P = Sum of cumulative increase or decrease in the cost of the Project due to Change in Law and interest cost during construction corresponding to the period exceeding one hundred eighty (180) due to Force Majeure Event leading to extension of Scheduled COD for a period beyond one hundred eighty (180) days.

n = number of years over which the Transmission Charges has to be paid

d = 8.09% (Discount rate as notified by the CERC, applicable on the Bid Deadline as per CERC notification dated 30.03.2022)

The increase in Transmission Charges as stated above shall be applicable only if the value of increase in Transmission Charges as calculated above exceeds 3.30% (zero point three percent) of the quoted Transmission Charges of the TSP.

21. The parties have cited many Judgments of Hon'ble Supreme Court / Hon'ble High Courts / Hon'ble APTEL in support of their contentions. Some paragraphs of the relevant Judgments are cited herewith for ready reference:

i. Hon'ble APTEL in Judgment dated 02.05.2023 in **Fatehgarh Bhadla Transmission Company Limited vs Central Electricity Regulatory Commission & Ors in Appeal No. 352 of 2022** held as under:

Section 62 and 63 of Electricity Act, 2003

125. Section 62 of the Electricity Act relates to determination of tariff and, under sub-section (1) thereof, the Appropriate Commission shall determine the tariff in accordance with the provisions of this Act for, among others, (b) Transmission of electricity. Section 62(2) enables the Appropriate Commission to require a licensee or a generating company to furnish separate details, as may be specified

in respect of generation, transmission and distribution for determination of tariff. Section 62(3) provides that the Appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may differentiate according to the consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required. Under Section 62(4), no tariff or part of any tariff may ordinarily be amended, more frequently than once in any financial year, except in respect of any changes expressly permitted under the terms of any fuel surcharge formula as may be specified. Section 62(5) enables the Commission to require a licensee or a generating company to comply with such procedures as may be specified for calculating the expected revenues from the tariff and charges which he or it is permitted to recover. Under Section 62(6), if any licensee or a generating company recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee.

*126. Section 63 of the Electricity Act relates to determination of tariff by bidding process, and thereunder, notwithstanding anything contained in Section 62, the Appropriate Commission shall **adopt** the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government.*

*180. On the Appellant's own showing, the TSA was entered into with the Generator ie AREPRL. The Appellant's claim of force majeure events resulting in delay in commissioning the project is in terms of clause 11, and their claim of a change in law is in terms of clause 12, thereof. **Any relief they are entitled to in terms of the TSA can only be against the other party to the said Agreement.***

- ii. The Respondent has also mentioned that the Hon'ble Supreme Court of India in **Satyabrata Ghose** (Supra) has already laid down that **any relief that may be awarded or any restitution that the Affected Party may claim in contract has to arise from the contract itself**. It is a well settled position in contract law that nothing that is not envisaged by the parties in the contract cannot later be awarded by going above and beyond the contract itself. The relevant paragraph from the aforementioned judgement has been reproduced hereunder for ready reference:-

"In cases, therefore, where the court gathers as a matter of construction that the contract itself contained impliedly or expressly a term, according to which it would stand discharged on the happening of certain circumstances, the dissolution of the contract would take place under the terms of the contract itself and such cases would be outside the purview of Section 56 altogether. Although in English law these cases are treated as cases of frustration, in India they would be dealt with under Section 32 of the Indian Contract Act which deals with contingent contracts or similar other provisions contained in the Act. In the large majority of cases however the doctrine of frustration is applied not on the ground that the parties themselves agreed to an implied term which operated to release them from the

performance of the contract. The relief is given by the court on the ground of subsequent impossibility when it finds that the whole purpose or basis of a contract was frustrated by the intrusion or occurrence of an unexpected event or change of circumstances which was beyond what was contemplated by the parties at the time when they entered into the agreement. Here there is no question of finding out an implied term agreed to by the parties embodying a provision for discharge, because the parties did not think about the matter at all nor could possibly have any intention regarding it. When such an event or change of circumstance occurs which is so fundamental as to be regarded by law as striking at the root of the contract as a whole, it is the court which can pronounce the contract to be frustrated and at an end. The court undoubtedly has to examine the contract and the circumstances under which it was made. The belief, knowledge and intention of the parties are evidence, but evidence only on which the court has to form its own conclusion whether the changed circumstances destroyed altogether the basis of the adventure and its underlying object [Vide Morgan v. Manser, 1947 AER Vol. II, p. 666]. This may be called a rule of construction by English Judges but it is certainly not a principle of giving effect to the intention of the parties which underlies all rules of construction. This is really a rule of positive law and as such comes within the purview of Section 56 of the Indian Contract Act."

- iii. The Respondent has also submitted that the Petitioner has alleged that various approvals required from Governmental Authorities were delayed and the same are events of force majeure qua each of their respective element in the TSA. It is submitted that for any event to qualify as force majeure it must not just be beyond the control of the parties, it must also be unforeseeable. The Delhi High Court in NTPC Vidyut Vyapar Nigam Ltd. v. Precision Technik Pvt. Ltd., ((2018) SCC OnLine Del 13102) categorically held that bureaucratic delays in our country are foreseeable and cannot be claimed as a force majeure event.

22. On analysis of the submissions made by the Petitioner and the Respondents on events related to force majeure, the observations and findings of the Commission on each issue are as under:

(The details of Petitioner's submissions and Respondent's reply have been mentioned in detail in previous part of this Order and therefore are **not been repeated here for sake of brevity**. Only small brief of issue has been mentioned here for reference.)

Force Majeure events:

Delay in Grant of Government approvals

I. Issue: Delay in receiving National highway crossing approval for construction of Transmission Lines

Petitioner's submission:

The Petitioner has submitted that the construction of certain elements of the Project has been materially delayed due to inordinate and uncontrollable delays in the grant of requisite approvals from the National Highways Authority of India ("NHAI") and the National Highways - Public Works Department ("NH-PWD") for overhead crossings of national highways. These delays, which far exceed the reasonable

timeframe of two months anticipated under the applicable guidelines, constitute Force Majeure events under Article 11 of the TSA, as they are circumstances beyond the Petitioner's reasonable control that have unavoidably hindered the timely performance of its obligations. The Petitioner is accordingly entitled to a day-for-day extension of the SCOD. The details of the delays attributable to each affected element are summarized in the table below:

<i>S. No.</i>	<i>Transmission Element</i>	<i>Date of application</i>	<i>Date of grant of approval</i>	<i>Number of days (Delay)</i>
1.	ELEMENT 4 132kV Sodalpur-Sultanpur Transmission Line	16.11.2023	08.07.2024	235 days
2.	ELEMENT 11 132kV Khujener – Chappiheda Transmission Line	03.06.2023	02.05.2025	699 days
3.	ELEMENT 14 132kV Kasarwad – Pipalgaon Transmission Line	03.06.2023	05.06.2025	733 days

The aforesaid delays represent the period from the date of application to the date of final approval, minus the expected reasonable timeframe of 60 days as per Clause 4 of the Guidelines dated 22.11.2016 issued by the Ministry of Road Transport and Highways, Government of India.

MPPMCL’s response:

The Respondent has submitted that perusal of Clause 11.3 makes it is clear that the force majeure event would only be such when and only to the extent that the said event is beyond the control of the Affected Party and in terms of the law laid down by the Hon’ble Supreme Court must be such an event which substantially alters the original understanding of the parties at the time of entering of the TSA. The Delhi High Court in a recent judgment held that for an event to qualify as event of force majeure it must not just be beyond the control of the affected party but also must be unforeseen. Accordingly, from the perusal of the provisions of the TSA and the law laid down on the issue of force majeure, that ‘hindrance’, obstruction created by land owners’, ‘ROW issues’, ‘routine delays by government authorities’ are issues that are likely to normally arise in implementation of any transmission project and do not alter the original bargain of the parties. It is submitted on the contrary, the entire risk of financing of the project, obtaining consents for the project, risk of ROW has been specifically allocated to the TSP. Thus, the petitioner cannot be allowed to treat the same as an event of force majeure and consequently pay for extension of SCOD of the project.

It is submitted that the Petitioner has achieved commissioning of only four elements of the eighteen elements required to be constructed by the Petitioner. It is submitted that since the delay is continuing it is impossible to comment on the duration of force majeure for such elements.

Commissions Observations & findings:

The Commission observes that NHAI & NH-PWD are national level authorities. The Petitioner has submitted that the Government of India, Ministry of Road Transport and Highways has issued Guidelines dated 22.11.2016 in which Clause 4 stipulates reasonable timeframe of 60 days. The Respondent has not made any remark on this time frame. The Commission observes that working of NHAI & NH-PWD is beyond the control of the Petitioner. **Therefore, this force majeure claim is acceptable in-principle.** However, for Force majeure, the delay has to be counted on issues which are directly attributable to the Government authorities. The time taken by Petitioner, beyond the reasonable time, to submit desired information / reply has to be segregated and cannot be treated as part of force majeure. This exercise has to be done element-wise by the Petitioner and submitted to the Respondent for prudence check, for calculation of exact number of days for claiming relief for force majeure.

II. Issue: Delay in issuance of State Highway crossing approvals from M.P. Road Development Corporation Limited for construction of Transmission Lines.**Petitioner's submission:**

The Petitioner has submitted that construction of certain elements of the Project has been materially delayed due to inordinate and uncontrollable delays in the grant of requisite approvals from the MP Road Development Corporation Ltd. ("MPRDCL") for overhead crossings of state highways. These delays, which significantly exceed the reasonable timeframe of three months anticipated by the Petitioner constitute Force Majeure events under Article 11.3 of the TSA, as these are the circumstances wholly beyond the Petitioner's reasonable control that have unavoidably hindered the timely performance of its obligations. The details of the delays attributable to each affected element are summarized in the table below:

S. No.	Transmission Element	Date of application	Date of grant of approval	Number of days (Delay)
1.	ELEMENT 2, 4 132 kV Seonimalwa – Harda Transmission Line 132kV Bisonikala – Sodalpur Transmission Line	12.12.2023	18.06.2024	189 days
2.	ELEMENT 6 132kV Gairatgunj – Pathari Transmission Line	31.10.2023	24.06.2024	237 days

MPPMCL's response:

The Respondent has submitted that the petitioner has made bald generic statements without giving any details what steps were taken for mitigating the impact of alleged events of force majeure.

Commissions Observations & findings:

The Commission observes that Article 5.3 of the TSA provides that “*the Long Term Transmission Customer / STU shall monitor the development of the Project for its timely completion for improving and augmenting the electricity system as a part of its statutory responsibility*”. Article 5.1.3 also has relevant provisions. The issue of delay at MPRDCL was **beyond the control of the Petitioner, therefore the claim qualifies as force majeure under TSA and this claim is accepted in-principle**. The days of delay directly attributable to MPRDCL shall be considered for force majeure. The time taken by Petitioner, beyond the reasonable time, to submit desired information / reply has to be segregated and cannot be treated as part of force majeure. This exercise has to be done element-wise by the Petitioner and submitted to the Respondent for prudence check, for calculation of exact number of days for claiming relief for force majeure.

III. Issue: Delay in receiving Railway crossing approvals for construction of Transmission Lines**Petitioner’s submission:**

The Petitioner has submitted that construction of certain elements of the Project has been materially delayed due to inordinate and uncontrollable delays in the grant of requisite approvals from the West Central Railway, Bhopal (“**WCR Bhopal**”) for overhead crossings of railway lines. These delays, which far exceed the reasonable timeframe of **64 days** anticipated under the *Joint Procedure Order for Granting Permission to Overhead Power Line Crossings over Railway Tracks* issued by the Ministry of Railways, Government of India, dated 30.01.2017, constitute Force Majeure events under Article 11.3 of the TSA, as they are circumstances beyond the Petitioner's reasonable control that have unavoidably hindered the timely performance of its obligations. The Petitioner is accordingly entitled to a day-for-day extension of the SCOD under Article 4.4.2 read with Article 11 of the TSA. The details of the delays attributable to each affected element are summarized in the table below:

S. No.	Transmission Element	Date of application	Date of grant of approval	Number of days (Delay)
1.	ELEMENT 2 132 kV Seonimalwa – Harda Transmission Line	20.05.2023	15.10.2024	514 days
2.	ELEMENT 4 132kV Bisonikala – Sodalpur Transmission Line	22.05.2023	15.10.2024	512 days

MPPMCL’s response:

The Respondent has submitted that the petitioner has made bald generic statements without giving any details what steps were taken for mitigating the impact of alleged events of force majeure.

Commissions Observations & findings:

The Commission observes that the Petitioner has submitted that reasonable timeframe was 64 days, but it was delayed by WCR. The Respondent has not made any remark on this time frame. The Commission observes that working of WCR is beyond the control of the Petitioner. **Therefore, this force majeure claim is accepted in-principle.** For Force majeure, the delay has to be counted on issues which are directly attributable to the Government authorities. The time taken by Petitioner, beyond the reasonable time, to submit desired information / reply has to be segregated and cannot be treated as part of force majeure. This exercise has to be done element-wise by the Petitioner and submitted to the Respondent for prudence check, for calculation of exact number of days for claiming relief for force majeure.

IV. Issue: Delay in obtaining authorization under Section 164 of Electricity Act, 2003**Petitioner's submission:**

The Petitioner has submitted that the timely implementation and the development of the Project is adversely affected as the scheduled commercial operation date of various transmission elements is 18 months/ 24 months (depending upon the element) from the effective date of the TSA. The Petitioner was facing difficulty due to delay in grant of the statutory approval from Energy Department, Government of Madhya Pradesh under Section 164 of the Electricity Act conferring powers of the Telegraph Authority for implementation of the transmission projects.

<i>S. No.</i>	<i>Transmission Element</i>	<i>Date of application</i>	<i>Date of grant of approval</i>	<i>Number of days (Delay)</i>
1.	Delay in grant of approval under Section 164 of Electricity Act, 2003	04.01.2024	29.07.2024	207 days

MPPMCL's response:

The Respondent has submitted that it is settled law that a licensee is entitled to start work in terms of the Works of Licensee Rules and is not required to wait for approval under Section 164 and therefore delay in grant of Section 164 approval can not be termed as an event of force majeure.

The Petitioner has alleged that various approvals required from Governmental Authorities were delayed and the same are events of force majeure qua each of their respective element in the TSA. It is submitted that for any event to qualify as force majeure it must not just be beyond the control of the parties, it must also be unforeseeable. The Delhi High Court in NTPC Vidyut Vyapar Nigam Ltd. v. Precision Technik Pvt. Ltd., ((2018) SCC OnLine Del 13102) categorically held that bureaucratic delays in our country are foreseeable and cannot be claimed as a force majeure event.

Commissions Observations & findings:

The Commission observes that this issue is directly related to Respondents themselves. So, delays from Respondents own side must be avoided. **Since it was within control of the Respondent but beyond the control of the Petitioner, this claim qualifies as force majeure under TSA and this claim is accepted in-principle.** The days of delay directly attributable to Government Department shall be considered for force majeure. The time taken by Petitioner to submit application / information has to be segregated and cannot be treated as part of force majeure. This exercise has to be done by the Petitioner and submitted to the Respondent for prudence check, for calculation of exact number of days for claiming relief for force majeure

V. Issue: Delay in securing Forest Approval towards construction of transmission line**Petitioner's submission:**

The Petitioner has submitted that in terms of Rule 6 of Forest (Conservation) Amendment Rules, 2004, the Petitioner ought to have received the requisite forest approval within a reasonable period of 210 days from the date of application. The Petitioner submitted its application seeking forest approval to MOEF&CC on 04.03.2023. However, the grant of the said approval was unreasonably delayed for no fault of the Petitioner for a period of approx. 14 months i.e. from March 2023 until May, 2024. The above delay of around 14 months in grant of forest approval by various Forest Officials constitutes a Force Majeure event under the TSA entitling the Petitioner to appropriate extension in the SCOD.

<i>S. No.</i>	<i>Transmission Element</i>	<i>Date of application</i>	<i>Date of grant of approval</i>	<i>Number of days (Delay)</i>
1.	ELEMENT 6 132kV DCDS Gairatgunj – Pathari Transmission Line	04.03.2023	Granted on 08.05.2024	431 days

MPPMCL's response:

The Respondent has submitted that the Petitioner has alleged delay in grant of approval for diversion of forest in Element No.6. The Petitioner has submitted that the minimum time required taken for grant of forest clearance should have been 210 days, however it would be incorrect to assume that each day after the 210th day would be an event of force majeure. As pointed out herein above, the law laid down by the Hon'ble Supreme Court is that an event of force majeure must be such that it fundamentally alters the bargain between the parties and does not include routine delays in grant of approvals from the government. Further, it cannot be disputed that the estimate that approximately 210 days would be required for grant of forest clearance assumes that the applicant is diligent and does not delay the grant of forest clearance. Further, estimated timeline is upto the date of grant of Stage-II forest clearance and does not include the timeline for tree cutting approval. Therefore, it is baseless to assume that the tree cutting approval was also required to be issued within the estimated time of 210 days.

Further, in the instant event also, the FM notice was issued at a belated stage and this does not satisfy the requirement under the TSA and applicable law.

While there is an estimate of time taken in grant of forest clearance provided by MOEF& CC; however, time taken beyond such estimate would not automatically become an event of force majeure. In order to satisfy whether such an event is an event of force majeure or not the Petitioner would have to demonstrate that there was no delay attributable to it, the delay that happened in grant of the clearance was unforeseeable. Thereafter, the petitioner would then be required to also demonstrate that TSA provisions were complied with to invoke the event of force majeure. The Petitioner has not identified steps that it took between June 2023 to November 2023; further the demand for compensatory afforestation made on 08.01.2024 was only paid on 22.02.2024 after more than 40 days. Clearly, the Petitioner was not diligent and therefore, there is no basis for claiming the alleged delay in grant of forest clearance as an event of force majeure. In any event, the application for grant of forest clearance was made on 04.03.2023 and was granted on 08.05.2024, it appears that the Petitioner has claimed entire duration as event of force majeure and not just period over and above 210 days. Clearly the entire claim is baseless and in any event exaggerated.

Commissions Observations & findings:

It is undisputed that both the Petitioner & the Respondent have stated that the estimated time for grant of forest clearance in this case was 210 days. **Since the matter of forest clearance was beyond the control of the Petitioner, this claim is accepted in-principle.** However, for force majeure, the delay has to be counted on issues which are directly attributable to the Government authorities. The time taken by Petitioner to submit desired information / deposit amount, beyond a normal period, has to be segregated and cannot be treated as part of force majeure. This exercise has to be done element-wise by the Petitioner and submitted to the Respondent for prudence check, for calculation of exact number of days for claiming relief for force majeure.

VI. Issue: Patwari Strike

Petitioner's submission:

The Petitioner has submitted that 19,000 Patwari's (Staff of Revenue Department) went on a pen down strike from 27.08.2023 to 29.09.2023 (33 days) seeking hike in salary and perks. These Patwaris oversee land mutation and caste certificate issuance process. The prolonged Patwari strike in Madhya Pradesh, resulted in significant delay in completing necessary documentary compliances related to acquisition of land, their registry and mutation & land diversion process, which ultimately caused delay in completion of the transmission elements on time.

MPPMCL's response:

The Respondent has submitted that the Petitioner has made generic bald statements such as all elements required to be developed by the Petitioner were impacted by Patwari strike for 33 days (27.08.2023 to 29.09.2023) affected the works of the Petitioner. It is a matter of common knowledge that a TSP merely utilises right of way to lay transmission towers and wires, there is no direct or indirect impact of

strike by Patwari in the works of the Petitioner. It is submitted that as per the TSA a notice for an event of force majeure is required to be given in 7 days of date of event, however the alleged notice was only given on 30.05.2024 which is more than 9 months after the alleged event of force majeure. Clearly the averment was an after-thought and in terms of law laid down by the SC on force majeure

Commissions Observations & findings:

The Commission observes that Patwaris are important part of land & revenue establishment of the State Government and their strike may adversely affect Patwari related works of the Petitioner. **Since the issue was beyond the control of the Petitioner, this claim is accepted in-principle.** However, the Petitioner has to demonstrate which of works related to the Elements of the Project were adversely affected along-with relevant documents and reasons. **Blanket 33 days force majeure can not be considered for all elements.** The Petitioner may submit aforementioned details to the Respondent for prudence check, who shall consider the necessary number of days for each element.

VII. ROW issues raised by locals and land owners

**a. Issue: Delay in construction of Transmission lines due to agitation by locals
Petitioner’s submission:**

The Petitioner has submitted that the timely implementation of the Project has been materially impeded by severe and uncontrollable agitations from local landowners and residents at various sites across the State of Madhya Pradesh. These agitations have manifested in repeated obstructions to construction activities, demands for excessive compensation beyond government-prescribed norms, calls for re-routing or repositioning of approved transmission lines, threats to workers, damage to materials, and illegal encroachments. Such events, which are wholly beyond the Petitioner's reasonable control and could not have been mitigated despite diligent efforts, constitute Force Majeure events under Article 11.3 of the TSA and have unavoidably delayed the Petitioner's performance of its obligations. The Petitioner is accordingly entitled to a day-for-day extension of the SCOD under Article 4.4.2 read with Article 11 of the TSA for the affected elements. The details of the delays attributable to these agitations for each affected element are summarized in the table below:

S. No.	Transmission Element	Number of days Delay
1.	ELEMENT 1 132/ 220 kV Mandideep LILO Transmission Line	833 days (till 31.12.2025) [Ongoing]
2.	ELEMENT 2 132 kV Seonimalwa – Bisonikala Transmission Line	289 days (till 31.12.2025) [Ongoing]
3.	ELEMENT 4 132kV Sodulpur – Sultanpur Transmission Line	690 days (till 12.08.2025)
4.	ELEMENT 5 132kV DCDS TL / LILO Astha - Sonkatch	654 days (till 31.12.2025) [Ongoing]
5.	ELEMENT 7 132kV Bareli - Badi Transmission Line	610 days

		(till 31.12.2025) [Ongoing]
6.	ELEMENT 8 132kV TL Ashoknagar – Semarhat 132kV TL Semarhat - Aron	590 days (till 31.12.2025) [Ongoing]
7.	ELEMENT 11 132kV Khujener – Chappiheda Transmission Line	527 days (till 31.12.2025) [Ongoing]
8.	ELEMENT 14 132kV Kasarwad – Pipalgaon Transmission Line	532 days (till 31.12.2025) [Ongoing]
9.	ELEMENT 15 132/33kV substation, Ambaja, District: Alirajpur	489 days (till 31.12.2025) [Ongoing]
10.	ELEMENT 16 132kV Sonkatch – Chaubaradheera Transmission Line	722 days (till 31.12.2025) [Ongoing]
11.	ELEMENT 18 132kV Bahadurpur – Badgaon Transmission Line	609 days (till 31.12.2025) [Ongoing]

b. Issue: Hindrance by locals post execution of Sale Deed

Petitioner’s submission:

The Petitioner has submitted that the implementation of the Project has been materially delayed due to unforeseen and uncontrollable hindrances caused by local individuals (including previous landowners and their relatives) after the legal transfer of land ownership through executed sale deeds. These hindrances include baseless objections, disputes over land mutation, demands for cancellation of the sale, and physical obstructions to construction activities. Such actions, which are beyond the Petitioner's reasonable control and could not have been anticipated or fully mitigated despite diligent efforts (including negotiations, payments, and seeking authority intervention), constitute Force Majeure events under Article 11.3 of the TSA. They qualify as non-natural circumstances that have unavoidably delayed the Petitioner's obligations. The Petitioner is accordingly entitled to a day-for-day extension of the SCOD under Article 4.4.2 read with Article 11 of the TSA for the affected elements. The details of the delays attributable to these hindrances for each affected element are summarized in the table below:

S. No.	Transmission Element	Number of Days of Delay
1.	ELEMENT 6 132/33kV substation, Pathari, District: Gairatganj, Raisen	519 days (till 10.02.2025)
2.	ELEMENT 7 132/33kV substation, Badi, District: Raisen	923 days (till 31.12.2025) [Ongoing]
3.	ELEMENT 10	721 days

	220kV LILO/ TL Satpura TPS-Itarsi	(till 31.12.2025) [Ongoing]
4.	ELEMENT 12 132kV DCSS Transmission Line LILO of Badnagar – Orange Bercha	590 days (till 25.02.2025)

MPPMCL’s response:

The Respondent has submitted that as per the TSA, procuring ROW is strictly the obligation of the TSP. There is nothing on record to show that alleged hinderance caused by the landowners were of a magnitude which is not routine to any transmission project. Since it is settled law that routine risks associated with the contract cannot be termed as events of force majeure and this do not appear to satisfy the tests laid down by courts for determination that an event would qualify as event of force majeure.

Commissions Observations & findings:

The Commission has clubbed issues at a & b above and observes that since the project is on BOOT basis, therefore Article 4.1 of the TSA provides for TSP’s obligations regarding “development of project” and Article 4.2 provides for “roles of LTCC in implementation of the project”. Similarly, Article 5.1 provides for “TSP’s construction responsibilities” while Article 5.3 provides for LTCC / STU’s statutory responsibility.

Moreover, only a few elements have attained COD while most of others are still pending for COD.

In view of the facts and circumstances of the case, the Commission is of the considered view that the Respondents cannot be absolved of their responsibilities in such matters. **Therefore, the Petitioner’s claim qualifies as force majeure under TSA and is accepted in-principle.** The Respondents should fulfill their obligations by assisting the Petitioner in such issues, within the provisions of the TSA.

VIII. Land issues

a. Issue: Delay in identification of land

Petitioner’s submission:

The Petitioner has submitted that construction of Element 3 (220/132/33 kV AIS Substation at Khargone, District Khargone) has been materially delayed due to inordinate and uncontrollable difficulties in identifying suitable land within the prescribed 3 km radius of the coordinates provided under Schedule 1 of the TSA. This delay, which remains ongoing as on 19.12.2025, constitutes a Force Majeure event under Article 11 of the TSA, as it is a circumstance wholly beyond the Petitioner's reasonable control that has unavoidably prevented timely performance of its obligations. The Petitioner is accordingly entitled to a day-for-day extension of the Scheduled Commercial Operation Date (SCOD) for Element 3 under Article 4.4.2 read with Article 11 of the TSA. The details of the delay are summarized below:

S. No.	Transmission Element	Number of Days (Delay) (Ongoing) [From 04.03.2023 till 31.12.2025]
1.	ELEMENT 3 220/132/33kV AIS substation, Khargone, District : Khargone	1034 days

b. Issue: Delay in completion of Project due to non-availability of land

Petitioner's submission:

The Petitioner has submitted that in terms of Schedule 1 of TSA, the Petitioner was required to carry-out construction of new substation by identifying a suitable land within the radius of 3km. Accordingly, the Element 15 of the Project had to be constructed on land lying in Ambaja Village, District Alirajpur in the State of Madhya Pradesh. However, the construction of the 132/33kV substation, Ambaja, District Alirajpur has been affected due to non-availability of suitable land for construction of the 132/33kV substation, Ambaja, District Alirajpur. Most of the available lands belonged to Scheduled Tribes (ST), mostly farmers, which raised heavy objections in providing lands for construction of transmission elements. Consequently, the Petitioner sought intervention of District Magistrate for identification and allocation of the referred ST land for construction of 132/33kV substation at Ambaja. Despite the same, the Petitioner faced immense difficulties in locating the land, for which there was only little support from the authorities.

It is further submitted that as per the RfP, Para 1.6.2, the BPC i.e., RECPDCL is responsible for initiating the process of acquisition of land for location specific substations, however, there has been no support whatsoever.

S. No.	Transmission Element	Number of Days of Delay
1.	ELEMENT 15 132/33kV substation, Ambaja, District: Alirajpur	323 Days

c. Issue: Non-timely partition of land by the Revenue Department

Petitioner's submission:

The Petitioner has submitted that in terms of Schedule 1 of TSA, the Petitioner was required to carry-out construction of new substation by identifying a suitable land within the radius of 3km. Accordingly, the Element 6 of the Project was to be constructed in land identified in Babai Village, Gairatganj Tehsil, Raisen.

S. No.	Transmission Element	Number of Days of Delay
1.	ELEMENT 6 132/33kV substation, Pathari, District: Raisen	289 days

MPPMCL’s response:

The Respondent has submitted a common reply to these clubbed issues by stating that ROW is the obligation of the TSP. There alleged hinderance caused by the landowners are routine to any transmission project and such routine risks associated with the contract cannot be termed as events of force majeure.

Commissions Observations & findings:

The three land related issues have been clubbed as a, b & c with common observation that the Petitioner’s project is on BOOT basis. The TSA which is a part of Standard Bidding Documents also provides for roles of both Petitioner & the Respondents. Article 4.1 of the TSA provides for TSP’s obligations regarding “development of project” and Article 4.2 provides for “roles of LTCC in implementation of the project”. Similarly, Article 5.1 provides for “TSP’s construction responsibilities” while Article 5.3 provides for LTCC / STU’s statutory responsibility. Till now only a few elements have attained COD while most of others are still pending.

In view of the facts and circumstances of the case, the Commission is of the considered view that Respondents cannot be absolved of their responsibilities in such matters. Therefore, **the Petitioner’s claim qualifies as force majeure under TSA and is accepted and allowed in-principle.** The Respondents should fulfill their obligations by providing necessary support to the Petitioner in such issues, within the provisions of the TSA.

IX. Issue: Non – Grant / Delay in ‘Right of Way’ clearance from Collector / DM**Petitioner’s submission:**

The Petitioner has submitted that the Project has to be constructed at various locations being at all the elements in the State of Madhya Pradesh. However, the construction of these elements (except Element 9 and Element 17) of the Project has been affected due to delay in grant of permission by Collector/ District Magistrate.

S. No.	Transmission Element	Date of Application to DM	Date of approval granted by DM	Number of days of delay
1.	ELEMENT 1, 6, 7 Gairatganj – Pathari 132 kV DCDS Badi – Shahganj 132 kV DCSS Bareli - Badi 132kV DCSS LILO – Hoshangabad-Adampur 220kV (S/S Mandideep) LILO Mandideep - Bhopal 220kV (S/S Mandideep)	17.07.2023	21.09.2023	66 days

	LILO Mandideep – Bagroda 132kV LILO Itarsi – Bhopal 400kV (S/S Mandideep)			
2.	ELEMENT 2 132kV Bisonikala – Sodalpur Transmission Line 132kV Seonimalawa – Harda LILO 220kV Satpura – Handia LILO 220kV Itarsi – Handia, under Narmadapuram	17.07.2023	29.08.2024	409 days
3.	ELEMENT 4 132kV Bisonikala – Sodalpur Transmission Line 132kV Sodapur – Sultanpur Transmission Line	17.07.2023	28.08.2023	43 days
4.	ELEMENT 5 132kV DCDS TL / LILO Astha – Sonkatch	31.08.2023	15.03.2024	198 days
5.	ELEMENT 8 132kV TL Ashoknagar – Semarhat 132kV TL Semarhat – Aron	29.07.2023	14.12.2023	139 days
6.	ELEMENT 10 220kV LILO/ TL Satpura TPS-Itarsi	18.03.2024	04.07.2024	109 days
7.	ELEMENT 11 Khujner – Chhapiheda – Nalkheda 132kV DCSS line	28.03.2024	29.05.2024	63 days
8.	ELEMENT 12 132kV DCSS Transmission Line LILO of Badnagar – Orange Bercha	08.07.2023	18.07.2024	377 days
9.	ELEMENT 13 132kV DCSS Jaoro – Daloda Transmission LILO/ Line	11.02.2024	Not granted	
10.	ELEMENT 14 32kV Khasrawas – Pipalgaon Transmission Line	25.09.2023	02.07.2024	281 days

11.	ELEMENT 15 132kV Barwani – Kukshi Transmission Line (District – Alirajpur)	19.02.2024	12.07.2024	145 days
12.	ELEMENT 16 132kV DCSS TL from Sonkatch to Choubaradhira	31.08.2023	10.11.2023	71 days
13.	ELEMENT 18 132kV TL Bahadurpur – Badgaon	13.09.2023	13.12.2023	91 days

MPPMCL’s response:

The Respondent has submitted that ROW is the obligation of the TSP. There alleged hinderance are routine to any transmission project and such routine risks associated with the contract cannot be termed as events of force majeure.

Commissions Observations & findings:

The Commission observes that the Petitioner’s project on BOOT basis. Therefore, the Guidelines dated 10/08/2021 issued by Central Government under section 63 of the Electricity Act, 2003 provides for specific roles to the Petitioner and the Respondents. The TSA which is a part of Standard Bidding Documents also provides for roles of both Petitioner & the Respondents. Article 4.1 of the TSA provides for TSP’s obligations regarding “development of project” and Article 4.2 provides for “roles of LTCC in implementation of the project”. Similarly, Article 5.1 provides for “TSP’s construction responsibilities” while Article 5.3 provides for LTCC / STU’s statutory responsibility. Till now only a few elements have attained COD while most of others are still pending.

In view of the facts and circumstances of the case, the Commission is of the considered view that Respondents cannot be absolved of their responsibilities in such matters. **Therefore, the Petitioner’s claim qualifies as force majeure under TSA and is accepted in-principle.** The Respondents should fulfill their obligations be providing necessary assistance to the Petitioner in such issues, within the provisions of the TSA.

The interdepartmental meetings of the Government Departments may be held to resolve the issues pertaining to this Project notified by the Government. Both the Petitioner and the Respondents should cooperate and make efforts so as to complete the project at the earliest.

For the purpose of force majeure, issues beyond control the Petitioner shall be allowed by the Respondent after prudence check of reasons stated by the Petitioner.

**X. Issue: Delay in grant of clearance for crossing of BPCL pipeline
Petitioner’s submission:**

Upon execution of the TSA, the Petitioner commenced route survey and detailed engineering activities for finalisation of the transmission line alignment. During the final route survey, it was identified that the optimal alignment required crossing of

the existing BPCL pipeline. Based on preliminary assessments, the Petitioner understood that a separate NOC may not be required. However, during site consultations, BPCL officials informed the Petitioner that the deviation angle necessitated formal approval from BPCL.

The Petitioner submitted its application for grant of NOC on 25.02.2025 along with the requisite documents. BPCL thereafter directed the Petitioner to apply through its online portal and deposit processing charges, which were duly complied with by the Petitioner. Despite complete compliance and repeated follow-ups, the approval has not been granted till date, even though such approvals are ordinarily processed within 60 days under BPCL guidelines.

The Petitioner has submitted that the construction of transmission lines at Element 8 has been materially delayed due to the inordinate and uncontrollable delay in obtaining the No Objection Certificate (“NOC”) from Bharat Petroleum Corporation Limited (“BPCL”) for overhead crossing of the Bina-Kota pipeline. This delay, which remains ongoing, constitutes a Force Majeure event under Article 11 of the TSA, as it involves an unreasonable delay by an Indian Governmental Instrumentality (BPCL, a public sector undertaking) in granting necessary clearances required for Project development. The Petitioner is accordingly entitled to a day-for-day extension of the SCOD under Article 4.4.2 read with Article 11 of the TSA. The details of the delay for the affected element are summarized in the table below:

S. No.	Transmission Element	Date of Application to DM	Date of approval	Number of days of delay [Ongoing till 31.12.2025]
1.	ELEMENT 8 132kV TL Ashoknagar – Semarhat 132kV TL Semarhat – Aron	25.02.2025	Not granted	

MPPMCL’s response:

The Respondent has not submitted any specific reply on this issue. The general reply is that obtaining permissions is responsibility of TSP.

Commissions Observations & findings:

The Commission observes that the Petitioner initially understood that a separate NOC may not be required. Later BPCL officials informed the Petitioner that the deviation angle necessitated formal approval from BPCL. The Petitioner submitted its application for grant of NOC on 25.02.2025. Despite repeated follow-ups, the approval has not been granted till date, even though such approvals are ordinarily processed within 60 days under BPCL guidelines.

The Commission observes that in case of such doubt, the Petitioner should have consulted Respondents to find the optimal solution. **Since the delay on part of BPCL is beyond the control of the Petitioner, it qualifies as force majeure under the TSA.** However, the need of such permission and its timelines need to be checked by the Respondents. Since the permission is still pending, the Petitioner is required to consult the Respondents and the Respondents are required to provide necessary guidance and assistance in the matter.

XI. Issue: Delay due to heavy Rainfall

Petitioner's submission:

The Petitioner has submitted that the heavy rainfall and resultant flooding halted critical construction activities, including foundation work for towers/substations and transportation of materials. Waterlogged conditions at the Project sites posed safety risks to workers and equipment, necessitating suspension of operations. The Petitioner was unable to carry out essential tasks due to the extreme weather conditions. In view of these risks, and in strict adherence to safety protocols and statutory obligations, the Petitioner was compelled to temporarily suspend construction operations at several location resulting in **delay of 211 days**.

It has submitted that the occurrence of natural calamities has been consistently recognized as a Force Majeure event in the electricity sector. In this context, reference is made to the judgment of the **Hon'ble Appellate Tribunal for Electricity dated 27.04.2011 in Maharashtra State Power Generation Co. Ltd. v. MERC (Appeal No. 72 of 2010)**, wherein it was held that unprecedented excess rainfall and flooding constitute Force Majeure, exempting parties from liability for resultant delays. Applying these principles to the present case, it is undeniable that the unprecedented excess rainfall and flooding qualify as Force Majeure under Article 11 of the TSA, and the Petitioner cannot be held liable for the delay caused thereby.

MPPMCL's response:

The Respondent has submitted that the Petitioner has claimed incessant rain as an event of force majeure for all elements (Other than 3, 5, 9 and 17) for a uniform period of 211 days. The same are split as 104 days between 23.06.2024 to 04.10.2024 and 107 days 20.06.2025 to 04.10.2025. It is submitted that no details of impact on individual element either in the present petition or in the force majeure notice has been provided. Admittedly no notice for alleged event of force majeure of excess rainfall was ever given.

It is submitted that above average monsoon is not an event of force majeure as per the TSA and the Petitioner is required to demonstrate that the weather condition was 'excess of the statistical measures for the last hundred (100) years. Monsoon rains cannot be considered as a event of force majeure as a matter of routine. Even looking at the alleged dates complained-off it was a predictable monsoon rain between end of June and first week of October which is routine to the State of Madhya Pradesh.

Commissions Observations & findings:

The Commission observes that TSA has specific provisions. It is normal that some parts of the state have heavy rainfall while some others have dry spell. This is routine risk in such transmission projects which are covered under risks to be borne by the TSP in the TSA. **Therefore, petitioner's claim for 211 days (104 days of rainy season in 2024 and 107 days of rainy season in 2025) impact due to unprecedented rain is rejected in-principle** for want of insufficient detail of the effect on the performance of the TSP, as per the TSA.

Normal rains can not be called as natural calamity. If any particular place was flooded due to which work at any particular Element was adversely affected for more than 7 days at a time or some flood resulted in substantial damage to any Element, then the Petitioner may provide such details to the Respondent No.1, who shall allow it, after prudence check.

XII. Issue: Force Majeure notices issued to MPPMCL under the TSA:

Petitioner's submission:

The Petitioner has submitted that it has demonstrated exemplary diligence by issuing timely and detailed Force Majeure notices commencing from 03.05.2024, supplemented by regular updates and copies of correspondence with authorities. MPPMCL's persistent denials (culminating in the formal rejection dated 24.07.2024 and the post-SCOD threat dated 07.11.2025) have rendered the parties' disagreement on the existence, duration, and consequences of the Force Majeure events irrevocable, fully crystallizing the dispute for adjudication under Article 16 of the TSA. The Petitioner has acted bona fide throughout, mitigating impacts to the extent possible while keeping MPPMCL fully apprised, thereby satisfying all procedural prerequisites under the TSA.

MPPMCL's response:

The Respondent has submitted that the alleged events of force majeure are an attempt to avoid liability to pay liquidated damages, are purely an afterthought and thus the present petition is devoid of any merits and must be dismissed.

Relief for Events of Force Majeure

Without prejudice to the submission that the claims are baseless, exaggerated and thus liable to be rejected, it is submitted that since admittedly **only four elements have been commissioned till date, therefore the prayers seeking declaration of revised SCOD and consequential reliefs cannot be granted at this stage.** It is submitted that courts and tribunals cannot be expected to undertake academic exercise and merely seek a declaration as the petitioner would have to initiate fresh proceedings to **claim reliefs after the project has been commissioned.**

It is submitted that **only after the performance has ceased to be affected by alleged events of force majeure that the TSP can request for revision of SCOD and only in the event of disagreement, approach the Commission.** Clearly, in terms of Article 4.4.3 also the instant petition is premature and thus liable to dismissed.

Commissions Observations & findings:

The Commission observes that the Petitioner and the Respondents have quoted partial Articles of the TSA at various places of their submissions. To have a holistic view, the Commission has quoted the relevant Articles of TSA in a comprehensive manner at one place in this Order. On perusal of relevant Articles of TSA, which are not quoted again for brevity, the following may be observed:

Article 1: “Scheduled COD” in relation to an Element(s) shall mean the date(s) as mentioned in Schedule 2 as against such Element(s) and in relation to the Project, shall mean the date as mentioned in Schedule 2 as against such Project, subject to the provisions of Article 4.4 of this Agreement, or such date as may be mutually agreed among the Parties;

4.4 Extension of Time:

4.4.1 In the event that the TSP is unable to perform its obligations for the reasons solely attributable to the Long Term Transmission Customer, the Scheduled COD shall be extended, by a ‘day to day’ basis, subject to the provisions of Article 13.

4.4.2 In the event that an Element or the Project cannot be commissioned by its Scheduled COD on account of any Force Majeure Event as per Article 11, the Scheduled COD shall be extended, by a ‘day for day’ basis, for a period of such Force Majeure Event. Alternatively, if deemed necessary, the Long Term Transmission Customer may terminate the Agreement as per the provisions of Article 13.4 by giving a Termination Notice to the TSP, in writing, of at least seven (7) days, with a copy to Government of Madhya Pradesh, STU and the Lenders’ Representative in order to enable the Lenders to exercise right of substitution in accordance with Article 15.3 of this Agreement.

4.4.3 If the Parties have not agreed, within thirty (30) days after the affected Party’s performance has ceased to be affected by the relevant circumstances, on how long the Scheduled COD should be deferred by, any Party may raise the Dispute to be resolved in accordance with Article 16.

In view of the afore-cited provisions of the TSA along with all other relevant provisions of the TSA and the Guidelines and the Act, the Commission is of the considered view that Petitioner’s submissions need to be accepted and allowed by the Respondents. In view of the issue wise Observations and findings of the Commission, element wise exercise has to be carried out.

XIII. Issue: Wrongful levy of Liquidated Damages:

Petitioner’s submission:

The Petitioner has submitted that the threat of imposition of liquidated damages by MPPMCL, as communicated vide its letters dated 23.07.2024 and 07.11.2025, is wholly wrongful, arbitrary, and contrary to the express provisions of the TSA. The delays in achieving the SCOD for various elements of the Project are solely attributable to Force Majeure events as detailed in the petition, which entitle the Petitioner to an extension of the SCOD on a day-for-day basis under Article 4.4.2

read with Article 11 of the TSA. Consequently, no liability for liquidated damages arises under Article 6.4 of the TSA, and any attempt to levy or recover the same is liable to be declared null and void.

MPPMCL, vide its letter dated 23.07.2024, asserted applicability of liquidated damages under Article 6.4.1 of the TSA for failure to achieve COD, without addressing the Force Majeure notices issued by the Petitioner or acknowledging the uncontrollable nature of the delays. Further, MPPMCL vide its letter dated 07.11.2025, calculated liquidated damages at Rs. 83.55 Crores (excluding Elements 9 and 17) and threatened forfeiture of the Contract Performance Guarantee under Article 6.4.4 of the TSA, along with recovery of extra payments incurred due to delays. This letter ignored the subsisting Force Majeure events and the Petitioner's prior intimations.

The Petitioner has prayed that no Liquidated Damages may be imposed on the Petitioner (*for all the elements that have achieved COD and are yet to achieve COD, including Element 5, Element 16 and Element 18 that have achieved COD*) for the delays caused in Project's implementation due to the aforesaid Force Majeure Events under the TSA or otherwise.

MPPMCL's response:

The Respondent has submitted that the Petitioner has alleged that vide letter dated 07.11.2025, MPPMCL levied LDs on the Petitioner and threatened encashment of performance bank guarantee in the event the LDs were not paid. The above is patently false and misleading. The present petition has been filed on 20.01.2026 i.e. 2 months after the alleged letter of MPPMCL claiming liquidated damages.

Further, it was only on 27.02.2026 i.e. more than 3 months after the receipt of LD Letter, that the Commission was pleased to direct no coercive steps to be taken. In the meantime, MPPMCL neither sent any reminder letters for LDs nor made a claim on the performance guarantee. Even upon bare perusal of the letter dated 07.11.2025 it is evident that vide the said letter **the computation of LD was communicated to the Petitioner, but no demand for payment was made.**

It is submitted that **nothing in the said letter can be termed as demand for liquidated damages and threat for encashment.** Clearly the present petition is premature and liable to be dismissed with costs.

Commissions Observations & findings:

The Commission observes that MPPMCL has submitted that its letter dated 07/11/2025 was only computation of LD and no demand for payment was made.

Now with the Commission's observations and findings in this Order, the whole computation would have to be done afresh. MPPMCL has itself stated that vide the said letter dated 07.11.2025 the computation of LD was communicated to the Petitioner, but no demand for payment was made. **Therefore, MPPMCL's aforementioned letter dated 07/11/2025 has become infructuous.** As detailed in other part of this Order, the issues of LD, relief for force majeure, etc as per TSA may be calculated **after COD of all elements of the Project.**

XIV. Issue: Current Status of Project Elements

Petitioner's submission:

The Petitioner has submitted that several elements of the Project have achieved Commercial Operation Date, notwithstanding the ongoing Force Majeure events affecting the overall timeline. Specifically:

- Element 18: Transmission Line (TL) achieved COD on 27.10.2025;
- Element 16: Transmission Line (TL) achieved COD on 17.11.2025;
- Element 16: Substation (SS) achieved COD on 21.11.2025;
- Element 5: Transmission Line (TL) and SS achieved COD on 09.12.2025.

The Petitioner has prayed that these elements have commenced commercial operations, and the petitioner is entitled to receive Monthly Transmission Charges in respect thereof without any deduction on account of liquidated damages. In terms of Article 6.2.2 of the TSA, subject to extension of their respective SCODs due to subsisting Force Majeure events. It is further submitted that some of the remaining elements are at advanced stages of completion but continue to be impacted by the Force Majeure Events.

The Petitioner has prayed to Grant an extension of the Scheduled Commercial Operation Date for Element 5, Element 16 and Element 18, that have achieved COD, on a day-to-day basis for the period of subsisting Force Majeure events, to regularize their commissioning and absolve the Petitioner from any liability for delays attributable thereto;

MPPMCL's response:

The Respondent has also submitted that four elements have achieved COD.

Commissions Observations & findings:

The Commission observes that both the Petitioner and the Respondent have submitted that aforementioned four elements have achieved COD and other elements are at various stages of commissioning. As requested by the Petitioner, it is entitled to receive Monthly Transmission Charges in respect thereof without any deduction on account of liquidated damages at this stage. **The Respondent No. 1 is directed to follow the provisions of the TSA and make payments of monthly transmission charges for the elements from the date of COD.**

After COD of all elements of the Project, such issues like SCOD, extension of SCOD, force majeure, etc will crystalize and thereafter LD, relief for force majeure, etc issues shall be calculated as per TSA.

XV. Issue: Other Prayers

Petitioner's submission:

The Petitioner has also prayed as under:

- a. Declare that the following events are in the nature of Force Majeure events as per Articles 4.4.2 and 11 of the TSA affecting the Scheduled Commercial Operation Date (SCOD) of the Project.
- b. Grant an extension of SCOD as claimed for in the Petition until the adverse impact of Force Majeure impact has ceased to impede the works as mentioned.

- c. Grant an extension of SCOD as claimed for in the Petition on account of Force Majeure events as mentioned in the petition.
- d. Direct that the Petitioner ought not be made liable in any manner for the delays caused in Project's implementation due to the aforesaid Force Majeure Events.

MPPMCL's response:

The Respondent has submitted that the present petition has been filed in terms of the liberty granted by the Commission's order dated 01.10.2024 in Petition No 41 of 2024. The order of the Commission was clear and unambiguous and the present petition does not appear to be satisfying the criteria specified in the said order. Thus, the instant petition is not maintainable and liable to be dismissed with a specific direction that the petition for **reliefs as prayed in the instant petition can only be filed after all the elements have achieved commercial operation.**

Commissions Observations & findings:

The Commission has made issue-wise observations and findings in the preceding paragraphs of this Order. All these prayers shall be addressed accordingly on same principles.

XVI. Issue: Relief like IDC, IEDC, etc

Petitioner's submission:

The Petitioner has prayed that as relief for force majeure events the Petitioner is entitled to receive compensation by way of increase in monthly transmission charges on account of increase in the Interest During Construction (IDC) and Incidental Expenses During Construction (IEDC), for the corresponding force majeure period exceeding one hundred and eighty (180) days;

MPPMCL's response:

The Respondent has submitted that Petitioner's claims for financial compensation (including increased Interest During Construction (IDC) and Incidental Expenses During Construction (IEDC) go beyond the relief envisaged in the TSA.

Commissions Observations & findings:

The Commission has quoted relevant provisions of TSA in the previous part of this Order. Following may be observed:

Article 4.4 provides for Extension of Time.

Article 6 provides for Connection and Commissioning of the project.

Article 11 provides for Force Majeure.

Article 11.7 provides for Available Relief for a Force Majeure event.

Article 12 provides for Change in Law.

Article 12.2 provides for Relief for change in Law.

In view of the afore mentioned Articles of the TSA along with all other relevant provisions of the TSA and the Guidelines and Law, the Petitioner shall be entitled to claim Reliefs, which will be subject to prudence check by the Respondents. However, as submitted, till date only 4 elements have achieved COD and others are pending, the project is a work in progress. **All parties should make efforts to complete the Project as soon as possible and then decide on the Reliefs, LD, etc issues, as per provisions of the TSA, after project has achieved COD.**

XVII. Issue: Relief sought in IA No. 5 of 2026

Petitioner's submission:

The Petitioner has filed IA No. 5 of 2026 with prayers to Allow the present application and list the captioned petition along with accompanying application for interim relief on urgent basis for hearing, subject to convenience of the Commission.

Commissions Observations & findings:

The Commission listed the Petition for motion hearing on 27/02/2026 and thereafter the procedural history is as mentioned in previous part of this Order. Hence this IA stands disposed of.

XVIII. Issue: Relief sought in IA No. 6 of 2026

Petitioner's submission:

The Petitioner has filed IA No. 6 of 2026 with prayers to;

- a. Pass an ex-parte ad interim order directing MPPMCL and their agents, representatives, attorneys, servants etc. from taking any action in terms of its letter dated 07.11.2025;
- b. Pass an ex-parte ad interim order restraining MPPMCL and their agents, representatives, attorneys, servants etc. from taking any action towards the encashment of Applicant's Contract Performance Guarantee dated 19.01.2023 (renewed on 15.04.2025) for an amount of Rs. 28.90 Crores in terms of the TSA during the pendency of the present Petition before the Commission;
- c. Direct that no Liquidated Damages may be imposed on the Petitioner (*for all the elements that have achieved COD and are yet to achieve COD, including Element 5, Element 16 and Element 18 that have achieved COD*) for the delays caused in Project's implementation due to the aforesaid Force Majeure Events under the TSA or otherwise until the final disposal of the Petition;
- d. Pass an order directing Respondents to maintain status quo till the final disposal of the Petition.

MPPMCL's response:

The Respondent has submitted that the Petitioner has alleged that vide letter dated 07.11.2025, MPPMCL levied LDs on the Petitioner and threatened encashment of performance bank guarantee in the event the LDs were not paid. The above is patently false and misleading. The present petition has been filed on 20.01.2026 which is more than 2 months after the alleged letter claiming liquidated damages was sent by MPPMCL.

Further, it was only on 27.02.2026 i.e. more than 3 months after the receipt of LD letter, that the Commission was pleased to direct no coercive steps to be taken. In the meantime, MPPMCL neither sent any reminder letters for LDs nor made a claim on the performance guarantee. Even upon bare perusal of the letter dated 07.11.2025 it is evident that vide the said letter the computation of LD was communicated to the Petitioner, but no demand for payment was made.

It is submitted that nothing in the said letter can be termed as demand for liquidated damages and threat for encashment.

Commissions Observations & findings:

The Commission has dealt with the issues in the previous parts of this Order and has given its observations and findings. Hence this IA stands disposed of.

**XIX. Issue: Relief sought in IA No. 10 of 2026 and Delay in allotment of Nazul land
Petitioner's submission:**

The Petitioner has submitted that the timely commissioning of Elements 9 and 17 of the Project has been materially impeded by the inordinate and uncontrollable delay in the allotment of Nazul land (government-owned land) by the concerned authorities of the Government of Madhya Pradesh. As per the RFP and Schedule 1 of the TSA, the Petitioner was required to construct new substations on government land to be provided within a 3 km radius of specified coordinates. Despite timely applications and repeated follow-ups, the land has not been allotted in an encumbrance-free manner, resulting in substantial loss of productive time. This delay, entirely attributable to governmental processes and beyond the Petitioner's reasonable control, constitutes a Force Majeure event under Article 11.3 of the TSA. The Petitioner is accordingly entitled to a day-for-day extension of the SCOD under Article 4.4.2 read with Article 11 of the TSA.

These delays, entirely attributable to inter-departmental governmental processes and beyond the Petitioner's reasonable control, constitute Force Majeure events under Article 11.3 of the TSA (as direct non-natural Force Majeure events involving unreasonable delay or refusal in granting consents/clearances by an Indian Governmental Instrumentality). The Petitioner is accordingly entitled to a day-for-day extension of the SCOD under Article 4.4.2 read with Article 11 of the TSA. The details of the delays for the affected elements are summarized in the table below:

S. No.	Transmission Element	Date of application	Number of Days of Delay (till 31.12.2025) [Ongoing]
1.	ELEMENT 9 132/33kV GIS S/s at HOD Bhopal	15.03.2023	1023 days
2.	ELEMENT 17 132/33kV GIS S/s at Sector-III Pithampur	15.03.2023	1023 days

The Petitioner has also filed **IA No. 10 of 2026** with following prayers:

- a. Direct that the Scheduled Commercial Operation Date (SCOD) for Elements 9 and Element 17 shall be reckoned **24 months from the date of actual allotment and handover of encumbrance-free Nazul land**;
- b. Grant consequential **relief** by way of adjustment in Project cost arising out of the aforesaid delay;
- c. Permit the Petitioner the right to claim the **incremental cost** of the project at the appropriate time.

- d. Restrain respondent No. 1 from taking any coercive action, including invocation/ encashment of the Contract Performance Guarantee, in respect of Element 9 and Element 17 till the final disposal of the captioned petition;

MPPMCL's response:

The Respondent has submitted that

- a. The prayers in the application and the main petition are substantially similar and it is settled law that interim prayer in an application cannot be same as the final prayer.
- b. The rights and obligations of the parties to the TSA are governed solely by the TSA and there is no question of any legitimate expectation in contractual sphere. Without prejudice it is submitted that, MPPMCL made best efforts to acquire the land at the earliest to hand over the same to the petitioner. The status of land required for the project is as under:
- (i) Element 9: Land has been identified and is in possession of MPPMCL. A joint inspection of the site was also undertaken by the parties. The Petitioner had requested removal of trees on the site before the same is handed over to the Petitioner. While removal of trees does not appear to be an obligation of MPPMCL, however in the interest of the project, the answering respondents is taking steps to get the trees removed. Pursuant to which, the Petitioner would be directed to deposit the requisite fee and execute the documents for handing over of the site.
- (ii) Element 17: Land has been identified and acquired by the State and possession has been handed over to the Energy Department by MPIDC. After joint inspection of the site, the petitioner has already deposited the charges for the same and steps for execution of agreement and handing over of the site are being processed.
- c. There is **no dispute that land for Element 9 and 17 are to be provided through MPPMCL**. It is however submitted that no liquidated damages has even been levied for delay in commissioning Element 9 and 17.
- d. While all efforts were made to acquire the land at the earliest however due to reasons beyond the control of MPPMCL, the handing over of land to the Petitioner has been delayed.
- e. The Commission may in its discretion taking into account the scope of work grant **reasonable time from the date of handing over possession** of the Element 9 and 17 for completion of works in relation to the respective elements.

Commissions Observations & findings:

The Commission observes that this issue is directly related to Respondents themselves. The Commission has observed that this is **first project in the State under revised Guidelines dated 10/08/2021**. Therefore, there is **no precedence in MP for this project**. The subject project under Built Own Operate Transfer (BOOT) basis. Delays from Respondents own side must be avoided. **Since it was within the control of the Respondent but beyond the control of the Petitioner,**

this claim for force majeure is accepted in-principle. The days of delay directly attributable to Government Department shall be considered for force majeure.

It is further observed that the Original SCOD of the project has already lapsed on 21/01/2025. Now in June 2026, even after 18 months of lapse of this period, the Petitioner and Respondent have submitted that land allotment, which was to be done by the Respondents themselves, is **still pending**.

The Petitioner has sought reliefs and the Respondent has submitted that the Commission may in its discretion, grant reasonable time for completion of the works.

The Commission finds that TSA has all provisions and the Petitioner and the Respondents are directed to co-operate with each other to ensure that the pending works are completed as soon as possible, as per the TSA.

23. The Commission has made issue wise observations and findings in previous part of the Order. Abstract of the aforesaid observations and findings are as under:
- i. The Ministry of Power, Government of India notified following Resolutions dated 10/08/2021 under section 63 of the Electricity Act 2003:
 1. Guidelines for Encouraging Competition in Development of Transmission Projects and
 2. Tariff based Competitive-bidding Guidelines for Transmission Service.These two revised Guidelines are together to be followed since 10/08/2021.
 - ii. The Government of Madhya Pradesh, vide its Gazette Notification notified REC Power Development and Consultancy Limited (REC PDCL) to act as the Bid Process Coordinator (BPC) for the purpose of selection of a bidder as TSP for development of the Project through Tariff Based Competitive Bidding (TBCB) process. In furtherance thereof, the Petitioner was incorporated under the Companies Act, 2013 as a wholly owned subsidiary of RECPDCL with the objective to establish the Project on build, own, operate and transfer (BOOT) basis and to act as the transmission service provider (TSP) after being acquired by the successful bidder. RECPDCL issued the Request for Proposal (RfP) dated 31.12.2021. RECPDCL vide its letter dated 22.11.2022 communicated that the offer of M/s Megha Engineering and Infrastructure Limited (MEIL) was accepted and was declared as a successful bidder. Subsequently, a Letter of Intent "LOI" dated 29.11.2022 was issued in favour of MEIL by REPDCL for development of intra-state transmission system along with the details of quoted annual transmission charges as Rs 1474.69 million.
 - iii. The Commission observed that the subject Project is the **first project** in the State under revised **Guidelines dated 10/08/2021**. Therefore, there is no precedence in the State for this project.
 - iv. The projects shall be awarded on Build, Own, Operate and **Transfer (BOOT)** basis. Due to this shift in principles, the **TSA dated 21/01/2023** which is a part of the Standard Bidding Documents is different from the old TSAs signed by other licensees.

- v. The relevant **Articles of the TSA** have been quoted in this Order. Some important Articles are again reproduced below:

*4.4.2 In the event that an Element or the Project cannot be commissioned by its Scheduled COD on account of any Force Majeure Event as per Article 11, the **Scheduled COD shall be extended, by a ‘day for day’ basis, for a period of such Force Majeure Event.***

*5.1.3 The TSP shall be responsible for obtaining all Consents, Clearances and Permits related but not limited to road/ rail/ river/ canal/ power line/ crossings, Power and Telecom Coordination Committee (PTCC), defense, civil aviation, right of way/ way-leaves and environment & forest clearances from relevant authorities required for developing, financing, constructing, maintaining/ renewing all such Consents, Clearances and Permits in order to carry out its obligations under this Agreement in general and shall furnish to the Long Term Transmission Customer such copy/ies of each Consents, Clearances and Permits on demand. **Long Term Transmission Customer shall provide letters of recommendation to the concerned Indian Governmental Instrumentality, as may be requested by the TSP from time to time, for obtaining the Consents, Clearances and Permits required for the Project.***

*5.3 The TSP shall provide to the STU, Long Term Transmission Customer & Independent Engineer, on a monthly basis, progress reports along with likely completion date of each Element with regard to the Project and its execution (in accordance with prescribed form). **The Long Term Transmission Customer / STU shall monitor the development of the Project for its timely completion for improving and augmenting the electricity system as a part of its statutory responsibility.***

*6.4.2 The **TSP’s maximum liability** under this Article 6.4 shall be limited to the amount of liquidated damages calculated in accordance with Article 6.4.1 for and up to **six (6) months of delay** for the Element or the Project.*

*11.7(e) For avoidance of doubt, the TSP acknowledges that for extension of Scheduled COD a period up to one hundred eighty (180) days due to Force Majeure event, no compensation on the ground such as interest cost, incident expenditure, opportunity cost will be made to the TSP. However, if Scheduled COD is extended beyond a period of one hundred eighty (180) days due to Force Majeure event, the **TSP will be allowed to recover the interest cost during construction corresponding to the period exceeding one hundred eighty (180) days by adjustment in the Transmission Charges** in accordance with Schedule 9.*

Schedule 9 The relief in the form of revision in tariff due to Force Majeure Event leading to extension of Scheduled COD for a period beyond one hundred eighty (180) days and/ or Change in Law during the construction period shall be as under:

$$\Delta T = [(P \times d)] \div [1 - (1+d)^{-n}]$$

Where,

ΔT = Change in Transmission Charges for each year

P = Sum of cumulative increase or decrease in the cost of the Project due to Change in Law and interest cost during construction corresponding to the period exceeding

one hundred eighty (180) due to Force Majeure Event leading to extension of Scheduled COD for a period beyond one hundred eighty (180) days.

n = number of years over which the Transmission Charges has to be paid

d = 8.09% (Discount rate as notified by the CERC, applicable on the Bid Deadline as per CERC notification dated 30.03.2022)

*The increase in Transmission Charges as stated above shall be applicable only if the value of increase in Transmission Charges as calculated above **exceeds 3.30% (zero point three percent) of the quoted Transmission Charges of the TSP.***

- vi. The Petitioner has claimed force majeure for many reasons as detailed in previous paragraphs of this Order. In view of foregoing paragraphs and articulations of TSA, the abstract of the Commission's observation and finding on the issues regarding force majeure are as under:
- a. TSA dated 21/01/2023 signed between the Petitioner & the Respondents has to be followed by them. Various issues raised by the Petitioner and the Respondents have to be dealt with as per the contours of the TSA.
 - b. For delays directly attributable to Government authorities like NHAI, MPRDCL, Railway, State Government, Forest Department, etc **since it was beyond the control of the Petitioner, the claim qualifies as force majeure under TSA and such claims are accepted in-principle.** The days of delay directly attributable to Government authority shall be considered for force majeure. The time taken by Petitioner, beyond the reasonable time, to submit desired information / reply has to be segregated and cannot be treated as part of force majeure. This exercise has to be done element-wise by the Petitioner and submitted to the Respondent for prudence check, for calculation of exact number of days for claiming relief for force majeure.
 - c. For issues like Patwari strike, since the issue was beyond the control of the Petitioner, this claim is accepted in-principle. However, the Petitioner has to demonstrate which of works related to the Elements of the Project were adversely affected. **Blanket 33 days force majeure can not be considered for all elements.**
 - d. For delay due to ROW issues, land related issues, BPCL clearance, delay in grant of ROW clearances by Collector / DM, etc the Commission observed that various Articles of TSA provide for roles and responsibility of the TSP (Petitioner) and LTCC (Respondents). Hence, the Respondents cannot be absolved of their responsibilities in such matters. **Therefore, the Petitioner's claim qualifies as force majeure under TSA and is accepted and allowed in-principle.** The Respondents should fulfill their obligations by providing necessary assistance to the Petitioner in such issues, within the provisions of the TSA.
 - e. For delay related to heavy rainfall, the petitioner's claim for 211 days (104 days of rainy season in 2024 and 107 days of rainy season in 2025) impact due to unprecedented rain is **rejected** in-principle for want of insufficient detail of the effect on the performance of the TSP, as per the TSA.

- f. For issue related to alleged wrongful levy of **Liquidated damages** by Respondent No.1, the Commission observed that MPPMCL has itself stated that vide the said letter dated 07.11.2025 the computation of LD was communicated to the Petitioner, but **no demand for payment was made**. Therefore, **MPPMCL's aforementioned letter dated 07/11/2025 has become infructuous**. Now with the Commission's observations and findings in this Order, the whole computation would have to be done afresh. Both Petitioner and Respondent have submitted that after COD of the Project, such issues will crystalize. **Therefore, the issues of LD, relief for force majeure, etc as per TSA shall be calculated after COD of all elements of the Project**.
- g. For issues related to charges for elements that have achieved COD, the Commission observed that as requested by the Petitioner, it is entitled to receive Monthly Transmission Charges in respect thereof without any deduction on account of liquidated damages. **The Respondent No. 1 has been directed to follow the provisions of the TSA and make payments of monthly transmission charges for elements that achieve COD.**
- h. For issues like Petitioner's claim for **relief for force majeure events**, the Commission observed that both Petitioner & Respondent have submitted that till date **only 4 elements have achieved COD and others are pending, the project is still a work in progress**. Therefore, all parties should make efforts to complete the Project as soon as possible and then decide on the **Reliefs, LD, etc issues as per provisions of the TSA, after the project has achieved COD.**
- i. For delay in allotment of land for element No. 9 & 17 by Respondent themselves, the Commission observed that since it was within the control of the Respondent but beyond the control of the Petitioner, **this claim for force majeure is accepted in-principle**. The days of delay directly attributable to the Government Department shall be considered for force majeure. **The Commission further observed that the TSA has all details and the Petitioner and the Respondents are directed to co-operate with each other to ensure that the pending works are completed as soon as possible, as per the TSA.**
24. The parties are directed to take action as per the provisions of the TSA and the issue wise Commission's observations and findings mentioned in previous paragraphs of this Order.

(Gajendra Tiwari)
Member

(Gopal Srivastava)
Acting Chairman