

**Appellate Tribunal for Electricity at New Delhi
(Appellate Jurisdiction)**

Appeal No. 129 of 2014

Dated: 05th May, 2015

Present: HON'BLE MR. JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER
HON'BLE MR. T MUNIKRISHNAIAH, TECHNICAL MEMBER

In the Matter of:

Power Grid Corporation of India Ltd.

Saudamini, Plot No.2,
Sector-29, Gurgaon – 122001
Haryana.

...Appellant(s)

Versus

- 1. Central Electricity Regulatory Commission**
3rd and 4th Floor, Chanderlok Building,
36, Janpath, New Delhi – 110 001.
- 2. Karnataka Power Transmission Corporation Ltd.**
Cauvery Bhawan, Bangalore – 560 009.
- 3. Transmission Corp. of Andhra Pradesh**
Vidyut Soudha, Hyderabad – 500 049.
- 4. Kerala State Electricity Board (KSEB)**
Vaidyuthi Bhavanam, Pattom,
Trivandrum – 695 004.
- 5. Tamil Nadu Electricity Board (TNEB)**
800, Anna Salai, Chennai – 600 002.

- 6. Electricity Department, Government of Goa**
Vidyut Bhawan, Panaji,
Goa – 403 001.
- 7. Electricity Department**
Government of Pondicherry,
Pondicherry – 605 001.
- 8. Eastern Power Distribution Co. of Andhra Pradesh Ltd.**
P&T Colony, Seethammadhara,
Visakhapatnam – 530 013
Andhra Pradesh.
- 9. Southern Power Distribution Co. of Andhra Pradesh Ltd.**
D.No. 19-13-65/A, Srinivasapuram
Tiruchanoor Road,
Tirupati – 517 503
Andhra Pradesh.
- 10. Central Power Distribution Co. of Andhra Pradesh Ltd.**
6-1-50, Corporate Office,
Mint Compound,
Hyderabad – 500 063,
Andhra Pradesh.
- 11. Northern Power Distribution Co. of Andhra Pradesh Ltd.**
H.No. 2-5-31/2, Corporate Office,
Nakkalagutta,
Hanamkonda, Warangal (AP) – 506 004
Andhra Pradesh
- 12. Bangalore Electricity Supply Co. Ltd.**
Krishna Rajendra circle, Bangalore – 560 009.

13. Mangalore Electricity Supply Co. Ltd. (MESCOM)

Paradigm Plaza, A.B. Shetty Circle,
Mangalore – 575 001.

14. Chamundeshwari Electricity Supply Corp. Ltd.

(CESC Mysore)
Corporate Office, 927, L.J.Avenue,
New Kantharajours Road,
Saraswathi Puram, Mysore – 570 009.

15. Gulbarga Electricity Supply Co. Ltd. (GESCOM)

Main Road, Gulbarga, Karnataka
Gulbarga – 585 102.

16. Hubli Electricity Supply Co. Ltd.

P.B.Road, Nava Nagar Hubli
Karnataka – 580 025.

...Respondent(s)

Counsel for the Appellant(s) : Mr. Anand K. Ganesan
Ms. Swapna Seshadri
Ms Mandakini Ghosh, Advs.

Mr. Jasbir Singh (officer of
PGCIL)
Mr. R.P.Padhi (Officer of
PGCIL)

Counsel for the Respondent(s) : Mr. K. S. Dhingra for
Resp.No.1

Mr. S. Vallinayagam for Resp.
No.5

J U D G M E N T

PER HON'BLE MR. T MUNIKRISHNAIAH, TECHNICAL MEMBER

The present appeal has been filed under section 111 of the Electricity Act 2003 against the order dated 21.02.2014 (impugned order) passed by Central Electricity Regulatory Commission (hereinafter called the Central Commission) in Petition No. 332 of 2010, wherein the Central Commission has disallowed the interest during construction (IDC) and the incidental expenses during construction (IEDC) for different periods for the delay in commissioning of the various transmission assets (Asset nos. 5, 6, 7, 8 & 9) pertaining to transmission system associated with Neyveli Lignite Corporation II (NLC-II expansion project) in southern region.

- 2) The appellant herein, Power Grid Corporation of India Ltd. (hereinafter referred to as the appellant) is a Government company within the meaning of Companies Act 1956 and is undertaking interstate transmission of electricity in India. The appellant also discharges the functions of the central transmission utility as provided under the Electricity Act 2003. The appellant discharges the above functions under the regulatory control of the Central Commission. The tariff for the services rendered by the appellant is also determined by the Central Commission.

- 3) The Central Commission is the respondent No.1. The respondent Nos. 2 to 16 are transmission and distribution licensees for various beneficiaries for the States of Southern region.
- 4) The short facts of the case are as follows:
- i) The Ministry of Power vide its letter dated 11.01.2005 granted administrative approval and expenditure sanction for the Associated Transmission Systems (ATS) at a total cost of Rs.69,183,00,000/- including Interest During Construction (IDC) of Rs.41,35,00,000/-
 - ii) Subsequently, vide memorandum dated 22.03.2010 the Board of Directors of the appellant approved the cost estimate of Rs.96,239,00,000/- including IDC of Rs.10,732,00,000/-
 - iii) In accordance with original administrative approval accorded vide Ministry of Power letter dated 11.02.2005, the Associated Transmission System (ATS) was to be commissioned within 35 months from the date of issue of letter i.e. latest by 01.01.2008.
 - iv) The NLC-II expansion transmission scheme was executed in two phases. The assets in the first phase were covered under Petition No. 136 of 2010 and the assets in the second phase were covered under Petition No. 332 of 2010.

- v) The present appeal is in respect of second phase covered under Petition No. 332 of 2010.
- vi) As per investment approval the entire project was to be commissioned within 35 months from the date of approval i.e. 11.01.2005, namely by 01.01.2008. As against 01.01.2008 there is varying delay in the commissioning of each of the transmission assets.
- vii) The time over-run in commissioning of the assets mentioned in the instant petition are as follows:

| Sl. No. | Name of the assets | Scheduled DOCO | Actual DOCO | Delay (in months) | |
|---------|--|----------------|-----------------|-------------------|-------------------------------------|
| 1 | LILO of Ramagundum-Khammam Transmission Line at Warangal S/S | 1.1.2008 | 1.8.2009 | 19 | Covered in Petition No. 136 of 2010 |
| 2 | 2x315 MVA Auto Transformer & 400/220 kV Bays Equipment at Warangal sub-station | 1.1.2008 | 1.8.2009 | - | |
| 3 | Neyveli-Pugalur-Madurai 400 kV D/C Transmission Line | 1.1.2008 | 1.9.2009 | 20 | |
| 4 | 2x315 MVA Auto Transformer & 400/220 kV Bays Equipment at Pugalur sub-station | 1.1.2008 | 1.9.2009 | 20 | |
| 5(c) | Udumalpet- Arasur 400 kV D/C Line along with 400/220 kV sub-station at Arasur and associated bays at Udumalpet and | 1.1.2008 | 1.8.2010 | 31 | |
| 5(d) | LILO of Neyveli - Sriperumbudur 400 kV S/C line at | 1.1.2008 | 1.8.2010 | 31 | |

| | | | | | |
|---|--|----------|-----------|----|--|
| | Puducherry sub-station with associated bays. | | | | |
| 6 | 315 MVA ICT-I along with associated bays and 220 kV downstream equipment at Arasur 400/220 kV sub-station | 1.1.2008 | 1.8.2010 | 31 | |
| 7 | 315 MVA ICT-II along with associated bays and 220 kV downstream equipment at Arasur 400/220 kV S/S | 1.1.2008 | 1.9.2010 | 32 | |
| 8 | 2 Nos. 315 MVA ICT's along with associated bays and 220 kV downstream equipment at Puducherry 400/220 kV sub-station | 1.1.2008 | 1.10.2010 | 33 | |
| 9 | 2 Nos. of 50 MVAR line Reactors at Pugalur 400/220 kV sub-station along with associated bays at Pugalur sub-station | 1.1.2008 | 1.10.2010 | 33 | |

- viii) Assets 1 to Asset 4 have been covered in Petition No. 136 of 2010 and accordingly not being considered here.
- ix) The Appellant filed Petition No. 332 of 2010 before the Central Commission for approval of transmission tariff for the assets 5, 6, 7, 8 & 9.
- x) That the Central Commission approved the tariff in the impugned order dated 21.02.2014.

- xi) The Central Commission while dealing with the aspect of Interest During Construction (IDC) and Incidental Expenses During Construction (IEDC) has disallowed the claim of the appellant amounting to Rs.948.20 Lacs towards IDC and Rs.647.60 Lacs taken towards IEDC on the ground that the appellant failed to submit proper explanation for the delay in executing the associated transmission assets.
- xii) Aggrieved by the said rejections of the IDC and IEDC for the asset Nos. 5, 6, 7, 8 & 9 for the said period the appellant has filed this appeal and prayed to set aside the order dated 21.02.2014 passed by the Central Commission to the extent challenged in the present appeal.
- 5) After hearing the arguments of the learned counsel for the appellant Mr. Anand K. Ganesan and the learned counsel for the respondent, Central Commission, Mr. K.S. Dhingra and after going through the submissions made by the rival parties, the following issues arise for consideration:

ISSUE NO.I: whether the Central Commission is right in rejecting claim of the appellant towards the IDC and IEDC for delay in commissioning the assets 5(c), 6 & 7?

ISSUE NO.II: whether the Central Commission has erred in disallowing the total time over run in respect of assets 5(d), 8 & 9?

Issue No.I:

Let us discuss asset-wise, specified in Issue No.I:

Asset No. 5(c), 6 & 7 are interrelated and hence these three assets will be taken up together and the details of delay in commissioning the assets and disallowed IEDC and IDC is shown below:

| Asset Name | Actual date of commissioning | Total Delay (in months) | Delay condoned (in months) | IEDC/IDC deducted (Rs. In Lakhs) | |
|---|------------------------------|-------------------------|----------------------------|----------------------------------|--------|
| | | | | IEDC | IDC |
| Udumalpet-Arasur 400 kV D/C Line along with 400/220 kV substation at Arasur - Asset 5(c) | 1.8.2010 | 31 | 22 | 159.74 | 257.58 |
| 315 MVA ICT-I along at Arasur 400/220 kV S/S - Asset 6 | 1.8.2010 | 31 | 22 | 19.07 | 24.41 |
| 315 MVA ICT-II at Arasur 400/220 kV S/S - Asset 7 | 1.9.2010 | 32 | 22 | 21.46 | 28.16 |

6) The following are the submissions made by the appellant:

6.1 that the delay is attributed to litigation with land owner for erection of a tower pertains to Udumalpet-Arasur 400 kV DC

line and assets 6 & 7, ICTs of 315 MVA at 400/220 kV Arasur substation.

6.2 that out of delay of 31/32 months which has occurred in the commissioning of assets 5(c), 6 & 7, the Central Commission has condoned only 22 months without there being any reason for not condoning the balance delay. The entire delay was due to availability of land and litigations with land owners.

6.3 that there is no basis at all for the Central Commission to only condone 22 months and not the balance delay. Asset 5(c) is a transmission line and the assets 6 & 7 are the ICTs which can be installed only after the line is complete.

6.4 that with respect to assets 5(c), the following occurred:

The appellant/petitioner has attributed the delay due to litigations with the land owner and the sequence of incidents occurred are as follows:

- (i) A land owner in Coimbatore District challenged the construction of transmission tower as early as on 12.02.2007.
- (ii) The District Magistrate by order dated 09.05.2007 over ruled the objections of the land owner and allowed the appellant to proceed with the construction.
- (iii) The order dated 09.05.2007 came to be challenged by the land owner by filing Writ Petition No. 19676 of 2007 before the Hon'ble High Court of Madras.

- (iv) The Hon'ble High Court passed an order dated 04.04.2008 directing the authorities to examine the availability of alternative land.
- (v) The District Magistrate passed an order on 12.06.2009 in ROC No. 25311/2007/C3 and did not accept the objection of the land owner.
- (vi) The above order dated 12.06.2009 was also challenged before the Hon'ble High Court of Madras.
- (vii) The Hon'ble High Court stayed the District Magistrate's order on 16.12.2009.
- (viii) The Hon'ble High Court finally dismissed the Writ Petition on 22.06.2010.
- (ix) As soon as the land was available the appellant put extra efforts and commissioned the assets by 02.08.2010 / 01.09.2010.

6.5 that the entire delay of 31/32 months occurred due to land dispute and there is no reason for only condoning 22 months and not the balance period of delay. The delay occurred due to non availability of land.

6.6 that if the land is not available even for a small stretch such as in the present case, transmission line cannot be completed. The execution of the transmission project would completely depend on availability of land and if the appellant indeed took 31/32 months because of non availability of land the entire period needs to be condoned.

- 6.7 that no further reasons are recorded in the impugned order. During the arguments the Central Commission has handed over written submissions and contended that the central Commission has in fact been charitable to the appellant and there was only an actual stay for a period of seven months i.e. between 16.12.2009 to 22.06.2010 and the appellant could have done work in the balance period.
- 6.8 that such an argument is absurd and cannot be accepted till the time the appellant does not have free and vacant position of land, the transmission line cannot be completed. In most cases it is seen that once the planning, design and procurement stage is completed and the towers are about to be laid down some or the other land owner approaches the District Magistrate for stay of proceedings. Even in the present case when a tower was being installed, the land owner approached the District Magistrate on 12.02.2007. Thereafter, when the objections were over ruled on 09.05.2007, the Hon'ble High Court was approached which directed the District Magistrate / parties to examine the availability of alternative land.
- 6.9 that once such an order has been passed by Hon'ble High Court, the appellant could of course not go ahead and install the transmission tower and commission the transmission line.

6.10 that the appellant put extra efforts and commissioned the assets by 02.08.2010/ 01.09.2010 i.e. within two months of the land being available.

6.11 that the Central Commission has not given any clarifications as to why only 22 months has been condoned. If the Central Commission is taking the position that only the period of stay has to be excluded then only seven months are to be condoned. However, it is not the case. If the land itself was not available to the appellant nothing could have been proceeded with.

6.12 that the Assets 6 & 7 has to be commissioned only when the transmission line (asset 5(c)) is to be charged. Hence, the two Nos. ICTs erected in the 400 / 220 kV Arasur substation were charged along with the transmission line. Thus, all the three assets were commissioned simultaneously.

7) **Per contra, the learned counsel for the respondent No.1, CERC submitted as follows:**

7.1 that the appellant filed an Affidavit dated 08.04.2013 wherein it gave the details of events to explain the delay. The Central Commission noted the reasons given by the appellant as under:

“18. In Udumalpet – Arasur 400 kV D/C line along with 400/220 kV sub-station at Arasur and 2 Nos. of 315 MVA ICTs at Arasur sub-station, the 400 kV D/C Udumalpet-Arasur line along with associated bays was commissioned on 1.8.2010, after a delay of 31 months. The petitioner has attributed the delay to litigations with land owner. The petitioner has submitted vide affidavit dated 8.4.2013 that a land owner in Coimbatour district challenged the construction of the transmission line tower by the petitioner. The District Magistrate, Coimbatour, passed an order dated 9.5.2007 overruling the objections of the land owner and directed the petitioner to proceed with the construction of the transmission line. The said order was challenged by the land owner before Madras High Court in Writ Petition No. 19676 of 2007. Vide order dated 4.4.2008, the Madras High Court directed the authority to examine further if any Porambok land is available for erecting the tower. Further, vide order dated 12.6.2009 in ROC No. 25311/2007/C3, the District Magistrate rejected the objections of land owner. However, vide writ Petition 11070/2009 the above order of District Magistrate was challenged by the land owner and vide order dated 16.12.2009, stay was granted on the District Magistrate order dated 12.6.2009. High Court of Madras finally dismissed the writ petition filed by land owner vide its order dated 22.6.2010 in Writ Petition No. 6353/2010. The petitioner has also enclosed copy of judgement dated 22.6.2010 in WP No. 6353 of 2010 of Madras High Court.”

From the above, it is clear that the stay on construction of transmission line / tower was effective just for a period of about seven months i.e. from 16.12.2009 to 22.06.2010.

7.2 that the Central Commission stated that prior to 16.12.2009, there was no stay on construction by the appellant who could

proceed with construction without any hindrance or obstruction.

7.3 that the associated transmission system was scheduled to be commissioned by January 2008, nearly two years before the stay order dated 16.12.2009 granted by the Hon'ble High Court.

7.4 that the Central Commission by taking a liberal view of the matter condoned the delay of 22 months after taking cognizance of above litigation. The relevant portion of the impugned order of Central Commission is extracted below:

“19. Based on the above, we hold that there is justification for condoning the delay of 22 months for construction of Udumalpet- Arasur 400 kV D/C line long with 400/220 kV sub-station at Arasur and associated bays at Udumalpet”

7.5 that the appellant did not give any justification in support of delay for the remaining nine months i.e. from 10.11.2009 till 01.08.2010 and accordingly this delay was not condoned.

7.6 that even in the present appeal the appellant has not given any justification for delay which fact has already been considered by the Central Commission.

8) The following submissions were made by the learned counsel for respondent No.5, Tamil Nadu Electricity Board:

8.1 that the entire delay cannot be attributable to land dispute. The appellant could have charged the bay equipments and ICTS at substation which were installed at the substation and were ready for commissioning. The time taken in the litigation can only be limited to the land in question in the litigation. The other lands in respect of which there was no litigation pending, the appellant should have completed the work to show the work bona fide. However, the appellant delayed the entire project citing litigation. The appellant has not provided details of land in respect of which litigation was there. In the circumstances, the Central Commission is justified in refusing to grant IDC/IEDC for the balance period of nine months i.e. till date of commissioning of the line.

9) **Our consideration and conclusions on assets (5(c), 6 & 7) regarding time over run are as follows:**

9.1 the appellant filed a Petition No. 332 of 2010 before the Central Commission on 13.10.2010 with regard to the second phase of the NLC-II expansion project for approval of the tariff order.

9.2 there was a delay of 31 months in respect of assets 5(c), 6 and 32 months in respect of asset 7. The Central Commission has disallowed the IEDC and IDC in respect of these assets and the same is detailed hereunder:

| Sl.No. | Name of the Asset | Scheduled Dt. Of commissioning | Actual Dt. Of commission | Total delay (in | Delay condoned | IEDC disallowed | IDC disallowed |
|--------|-------------------|--------------------------------|--------------------------|-----------------|----------------|-----------------|----------------|
|--------|-------------------|--------------------------------|--------------------------|-----------------|----------------|-----------------|----------------|

| | | | | months) | | (Rs.in lacs) | (Rs.in lacs) |
|---|---|----------|----------|---------|----|--------------|--------------|
| 1 | Udumalpet-Arasur 400 kV D/C Line along with 400/220 kV substation at Arasur – Asset 5(c) | 1.1.2008 | 1.8.2010 | 31 | 22 | 159.74 | 257.58 |
| 2 | 315 MVA ICT-I along at Arasur 400/220 kV S/S – Asset-6 | 1.1.2008 | 1.8.2010 | 31 | 22 | 19.07 | 24.41 |
| 4 | 315 MVA ICT-II at Arasur 400/220 kV S/S – Asset-7 | 1.1.2008 | 1.9.2010 | 32 | 22 | 21.46 | 28.16 |

Now we proceed to decide whether the Central Commission is justified in disallowing the IDC and IEDC for the time over run specified in the table above.

9.3 Before proceeding to come to our conclusion we deem it appropriate to reproduce the relevant part of the impugned order regarding time over run and disallowance of IEDC and IDC pertains to asset 5(c), 6 & 7. The relevant extract of the order is reproduced below:

“18. In Udumalpet- Arasur 400 kV D/C line along with 400/220 kV sub-station at Arasur and 2 Nos. of 315 MVA ICTs at Arasur sub-station, the 400 kV D/C Udumalpet-Arasur line along with associated bays was commissioned on 1.8.2010, after a delay of 31 months. The petitioner has attributed the delay to litigations with land owner. The petitioner has submitted vide affidavit dated 8.4.2013 that a land owner in Coimbatour district challenged the construction of the transmission line tower by the petitioner. The District Magistrate, Coimbatour, passed an order dated 9.5.2007 overruling the objections of the land owner and directed the petitioner to proceed with the construction of the transmission line. The said order was challenged by the land owner before Madras high Court in Writ Petition No. 19676 of 2007. Vide order dated 4.4.2008, the madras High Court directed the authority to examine further if any Porambok land

is available for erecting the tower. Further, vide order dated 12.6.2009 in ROC No. 25311/2007/C3, the District Magistrate rejected the objections of land owner. However, vide writ Petition 11070/2009 the above order of District Magistrate was challenged by the land owner and vide order dated 16.12.2009, stay was granted on the District Magistrate order dated 12.6.2009. High court of Madras finally dismissed the writ petition filed by land owner vide its order dated 22.6.2010 in Writ Petition No. 6353/2010. The petitioner has also enclosed copy of judgement dated 22.6.2010 in WP No. 6353 of 2010 of Madras High Court.

19. Based on the above, we hold that there is justification for condoning the delay of 22 months for construction of Udumalpet- Arasur 400 kV D/C line along with 400/220 kV sub-station at Arasur and associated bays at Udumalpet, and also for condoning delay in respect of 2 nos. 315 MVA ICTs along with associated bays and 220 kV downstream equipment at Arasur 400/220 kV sub-station because, before the execution of transmission line, ICTs cannot be charged at Arasur sub-station which is a new sub-station and the ICTs were to be charged along with transmission line.”

9.4 the main contention of the appellant is that the delay is due to dispute regarding erection of the tower due to land owner in the District of Coimbatore who had filed a petition before the District Magistrate on 12.02.2007 and explained the sequence of events happened up to the petition dismissed by the Hon'ble High Court on 22.06.2010 and the events happened are as follows:

- a) A land owner in Coimbatore District challenged the construction of transmission tower as early as on 12.02.2007.

- b) The District Magistrate by Order dated 09.05.2007 overruled the objections of the land owner and allowed the appellant to proceed with the construction.
- c) The Order dated 09.05.2007 came to be challenged by the land owner by filing Writ Petition 19676 of 2007 before the Hon'ble High Court of Madras.
- d) The High Court passed the order dated 04.04.2008 directing the authorities to examine availability of alternative land.
- e) The District Magistrate passed an order on 12.06.2009 in ROC No. 25311/2007/C3 and did not accept the objections of the land owner.
- f) The above order dated 12.06.2009 was also challenged before the Hon'ble High Court of Madras.
- g) The High Court stayed the District Magistrate's Order on 16.12.2009.
- h) The Hon'ble High Court finally dismissed the Writ Petition on 22.06.2010.
- i) As soon as the land was available, the appellant put extra efforts and commissioned the assets by 02.08.2010/01.09.2010 i.e. within 3 months of the land being available.

9.5 that the other contention of the appellant is that the transmission line cannot be commissioned even though there is a dispute for a piece of land where the transmission tower has to be erected.

9.6 Refuting the above said contention of the appellant, the Central Commission stated that the appellant failed to give

any other reason for the delay of 31/32 months other than land dispute either in the instant petition, being Petition No. 332 of 2010 or disclosed during the hearing for the delay. The Central Commission further submitted that by taking a very liberal view of the matter it condoned the delay of 22 months after taking cognizance of above litigation, land dispute.

9.7 The respondent Central Commission relied upon this Tribunal's judgment dated 12.01.2012 in Appeal No. 65 of 2011 filed by the appellant, which too involved condonation of delay and non-capitalization of IDC and IEDC for the period of delay, this Tribunal upheld the Commission's order on the ground that the decision was in the consumers interest. The relevant portion of this Tribunal's judgment is extracted below:

"18. As per the preamble of the Act and the Section 61(d) of the Act, the Commission has to safeguard the consumer's interest so that all the tariff, transmission tariff as well as the retail tariff for distribution of electricity has to be so determined that the electricity is supplied to the consumers on the cheapest rates. If the claim of Rs.189.51 lakhs made by the Appellant is added in the capital cost of the transmission system on the date of the commercial operation i.e. on 1.9.2009, the beneficiary utilities have to pay the annual charges on the said amount for all the times to come. This additional charge would be passed through in ARR of beneficiaries approved by the Appropriate Commission which in turn add to the burden of the consumers. As such there is no merit in the claim made by the Appellant."

9.8 the Central Commission contended that the appellant did not give any justification in their petition other than the land dispute. Further, the Central Commission stated that the Hon'ble High Court stay was only for seven months and hence the appellant could go ahead with the work in the rest of the period.

9.9 The land dispute started from 12.02.2007 onwards and the District Magistrate by order dated 09.05.2007 overruled the objections of the land owner and allowed the appellant to proceed with the construction but the appellant could not start the work as the land owner filed a Writ Petition before the Hon'ble High Court of Madras and the Hon'ble High Court passed an order dated 04.04.2008 directing the authorities to examine availability of alternate land.

But the authorities failed to show any alternate land for execution of the tower. The District Magistrate passed an order on 12.06.2009 and did not accept the objection of the land owner and again land owner challenged the District Magistrate's order dated 12.06.2009 before the Hon'ble High Court of Madras and the Hon'ble High Court stayed the District Magistrate's order on 16.12.2009. Finally the Hon'ble High Court dismissed the Writ Petition on 22.06.2010.

9.10 We feel that the appellant could not be able to do any work in the said disputed land from 12.02.2007 to 22.06.2010 even

though the court stay is only for seven months. Practically it is difficult to commence work in the disputed land. Because the land owner will create trouble when the matter is before the court, even though there is no stay the appellant cannot be able to execute the work. The Hon'ble High Court stayed the District Magistrate's order on 16.12.2009 and finally the Hon'ble High Court dismissed the Writ Petition on 22.06.2010. As soon as the land was available the appellant put an extra effort to complete the work within two months.

9.11 Though the execution of other part of the transmission work and erection of ICTs in the 400/220 kV Arasur sub-station were completed, the appellant is unable to charge the ICTs in the Arasur sub-station because of non-availability of 400 kV Udumalpet-Arasur line. Unless the transmission line is completed in all respects the line cannot be charged. Further, the Arasur sub-station is a new sub-station, it cannot be charged without charging the transmission line (the respondent No.5 Tamil Nadu Electricity Board has stated that the sub-station equipment might have been commissioned without the transmission line). The sub-station ICTs can be charged by back charging with 220 kV supply but that will not serve the purpose.

9.12 We feel condoning only 22 months out of 31/32 months of delay by the Central Commission is not reasonable because the land dispute went on for a long period and unless the

disputed land finally comes into possession of the appellant the appellant cannot complete the balance work and cannot charge the line unless the line is commissioned, the new 400 kV Arasur sub-station along with ICTs cannot be commissioned.

9.13 **Issue No.1:** The learned Central Commission has wrongly rejected the claim of the Appellant towards IDC and IEDC for the delay in commissioning of the Assets 5(c), 6 and 7. We observed that the condonation of only 22 months out of total 31/32 months of delay by the Central Commission is not reasonable because the land dispute went on for a long period and unless the disputed land finally comes into peaceful and actual possession of the Appellant Petitioner, the Appellant cannot build, the balance work, hence, the findings on Issue No.1 recorded in the impugned order are preserve and based on improper appreciation of the material available on record. We allow the total time over run as claimed by the Appellant Petitioner with regard to assets 5 (c), 6 and 7. The Central Commission's findings are liable to be set aside to the extent indicated above by us while concluding this Issue No.1.

10. **ISSUE NO.II: whether the Central Commission erred in not condoning the total time over run of assets 5(d), 8 and 9 and thereby disallowing the entire IDC & IEDC?**

The details of delay in commissioning the assets and disallowed IEDC and IDC are shown below:

| Asset No. | Name of the assets | Actual DOCO | Delay (in months) | Delay condoned (in months) | Delay not condoned (in months) | IEDC Dis-allowed (Rs.in Lakhs) | IDC Dis-allowed (Rs. In Lakhs) |
|------------------|---|--------------------|--------------------------|-----------------------------------|---------------------------------------|---------------------------------------|---------------------------------------|
| 5(d) | LILO of Neyveli Sriperumbudur 400 kV S/C line at Puducherry sub-station with associated bays | 1.8.10 | 31 | - | 31 | 172.50 | 234.18 |
| 8 | 2 Nos. 315 MVA ICT's along with associated bays and 220 kV downstream equipment at Puducherry 400/220 kV sub-station | 1.10.10 | 33 | - | 33 | 188.11 | 276.44 |
| 9 | 2 Nos. of 50 MVAR line Reactors at Pugalur 400/220 kV sub-station along with associated bays at Pugalur sub-station | 1.10.10 | 33 | - | 33 | 86.72 | 127.43 |

10.1 The learned counsel for the appellant submitted the following regarding time over run with respect to assets 5(d) & 8:

10.2 that assets 5(d) was the LILO of Neyveli Sriperumbudur 400 kV S/C at Puducherry which was only required for evacuation of power from the NLC-II expansion project and therefore was delayed to match the commissioning schedule of NLC-II expansion project.

Asset 8, the two ICTS of 315 MVA that associated bays and 220 kV downstream equipment at Puducherry substation were also to be installed only after the LILO of Neyveli – Sriperumbudur 400 kV S/C line at Puducherry was completed i.e. after completion of asset 5(d).

10.3 that the Central Commission also contended that since in asset 1 to 4 was agreed to in the Southern Regional Power Committee (SRPC) meetings the delay was condoned. This reasoning is not there in the impugned order. Further, the Central Commission is a quasi-judicial body and cannot decide on the basis of the discussions held in the SRPC Forum. The fact is that the asset 5(d) and asset 8 were delayed to match the commissioning schedule of NLC-II expansion project and the delay ought to have been condoned.

10.4 that in the case of assets 1 & 2 there was also a delay of 6 & 7 months respectively which had been condoned by the Central Commission because the downstream of Andhra Pradesh Transco System was not ready but the Central Commission has not applied the same to the matter in hand. Without prejudice to the arguments that the delay of 31/33 months should be condoned, at least the delay which occurred so as to match the commissioning schedule of NLC-II expansion project should straight away be condoned.

11. Per contra, the learned counsel for the Central Commission submitted (assets 5(d) & 8) as follows:

11.1 that there had been a delay of 31 months for the commissioning of asset 5(d) and no part of the delay was condoned.

11.2 that the appellant did not give any specific explanation at all for the delay in the Affidavits filed in Petition No. 332/2010 for asset 5(d) though in respect of certain other assets, the appellant explained the delay.

11.3 that the appellant is now relying upon the Central Commission order dated 11.01.2012 in Petition No. 136 of 2010 and 952013 in Review Petition No. 7/RP/2013.

11.4 that the above orders were available with the appellant much before the hearing of the tariff petition and were within its knowledge but the appellant did not place reliance on either of the above two orders in the proceedings before the Central Commission. Therefore, the reason given by Central Commission for condoning the delay of asset 1 & 2 cannot *ipso facto* be applied to asset 5(d).

11.5 that LILO of Neyveli Sriperumbudur 400 kV S/C line at Puducherry substation, asset 5(d), is in no way connected with the assets Warangal substation located in Andhra Pradesh or construction of downstream assets by AP Transco. Also that

the Central Commission did not condone the delay in respect of assets 3 & 4, the tariff for which was approved along with assets 1 & 2.

11.6 that the appellant submitted that the delay in commissioning of the asset in question was on account of the delay in commissioning of the generating units of NLC.

11.7 that it was for the appellant to safe guard its interest in the indemnification agreement signed with NLC to claim compensation for the period of delay in accordance with law.

11.8 that the respondent beneficiary and ultimately the consumers cannot be saddled with the additional charges attributable on account of delay in commissioning.

11.9 that the respondent beneficiaries and consumers which in no way are responsible for the delay and therefore should not be liable to pay the inflated tariff.

11.10 that the asset 8 was commissioned with a total delay of 33 months, no part of which was condoned because the appellant did not give any specific explanation at all for the delay in the Affidavits filed in Petition No. 332/2010 though in respect of certain other assets the appellant explained the delay.

12) **The counter submissions on behalf of respondent No.5, Tamil Nadu Electricity Board for asset 5(d) & 8 is:**

That the appellant had not published the details with regard to delay of 33 months (scheduled date of commissioning 01.01.2008/actual date of commissioning 01.10.2010) in declaring commercial operation of the assets. The appellant failed to furnish the details of testing activities carried out and the test reports issued by testing agency. Also there is not dispute with regard to acquisition of land for erection of transmission towers or any *force majeure* conditions hence, the claim of the appellant for IDC / IEDC beyond date of commercial operation i.e. 01.01.2008 is not tenable.

13) **Our consideration and conclusion on assets 5(d) and 8 regarding Time Over Run is as follows:**

13.1 There had been a delay of 31 months in commissioning asset 5(d) and 33 months for asset 8. The Central Commission disallowed total period.

13.2 The appellant is now relying upon the Central Commission order dated 11.01.2012 in Petition No. 136 of 2010 and Review Petition No. 7/RP/2013. In the Original Petition No. 136 of 2010 the Central Commission disallowed six months out of nine months delay in commissioning the assets 1 & 2. Subsequently, the appellant filed Review Petition No. 7/RP/2013 and prayed for consideration of disallowed six months period in respect of assets 1 & 2. The Central commission condoned disallowed period of six months in the

Review Petition, the relevant part of the review order are quoted below:

“17. We consider the second issue of disallowance of IDC and IEDC for 6 and 7 months in case of Assets 1 & 2 and Assets 3 & 4 respectively. It is an admitted fact that all the four assets were scheduled to be commissioned in January 2008. However, the assets were commissioned only 1.8.2009 and 1.9.2009. The delay from January 2008 to February 2009 was condoned as PGCIL had rescheduled the commissioning of the transmission lines to February 2009 to match with the revised commissioning schedule of NLC, which was also discussed and agreed upon by the beneficiaries in the SRPC meetings. The delays beyond February 2009 i.e. 6 months in the case of Asset 1 and 2 and 7 months in the case of Asset 3 and 4 were not condoned and accordingly, IDC and IEDC were not allowed for the said period. It has been brought to our notice that PGCIL had submitted in the original petition (Petition No. 136/2010) that APTRANSCO in the 9th and 10th SRPC meetings informed that Warangal Sub-station along with LILO of Ramagundam- Khammam line would be ready by July 2009 and accordingly Assets 1 & 2 were commissioned on 1.8.2009. This aspect was overlooked while passing the impugned order. Since PGCIL had delayed the commissioning of Assets 1 & 2 to match the APTRANSCO downstream assets, we are of the view that the delay cannot be attributed to PGCIL. Accordingly, IDC & IEDC for the period from 1.2.2009 to 31.7.2009 are allowed to be capitalised. The impugned order stands corrected to that extent.”

13.3 The appellant now is relying on this and prayed to consider in the similar lines for Asset 5(d) i.e. LILO of Neyveli Sriperumbudur 400 single circuit line at Puducherry.

13.4 The reasons considered for Assets 1 & 2 cannot be considered for Assets 5(d) & 8. The Asset 5(d) is LILO of Neyveli Sriperumbudur 400 kV single circuit line at Puducherry which was only required for evacuation of power from NLC-II expansion generation project and the commissioning of the asset was delayed to match the commission schedule of NLC-II expansion generation project. Asset 8, the 2 ICTs of 315 MVA with associated base and 220 kV downstream equipment at Puducherry sub-station were also to be installed only after commissioning of Asset 5(d) whereas the Assets 1 & 2 are the transmission lines commissioned for strengthening of Southern Grid and hence the conditions of Assets 1 & 2 cannot be considered for Asset 5(d).

13.5 The LILO of Neyveli Sriperumbudur 400 single circuit line at Puducherry sub-station [Asset 5(d)] is in no way connected with the assets at Warangal sub-station in Andhra Pradesh which is constructed downstream by APTRANSCO and hence the arguments of the appellant cannot be considered for Asset 5(d).

13.6 Further, the appellant had executed indemnification agreement dated 26.12.2014 with Neyveli Lignite Corporation Ltd. which contains the indemnification clause as under:

“2. **Indemnification**

- a) *In the event of delay in commissioning of generating units vis a vis ATS and vice-versa the defaulting party shall pay the Interest During Construction (IDC) including FERV and Govt. Guarantee fee if any for generating units and ATS calculated as lower of the two, upto a period of one year from the zero date. However, the indemnification claim shall be raised and the defaulting party shall pay only in case of revenue loss or part thereof suffered by the other party due to delay in the commissioning by the defaulting party.*
- b) *Either party who was ready to commission and have notified the other party, shall obtain a certificate from Statutory Auditors at the end of financial year certifying the amount of IDC from zero date to actual date of commissioning or one year IDC whichever is less.”*

13.7 For the purpose of clause 2 of the Indemnification Agreement the zero date agreed between the parties was March 2008 by a subsequent agreement signed on 26.11.2007 clause 2(a) of the Indemnification Agreement dated 29.12.2004 was substituted as under:

“In the event of delay in commissioning of generating units Vis a Vis ATS and vice versa the defaulting party shall pay the interest during construction (IDC) including FERV and Govt. guarantee fee, if any, for generating units and ATS calculated as lower of the two, upto a period of one year from the zero date.

In case of commissioning schedule of generating units and Associated transmission System is delayed beyond the Zero date, the actual date of commission of generating units and Associated transmission System whichever is commissioned earlier after the original Zero date shall be considered as the revised zero date.

However, the indemnification claim shall be raised and the defaulting party shall pay only in case of revenue loss or part thereof suffered by the other party due to delay in the commissioning by the defaulting party.”

Thereafter, the parties signed the Indemnity Agreement dated 25.06.2008, which incorporates the indemnification clause as amended on 26.11.2007.

13.8 The following position emerges from reading of clause 2 of the Indemnification Agreement dated 25.06.2008:

- (a) The Zero date for the purpose of clause 2 of the Indemnification Agreement was 28.2.2009.*
- (b) The Zero date would stand revised to the actual date of commissioning of the generating unit or ATS, whichever is earlier, in case the commissioning was delayed beyond 28.2.2009.*
- (c) The defaulting party would not be liable to pay any compensation up the zero date or the revised zero date.*
- (d) The defaulting party would compensate the other party from the zero date or the revised zero date for a period of one year or upto the date of commissioning of the generating unit or ATS, as the case may be, to the extent of revenue loss suffered by the other party or IDC and FERV and Govt. Guarantee fee, whichever was lower.”*

13.9 As per the Indemnification Agreement entered between the appellant and the NLC project the defaulting party, Neyveli Lignite Corporation Ltd. would compensate the other party i.e. Power Grid Corporation from the zero date or the revised zero date for a period of one year or up to the date of commissioning of the generating unit or ATS as the case may

be to the extent of revenue loss suffered by the other party or IDC and FERV and Government guarantee fees whichever is lower.

13.10 Accordingly, the appellant (Power Grid Corporation of India Ltd.) has to claim the compensation from NLC authorities as the delay is due to commissioning of NLC generating units as per the Indemnification Agreement.

13.11 The Asset 8 i.e. erection of 2 Nos. ICTs of 315 MVA at Puducherry also to be commissioned along with LILO of Neyveli Sriperumbudur 400 kV single circuit line and hence the appellant has to claim the compensation as per the Indemnification Agreement with Neyveli Lignite Corporation Ltd. for the time over run of asset 8 also.

13.12 **Accordingly, the prayer of the appellant to condone the delay in respect of Assets 5(d) and 8 cannot be allowed and the decision of the Central Commission is justified and legal one requiring no interference by us.**

14) Asset No.9:

2 Nos. 50 MVAR line reactors at Pugalur substation, following are the submissions made by the appellant.

14.1 That the Central Commission erred in rejecting the delay of 33 months in the commissioning of asset 9 holding that this is a bilateral issue between the appellant and the supplier of

equipment. The Central Commission failed to appreciate the following aspects:

- (i) The reactors were ordered and were supplied to the appellant on 13.08.2008 and 08.06.2009.
- (ii) When the appellant tried to install the same, there were some defects noticed in the same and it had to be sent back to the manufacturer.
- (iii) At the repairing work shop the reactors were repaired and sent back to site in August, 2010.
- (iv) As soon as possible the reactors were installed and declared under commercial operation on 01.10.2010.

14.2 that as per section 38 of the Electricity Act, 2003 the appellant being a Central Commission utility has to adhere to the highest standards and make sure that only such equipment which passes all tests and standards is installed at its project and has to take all necessary stages in this regard.

14.3 that all issues cannot be decided on the reasoning that this is purely a contractual issue between the appellant and its equipment supplier without appreciating the facts of the case, wherein the reasons for the delay were beyond the control of the appellant.

15) **Per contra, following are the submissions of respondent No.1, Central Commission :**

- 15.1 that the asset 9 was declared under commercial operation with a total delay of 33 months.
- 15.2 that the appellant stated the asset could not be commissioned along with the main Pugalur substation because of the manufacturing defects observed during pre-commissioning check.
- 15.3 that the delay in commissioning was attributable to the manufacturing defect, the Central Commission refused to condone the delay of 33 months while observing that the appellant is at liberty to claim liquidation damages against the supplier.
- 15.4 that the Central Commission has disallowed the capitalization of IDC and IEDC for the period of delay not condoned in the consumers interest, which the Central Commission is mandated to safe guard under the Electricity Act, 2003.
- 15.5 that the Central Commission relied on the judgment dated 12.01.2012 in Appeal No.65 of 2011 of this Appellate Tribunal upholding the Central Commission's order on the ground that the decision was in the consumers interest.

The observations of the Appellate Tribunal in the above judgment are extracted below:

“18. As per the preamble of the Act and the Section 61(d) of the Act, the Commission has to safeguard the consumer's interest so that all the tariff,

transmission tariff as well as the retail tariff for distribution of electricity has to be so determined that the electricity is supplied to the consumers on the cheapest rates. If the claim of Rs.189.51 lakhs made by the Appellant is added in the capital cost of the transmission system on the date of the commercial operation i.e. on 1.9.2009, the beneficiary utilities have to pay the annual charges on the said amount for all the times to come. This additional charge would be passed through in ARR of beneficiaries approved by the Appropriate Commission which in turn add to the burden of the consumers. As such there is no merit in the claim made by the Appellant.”

16) Counter submission of respondent No.5 on Asset No.9:

Is that the Central Commission is justified in rejecting the delay of asset 9 by holding that the issue was bilateral issue between the appellant and the supplier of the equipment. The remedy lies in the contract between the appellant and the supplier for the liquidated damages for the delay caused in supply of equipment. That burden cannot be shifted on to the beneficiary. Hence, the answering respondent has nothing to do with the agreement between the appellant and the equipment supplier and the purchase order for procurement of equipment will definitely have a clause for liquidated damages in the event of failure of equipment supplied by the supplier and delay in supply beyond the scheduled date. Hence, the appellant petitioner has to claim the liquidated damages from the supplier. CERC, upon considering the above has rightly condoned the delay of 33 months.

17. Our consideration and conclusion on Asset 9 regarding Time over run:

17.1 As per investment approval, the Asset No.9 has to be commissioned by 01.01.2008 but due to delay in commissioning of the transmission line, the asset was put into commercial operation on 01.10.2010 with a delay of 33 months.

17.2 Though the original administrative approval was accorded by Ministry of Power letter dated 11.02.2005, the reactors were ordered and were supplied to the appellant on 13.08.2008 and 08.06.2009 respectively. Thus there was a delay of more than two years to place the purchase order for the reactors.

17.3 The relevant part of the Central Commission's impugned order on this issue is extracted as under:

“16. 2 nos. 50 MVAR line reactors at Pugalur 400/220 kV sub-station along with associated bays at Pugalur sub-station were put under commercial operation on 1.10.2010. However,, 400 kV D/C Neyveli-Pugalur-Madurai Transmission Line as well as 2 nos. 315 MVA Auto Transformer and 400/220 kV bays equipment at Pugalur sub-station were put under commercial operation on 1.9.2009. Thus, there is 33 months' delay in the commissioning of 2 nos. of 50 MVAR line reactors at Pugalur 400/220 kV sub-station. The petitioner has submitted, vide affidavit dated 27.5.2011, that the switchable line reactors could not be commissioned along with the main Pugalur sub-station due to the manufacturing defects observed in the reactors during commissioning checks. Subsequently, the reactors were sent back to manufacturing

works in December, 2009 and the same were received at site in August, 2010 upon completion of all the checks at factory. After completion of erection works, the reactors were commissioned in September, 2010 and put into commercial operation on 1.10.2010.

“17. We are of the opinion that the delay in the commissioning of two reactors is a bilateral issue between the petitioner and the supplier and the petitioner is at liberty to claim liquidated damages from the supplier of the reactors. We are, therefore, not inclined to condone the delay of 33 months. Proportionate deductions are accordingly made in IDC and IEDC. Accordingly, the petitioner may also claim IDC and IEDC for 13 months’ delay, from NLC. In case the liquidated damages received from supplier is more than the actual IDC and IEDC, the excess shall be reimbursed to the beneficiaries.

- 17.4 The appellant failed to check up the healthiness of the reactors at the time of receipt of the 2 Nos. 50 MVR reactors at Pugalur sub-station.
- 17.5 The appellant noticed the defect of the reactors at the time of installation only i.e. at the time of commissioning of the transmission line. If the defects were noticed at the time of receipt, the reactors, the equipment might have been sent for early repairs and the same might be commissioned along with the transmission line.
- 17.6 The responsibility of the manufacturer is to verify the physical condition of the reactors before dispatching to the appellant. The manufacturer also failed in checking the

defects of the equipment and the appellant also did not notice the physical damages, if any, at the time of receipt of reactors. Hence, the total fault lies on the supplier.

17.7 We find that the delay in commissioning of the reactors is a bilateral issue between the appellant and supplier as per the clause of the purchase order. In view of the above, the appellant can claim liquidated damages from the supplier of the reactors.

17.8 Hence, the time over run pertaining to this asset No.9 is not liable to be allowed by us. We uphold the decision of the Central Commission in this regard. Thus this issue No.II is decided against the appellant.

18. **Summary of our findings: Issue No.1 – Asset 5(c), 6 and 7:**

18.1 The Commissioning of Asset 5(c) was delayed due to dispute of land owner and thereby erection of a tower was delayed. As soon as the dispute was resolved, the appellant completed the work and commissioned the transmission line [Asset 5(c)].

The Central Commission condoned only 22 months and disallowed 9/10 months and proportionately IDC and IEDC was reduced. The Central Commission did not mention in the impugned order, the reasons for condoning 22 months and not for condoning remaining period.

The delay in commissioning the transmission line is due to delay in erection of a tower in the disputed land. The delay of one tower also matters for commissioning the transmission line unless total line is completed, the line cannot be charged.

Hence, condoning a part of the delay is not justifiable and the contention of the Central Commission that the appellant has not given proper explanation is not acceptable.

18.2 The Assets 6 and 7 being ICTs were also commissioned simultaneously. The Assets were commissioned after a delay of 31/32 months from the scheduled date of commissioning i.e. 1.1.2008. Assets were commissioned on 1.8.2010 and 1.9.2010 respectively.

Assets 6 and 7 were commissioned along with Asset 5(c), transmission line. The 2 Nos. ICTs at Arasur sub-station were commissioned along with 400 kV Udumalpet Arasur line and hence, what ever the delay is condoned to asset 5(c) will be applicable for assets 6 and 7.

We find legal justification in condoning the delay of 9/10 months in commissioning of the Assets 5(c), 6 and 7 by the appellant / petitioner. The impugned order, to this extent is liable to be modified.

- 18.3 In view of the above discussions, we hold that the Impugned Order passed by the Central Commission suffers from illegality and perversity because the approach of the Central Commission appears to be unrealistic and not judicial one. The Appellant claimed condonation of total period of 32 months in the commissioning of the Assets 5(C), 6 and 7. The Central Commission by the Impugned Order condoned only a period of 22 months without assigning any cogent or sufficient reasons. Further, the Central Commission has not mentioned cogent reasons for disallowing the remaining period as claimed by the Appellant in the commissioning of Assets No. 5(c), 6 and 7. In the absence of reasoning on this aspect, the Impugned order so far as it relates to the commissioning of Assets 5(C), 6 and 7, is not just and legal.
- 18.4 We have in upper part of the judgment clearly held that the Appellant could not be able to do any work in the said disputed land and it was difficult for the Appellant to commence the work in the disputed land and due to litigation by the land owners, the said delay had occurred. We deem it proper to allow the whole time over run in commissioning of the Assets No.5(c), 6 and 7 and the Central Commission's findings on this issue is liable to be set aside to that extent. Thus, the issue No.1 is decided in favour of the Appellant and the delay is liable to be partly allowed on this issue.

19. **Issue No.2 (Assets Nos. 5(d), 8 and 9):**

- 19.1 Asset 5(d) is LILO of Neyveli Sriperumbudur line, Asset 8 is 2 Nos. 215 MVA ICTs along with associated bays and 220 kV downstream equipment at Puducherry 400/220 kV sub-station and asset 9 is 2 Nos. 50 MVAR line reactors at Pugalur 400/220 kV sub-station along with associated bays at Pugalur sub-station. The Central Commission disallowed the total period of delay i.e. 33 months in respect of these assets.
- 19.2 Asset 5(d) and 8 are related to NLC generating project for evacuation of power from NLC-II generating project. Asset 5(d) commissioning was caused due to delay in schedule of date of commissioning of NLC-II generating project.
- 19.3 The appellant had executed an Indemnification Agreement dated 26.12.2014 with Neyveli Lignite Corporation Ltd. and as per the agreement in the event of delay in commissioning of generating units vis-à-vis ATS and vice versa the defaulting party shall pay the interest during construction including FERV and Government guarantee fees, if any, to the other affected i.e. Power Grid Corporation of India Limited. In view of the above agreement, the appellant has to claim compensation from Neyveli Lignite Corporation Ltd. for the delay in commissioning the assets.

20. **Asset No.9:- 2 Nos. 50 MVAR line reactor at Pugulur sub-station :**

20.1 The Central Commission has correctly rejected the delay of 33 months in the commissioning of Asset 9 holding that this is a bilateral issue between the appellant and the equipment supplier. The appellant noticed the defects in the reactors at the time of installation and the reactors were sent back to the repair workshop of the supplier and after receipt of the reactors from the supplier, the reactors were installed and declared commercial operation on 01.10.2010.

20.2 The learned Central Commission has not erred in disallowing the time over run in respect of Assets 5 (d), 8 and 9 for the reasons recorded by us above while discussing and concluding Issue No.2. Therefore, Issue No.2 is decided against the appellant.

21. In view of the above discussions, the instant Appeal is partly allowed with regard to issue No.1 and the impugned order is accordingly set aside to the extent mentioned above. We hereby condone the total delay of 31/32 months in the commissioning of the Assets 5(C), 6 and 7 as claimed by the Appellant Petitioner. The Central Commission is accordingly directed to condone the balance total delay of 9/10 months pertaining to assets 5(C), 6 and 7. We direct the Central

Commission to condone the delay and allow IDC and IEDC to the Appellant Petitioner accordingly. The Central Commission is directed to pass consequential orders within 03 months from the date of receipt of the copy of this judgment.

22. There is no order to costs.
23. Pronounced in the open court on this **05th day of May, 2015.**

(T. Munikrishnaiah)
Technical Member

(Justice Surendra Kumar)
Judicial Member



REPORTABLE / ~~NON-REPORTABLE~~