

**In the Appellate Tribunal for Electricity,
New Delhi
(Appellate Jurisdiction)**

Appeal no. 86 of 2015

Dated: 6th April, 2016

**Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson
Hon'ble Mr. I.J. Kapoor, Technical Member**

In the matter of

**Western Region Transmission (Maharashtra)
Pvt. Ltd.
12th Floor, Building No. 10 B,
DLF Cyber City
Gurgaon – 122 002**

... Appellant(s)

Versus

**Central Electricity Regulatory Commission
3rd & 4th Floor, Chanderlok Building
36, Janpath, New Delhi – 110 001**

...Respondent no. 1

**Power Grid Corporation of India
B-9, Qutab Institutional Area Katwaria Sarai
New Delhi – 110 016**

...Respondent no. 2

**MP Power Trading Company Ltd.
Shakti Bhawan, Rampur,
Jabalpur – 482 008**

...Respondent no. 3

**Gujarat Urja Vikas Nigam Ltd. (GUVNL)
Sardar Patel Vidyut Bhawan,
Race Course Road, Vadodra – 390 007**

...Respondent no. 4

**Maharashtra State Electricity Distribution
Company Ltd. (MSEDCL)
Prakashgad, 4th Floor, Andheri (East)
Mumbai – 400 052**

...Respondent no. 5

**Chhattisgarh State Power Distribution
Company Ltd. (CSPDCL),
Vidyut Seva Bhavan, Danganiya
Danganiya, Raipur – 492 013** ...Respondent no. 6

**Government of Goa, Electricity Department
Vidyut Bhavan
Panaji, Goa – 403 001** ...Respondent no. 7

**Electricity Department, Administration of
Daman & Diu Daman – 396 210** ...Respondent no. 8

**Electricity Department
Govt. of UT of Dadra & Nagar Haveli
Silvasa – 396 210** ...Respondent no. 9

**M.P. Audyogik Kendra Vikas Nigam Ltd
3/54, Press Complex, Agra Mumbai Road
Indore – 452 008** ...Respondent no. 10

Counsel for the Appellant(s) : Mr. Amit Kapur
Mr. Vishnu Sudersan
Ms. Sugandha Somani
Mr. Devashish Marwah

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

Mr. Ranjan Roy Gawai,
Ms. Vasudha Sen,
Ms. Samridhi Kapur,
Mr. Krishna Keshav and
Mr. Shailesh Suman for R-2

Mr. Rishabh Donnel Singh for R-3

Mr. M.G. Ramachandran,
Mr. Anand K. Ganesan,
Ms. Swapna Seshadri and
Mr. Sandeep for R-4

JUDGMENT

PER HON'BLE MR. I.J. KAPOOR, TECHNICAL MEMBER

1. The present Appeal has been filed under Section 111 of the Electricity Act, 2003 by M/s. Western Regional Transmission (Maharashtra) Pvt. Ltd. (**hereinafter referred to as "Appellant"**) against the Impugned Order dated 02.07.2014 passed by the Central Electricity Regulatory Commission (**hereinafter referred to as "Central Commission"**) in Petition No. 71/MP/2014 dated 22.05.2014 filed by Power Grid Corporation of India Ltd. (**hereinafter referred to "Respondent No.2"**) read with Review Order dated 05.01.2015 passed by the Central Commission in Review Petition filed by the Appellant seeking review of the Impugned Order.
- 1.1 The Appellant is a wholly owned subsidiary of Reliance Power Transmission Ltd. (**"RPTL"**) having its registered office at Cyber City, Gurgaon, Haryana. The Appellant is a Special Purpose Vehicle (**"SPV"**) incorporated by the RPTL to implement Western Region

System Strengthening Scheme-II, Project B (**“WRSSS-II, Project B”**).

- 1.2 The Central Commission (Respondent No.1) is established under Section 3 of the Electricity Regulatory Commissions Act, 1998 to exercise the powers conferred on and discharge the functions assigned to it under the Electricity Act, 2003, such as to adjudicate upon disputes between the parties.
- 1.3 The Power Grid Corporation of India Ltd., the Respondent No.2 is a Transmission Licensee under Section 2 (73) of the Electricity Act, 2003 and being the Central Transmission Utility (CTU), it is engaged in bulk power transmission and responsible for ensuring planning, coordination, supervision, control over Inter-State transmission system and operation of National and Regional power grids.
- 1.4 Respondent No. 3 is Madhya Pradesh Power Trading Company operating in the state of Madhya Pradesh.
- 1.5 Respondent No. 4 is Gujarat Urja Vikas Nigam Ltd., a Government of Gujarat undertaking located in the state of Gujarat.
- 1.6 Respondent No. 5 is the Maharashtra State Electricity Distribution Company Ltd operating in the State of Maharashtra.

1.7 Respondent No. 6 is Chhattisgarh State Power Distribution Company Ltd. operating in the State of Chhattisgarh.

1.8 Respondent No. 7 is the Electricity Department operating in the State of Goa.

1.9 Respondent No.8 is Electricity Department, Administration of Daman & Diu, Daman.

1.10 Respondent No.9 is the Electricity Department, Government of UT of Dadra and Nagar Haveli located at Silvassa.

1.11 Respondent No. 10 is the M.P. Audyogik Kendra Vikas Nigam Ltd. located in the State of Madhya Pradesh.

The Respondent No. 3 to Respondent No. 10 as above are the beneficiaries for the use of the said transmission facility.

2. Facts of the Appeal

(a) The Appellant entered into an Implementation Agreement (“**IA**”) on 23.11.2007 with Respondent No. 2 for implementation of the Western Region Strengthening Scheme-II, Project B.

(b) As per the IA, the Regional Commercial Operation Date (“**RCOD**”) of the project was 31.03.2010.

- (c) The Central Commission granted transmission licence to the Appellant on 30.12.2008 for construction, operation and maintenance of the transmission lines falling under project WRSSS-II, Project B. Keeping in view the delay in issuance of transmission licence to the Appellant, the Central Commission vide its order dated 30.12.2008 extended the RCOD for the assigned project from 31.03.2010 to 31.12.2010.
- (d) In view of Central Commission's Order dated 30.12.2008 and the Appellant's letter dated 02.01.2009, the Respondent No.2 issued letter dated 27.03.2009 to the Appellant *inter alia* amending the RCOD for the Project B of WRSSS-II under the IA as 31.12.2010.
- (e) Since there was further delay beyond the Appellant's control in execution of the assigned work, the Appellant took up the matter vide letter dated 07.10.2010 with the Respondent No.2 seeking extension of RCOD for WRSSS-II, Project B to September 2011.
- (f) Respondent No.2 filed a petition with the Central Commission for seeking extension of the RCOD on account of the stated

circumstances resulting into these delays. The Central Commission vide its order dated 31.12.2010 admitted the fact that the delay was beyond the control of the concerned parties and can be covered under the force majeure events as contained in the IA and granted the extension of revised COD by a period of eight months for WRSSS-II, Project B.

- (g) In consideration of the above request of the Appellant, the Respondent No.2 issued a communication to the Appellant extending the RCOD Project B of WRSSS-II, Project B to 31.08.2011.

- (h) Even after the above extension of RCOD, there has been many occasions when the Appellant has sought further extension of the RCOD from the Respondent No. 2 on account of compelling reasons as stated by the Appellant for seeking such extensions and the Respondent No.2 vide letter dated 17.02.2012 further extended the RCOD of WRSSS-II, Project B up to 30.11.2012 and vide letter dated 14.03.2013 extended again upto 31.05.2013 and again vide letter dated 30.08.2013, the RCOD of WRSSS II, Project B was

further extended up to 30.11.2013 by the Respondent No.2 to the Appellant.

- (i) On 01.01.2014, the WRSSS II, Project B achieved its commercial operation. In view of this, the Appellant sought from Respondent No. 2 further extension of RCOD from the earlier date of 30.11.2013 to the actual Date of Commercial Operation i.e. 01.01.2014. In light of this, the Respondent No. 2 filed petition No. 71/MP/2014 before the Central Commission seeking extension of revised Commercial Operation Date of WRSSS-II, Project B due to events analogous to Force Majeure that have taken place subsequent to the award of the project.

- (j) On 02.07.2014, the Central Commission issued the Impugned Order observing that the Appellant and the Respondents should sort out the issue of extension of RCOD amongst themselves on terms and conditions as indicated in the IA on account of force majeure events in light of the Appellant's acceptance that such extension of RCOD would not have any financial impact on the transmission charges

payable by the beneficiaries and the relevant extract of the Impugned Order is reproduced as under;

“In terms of Para 4.4.2 of the IA, the RCOD of the project can be extended by mutual consent of the parties i.e. the petitioner and WRTPML. Since, the petitioner has accepted the events responsible for execution of the project as the events in the nature of force majeure and WRTPML has accepted that the extension of RCOD would not have any impact on the transmission charges payable by the beneficiaries, we are of the view that the petitioner and WRTPML should sort out the issue of extension of RCOD between themselves in terms of the relevant provisions of the IA and approval of the Commission for the same is not necessary.”

- (k) In light of the Impugned Order dated 02.07.2014 passed by the Central Commission, the Respondent No. 2 extended the RCOD of the assigned project to 01.01.2014, as requested by the Appellant.
- (l) On 28.07.2014, the Appellant filed Review Petition No. 23/RP/2014 before the Central Commission seeking review of the Impugned Order dated 02.07.2014 on account of error apparent on the face of the record being that the Appellant had never accepted that extension of RCOD of the project would not have any impact on its transmission charges.

- (m) The Central Commission issued order dated 05.01.2015 in the Review Petition dismissing the claim of the Appellant filed vide its Petition thereby denying the Appellant for enhancement of transmission tariff on account of extension of RCOD of WRSSS-II, Project B.
- (n) Aggrieved by the Central Commission's Impugned Order dated 02.07.2014 read with its Review Order dated 05.01.2015, the Appellant has filed this Appeal.
3. Keeping in view the facts of this Appeal as stated above, the only issue which is to be decided in the present Appeal is **"Whether the Central Commission erred in observing that the Appellant has accepted that extension of RCOD of the WRSSS-II, Project B without any impact on the transmission charges payable by the beneficiaries?"**
4. We have heard at length Mr. Amit Kapur, learned Counsel for the Appellant, Mr. M.S. Ramalingam, learned Counsel for the Respondent No.1, Mr. Ranjan Roy Gawai, learned Counsel for the Respondent No.2, Mr. Rishabh Donnel Singh, learned Counsel for the Respondent No.3, Mr. M.G. Ramachandran, learned Counsel for

the Respondent No.4 and considered their written submissions and the arguments put forth by the rival parties before us and our observations are as follows:-

- (a) The learned counsel for the Appellant submitted that it would be pertinent to take note of facts relating to the extra ordinary nature of the project. Assignment of the said work by the Respondent No.2 was initiated under peculiar circumstances, in the absence of well defined procedures specified by the Competent Authority and this extra ordinary situation was appreciated by the Central Commission while considering the question of granting transmission licence and in support of the same the relevant paragraphs 42 and 43 of the Central Commission's order dated 26.07.2005 issued in Petition No. 85 of 2004 *inter alia* as under:-

“42. For this purpose, the CTU may approach the Commission for its approval of the processes and procedures for implementation of the Scheme by private party.

“Caveat

- 43. The view that has been taken in the present application is in the absence of any well-defined procedures specified by the competent authority. For this reason, the procedure being decided in this order shall not be quoted as a precedent for any future case. The cases arising in future will be governed by the Regulations to be framed by*

the Commission on the terms and conditions for construction of inter-state transmission of electricity, and guidelines to be issued by the Central Government.”

- (b) Pursuant to the aforesaid order dated 26.07.2005 of the Central Commission, the Respondent No. 2 on 21.11.2015 issued a Request for Selection (“**RFS**”) for selection of private developers to implement the project on Build, Own, Operate and Transfer (“**BOOT**”) basis. Subsequently, the bidding parameters of the project based on capital cost was changed to tariff based bidding and the final tariff to the selected bidder for payment purpose was to be as approved by the Central Commission.
- (c) The Appellant also stated that when the project was envisaged and the bids were invited, no bidding guidelines under Section 63 of the Electricity Act, 2003 have been issued by the Central Government.
- (d) The Appellant further stated that on 22.11.2007, M/s. Reliance Energy Transmission Ltd., was selected as successful bidder which subsequently incorporated the Appellant as a SPV to execute the assigned project.

- (e) Subsequently, the Appellant entered into Implementation Agreement with the Respondent No. 2 on 23.11.2007 setting out the terms and conditions for execution and implementation of the project, wherein;
- (i) As per Clause 3.1.2 (viii) of the Implementation Agreement, the Appellant is required to obtain the approval of transmission service charge by the Central Commission to facilitate the implementation of the project, as a condition precedent to its obligations under the Implementation Agreement.
- (ii) Clause 4.4.2 of the Implementation Agreement provides that the RCOD of the project may be extended by reason of one or more force majeure events.
- (iii) Clause 5.1(ii) of the Implementation Agreement provides that the Appellant shall be responsible to obtain approval of the transmission service charge from the Central Commission.
- (f) Petition dated 04.03.2008 was filed by the Appellant before the Central Commission seeking grant of transmission licence to

implement this project and extension of time in completion of the project with upward revision of transmission charges. The Central Commission vide its Order dated 30.12.2008 granted transmission licence to the Appellant and extension of RCOD up to 31.12.2010 and denied upward transmission of service charges and relevant extract of this order is reproduced below:-

“21. We have considered the submissions made on behalf of the parties. The present proceedings relate to grant of transmission licence. It is neither advisable nor possible for us to consider the question of determination/escalation of the transmission service charges in these proceedings. These proceedings were not under Section 63 of the Act. The regulations specified by the Commission lay down an elaborate process for approval of the transmission service charges. Therefore, we are not considering the enhancement of the transmission service charges, projected by the applicant in the affidavit filed on 30.10.2008, particularly when the enhancement was not insisted upon at the hearing.”

- (g) The Appellant entered into a Power Transmission Agreement (**“PTA”**) on 16.01.2009 with eight beneficiaries i.e. Respondent No. 3 to Respondent No. 10 for use of the transmission capacity of the assigned project. The Appellant stated that it was confronted with several issues analogous to force majeure events such as law and order problems, change in tower design, delay in notification of wild life sanctuaries falling on the route of the transmission line and

as a result of the same it consistently kept Respondent No. 2 updated about the same and was constrained to seek extension of the RCOD from time to time vide its various communications from the Respondent No. 2 on account of the reasons beyond its control as alleged by the Appellant. The Appellant further submitted that even before the Central Commission during the hearings in response to the petition dated 22.05.2014 filed by the Respondent No.2 seeking the final extension of RCOD, it specifically mentioned the following for the consideration of the Central Commission;

- (i) The Appellant was not opposed to admission of the matter and was agreeable to the Respondent No. 2's submissions only insofar as they related to the extension of RCOD up to 01.01.2014.
- (ii) The Respondent No. 2's Petition was limited to seeking extension of RCOD and the issue of alteration of transmission charges was not within its scope and was a separate matter.
- (iii) It was a settled position of law that when there is a delay in execution of a project due to events which are beyond the

control of the parties, benefit of additional costs incurred due to time overrun should be provided to the developer.

- (iv) The Appellant requested the Central Commission not to make any observations with respect to the transmission charges.
- (h) The Appellant stated that despite its above submissions during the hearings before the Central Commission, the Central Commission vide its Impugned Order dated 02.07.2014 *interalia* observing that the Appellant had accepted that the extension of RCOD would not have any impact on the transmission charges payable by the beneficiaries and hence all the extensions granted to the Appellant from time to time up to 01.01.2014 would be without any financial implication denying thereby revised transmission charges considering the escalation factor as indicated in the Implementation Agreement. Aggrieved by the above Impugned Order dated 02.07.2014, the Appellant filed Review Petition before the Central Commission which was dismissed by the Central Commission vide its order dated 05.01.2015 *interalia* observing as under:-

- (i) In pursuance of Order dated 31.12.2010 in Petition No. 296/2010, Respondent No. 2 vide its letter dated 10.03.2011, extended RCOD of Project B to 31.08.2011. In para 4.0 of the letter it was mentioned that the Appellant would not be entitled for any enhancement of tariff on account of extension of RCOD.
- (ii) Respondent No. 2 vide its letter dated 17.2.2012 permitted time till 30.11.2012 for completion of the project with the condition that the Appellant shall not be entitled to any enhancement of tariff on account of delay in execution of the project.
- (iii) Respondent No. 2 vide its letter dated 30.8.2013 extended the time for completion of the project till 30.11.2013 with the condition that the Appellant would not be entitled to any enhancement of tariff on account of delay in execution of the project.
- (iv) There is nothing on record which states that the Appellant had opposed the conditions laid down by the Respondent No. 2 regarding enhancement of tariff.
- (v) The Respondent in its Petition filed before the Central Commission had mentioned that in order to consider the request of the Appellant for extension of RCOD of the Project,

the Respondent No. 2 had constituted a committee which had recommended that RCOD may be extended till 01.01.2014. The Committee had also observed that the Appellant had acknowledged that extension of RCOD of the project would not have any adverse impact on transmission charges. No document has been placed on record by the Appellant to establish that it was not agreeable to the recommendations of the committee appointed by the Respondent No. 2.

- (vi) The Appellant has not challenged at any point of time, rather accepted the letters issued by Respondent No. 2 for granting extension of the time for completion of the project subject to the condition that the Appellant would not be entitled for revision of transmission charges.
- (vii) Accordingly, there is no error in the Order dated 02.07.2014 and the review petition was dismissed.

- (i) The Appellant alleged that at no point of time after the grant of first extension by the Central Commission vide its order dated 30.12.2008 wherein the RCOD was extended up to 31.12.2010 without any enhancement in transmission tariff, the Appellant has

ever accepted the subsequent extensions granted by the Respondent No.2 from time to time in respect of the RCOD and finally by the Central Commission granting the extension of RCOD upto 01.01.2014 without any enhancement in transmission tariff and all these extensions which as per the Appellant ought to cause financial implications on account of cost over runs as these delays were for the reasons beyond its control as recognized by the Central Commission as well as Respondent No. 2 in consideration of the events analogous to force majeure. In light of this, the Appellant alleged that denial of enhancement of transmission charges payable by the beneficiaries would be highly unjustified keeping in view that the subject work was assigned after a tariff based bidding wherein the Appellant emerged as the most competitive bidder and as such, it quoted the lowest tariff without having any cushions to bear financial burden for such extended period.

- (j) As per the Appellant, when there is delay in execution of a project due to reasons which are beyond the control of the parties, benefit of additional cost incurred due to time over run should be provided to the Appellant by the beneficiary Respondents.

- (k) The learned counsel for the Respondents stated that the orders dated 02.07.2014 and 05.01.2015 passed by the Central Commission are correct based on the factual details of the case. The Respondents further stated that the Appellant has consistently taken the position that there would be no escalation in cost due to the extension of RCOD. In this regard, if the Central Commission had made any wrong recording, it was for the Appellant to challenge the findings of the Central Commission's earlier orders dated 30.12.2008 and 31.12.2010 wherein the RCOD was extended upto 31.12.2010 and thereafter upto 31.08.2011, without any enhancement in tariff. These orders have attained finality as these are not challenged by the Appellant at any point of time.
- (l) The learned counsel for the Respondents further quoted letter dated 13.10.2010 of the Appellant seeking extension of RCOD wherein it was clearly accepted by the Appellant that there would be no bearing on the transmission service charge payable by the beneficiaries for extending RCOD as sought.

- (m) The Respondents further stated that the Appellant was accepting grant of extension of RCOD from the Respondent No. 2 from time to time and such communications of the Respondent No. 2 granting extension of RCOD were with a specific condition that there would be no cost escalation and the Appellant was accepting it without any protest and at no point of time in the intervening stages, the Appellant ever stated that the extension sought in RCOD would be subject to price escalation as per the Implementation Agreement.
- (n) The Respondents further stated that after obtaining the accommodation on account of various extensions in the RCOD on several occasions both from Central Commission and Respondent No. 2, the Appellant cannot now state that the Respondent No. 2 had no jurisdiction and even if it is assumed for the sake of the arguments that the Respondent No. 2 had no jurisdiction, then the Central Commission had the requisite jurisdiction and it had already passed the orders dated 30.12.2008 and 31.12.2010 without providing any escalation for the extended RCOD which

have now become final and binding on the parties. As such no contrary claim can be raised at this stage.

- (o) In response to the Appellant's statement that no guidelines were issued by the Central Government under Section 63 of the Electricity Act, 2003 at that point of time when the bids were invited, the Respondents stated that this project was awarded under the tariff based competitive bidding in compliance of Section 63 of the Electricity Act, 2003 only and the non issuance of guidelines by Central Government at that point of time was not contested by the Appellant while submitting its bid and this position remained same for other bidders also and raising this issue now by the Appellant does not have any merit.

- (p) The Respondents also denied that the problems encountered by the Appellant were in the nature of force majeure as being contended by the Appellant. The Respondents further stated that the Appellant in each proceedings before the Central Commission as well as during its meetings with the Respondent No. 2 regarding grant of extension of RCOD from time to time has categorically

accepted that there will be no increase in the transmission charges and the Central Commission has correctly recorded this position on the part of the Appellant in its Impugned Order.

5. After having carefully examined the various aspects relating to the present Appeal, our considerations are stated hereunder:-

5.1 It is an admitted fact that the transmission system which has been developed by the Appellant was pursuant to competitive bidding initiated under Section 63 of the Electricity Act, 2003 and the Appellant was selected only on the basis of tariff quoted by it in the competitive bidding process. Though at that point of time, Government of India's guidelines under Section 63 of the Electricity Act, 2003 had not been notified but undoubtedly, the entire process of tendering was carried out as per the competitive bidding process which cannot be varied at this stage.

5.2 We have perused the following relevant Clauses of the Implementation Agreement executed on 23.11.2007 between the Appellant and the Respondent No. 2 which would throw light on various issues raised by the Appellant in the present Appeal so as

to facilitate our better understanding on the relevant terms and conditions, as extracted hereunder:-

“(i) *RECITALS*

- a) *POWERGRID had invited proposals on International Competitive Bidding basis for selection of Independent Private Transmission Company (IPTC) to establish transmission lines associated with Western Region System Strengthening Scheme-II under Project B (specification no. C-02510-1816-3) pursuant to which Reliance Energy Transmission Limited, Mumbai had submitted its Proposal No. Nil dated. 8.10.2006 on Build, Own, Operate and transfer (BOOT) basis and pursuant to the change of the project from BOOT to Build, Own and Operate (BOO) in the light of A.K. Khurana Committee recommendations of Ministry of Power, Govt. of India and clarifications dated 31/01/07 on Public Private Participation Appraisal Committee (PPPAC) of Ministry of Finance, Govt. of India:*
- b) *The RETL was notified as the prospective IPTC by POWERGRID. RETL, then incorporated the IPTC as its 100% subsidiary and signed the Joint Undertaking as per the specified format in the RFS documents. The IPTC proposes to set up the Project on Build, Own and Operate (BOO) basis for the purpose of selling all the Project’s available transmission capacity to Beneficiary(s) i.e. Madhya Pradesh State Electricity Board (MPSEB), Maharashtra State Electricity Distribution Company Ltd. (MSEDCL), Gujarat Urja Vikas Nigam Ltd. (GUVNL), Chhattisgarh State Electricity Distribution Company Ltd. (CSEB), Electricity Department of Goa, UT Daman & Diu, UT Dadar & Nagar Haveli and MP Audyogik Kendra Vikas Nigam Ltd. (MPAKVNL) (herein referred to as “Beneficiary”) in individual capacity and collectively as “Beneficiaries”) on the terms and conditions contained in this Agreement and the ‘Power Transmission Agreement.’ (hereinafter referred to as PTA);*

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4.4 Extension of time

4.4.1 If:

- (i) *The IPTC is prevented from performing its obligations under Clause 4.1 by the Required Commercial Operation Date of an element due to POWERGRID's default (including without limitation, POWERGRID's failure to arrange for the connection of Project-B with Interconnection Facilities in accordance with Clause 4.2); or*
- (ii) *subject to clause 4.4.2 and Section 9, the Project-B cannot be Commissioned by its Required Commercial Operation Date,*

The required Commercial Operation Date of such Project-B shall be extended on a day for day basis for the duration of such events.

4.4.2 The Required Commercial Operations Date of the Project-B may be extended up to one hundred eighty (180) days from its Required Commercial Operation Date first determined pursuant to this Agreement by reason of one or more Force Majeure Events. In case there is a further delay on account of Force Majeure, the Required Commercial Operations Date of Projects B may be extended further (beyond 180 days), with the mutual consent of the Parties.

In case the parties could not reach an agreement and the Force Majeure Event continues to be present, POWERGRID shall have the right to cause termination of the Agreement by giving a notice to the IPTC in this regard. The IPTC shall also have the right to cause termination of the Agreement by giving a notice to POWERGRID in this regard.

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SECTION 9

9.0 FORCE MAJEURE

9.1 Available Relief For a Force Majeure Event

Except as expressly provided in this Agreement, no party shall be in breach of its obligations pursuant to this Agreement or otherwise liable to the other party for any hindrance or delay in performance or any non-performance of any such obligations if and to the extent that such hindrance or delay or non-performance is due to a Force Majeure Event as defined in Clause 9.3 provided that;

- (i) the affected party could not have avoided the effect of Force Majeure by taking precautions which having regard to all matters known to it before occurrence of the Force Majeure Event and all relevant factors it ought reasonably to have taken but did not take; and*
- (ii) the affected party has used its best endeavours to mitigate the effect of the Force Majeure Event and to carry out its obligations under this Agreement in any other way that is reasonably practicable.*

Either party may claim relief as per Clause 4.4.2 of the Agreement.

9.2 Duty to Report

9.2.1 Neither party may claim relief for a Force Majeure even if it is likely to have a Material Adverse Effect on its performance of its obligations under this Agreement, unless it shall have notified the other party in writing of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event within seven (7) days after the affected party knew, or ought reasonably to have known, of its occurrence and that the Force Majeure Event would be likely to have a Material Adverse Effect on its performance of its obligations under this Agreement.

9.2.2 Any notice pursuant to Clause 9.2.1 shall include full particulars of:

- i) the nature of each Force Majeure Event which is the subject of any claim for relief under this Agreement;*

- ii) *the effect which such Force Majeure Event is having on the affected party's performance of its obligations under this Agreement;*
- iii) *the measures which the affected party is taking, or proposes to take, to alleviate the impact of those Force Majeure Events; and*
- iv) *any other information relevant to the affected party's claim and the same shall be notified within fifteen (15) days after the affected party knew of the occurrence of the Force Majeure Event.*

9.2.3 *For so long as the affected party continues to claim to be affected by a Force Majeure Event, it shall provide the other party with regular written reports, at least once in a every month, containing;*

- i) *the information called for by Clause 9.2.2; and*
- ii) *such other information as the other party may reasonably request about the affected party's claim.*

9.2.4 *Where the IPTC is the affected party, it shall promptly notify POWERGRID in writing when ay Force Majeure Event which is the subject of any claim under this Agreement ceases or when there is any material change in its impact on the IPTC's performance of its obligations under this Agreement.*

9.3 *Force Majeure Events:*

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

- (i) *act of God, including, but not limited to lightning, drought, fire and explosion (to the extent originating from a source external to the Site), earthquake, volcanic eruption, landslide, flood, cyclone, typhoon, tornado or exceptionally adverse weather conditions which are in excess of the statistical measures for for the last hundred (100) years, or*
- (ii) *any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action;*
- (iii) *Change in Law to the extent not covered under tariff adjustments as per Section 11;*
- (iv) *expropriation or compulsory acquisition by any Indian Governmental Agency of any material assets or rights of the IPTC;*
- (v) *any event of circumstance of a nature analogous to any of the above;*

9.4 None of the following conditions shall constitute a Force Majeure Event unless due to a Force Majeure Event, they affect the IPTC's Contractors:

- i) late delivery of plant, machinery, equipment, materials, spare parts, fuel, water or consumable for the Project; or*
- ii) a delay in the performance of any of the IPTC's Contractors.*

9.5 Notwithstanding anything contained in this Section-9, insufficiency of funds shall not constitute a Force Majeure Event.

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9.8 Continuance of Financial Obligations

It is hereby expressly clarified and agreed between the parties hereto that the occurrence of a Force Majeure event or its

continuance shall not absolve the parties from their respective financial obligations due under the Agreement.

From the above, it is amply clear that such extensions in RCOD granted from time to time on the request of the Appellant either by the Central Commission or by the Respondent No. 2 even if it is considered to be on account of force majeure events as contended by the Appellant, it would not absolve the parties from their respective financial obligations due under the above executed Implementation Agreement. We have also noted that Clause 9.8 titled Continuance of Financial Obligations wherein the Appellant as well as the Respondents in question have agreed to that occurrence of force majeure event or its continuation shall only facilitate extension of RCOD to that extent without altering the accepted tariff position as emerged through a competitive bidding process.

We have noted that IA executed between the parties does provide all possible safeguards to protect the interest of the parties particularly in respect of force majeure events as defined in the relevant clauses as cited above. Such Force Majeure events are experienced in such type of transmission projects and the party executing the project should need to be safeguarded suitably from levy of the liquidated damages for such delays which are beyond its

control. Further, we have noticed from the above cited paras of IA that the Appellant has accepted unconditionally the provisions of clause 9.8 of IA thereby accepting that such occurrences of force majeure shall not absolve the parties from their respective financial obligations under the Agreement.

5.3 Now, let's look at the earlier two orders of the Central Commission which have attained finality i.e. the order dated 30.12.2008 and 31.12.2010 wherein the Central Commission have categorically denied any price escalation to the Appellant and the relevant extract from the first order dated 30.12.2008 is as under:-

“In terms of clause 4.4.1 of the Implementation Agreement, the required commercial operations date may be extended up to 180 days by reason of one or more force majeure events and in case of further delay on account of force majeure, the required commercial operation date may be extended further beyond 180 days with the mutual consent of the parties. Force majeure events are defined in section 9 of the Implementation Agreement. In our opinion, delay in signing of the Power Transmission Agreement in the present case is of the nature of and analogous to force majeure events. Against this background, the Commission is satisfied that it will be in the interest of justice to grant extension of nine months from the date of completion contemplated in the Implementation Agreement so that the project gets implemented without further delay but the applicant shall not be entitled to increase in the transmission service charges by virtue of extension of time being allowed. We order accordingly....”

We observed from the above order of the Central Commission that with the mutual consent of the parties, the RCOD extension could be effected. In order to facilitate the implementation of project in time, the Central Commission granted an extension of nine months so as to enable the Appellant to get the project completed on account of the events analogous to force majeure and this order dated 30.12.2010 of the Central Commission denying the Appellant from increase in tariff was not challenged by the Appellant either before this Tribunal or before any other court so it is abundantly clear in our mind that it became binding on all the parties including the Appellant. Now, we quote the relevant extract of the Central Commission's subsequent order dated 31.12.2010 as under:-

“...We direct the petitioners and Respondent No. 1 to mutually decide the issue of extension of RCOD in respect of the transmission lines of the petitioners and the commissioning of the substations of Respondent No.1 in terms of the relevant provisions of the Implementation Agreement.....”

“.....The petitioners have already committed that the proposed extension of RCOD of the projects would not have any adverse impact on the transmission charges payable by the beneficiaries and shall remain unaltered as indicated in the TSA. We direct that the petitioners shall remain bound by this commitment....”

Once again the Central Commission reiterated that the proposed extension of RCOD would not have any adverse impact on the transmission charges payable by the beneficiaries and it shall remain unaltered as indicated in the Power Transmission Agreement and directed the Appellant to remain bound by this commitment and even this order of the Central Commission also has not been challenged till date and it has attained finality.

5.4 We have observed from the communication dated 13.10.2010 seeking extension of RCOD by nine months from the Respondent No. 2 wherein the Appellant conscious of the fact of its quoted position in the capacity as the lowest bidder and the prices quoted by it were relating to year 2006, still it gave its acceptance to keep the tariff same for such extension in RCOD.

5.5 We have perused communication letter dated 22.08.2011 of the Appellant wherein it sought an extension of RCOD from the Respondent No. 2 in terms of Clause 4.4.1 of the Implementation Agreement and in that request letter, the Appellant stated as under:-

“...In view of the above, we request that the delays in commissioning of the lines under WRTMPL to be treated as Force Majeure event to be covered under section 9.3 of IA and Required Commercial Operation Date for WRTMPL be extended by 180 days under clause 4.4.1 of Implementation Agreement.”

In light of the above, there is no doubt in our mind that the Appellant was fully conscious of its rights under the Implementation Agreement and therefore only sought for the extension of RCOD in terms of clause 4.4.1 of the Implementation Agreement which would be read with Clause 9 which deals with force majeure as reproduced in the preceding paras and the only prayer of the Appellant in the above referred communication was for extension of time period in terms of RCOD for completion of project.

5.6 We also observed that the Respondent No. 4 vide letter dated 05.11.2011 to the Respondent No. 2 stated that no further extension of time to be granted to the Appellant in view of two extensions that had been granted earlier. From this communication, we noted the concern of the beneficiaries which were affected by such extensions of RCOD. In view of the clear stipulation in the bidding documents that it was the duty of the Appellant to take all approval and consents for setting up the project, the Respondents were not appreciating the fact that the Appellant was seeking extension in RCOD from time to time which was causing hardships to the beneficiaries as any delay in the RCOD of WRSSS-II, Project B would affect them adversely since they would not be in a position to

draw any benefit due to delayed availability of the subject transmission facility

5.7 We have also noticed that the grant of extension of RCOD by Respondent No. 2, vide its letter of extension dated 17.02.2012, it was with a clear stipulation that the Appellant shall not be entitled for enhancement of tariff on account of delay in the execution of WRSSS-II, Project B and the relevant extract is stated as under:-

“4.0 After considering all the materials on record, the representations of WRTMPL, the objections of the beneficiaries and taking account of the fact that it is WRTMPL’s responsibility to obtain all the required consents and approvals and in particular after the grant of approval under Section 164 of the Electricity Act, 2003, the plea of Force Majeure affecting the implementation of the project is not admissible. WRTMPL has not completed the various elements of the project, despite the time being the essence and operation of other elements of the system which are ready, are dependent on the new completion of the project.

5.0 WRTMPL is responsible for non-completion of the project by RCOD in line with the Order dated 31.12.2010 of the Central Commission and for consequences provided for in the Implementation Agreement.

6.0 Without prejudice to the our rights (including levy of Liquidated Damages by POWERGRID at an appropriate stage) under the Implementation Agreement for non-completion in time, WRTMPL is required to make immediate and bonafide efforts to arrest further delays in commission of lines, as the delay has cascading effects on other projects.

8.0 *M/s. WRTMPL shall not be entitled for any enhancement of tariff on account of delay in the execution of Western Region System Strengthening Scheme-II (Projects-B&C).*

9.0 *It may be noted by M/s. WRTMPL that it shall not be possible for Powergrid to consider any further request beyond 30.11.2012 and to ensure that the situation does not arise, it is requested that M/s. WRTMPL may please deploy additional resources beyond what has been already done.”*

This letter of the Respondent No. 2 was replied by the Appellant vide its letter dated 01.03.2012 and the relevant extract is reproduced below;

“...Ref: Your letter no. C/PL/WRSSII-(B)/2012 dated February 17th, 2012...”

“...We refer to your letter on the subject above and thank you for extending the commissioning date up to 30.11.2012...”

“...we differ on paragraphs 4, 5 and 6 of your letter to the extent of delays being attributed to WRTMPL and again submit that the delays caused in the projects were beyond control of the Project Company and thus cannot be attributed to it. We hereby accept the extension of completion date for the projects....”

From the above communication dated 01.03.2012 wherein the Appellant has objected to certain paras of the letter dated 17.02.2012 of the Respondent No. 2 but raised no objection to the condition stipulated in para 8 of the Respondent No. 2's letter stating therein that there would be no cost escalation allowed to the

Appellant. This clearly depicts the intention of the Appellant that it was interested in extension of RCOD and even its objections as brought out in its reply vide letter dated 01.03.2012 on the reasons of delay if considered as analogous to Force Majeure events, it would have provided the relief of suitable extension of RCOD which was done by the Respondents and this is the only relief provided in the IA without levy of liquidated damages on the Appellant for such Force Majeure events. The Appellant expressed its disagreement on para 4, 5 and 6 only of the Respondent no. 2's letter dated 17.02.2012 so as to make it clear that the extension of RCOD is only admissible as per IA on account of Force Majeure events.

5.8 We observed from the communication of Respondent No. 2 vide letter dated 14.03.2013 wherein it further granted the extension of RCOD till 31.05.2013 as requested by the Appellant vide its letter dated 22.11.2012 with a clear stipulation that the Appellant would not be entitled to any enhancement of tariff on account of the delay in execution of the project and this condition was not refuted by the Appellant at any stage. The relevant extract of the Respondent No. 2's letter dated 14.03.2013 is reproduced as under;

“4.0 After considering all the materials on record, including the representations of WRTMPL, it is the responsibility of WRTMPL to obtain all the required consents and approvals timely particularly after the grant of approval under Section 164 of the Electricity Act, 2003. WRTMPL has not completed the various elements of the project, despite reasonable extension from time to time, also adversely affecting operation of other elements of the system which are ready and are dependent on the due completion of the project.

5.0 Accordingly, WRTMPL is responsible for non-completion of the project by RCOD in line with the Order dated 31.12.2010 of the CERC and is liable for consequences provided for in the Implementation Agreement.

6.0 Without prejudice to the our rights (including levy of Liquidated Damages by POWERGRID at an appropriate stage) under the Implementation Agreement for non-completion in time, WRTMPL is required to make immediate and bonafide efforts to arrest further delays in commissioning of lines, as the delay has cascading effects on other projects.

7.0 M/s. WRTMPL shall make all out efforts to ensure completion of the project at the earliest. M/s. WRTMPL shall ensure the timely extension of validity of development security and parent/affiliate company guarantee to secure performance and obligation of IPTC. Considering the critical stage of implementation of project and the need to expedite the completion of the project, you are hereby called upon to complete the project immediately and not later than 31.05.2013. This does not, however, mean our acceptance to your request for further time extension as sought vide letter at Sl. 1.7 above.

8.0 M/s. WRTMPL shall not be entitled for any enhancement of tariff on account of delay in the execution of Western Regional System Strengthening Scheme-II (Projects-B).

9.0 It may be noted by M/s. WRTMPL that it shall not be possible for POWERGRID to entertain any further request beyond 31.05.2013. M/s. WRTMPL may please deploy additional manpower

and resources beyond what has already been done at your own cost to expedite the remaining work.”

5.9 Based on further request of the Appellant made by its letter dated 31.05.2013 for extending the RCOD by explaining the reasons beyond its control, the Respondent No. 2 vide its communication dated 30.08.2013 extended the RCOD till 30.11.2013 by specifically stating therein as under:-

“5.0 WRTMPL is responsible for non-completion of the project by RCOD in line with the Order dated 31.12.2010 of the CERC and is liable for consequences provided for in the Implementation Agreement.

6.0 Without prejudice to the our rights (including levy of Liquidated Damages by POWERGRID at an appropriate stage) under the Implementation Agreement for non-completion in time, WRTMPL is required to make immediate and bonafide efforts to arrest further delays in commissioning of lines, as the delay has cascading effects on other projects.

7.0 M/s. WRTMPL shall make all out efforts to ensure completion of the project at the earliest. M/s. WRTMPL shall ensure the timely extension of validity of development security and parent/affiliate company guarantee to secure performance and obligation of IPTC. Considering the critical stage of implementation of project and the need to expedite the completion of the project, you are hereby called upon to complete the project immediately and not later than 31.11.2013. This does not, however, mean our acceptance to your request for further time extension as sought vide letter at Sl. 1.7 above.

8.0 M/s. WRTMPL shall not be entitled for any enhancement of tariff on account of delay in the execution of Western Regional System Strengthening Scheme-II (Projects-B).

9.0 It may be noted by M/s. WRTMPL that it shall not be possible for POWERGRID to entertain any further request beyond 31.11.2013. M/s. WRTMPL may please deploy additional manpower and resources beyond what has already been done at your own cost to expedite the remaining work.”

5.10 The above extension of the Respondent No. 2 was accepted by the Appellant vide its letter dated 09.09.2013 stating as under:-

“...With reference to your letter on the subject above we thank you for extending the commissioning date upto 30th November 2013 for the project. As stated earlier the reasons for delay in commissioning the lines are on account of reasons beyond our control.....”

“...we hereby accept the extension of completion date for the project as 30.11.2013.”

6.0 We further observed that vide communication dated 07.02.2014, the Appellant once more sought extension of RCOD from the Respondent No.2 keeping in view the actual date of commissioning. Therefore, the Respondent No. 2 filed Petition No. 71/MP/2014 dated 22.05.2014 before the Central Commission for seeking the extension of RCOD of WRSSS-II, Project B upto 01.01.2014 on the ground of events analogous to Force Majeure. However, when Petition No. 71/MP/2014 came for admission, the Central

Commission did not issue a notice and instead only heard the Respondent No. 2 and the Appellant.

7.0 The Central Commission decided Petition No. 71/MP/2014 at the admission stage itself and passed a detailed reasoned order dated 02.07.2014 holding as under:-

- “5. During the course of hearing, learned senior counsel for the petitioner submitted that PGCIL had constituted an internal committee to assess the reasons for delay in completion of the project. The committee in its recommendation has concluded that the reasons for delay in commissioning the project may be covered under force majeure events under clause 9.3 of IA and has recommended that RCOD of the project may be extended up to 1.1.2014. Learned senior counsel submitted that there is no cost over-run due to proposed extension of RCOD as WRTMPL has agreed that there would be no change in the transmission charges. Learned senior counsel submitted that since Gujarat and MP are not in favour for extension of RCOD, the petitioner has approached the Commission for extension of time. The representative of WRTMPL submitted that extension of RCODE may be granted by the Commisison as prayed in the petition.*
- 6. We have considered the submissions of the Learned Senior Counsel for the petitioner and the representative of WRTMPL. We have decided to dispose of the petition at the admission stage.*
- 7. The IA is a contractual document between the petitioner and WRTMPL. Clause 4.3 (iii) of the IA provides that the parties may meet at such intervals as they may decide to discuss the progress and implementation of the project and accordingly may mutually agree on the adjustment of the Required Commercial Operation Date. Clause 4.4.2 of the IA provides as under:-*

The Required Commercial Operations Date of the Project B may be extended up to one hundred eighty (180) days from its Required Commercial Operation Date first determined pursuant to this Agreement by reason of one or more Force Majeure Events. In case there is a further delay on account of Force Majeure, the Required Commercial Operations Date of such Project B may be extended further (beyond 180 days), with the mutual consent of the parties.

8. *Previously, the Commission dealt with the request of WRTMPL for extension of RCOD in Petition No. 296/2010. The Commission in its order dated 31.12.2010 directed WRTMPL and PGCIL to mutually decide the issue of extension of Required Commercial Operation Date. The relevant portion of the said order is extracted as under:*

It is evident from the above provisions of the Implementation Agreement that adjustment of the Required Commercial Operations Date has to be made through mutual agreement of the parties. Moreover, the extension of the RCOD can be made with the mutual consent of the parties if there is delay on account of one or more of the force majeure events. Based on our findings in paras 13 and 14 of this order, we are prima facie of the view that the delay in commencement of the projects was due to time consumed for compliance of the procedure by the petitioners for obtaining the approval under Section 164 of the Act and heavy downpour of rain for one month in respect of Project B which were beyond the control of the petitioners and can be covered under force majeure events under clause 9(3)(i) and (iii) of the Implementation Agreement. Therefore, we direct the petitioners and the Respondent No. 1 to mutually decide the issue of extension of RCOD in respect of the transmission lines of the petitioners and the commissioning of the substations of Respondent NO. 1 in terms of the relevant provisions of the Implementation Agreement keeping in view our findings regarding the delay in commencement and completion of the projects and arrive at a mutual agreement for the early completion of the projects. In so far as the interests of the beneficiaries are concerned, the petitioners have already committed that the proposed extension of RCOD of the projects would not have any adverse impact on the transmission charges payable by the beneficiaries and shall remain unaltered as indicated in the TSA. We direct that the petitioners shall remain bound by this commitment.

9. *WRTMPL vide its letter dated 7.2.2014 requested the petitioner to revise RCOD up to 1.1.2014 due to force majeure events and has provided a comprehensive description of the events leading to the delay in execution of the project. Subsequently, the petitioner constituted a committee to analyze the issues projected by WRTMPL. The committee after examination of events has recommended for extension of RCOD upto 1.1.2014. The petitioner has submitted that the extension of RCOD would not affect the transmission tariff payable by the beneficiaries as per the TSA.*

10. *In terms of Para 4.4.2 of the IA, the RCOD of the project can be extended by mutual consent of the parties i.e. the petitioner and WRTMPL. Since, the petitioner has accepted the events responsible for execution of the project as the events in the nature of force majeure and WRTMPL has accepted that the extension of RCOD would not have any impact on the transmission charges payable by the beneficiaries, we are of the view that the petitioner and WRTMPL should sort out the issue of extension of RCOD between themselves in terms of the relevant provisions of the IA and approval of the Commission for the same is not necessary.”*

From the above, it is evident that the Central Commission decided that the RCOD of the project can be extended by mutual consent of the parties on account of delay in RCOD due to the events analogous to Force Majeure on a specific condition that the Appellant has accepted that such extension of RCOD would not have any impact on the transmission charges payable by the beneficiaries.

- 8.0 Our another observation is that after obtaining all the extensions sought from time to time by the Appellant in respect of RCOD and

granted by the Central Commission as well as the Respondent No. 2 in terms of Implementation Agreement, the Appellant now changed its stand and sought review of order dated 02.07.2014 of the Central Commission by its Review Petition and this review was sought on the basis that the Appellant had never accepted that the extension of RCOD would not have an impact on the transmission charges. This petition of the Appellant was dismissed by the Central Commission after taking into account the entire history of this matter and the clear admission on the part of the Appellant that there would not be any escalation of tariff on account of such extensions of RCOD of the subject project.

9.0 We are of the considered opinion that the Appellant having acquired the subject contract through a tariff based competitive bidding process was totally conscious of its quoted position and accepted the work schedule in terms of RCOD with a clear understanding that any delay on account of Force Majeure Events could be compensated by granting only the extension of RCOD and it would not be entitled to have any cost escalation in the agreed tariff once accepted by all the parties. Had the Appellant at the time of bidding not accepted the Implementation Agreement as well as the Power

Transmission Agreement on this specific stipulation and would have sought accommodation to that extent i.e. seeking escalation in tariff on such extensions, either its bid would have been rejected on the ground as “Non-responsive” or the evaluated position of bidders would have been relatively different as the quoted tariff of the Appellant would have to be loaded appropriately as per the terms of bid specifications for such deviation and the Appellant would not have been awarded this contract since it was open to the Respondent No. 2 for selecting a bidder amongst the other bidders who emerged evaluated lowest. After having secured an order upon entering into such agreement consciously, it is not appropriate for the Appellant to raise the issue of enhancement of tariff at this stage. Keeping in view even if the Government guidelines were not there, the Section 63 of the Electricity Act, 2003 prevails in the statute and the present case was an outcome of tariff based competitive bidding.

10.0 Even if we look at the earlier two extensions granted by the Central Commission which have not been challenged by the Appellant, the Appellant was very clear that the extensions which were granted are without any financial implication in respect of the agreed tariff. We

also observe that the Appellant kept on seeking extension in RCOD even after the last order of the Central Commission at that point of time i.e. 31.12.2012 from the Respondent No. 2 and Respondent No. 2 while granting such extensions in light of the finding of the Central Commission that such extensions in RCOD can be granted by the Respondent No. 2 since it is contractual matter, the Respondent No. 2 while granting such extensions of RCOD from time to time as requested and sought by the Appellant was mentioning categorically that these extensions would not have any financial implications. The Appellant cannot challenge the jurisdiction of the Respondent No.2 for granting such extension in RCOD. The Central Commission made it amply clear that Respondent No. 2 could grant such extensions in RCOD as sought by the Appellant, provided the delays occurred are on account of Force Majeure and for such extensions, there would not be any financial implication, as per the executed IA between the parties.

11.0 For all these extensions in RCOD since on account of Force Majeure Events would not attract any levy of the liquidated damages as per the terms of the executed IA between the parties.

12.0 We are of the considered opinion that the Appellant's claims for enhancement of tariff on account of extension of RCOD as awarded by the Respondent Nos. 1 and 2 from time to time, finally upto 01.01.2014 in respect of WRSSS-II, Project B are not tenable at all, however, no liquidated damages for delay resulting out of such extensions on account of Force Majeure events would be leviable on the Appellant.

ORDER

In view of above, we find that the Impugned Order dated 02.07.2014 read with review order dated 05.01.2015 issued by the Central Commission is in order and is hereby upheld. The Appeal is devoid of any merits and is hereby dismissed.

No order as to costs.

Pronounced in the Open Court on this **6th day of April, 2016.**

(I.J. Kapoor)
Technical Member

(Justice Ranjana P. Desai)
Chairperson

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