APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI
(APPELLATE JURISDICTION)

APPEAL NO. 84 of 2018 & IA No.419 of 2018

Dated : 18th March, 2019

PRESENT: HON'BLE MRS. JUSTICE MANJULA CHELLUR, CHAIRPERSON
HON'BLE MR. S.D. DUBEY, TECHNICAL MEMBER

IN THE MATTER OF:

The Tata Power Company Limited - Distribution,
Backbay Receiving Station,
148 Lt. Gen. J Bhonsale Marg,
Nariman Point, Mumbai – 400 021. **….Appellant**

VERSUS

1. **Maharashtra Electricity Regulatory Commission**
   Through its Secretary,
   World Trade Centre, Centre No.1,
   13th Floor, Cuffee Parade,
   Mumbai – 400 005.

2. **Hindustan Petroleum Corporation Ltd.**
   Through its Chief Manager – Elect. Maintenance,
   Mumbai Refinery,
   B.D. Patil Marg, Mahul, Chembur,
   Mumbai- 400 074

3. Sai Wardha Power Generation Limited

Through its Managing Director,

8-2, 293/ 82/A/431/A,

Road No. 22, Jubilee Hills,

Hyderabad – 500 033.

4. Maharashtra State Load Despatch Centre

Through its Chief Engineer,

Thane-Belapur Road, P.O. Airoli,

Navi Mumbai – 400 708. **.....Respondent(s)**

Counsel for the Appellant(s) : Mr. Basava Prabhu S. Patil, Sr. Adv.
Mr. Mr. Amit Kapur
Mr. Shri Venkatesh
Mr. Abhishek Munot
Mr. Malcom Desai
Ms. Nishtha Kumar
Ms. Geet Ahuja

Counsel for the Respondent(s) : Mr.VarunPathak
Ms. Nikita Choukse for R-2

Mr. M.G. Ramachandran
Mr. Anand K. Ganeshan
Mr. Ashwin Ramanathan for R-3

J U D G M E N T

PER HON'BLE MR. S. D. DUBEY, TECHNICAL MEMBER

1. The Appellant, The Tata Power Company Limited (Distribution) ("**Appellant**"/ "**TPC-D**") has filed the present Appeal, under Section 111 of the Electricity Act, 2003 ("**Electricity Act**") assailing the correctness of the

impugned order dated 12.03.2018 passed by Maharashtra Electricity Regulatory Commission in Case No.58 of 2017 to the extent set out in the present Appeal.

2. Brief Facts of the case:

2.1 The Appellant, TPC-D is a Distribution Licensee supplying electricity in the Island City of Mumbai and Suburban Areas of Mumbai and areas covered under Mira Bhayandar Municipal Corporation in terms the Distribution License No.1 of 2014 dated 14.08.2014.

2.2 The Respondent No. 1, Ld. Maharashtra Commission, is a statutory authority constituted under the Electricity Regulatory Commissions Act, 1998 with limited and specific powers vested by Sections 86 and 181 of the Electricity Act. The powers of Maharashtra Commission, *inter alia*, include the power to grant a license for distribution of electricity, regulate the tariff of distribution companies etc.

2.3 The Respondent No.2, HPCL, is a Government of India Undertaking engaged in the refining and marketing of petroleum products, with total current demand of 57.5 MW. HPCL has been maintaining a Contract Demand of 17500 kVA with TPC-D and has also been meeting its remaining demand from group captive arrangement through Open Access

from SWPGL since December, 2015.

2.4 The Respondent No.3, Sai Wardha Power Generation Ltd.(SWPGL), is a Generating Company who has established and is operating a generating plant with a capacity of 540 MW (4 x 135 MW) at Warora, Dist. Chandrapur, in the State of Maharashtra.

2.5 The Respondent No.4, Maharashtra State Load Despatch Centre ("**MSLDC**") is the State Load Despatch Centre.In terms of Section 32 of the Electricity Act, MSLDC is *inter alia*, responsible for monitoring grid operations, keeping accounts of the quantity of electricity transmitted through the State grid, exercise supervision and control over the intra-State transmission system.

3. Facts in Issue :-

A. Whether Maharashtra Commission failed to appreciate the fact that the 110 kV Trombay-HPCL Lines 1 & 2:-

(i) Has been established, operated and maintained by TPC-D, as a Distribution Line with the approval of Ld. Maharashtra Commission, for meeting HPCL's load requirement, as also to cater to the load of other distribution consumers in the area?

(ii) The nature of the lines cannot be based on its voltage, but on its purpose/ usage.

(iii) Have been capitalized in TPC-D's books of accounts and have been considered by Maharashtra Commission as part of TPC-D's distribution assets while determining the tariff and/ or wheeling charges in TPC-D's area of supply?

(iv) Connecting HPCL from Trombay Generating station is a part of the distribution system?

(v) The said lines cannot be Transmission Lines as:-

(a) they are not being used to transmit electricity as envisaged in Section 2(72) of the Electricity Act;

(b) they are an essential part of TPC-D's distribution system and being used for supply of electricity to a consumer; and

(c) they connect a generating station to a consumer premises (consumer sub-station) and not a 'sub-station' as envisaged in Section 2(72) of the Electricity Act. The equipment installed at the consumer premises does not qualify as a sub-station [referred to in Section 2(72)], which is evident from the

definition of 'sub-station' provided in Section 2(69) of the Electricity Act.

(vi) Were inadvertently recorded in TPC-T's Transmission Licence No.1 of 2014.

B. Whether the Impugned Order violates the principles of natural justice and transparency (enshrined in Section 86(3) of the Electricity Act), as TPC-T's Application for Amendment of Transmission Licence (Case No.137 of 2016), (which was filed prior to HPCL's Petition, to correct, *amongst others*, the anomaly of the 110 kV Trombay-HPCL Lines having been *inadvertently* listed as a part of TPC-T's transmission network) was pending while passing the Impugned Order?

C. Whether Maharashtra Commission failed to appreciate that as a result of the Impugned Order the entire tariff philosophy designed by it for TPC-D's area of supply has been negated in the middle of the tariff period, that to without following due process of law?

D. Whether Ld. Maharashtra Commission failed to consider the adverse impact of the Impugned Order on the tariff of all other consumers of TPC-D, which was intentionally kept low by Ld. Maharashtra Commission by including EHT and HT sales while calculating the Wheeling Charges?

E. Whether the Impugned Order distorts level playing field, contrary to consumer interest, which was sought to be achieved by the Ld. Maharashtra Commission in its MYT Order dated 21.10.2016 passed in Case No 47 of 2016.

4. Questions of Law:-

The Appellant has raised following questions of law"-

A. Whether Maharashtra Commission has misinterpreted the applicable statutory framework read with the facts of the present case, to hold that the line connecting HPCL from Trombay Generating Station is a Transmission Line and not part of TPC-D's distribution system?

B. Whether Maharashtra Commission failed to appreciate that as per the extant regulatory framework, the nature of a line cannot be determined by its voltage, but is reflective of the nature of its use and its point of connection to other electrical installations?

C. Whether Maharashtra Commission erred in holding that 110 kV Trombay-HPCL Lines 1 & 2, are Transmission Lines and not part of TPC-D's distribution system in terms of the applicable regulatory framework?

D. Whether Maharashtra Commission failed to appreciate that this Hon'ble

Tribunal's Judgment dated 14.12.2012, in Appeal No.30 of 2012 titled *Orissa Power Transmission Corp. Ltd. vs. Orissa Electricity Regulatory Commission &Ors.,* whereby this Hon'ble Tribunal has clearly held that:-

(i) The line connecting a transmission system/ generating station to a consumer's premises is primarily used for distribution of electricity to such consumer and therefore, qualifies as part of the distribution network.

(ii) The definition of transmission line clearly demonstrates that it is a residual provision. Thereby, a line qualifies as a transmission line only if it does not form part of the distribution system.

(iii) Supply of electricity to a consumer cannot be treated as transmission of electricity.

(iv) An arrangement for stepping down of electricity at consumer's installation cannot be held to be a sub-station as defined in Section 2(69) of the Electricity Act.

E. Whether Maharashtra Commission failed to appreciate that the mere inadvertence of placing the line in the Transmission License, cannot be determinant of the nature of the line, in terms of the governing statutory framework?

F. Whether Maharashtra Commission failed to appreciate that by the Impugned Order, it has altered the tariff philosophy made applicable for TPC-D's area of supply, in the middle of the tariff period, without following due process of law and therefore is unreasonable?

G. Whether the Impugned Order violates the principles of natural justice and transparency (enshrined in Section 86(3) of the Electricity Act), as TPC-T's Application for Amendment of Transmission License (Case No.137 of 2016), was pending while passing the Impugned Order?

H. Whether Maharashtra Commission has erred in separately adjudicating TPC-T's Amendment Application (Case No. 137 of 2016) and HPCL's Petition (Case No.58 of 2017), when both arises out of the same subject matter and were pending adjudication before it?

I. Whether it was incumbent upon Maharashtra Commission to adjudicate TPC-T's Amendment Application (Case No. 137 of 2016)before deciding HPCL's Petition (Case No.58 of 2017 in view of the fact that TPC-T's Amendment Application was filed prior in time?

J. Whether the Maharashtra Commission has erred in relying upon the CEA Technical Regulations/ Practice Manual to hold that the voltage of a line is the absolute factor determining whether the line is a Transmission Line or

part of the Distribution System?

K Whether Maharashtra Commission has wrongly directed TPC-D to refund the Wheeling Charges/ Losses duly recovered from HPCL and that too with applicable interest, especially when billing was done in accordance with the provisions of the Tariff Order passed by Ld. Maharashtra Commission, without considering the fallout/ adverse impact of the same on other consumers and/ or completion in a parallel licensing scenario?

L. Whether Maharashtra Commission failed to appreciate the well-established practice followed by other State Commission's, which have recognized EHV lines as distribution assets, since they are primarily used to supply electricity to consumers?

M. Without prejudice to the above, whether Ld. Maharashtra Commission could have directed TPC-D to refund the Wheeling Charges/ Losses to HPCL, recovered on account of HPCL's direct consumption from TPC-D, contrary to the applicable tariff orders passed by it?

5. Mr. Amit Kapur, learned counsel for the Appellant has filed his written submission as follows:-

5.1 The Tata Power Company Limited (Distribution) ("**TPC-D**" / "**Appellant**") has been in the business of distribution of electricity in the City of Mumbai

for over a century and is a Distribution Licensee in terms of Section 14 of the Electricity Act, 2003 ("Electricity Act").

5.2 Hindustan Petroleum Corporation Limited ("HPCL" / "Respondent No.2") has been a consumer of TPC-D since 1956 (originally receiving supply at 22 kV level). Between 2005-08, in order to meet HPCL's additional load requirement of approx. 70 MW, TPC-D with the prior approval, knowledge and consent of Ld. Maharashtra Electricity Regulatory Commission ("Ld. Maharashtra Commission"/ "Respondent No.1") constructed, commissioned and operationalized the 110 kV Trombay-HPCL Feeders 1 & 2 (1.90 km.) ("110 kV HPCL Feeders"), at its own cost. Furthermore, Ld. Maharashtra Commission had duly capitalized the said 110 kV HPCL Feeders in TPC-D's books of accounts, vide its Order dated 04.06.2008 in Case No.69 of 2007 and thereafter considered the same while determining TPC-D's Annual Revenue Requirement ("ARR"), Tariff and Wheeling Charges, year on year and till date.

5.3 As on date, HPCL receives power supply at 110 kV level from TPC-D, which supply is effected from Tata Power's Trombay Generation Bus-Bar.

5.4 Despite the said 110 kV HPCL Feeders being originally constructed, commissioned, capitalized and operated by TPC-D as part of its Distribution System, due to inadvertence, the said 110 kV HPCL Feeders,

amongst others, were mentioned in the application for transmission license filed by The Tata Power Company Ltd. (Transmission) ("TPC-T") and accordingly erroneously recorded in the Transmission Licence No.1 of 2014 dated 14.08.2014 ("Transmission License No.1") granted to TPC-T. On 10.10.2016, TPC-T had filed Case No.137 of 2016 before Ld. Maharashtra Commission seeking an amendment of Transmission Licence No.1, in order to seek various rectifications, including the aforesaid error.

5.5 During pendency of the aforesaid Amendment Application, HPCL on 13.04.2017 filed a Petition (Case No.58 of 2017) before Ld. Maharashtra Commission, seeking a declaration that since the 110 kV HPCL Feeders of TPC-D are *(albeit erroneously)* mentioned in Transmission License No.1, TPC-D is not entitled to levy and recover Wheeling Charges and Wheeling Losses on the supply of electricity through Open Access and also direct supply to HPCL through the said 110 kV Feeders. *It is pertinent to note that, since 2008, HPCL has continued to receive power supply at 110 kV level and paid Wheeling Charges for the use of the said 110 kV Distribution System without any demur until 2015-16 [i.e., even after the same was erroneously recorded in TPC-T's Transmission Licence No.1, until the advent of Sai Wardha Power Generation Ltd. ("Sai Wardha"/*

"Respondent No.3")]. Furthermore, *till filing of the said Petition* HPCL had *never raised the issue of non-applicability of Wheeling Charges* and its *claim was only limited to non-applicability of Wheeling Losses,* in terms of the communication issued by Maharashtra State Load Despatch Centre ("MSLDC"), being connected at Extra High Voltage ("EHV")/ Extra High Tension ("EHT") level.

5.6 On 12.03.2018, Ld. Maharashtra Commission passed the Impugned Order on the aforesaid dispute raised by HPCL (i.e., prior to hearing/ deciding the Amendment Application - Case No.137 of 2016 filed by TPC-T), *inter alia*, erroneously holding that:-

(a) The EHV Feeders emanating from Trombay Generating Station's EHV Sub-station is connected through 110 kV Lines to the EHV Sub-station of HPCL. Thus, these Lines fall squarely within the definition of 'transmission lines' in terms of Section 2 (72) of the Electricity Act, 2003 ("Electricity Act").

(b) For all Distribution Licensees, including TPC-D, it has separately determined Wheeling Charges for LT and HT (11/22/33 kV), apart from other charges. However, it has not determined or even recognized any 66/110/220/400/765 kV levels for Wheeling Charges

in the respective Tariff Orders. This is in line with the principle and practice of segregation between HT and EHT levels in Maharashtra. Even assuming that such EHV Lines are considered as distribution assets, no Wheeling Charges are determined for 110 kV Lines in the Multi Year Tariff ("MYT") Order in respect of TPC-D.

(c) The Central Electricity Authority's ("CEA") Regulations demarcate distribution and transmission boundaries on the basis of voltage level. Voltage levels from 0.415 kV to 33 kV are included under the distribution head, and 66 kV to 765 kV AC and 500 kV DC voltage levels in transmission.

(d) TPC-T's Transmission Licence No.1 shows that the 110 kV HPCL Feeders are part of its Transmission System. That being the case, till these Feeders/ Lines remain in that Transmission Licence, TPC-D as a Distribution Licensee cannot claim Wheeling Charges or Losses for its use from HPCL as the consumer.

A. Whether the 110 kV HPCL Feeders are part of the Distribution System of TPC-D or can qualify as Transmission Lines in terms of the governing statutory framework?

5.7 The State Commission and the Respondents contend that the EHV Feeders emanating from Trombay Generating Station's EHV Sub-station

is connected through 110 kV Lines to the EHV Sub-station of HPCL. Thus, these Feeders/Lines fall squarely within the definition of 'Transmission Lines' in terms of Section 2 (72) of the Electricity Act. The Respondents aforesaid contentions are wrong and contrary to the extant statutory framework.

5.8 The following provisions of the Electricity Act categorically spell out as to what constitutes a Distribution System and Transmission Lines:-

(a) **Section 2(19) of the Electricity Act – Distribution System**:

""*distribution system" means the system of wires and associated facilities between the delivery points on the transmission lines or the generating station connection and the point of connection to the installation of the consumers;"*.

(b) **Rule 4 of the Electricity Rules 2005 – Distribution System**:

"The distribution system of a distribution licensee in terms of sub-section (19) of Section 2 of the Act shall also include electric line, sub-station and electrical plant that are primarily maintained for the purpose of distributing electricity in the area of supply of such distribution licensee notwithstanding that such line, sub-station or electrical plant are high pressure cables or overhead lines or associated with such high pressure cables or overhead lines; or used incidentally for the purposes of transmitting electricity for others."

(c) **Section 2(72) of the Electricity Act – Transmission Lines**:

"***"transmission lines" means all high pressure cables and overhead lines (not being an essential part of the distribution system of a licensee) transmitting electricity from a generating station to another generating station or a sub-station, together with any step-up and step-down transformers, switch-gears and other works necessary to and used for the control of such cables or overhead lines, and such buildings or part thereof as may be required to accommodate such transformers, switch-gear and other works.***"

(d) **Section 2(69) of the Electricity Act – Sub-Station**:

"sub-station" means a station for transforming or converting electricity for the transmission or distribution thereof and includes transformers, converters, switchgears, capacitors, synchronous condensers, structures, cable and other appurtenant equipment and any buildings used for that purpose and the site thereof;

(e) **Section 43 of the Electricity Act - Duty to supply on request**:

"***Duty to supply on request**:*

(1) Every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply:

Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission.

Provided further that in case of a village or hamlet or area wherein no provision for supply of electricity exists, the Appropriate Commission may extend the said period as it may consider necessary for electrification of such village or hamlet or area.

(2) It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-section (1):

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission.

(3) If a distribution licensee fails to supply the electricity within the period specified in sub-section (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default."

5.9 A bare perusal of Sections 2(19), 2(69) and 2(72) of the Electricity Act and Rule 4 of the Electricity Rules, reproduced above clearly indicate that *the definition of 'Transmission Line' is a limited definition, being residuary elements of the network other than elements of a Distribution System*. Therefore, all EHV/ high-pressure cables and overhead lines, which are not an essential part of the Distribution System of a Distribution Licensee are Transmission Lines. This Tribunal in its Judgment dated 14.12.2012 in Appeal No.30 of 2012 *(OPTCL vs. OERC)* has appreciated the said

definitions and *held that, if a line is not part of the Distribution Network/ System, only then it could be a Transmission Line*. The aforesaid provisions of the Electricity Act and Rules have a strong rationale since, *selection of the supply voltage is purely a technical requirement and it cannot change the nature and character of the line*.

5.10 Therefore, the Respondent's contention that only if an EHV line/ feeder is not a transmission line, can it be part of the Distribution System is erroneous and contrary to the provisions of the Electricity Act and the law laid down by this Tribunal.

5.11 Furthermore, in terms of the definition of Distribution System under Section 2 (19) of the Electricity Act, a Distribution System means the system of wire and associated facilities between delivery points on the transmission lines *or the generation station connection and the point of connection to the consumer's installation. As is evident from the said definition itself, a line to qualify as part of the Distribution System, need not be connected at both ends by other distribution lines, as contended by the Respondents*. In the present case, the 110 kV HPCL Feeders originate from Tata Power's Trombay Generation Bus-Bar and connect to HPCL (i.e., the installation of the consumer), through which HPCL has been

availing supply of power at 110 kV level since 2008 without any demur. Evidently, the 110 kV HPCL Feeders are an essential part of TPC-D's supply to HPCL (a consumer) and satisfies the criteria laid down under the Electricity Act to be termed as part of the Distribution System. An essential part of the Distribution System does not mean that the lines/ feeders in question need to be interconnected to the Distribution System at both ends. It must be an essential part for carrying out the Distribution Licensees activity of distribution and supply of power to the consumer. It is submitted that, if the Respondent's contention were true, then a Service Line cannot ever form part of a Distribution System, as it is connected to the Consumer at one end. Moreover, it has been time and again held by this Tribunal that a Service Line forms part of the Distribution System of a Distribution Licensee.

5.12 On the other hand, although the said 110 kV HPCL Feeders may be high pressure cables or overhead lines, *they are undisputedly not used for transmitting electricity* from the generating station to another generating station or a Sub-station as defined under Section 2(69) of the Electricity Act.

5.13 As regards Ld. Maharashtra Commission's erroneous finding and the Respondent's contention that, HPCL's (Consumer) Sub-Station, is a Sub-

station as defined under Section 2(69) of the Electricity Act, it is submitted that the said interpretations are squarely in teeth of this Tribunal's Judgment dated 14.12.2012 in Appeal No.30 of 2012 *(OPTCL vs. OERC)* which categorically holds that,

(a) *an arrangement for stepping down electricity at consumer's installations (i.e., Consumer Sub-station) cannot be held as 'sub-station' as defined in Section 2(69)* of the Electricity Act, *since the said arrangement is not meant for further transmission or distribution of electricity*.

This Judgment has attained finality as it has not been challenged.

(b) The issue framed in the said OPTCL Judgment and ruling therein is directly applicable to the issue involved in the present Appeal. The Respondents are raising the same issues that were made in the OPTCL case and rejected by this Tribunal. Therefore, the Respondents by reagitating the same issues in the present Appeal, seek to review this Tribunal's Judgment dated 14.12.2012 in the OPTCL case.

(c) The 110 kV HPCL Feeders are connected from the Trombay Generating Station's Bus-Bar to the Consumer's (HPCL) installation at its premises (not being a Sub-station in terms of Section 2(69) of the Electricity Act) and *are primarily used for distribution/ supply of electricity to HPCL and are an essential part of TPC-D's Distribution System,* without which HPCL could not receive power supply at the desired load. Undisputedly, these Feeders never were, nor are being used for transmitting electricity.

5.14 In light of the foregoing, it is evident that Ld. Maharashtra Commission in the Impugned Order has erred in concluding that the 110 kV HPCL Feeders are Transmission Lines under Section 2(72) of the Electricity Act. The aforesaid statutory provisions without an iota of doubt clarify that the 110 kV HPCL Feeders which were envisaged, constructed, capitalized and are operated and maintained by TPC-D for supplying power to HPCL (a consumer) are an essential part of TPC-D's Distribution System and cannot be Transmission Lines in terms of the extant statutory framework.

5.15 As is evident from the said definitions and this Tribunal's Judgment dated14.12.2012 in Appeal No.30 of 2012, a Transmission Line cannot end at a Consumer premises. Therefore, the line connecting the Consumer to the Transmission System, *Appeal No.30 of 2012.. Next requirement is that it must be connected with a generating station or a substation. According to the learned Counsel for the Respondent, every EHT consumer would necessarily have a substation. Substation has been defined in Section 2(69) as a station for transforming electricity for transmission or distribution thereof. Can an arrangement for stepping down electricity at consumer's installations be held as substation as defined in Section 2(69) of the Act? Does this arrangement meant for*

transmission or distribution of electricity? The answer would again be 'no'. No person can transmit or distribute electricity without a license under the Act. Therefore, the arrangement of stepping down electricity for consumer's own use cannot be held to be a substation as defined in the Act cannot be a Transmission Line as sought to be alleged by the Respondents. Although the Consumer can be connected to the Transmission System, the connecting line cannot form part of the Transmission System. In the facts of the present case, the line connecting TPC-G's Bus-Bar and HPCL is a Distribution Line connected to a Generating Asset and therefore, forms part of the Distribution System. Admittedly, the said feeders are not connected to the Intra-State Transmission System or used for the purpose of transmitting electricity.

5.16 In view of the above, although a consumer can be connected to the works of a Transmission Licensee, the connecting system cannot form part of the works of a Transmission Licensee. The Electricity Act in itself envisages an intervening system for the purpose of a Consumer being connected to the works of a Transmission Licensee, which in the present case forms part of TPC-D's Distribution System.

5.17 In light of the foregoing, it is imperative to submit that, the Hon'ble Supreme Court in its Judgment dated 25.04.2014 in the case of *Sesa Sterlite Ltd. vs. Orissa Electricity Regulatory Commission & Ors.* reported as (2014) 8 SCC 444 has held that, the Transmission Line connecting the generating station to the consumer is part of the Distribution System of the Distribution Licensee of the area in which the consumer is located. In that case, the 400 kV Busbar at the Generator (Sterlite) end was connected to a 200 kV Busbar at VAL-CGP catering to the VAL-Smelter 1, the consumer. The said 400/220 kV sub-station was connected through 5 Kms of 220 kV line to the 220 kV Bus of switching station at VAL-CGP end. There were 4 nos. of 200 kV Transmission Lines branching out from the said 220 kV switching station to carry power to VAL Smelter-1 Unit of the Appellant therein which was within the area of the Distribution Licensee (WESCO). *In this regard, the Hon'ble Supreme Court has held that the aforesaid line would be deemed to be part of the Distribution System of WESCO*.

B. Whether the 110 kV HPCL Feeders are part of the Distribution System of TPC-D or can qualify as Transmission Lines in he facts and circumstances of the present case?

5.18 While passing the Impugned Order, Ld. Maharashtra Commission has completely ignored the all relevant facts prior to 2014, i.e., the said 110 kV

HPCL Feeders were conceptualized, constructed, capitalized and approved by Ld. Maharashtra Commission as Distribution Assets of TPC-D

5.19 The Respondents contention that prior to 2014 Tata Power's functions were not segregated, is erroneous and contrary to the facts of the case, being:-

(a) In 2006, Tata Power had trifurcated all its assets/ businesses function-wise and segregated them into Generation, Transmission and Distribution. The said of segregation/ trifurcation of assets function-wise, was a conscious and detailed exercise undertaken by Tata Power and approved by Ld. Maharashtra Commission, who for the first time had determined separate Tariff for Tata Power's Generation, Transmission and Distribution Business' vide its Order dated 03.10.2006 in Case Nos. 12 & 56 of 2005.

(b) Since 2006, Ld. Maharashtra Commission has year-on-year determined and passed Tariff Orders separately for Generation, Transmission and Distribution, which is based on the segregated assets of these businesses. There is no integrated tariff passed for TPC-G, TPC-D and TPC-T.

(c) On 20.08.2008, Ld. Maharashtra Commission specified/ notified the MERC (Specific conditions of Distribution Licence applicable to The Tata Power Company Limited), Regulations, 2008.

Therefore, it is absolutely wrong to contend that till 14.08.2014, TPC

was an integrated business with no trifurcation between Generation, Transmission and Distribution. It is pertinent to note that, there was no change in the GFAs of the Transmission and Distribution Licenses made on account of grant of Licenses in 2014, during the subsequent tariff applications. If the contention of the Respondents is considered to be true, then there would have been significant changes in the GFA of the two Licenses post grant of licences.

5.20 As regards, HPCL's contention that TPC-D may have erred in placing the 110 kV HPCL Feeders in its Distribution Business instead of the Transmission Business, it is submitted that, segregation and also placing any asset into a particular business is not TPC's choice, but has to be done in accordance with law and the functions to be carried out utilizing these assets. It entails detailed procedure to be followed prior to establishing the asset and even thereafter, as was carried out in the present case.

5.21 These facts categorically demonstrate that prior to the error of recording these 110 kV HPCL Feeders in the Transmission Licence, the same were conceptualized, constructed, capitalized and approved by Ld. Maharashtra Commission as Distribution Assets of TPC-D. Without prejudice to the fact that the present system is part of TPC-D's Distribution System, had there

been any error committed by TPC-D in 2008, Ld. Maharashtra Commission would not have permitted the said Feeders to be capitalized in TPC-D's books of accounts and/ or considered the same for purpose of computing tariff. Prior to filing the Petition (Case No.58 of 2017), even HPCL has not raised any issue with respect to the same. The Respondent's aforesaid contention qua Tata Power having an integrated Licence until 2014 and/ or the 110 kV Feeders having been inadvertently placed in the distribution books, is purely an afterthought, which has been raised for the very first time, before this Tribunal. As held in this Tribunal's Judgment dated 23.05.2012 in Appeal No.75 of 2011 *(Union of India – Southern Railways vs. TNERC & Anr,* drawal of power at 110 kV or above for consumers with heavy power demand is a technical requirement. Theoretically, any load can be met even at 400 volts. However, that would require large number of circuits depending upon the power requirement. Managing large number of parallel circuits would be techno-economically unviable and impractical.

5.22 Maharashtra Commission's Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation Regulations ("SoP Regulation"), mandates that, the Distribution Licensees shall provide connection/ install equipment at EHV level, in case the

consumers contract demand exceeds 5 MVA (i.e., approx. 5 MW). These Regulations are applicable only to a Distribution Licensee and not a Transmission Licensee. Ld. Maharashtra Commission while passing the Impugned Order has completely ignored its own Regulations that mandate a Distribution Licensee to construct EHV lines/ Feeders and supply power at EHV level to consumers, if the consumers demand necessitates the same.

5.23 Even prior to the advent of Sai Wardha resupplying power to HPCL through Open Access in 2015-16, HPCL was procuring power supply from TPC-D by way of the said 110 kV HPCL Feeders. The same arrangement was in place since 2008 and HPCL was paying applicable Wheeling Charges to TPC-D without any demur. It is submitted that, prior to filing of the Petition (Case No.58 of 2017) HPCL had not raised any dispute qua applicability of Wheeling Charges. Its point of contention was only qua applicability of Wheeling Losses, since it was connected at EHV level.

5.24 Furthermore, on a perusal of the Short Term Open Access applications submitted by HPCL to TPC-D for grant of Distribution Open Access, evidences that 110 kV HPCL Feeders are connected to TPC-D's Generation Bus-Bar and not the InSTS, as sought to be now suggested.

5.25 When a consumer such as HPCL, approaches a Distribution Licensee to avail a large quantum of power at higher voltage levels, the Distribution Licensee is required to fulfil its Universal Service Obligation (under Section 43 of the Electricity Act) and create the necessary infrastructure as per the MERC SoP Regulations, such as the 110 kV network in the present case, to supply the required quantum of power to such consumer. As stated above, the MERC SoP Regulations mandates that the Distribution Licensees shall provide connection/ install equipment at EHV level, in case the consumers contract demand exceeds 5 MVA (i.e., approx. 5 MW).

5.26 Since supply at EHV level is few and sporadic, it was not necessary for TPC-D to include EHV lines as part of its Network Roll-out Plan, where the focus was on last mile connectivity and consumer choice for the residents in Mumbai city (who are generally connected at levels below 33 kV), considering the parallel licensing scenario. The submissions made by TPC-D before Ld. Maharashtra Commission in its Network Roll-out Plan nowhere state that lines/ cables with voltage exceeding 66 kV are not a part of its Distribution System.

C. Whether all EHV Lines/ Feeders (66 kV & above) automatically qualify as Transmission Lines or whether the nature and use of

such Lines/ Feeders would determine whether they are distribution or transmission assets?

5.27 The State Commission and the Respondents contend that in many States including Maharashtra, distribution and transmission activities are segregated on the basis of voltage (i.e., the distribution system consists of 11/22/33 kV lines, whereas the transmission network consists of lines having voltages at 66 kV and above). The CEA Regulations demarcate distribution and transmission boundaries on the basis of voltage level. Voltage levels from 0.415 kV to 33 kV are included under the distribution head, and 66 kV to 765 kV AC and 500 kV DC voltage levels in transmission.

5.28 The Respondents No.2 & 3 have contested that EHV Lines (such as the 110 kV HPCL Feeders) cannot form part of the Distribution System. Ld. Maharashtra Commission has not determined Wheeling Charges for any 66/110/220/400/765 kV (EHV) levels in TPC-D's MYT Order dated 21.10.2016 passed in Case No. 47 of 2016. Table No. 5-19 of the said MYT Order dated 21.10.2016[21] demonstrates that: (i) 110/ 132 kV (EHV) sales were excluded while determining the TPC-D retail tariff. (ii) The Distribution/ Wheeling Loss is only for 33 kV and below and does not include 110 kV/ 132 kV. (iii) If energy sales is at 110/ 132 kV, then only

Transmission Loss will be applicable and not Wheeling/ Distribution Losses. (iv) Therefore, in terms of the MYT Order, HPCL is liable to pay Transmission Charges and not Wheeling Charges.

5.29 At the outset, TPC submitts that contrary to its contentions in its Reply dated 17.05.2018, Sai Wardha/ Respondent No.3 has during the hearing before this Tribunal conceded/ accepted that there is no bar on a Distribution Licensee constructing, operating and maintaining EHV lines/ feeders (66 kV and above) as part of its Distribution System. As such, the instant 110 kV HPCL can qualify as part of TPC-D's Distribution System in terms of the extant statutory framework. This is in line with the definition of Distribution System provided under the Electricity Act and Rules which in clear terms, provides that all high-pressure cables and over-headlines, which are primarily used for supply of power to a consumer, **shall** form part of the Distribution System of the Distribution Licensee.

5.30 As regards, Ld. Maharashtra Commission's finding in the Impugned Order that, in many States including Maharashtra, distribution and transmission activities are segregated on the basis of voltage (i.e., the distribution system consists of 11/22/33 kV lines, whereas the transmission network consists of lines having voltages at 66 kV and above), is erroneous and contrary to the statutory mandate. This is also not in line with the system

prevalent in the rest of the country. While coming to the aforesaid erroneous finding, Ld. Maharashtra Commission has wrongly relied on the:-

(a) CEA (Technical Standards for Construction of Electrical Plants and Electric Lines) Regulations, 2010 ("CEA Technical Standards Regulations"); and

(b) The CEA (Manual on Transmission Planning Criteria), 2013 ("CEA Manual").

5.31 The CEA Regulations are notified in exercise of power vested to the Authority under Section 177 of the Electricity Act. Further, Section 177 provides a generic power to the CEA for framing Regulation qua Grid Standards, ensuring safe operations, installation and operation of meters, technical standards for construction of electrical plants and electric lines and connectivity to the Grid. However, Maharashtra Commission's own SoP Regulations mandates that, the Distribution Licensees shall provide necessary infrastructure, connection, install equipment at EHV level, in case the consumers' contract demand exceeds 20 MVA (i.e., approx. 20 MW).

5.32 *The nature of a line is determined upon its usage and not on the basis of its voltage*. Neither Ld. Maharashtra Commission nor the Respondents have demonstrated in categorical terms where any such segregation has

been defined in these Regulations. The 110 kV HPCL Feeders have always formed part and continue to form part of TPC-D's Distribution System. Since these Feeders do not fall within the definition of Transmission Lines (being an essential part of TPC-D's Distribution System), they cannot be termed/ converted into Transmission Lines, merely because they were inadvertently/ erroneously recorded in Transmission License No.1.

5.33 The Maharashtra Commission in the Impugned Order has wrongly observed that there might be practical difficulties for other Distribution Licensees, in the event they are required to supply power at EHV levels, since they would have to maintain the EHV lines and associated apparatus/ equipment, etc. A similar argument was put forth by the Respondents during the hearing before this Tribunal. Based on this analogy, amongst others, Ld. Maharashtra Commission has erroneously held that the established principle and practice in the state of Maharashtra is that lines/ equipment upto 33 kV are under the distribution system and those above 66 kV fall under the transmission network. In this regard, it is pertinent to state that, this Tribunal in its Judgment dated 31.08.2012 in Appeal No.17 of 2011 & Batch, has observed that, *"Whatever merit there might be in the Commission's approach made from the pragmatic stand*

point the issue has to looked at purely from the legal point of view and when the regulation in particular supports the case of the appellant the issue rests there…". In the present case, the Electricity Act clearly defines a Transmission Line and Distribution System and matter rests there. Ld. Maharashtra Commissions' view on practicality of maintaining EHV system by a Distribution Licensee cannot override statutory mandate.

5.34 In addition to the foregoing, it is pertinent to note that, different State Electricity Regulatory Commissions (such as DERC, HPERC etc.) have acknowledged that a Distribution Network/ system of a Distribution Licensee can consist of EHV lines/ sub-stations (i.e., 66 kV and above.

5.35 In its Multi-Year Tariff ("MYT") Order dated 21.10.2016 in Case No.47 of 2016, *Ld. Maharashtra Commission had not excluded the EHT Sales from the HT Sales while reviewing/ calculating the Wheeling Charges for TPC-D*. This was in line with the past practice followed by Ld. Maharashtra Commission. It is pertinent to note that, Ld. Maharashtra Commission had further observed that *due to lower sales on TPC-D's wires, the LT Wheeling Charges of TPC-D are already on the higher side. Therefore, excluding EHT Sales would further increase the Wheeling Charges at HT and LT levels*. Accordingly, Ld. Maharashtra Commission in its MYT Order

dated 21.10.2016 for TPC-D, *had computed the Wheeling Charges for HT* ***(including EHT)*** as Rs. 0.88/kWh for FY 2018-19 and LT Wheeling Charges as Rs.1.81/kWh for FY 2018-19

5.36 Maharashtra Commission had included EHV Sales (that of HPCL for utilizing the 110 kV Feeders in question) while determining Wheeling Chares, to be shared amongst all TPC-D consumers. Contrary to Ld. Maharashtra Commission's findings on this aspect in the Impugned Order, Ld. Maharashtra Commission itself in TPC-D's recent Mid Term Review ("MTR") Order dated 12.09.2018 in Case No. 69 of 2018, *has categorically acknowledged and accepted that it had indeed included/ considered EHV Sales while determining Wheeling Charges payable by consumers connected at EHV level in its MYT Order dated 21.10.2016*.

5.37 Evidently, Maharashtra Commission by way of the Impugned Order, has without following due process of law, sought to retrospectively alter the entire tariff philosophy, based on which it had earlier approved TPC-D's tariff, including EHV Sales while determining Wheeling Chares.

D. If the 110 kV HPCL Feeders are part of TPC-D's Distribution System, whether the mere paper-mistake/ error of recording the said Feeders in the Transmission Licence No.1 can, exempt HPCL from payment of Wheeling Charge?

5.38 The 110 kV HPCL Feeders were envisaged and constructed as a part of TPC-D's Distribution System in 2006-08 and accordingly capitalized as a Distribution Asset in TPC-D's books by Ld. Maharashtra Commission. It was only in 2014 while providing details for a line specific Transmission License (for the first time) that the 110 kV HPCL Feeders were inadvertently submitted and accordingly recorded in TPC-T's Transmission License No.1 (i.e., a mere paper mistake).

5.39 Apart from the mere paper-mistake of recording the Feeders as part of the Transmission License, there has been no change in the nature and accounting of the feeders, be it at arriving at the ARR for tariff determination for transmission or distribution. Therefore, removal/ exclusion of these Feeders from the Transmission License has no bearing on the prospectivity/ retrospectivity of application.

5.40 The contention that, since the 110 kV HPCL Feeders are already (erroneously) mentioned in the Transmission Licence, they should be continued therein, is unsound and cannot be legally permitted. If a line/ feeder is not a Transmission Line in terms of the Statute, it cannot be recorded/ continued to appear in the Transmission

License, just because it was inadvertently/ erroneously recorded therein.

5.41 Even otherwise, Ld. Maharashtra Commission in its MYT Order dated 21.10.2016 had determined the Wheeling Charges considering HPCL's share for utilization of the said 110 kV Feeders.

E. Whether a Transmission Licensee is empowered to set-up a Distribution System in terms of the Electricity Act as sought to be alleged by the Respondents?

5.42 This point has been, for the first time at appellate stage, raised by the Respondents, under the Electricity Act, both Transmission and Distribution are separate and distinct activities, for which the Statute undisputedly contemplates different Licenses. Section 2(17) of the Electricity Act defines a *Distribution Licensee* to mean a licensee who is *authorized to operate and maintain a Distribution System for supplying electricity* to the Consumers in his area of supply. Whereas, Section 2(73) defines a *Transmission Licensee* as a licensee who is *authorized to establish or operate Transmission Lines*.

5.43 The definition of Distribution Licensee read with Section 42(1) of the Electricity Act provides that, it is the Distribution Licensee (and not

Transmission Licensee) which is required to develop, operate and maintain a Distribution System and supply electricity to consumers in its area of supply, using its Distribution System. The duties of a Transmission Licensee are set out in Section 40(a) of the Electricity Act, which is to build, maintain and operate an efficient, coordinated and economical Inter-State Transmission System or Intra-State Transmission System, as the case may be. The duties of the Transmission Licensee do not envisage connecting to any consumer installation, which is the last mile connection, an activity entrusted upon a Distribution Licensee under Section 43 of the Electricity Act, as held by this Tribunal in its OPTCL Judgment dated 14.12.2012.

5.44 Section 2(61) of the Electricity Act defines the term Service-Line to mean, any electric supply line through which electricity is, or is intended to be supplied, either: (i) to a single consumer either from a distributing main or immediately from the Distribution Licensee's premises; or (ii) from a distributing main to a group of consumers on the same premises or on contiguous premises supplied from the same point of the distributing main. The Respondents have sought to rely in the definition of “Main” under Section 2(42), so as to contend that, electric supply line meant thereunder is not restricted to that of a

Distribution Licensee and it can also be associated with that of a Transmission Licensee. Such interpretation of the statutory definitions will violate the letter and spirit of the statute, which is undesirable. The definition of Service-Line relates back to 'distributing main', which is defined under Section 2(18) to mean the portion of any main with which a service line is or is intended to be immediately connected. The said definition clearly envisages the act of distribution of power and therefore a Main cannot be interpreted to mean the transmission line.

5.45 The settled position of law laid down by this Tribunal in its Judgment dated 14.11.2013 in Appeal No. 140 of 2011 titled *M/s. Reliance Infrastructure Ltd. vs. MERC & Ors.,* whereby it has after quoting the definitions of 'Distribution System' as per Section 2(19) of the Electricity Act and Rule 4 of the Electricity Rules, held as under:-

> *"35. The reading of the above two provisions would make it clear that any electrical system connecting delivery point on the transmission line and the consumer's premises is a part of distribution system of the distribution licensee.*
>
> *36. There cannot be supply of electricity without the use of distribution system."*
>
> *[Emphasis supplied]*

5.46 The Electricity Act does not envisage/ contemplate a Transmission Licensee setting up a Distribution System or installing service lines to a consumer, since Distribution of electricity (which entails laying down of the wires and supply of electricity) is a licensed activity, which can only be undertaken by a Distribution Licensee. Furthermore, supply to a consumer, for which last mile connection/ service line is required is the universal service obligation of a Distribution Licensee. The aspect where the wires can be laid by any licensee, whereas supply is to be done only by the supply/ distribution licensee is not envisaged under the current statutory regime.

F. What is Sai Wardha's locus in the present *lis*?

5.47 Despite TPC-D raising the issue qua Sai Wardha locus in the instant *lis,* Ld. Maharashtra Commission considered and accepted various submissions made by Sai Wardha, without considering the said objection.

5.48 The Sai Wardha is neither a necessary nor proper party for the adjudication of the present dispute, without whom this Tribunal cannot effectively adjudicate the instant *lis*. The matter in issue is

between TPC-D and HPCL, i.e., a Distribution Licensee and a Partial Open Access Consumer. Admittedly, Sai Wardha is the generating company, who used to cater to HPCL's partial load under a group captive arrangement through Open Access. Admittedly, as on date HPCL is not procuring power from Sai Wardha. Evidently, on date, Sai Wardha has no privity or contractual relationship with either TPC-D or HPCL and is raising objections purely for its own personal gains.

5.49 As is evident from the facts of the case, the entire dispute has arisen only after HPCL has sought power from Sai Wardha on Open Access. From 2008 till 2015-16 (i.e., even after the inadvertent error in recording the 110 kV HPCL Feeders in the Transmission Licence), HPCL had raised no issue and had rightly accepted the said feeders as part of the Distribution System and was paying Distribution/ Wheeling Charges without any demur. It was only after the correspondence between Sai Wardha and MSLDC *qua applicability of Wheeling Losses at 110 kV level*, that HPCL raised the issue of applicability of Wheeling Charges by way of the Petition before Ld. Maharashtra Commission.

5.50 As admitted by the Respondents, in terms of the Power Purchase Agreement dated 08.07.2016 between Sai Wardha and HPCL, the

tariff payable by HPCL to Sai Wardha is inclusive of all statutory/ regulatory losses and charges, Wheeling Charges, etc.upto the Delivery Point (i.e., HPCL's premises). Therefore, the non-applicability of Wheeling Charges on power consumed by HPCL will solely benefit Sai Wardha (a private generator), whereas, the burden of paying such Wheeling Charges for the system used by HPCL for procuring such power will be borne by TPC-D's consumers , thereby leading to a tariff shock.

G. Whether Ld. Maharashtra Commission pre-judged TPC-T's Application for Amendment of Transmission Licence No.1 of 2014 (i.e., Case No.137 of 2016)?

5.51 The State Commission ruled that TPC-T's Transmission Licence No.1 shows that the 110 kV HPCL Feeders are part of its Transmission System. That being the case, till these Feeders/ Lines remain in that Transmission Licence, TPC-D as a Distribution Licensee cannot claim Wheeling Charges or Losses for its use from HPCL as the consumer.

5.52 On one hand in the Impugned Order Ld. Maharashtra Commission held that since the 110 kV HPCL Feeders are presently (inadvertently/ erroneously) mentioned in TPC-T's Transmission License No.1 and therefore Wheeling Charges and Losses cannot be

levied; and on the other hand, Ld. Maharashtra Commission rejected the Amendment Application (Case No. 137 of 2016 – which was filed prior to HPCL's Petition), without application of mind and solely relying on its erroneous findings in the Impugned Order.

5.53 Despite being aware that the entire dispute has arisen due to the inadvertent error in recording the lines in the Transmission Licence, for which an amendment was sought and was pending, Ld. Maharashtra Commission passed the Impugned Order prior to deciding the Amendment Application, in effect prejudging the same and making the application for amendment otiose, which is one of the grounds in the instant Appeal.

5.54 TPC-D's aforesaid contention that Ld. Maharashtra Commission prejudged Case No.137 of 2016 by deciding HPCL's Petition (Case No. 58 of 2017) prior in time, is evident from Ld. Maharashtra Commission's Order dated 01.08.2018 in Case No.137 of 2016, wherein it has rejected the amendments sought by TPC-T qua the 110 kV Feeders. Maharashtra Commission has simpliciter rejected the aforesaid amendments, solely by reiterating its erroneous findings in the Impugned Order. Not only has Ld. Maharashtra

Commission completely failed to appreciate any of the legal and factual submissions made by TPC-T, but also has failed to provide any cogent reasoning while rejecting the said amendments.

5.55 Such rejection simpliciter citing the decision in the Impugned Order has been acknowledged by Ld. Maharashtra Commission itself in its recent MTR Order dated 12.09.2018 in Case No. 69 of 2018, wherein it has categorically acknowledged and observed that, *Ld. Maharashtra Commission has rejected TPC-T's Amendment Application vide its Order dated 01.08.2018, citing the decision taken by it in its Order dated 12.03.2018 in Case No. 58 of 2017.* This acknowledgment fortifies TPC-D's contention that Ld. Maharashtra Commission has prejudged the Amendment Application, making the same otiose.

Adverse impact of the Impugned Order on TPC-D's low-end consumers

5.56 By placing reliance on the erroneous findings in the Impugned Order, Ld. Maharashtra Commission has subsequently passed multiple orders against TPC-D and its group companies, thereby gravely

prejudicing TPC-D's operations and its 1.3 lac consumers (out of which approx. 88,000 are subsidized consumers).

5.57 The Impugned Order and the subsequent orders passed by Ld. Maharashtra Commission, based on its findings in the Impugned Order, has resulted in a sudden exponential increase in consumer tariff, leading to a massive tariff shock for the consumers and resulted in distorting the level playing field guaranteed by the Electricity Act, especially in a competitive parallel licensing scenario prevalent in the City of Mumbai.

5.58 In its recent MTR Order dated 12.09.2018 in Case No. 69 of 2018, Ld. Maharashtra Commission while relying upon its erroneous finding in the Impugned Order, has *while computing the Wheeling Charges for TPC-D's HT and LT consumers (for FY 2018-19 and 2019-20), excluded the EHT sales from the total sales*. Accordingly, the Wheeling Charges for HT consumers (excluding EHT consumers) has been determined at Rs.1.46 /kWh and for LT consumers at Rs.2.62/kWh for FY 2018-19 and Rs. 1.69/kWh and Rs. 2.97/kWh respectively for HT and LT consumers for FY 2019-20.

5.59 *Ld. Maharashtra Commission's action of excluding EHT sales while re-determining Wheeling Charges for TPC-D's consumers, during the Mid Term Review proceedings, is contrary to the tariff philosophy adopted in its MYT Order dated 21.10.2016 and the rationale employed by it to avoid a tariff shock to the consumers*. By the MTR Order dated 12.09.2018, Ld. Maharashtra Commission has created tariff shock for TPC-D's consumers, which it had during the MYT proceedings (just 2 years ago), sought to avoid.

5.60 The large-scale migration of HT consumers (subsidizing consumers) will have a further impact on the remaining consumers of TPC-D, who shall have to bear higher costs and shall lead to creation of further Regulatory Assets, which Ld. Maharashtra Commission in the MTR Order dated 12.09.2018 has sought to reduce to Zero by FY 2019-20. As such, reliance on the erroneous findings in the Impugned Order is causing irreparable loss and hardship to TPC-D and consequently its remaining consumers, which are primarily subsidized residential consumers.

Miscellaneous submission

5.61 As regards the Respondents reliance on this Tribunal's decision dated 12.09.2014 in the case of Steel Furnace Association of India (*Steel Furnace* case) it is submitted that:-

(a) In that case, the *consumer had borne the entire cost of the line* through which it was connected, as per the regulations of the State Commission therein. Considering the specific facts of that case, this Tribunal had held that, the *consumer therein who was directly connected through the 220/132 kV feeders (the entire cost of which was borne by it) could not be charged Wheeling Charges*, when it availed power under Open Access, since no part of the distribution licensees network therein was being utilized.

(b) The said Judgment relies on this Tribunal's earlier Judgment dated 29.03.2006 in the case of *Kalyani Steels Ltd. vs. KPTCL & KERC,* wherein also, the 7.25 km long 220 kV transmission line (in question) to the consumer's plant was (admittedly) entirely paid for/ financed by the consumer itself and was a Dedicated Transmission Line used exclusively to supply power to the appellant's plant.

(c) In the *Kalyani Steels* case, admittedly, while fixing the Tariff, the cost of the 7.25 km long Dedicated Transmission Line was excluded from consideration, as no part of the capital cost had been borne by the Licensee.

(d) In the present facts of the case (as clearly demonstrated hereinabove), undisputedly the 110 kV Trombay-HPCL Feeders 1 & 2 were set-up and capitalized by TPC-D for supply of power to HPCL and other consumers in the vicinity. As such, these Feeders are an integral/ essential part of TPC-D's Distribution System. The said Feeders are admittedly not a Dedicated Line for supply of power to HPCL alone and/ or paid for by HPCL itself. Therefore, the facts of the *Steel Furnace* & *Kalyani Steels* case are distinct and are of no use in the instant case.

(e) Even otherwise, the *Steel Furnace* case does not consider this Tribunal's Judgment dated 14.12.2012 in Appeal No.30 of 2012 *(OPTCL vs. OERC & Ors.)*, which was passed after the judgment in *Kalyani Steels*, and in clear terms holds that a consumer cannot be directly connected to the Transmission Line and the intervening line/ last mile connection would form part of the Distribution System of a Distribution Licensee.

5.62 In light of the above, it is evident that this Tribunal's Judgment in the case of *Steel Furnace* is not applicable in the facts of the present case and the Respondents reliance on the same is therefore erroneous. It is a settled position of law that, every judgment must be read as applicable to the particular facts proved, or assumed to be

proved, since the generality of the expressions which may be found there, is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found.

5.63 For the reasons mentioned above, the Impugned Order ought to be quashed and set aside by this Tribunal and the prayers sought by TPC-D be made absolute.

6.. Mr. Varun Pathak, learned counsel for the Respondent No. 2 / HPCL has submitted his submissions as follows:

6.1 The Tata Power Licenses were amended from time to time by various notifications issued by Ministry of Industries, Energy and Labour, Government of Maharashtra and by notification dated June 14, 1991 the validity of Tata Power Licenses were extended upto August 15, 2014.

6.2 In light of the above-mentioned facts, till 2014, Tata Power had an integrated license which was granted prior to the Electricity Act, 2003 (hereinafter "the Act") for supply of electricity, under the 1910 Act. Under the consolidated license granted to Tata Power it was undertaking integrated functions of both distribution, conveyance and transmission of electricity.

6.3 With the commencement of the Act and in terms of the supply license granted to Tata Power it became a deemed license in terms of the first proviso to section 14 of the Act. However, as the validity of the license was only till August 15, 2014, new distribution and transmission licensees were granted to Tata Power on August 14, 2014. The Distribution License No. 1 of 2014 (hereinafter "Distribution License")along with Transmission License No. 1 of 2014(hereinafter "Transmission License") came to be granted to Tata Power and they both were dated August 14, 2014.

6.4 Tata Power and HPCL entered into a Power Purchase October 20, 2005 (hereinafter "PPA")and under the terms of the PPA the supply to HPCL by Tata Power (in terms of its old license wherein both distribution and transmission were permitted) was to be done as per various approvals from MERC. Admittedly in the detailed project report dated December 22, 2006 being relied upon by Tata Power, it is clearly stated that the said supply was from 110 kV switchyard, Trombay Station-A.

6.5 Transmission License at Serial Number 77 provided for connection to direct feeders. It is evident from the said lis that Tata Power (Transmission) was connected to eight such consumers, two of which

were HPCL. The other connections pertained to Indian Railways and Bhabha Atomic Research Centre (hereinafter "BARC").

6.6 It is pertinent to note that even after the amendment of the Transmission License by virtue of order dated August 1, 2018 (hereinafter "Subsequent Order") passed by MERC in Case No. 137 of 2016 the transmission lines to direct consumers, specified at point 77 of the Transmission License, have been retained and have not been altered. Therefore, in accordance with the provisions of the Act the Transmission License is still connected to the direct consumers specified at point 77.

6.7 Tata Power by its submission of the revised network rollout by letter dated February 12, 2015, pursuant to order dated November 28, 2014 passed by this Hon'ble Tribunal in Appeal Nos. 246 & 229 of 2012 submitted its revised roll out plan on affidavit. In the above stated roll out plan, Tata Power clearly admitted that its distribution network comprised only of network at 33 kV, 22 kV, 11kV and 6.6kV. In light of these submission qua its distribution network, the submission that the present line qua HPCL was a distribution asset is nothing but an afterthought to cover up for its own inefficiencies and

there is no reason for this Tribunal to ignore the roll out plan and believe the argument of 'inadvertence'.

6.8 HPCL submitted before MERC that it was maintaining a contract demand of 17500 kVA with Tata Power. In addition, HPCL has been taking captive power through open access from Sai Wardha Power Generation Ltd. since December, 2015.

6.9 HPCL had taken up the issue of wheeling charges and wheeling losses, (after receiving email dated December 11, 2015 from Respondent No. 4 wherein it had stated that as HPCL was connected at 110 kV level there were no wheeling losses applicable)with Tata Power time and again but the same has not been resolved by it. HPCL by its various meetings and written communications dated January 27, 2016; March 7, 2016; January 12, 2017 and January 31, 2017 had raised the issue of wheeling charges and losses with Tata Power. However, despite the raising of the said issues by HPCL, Tata Power by its communications dated July 28, 2016 and February 9, 2017 had insisted on the applicability of wheeling charges and wheeling losses for its distribution network to the captive power supplied at 110 kV to HPCL.

6.10 It is pertinent to note that only upon the raising of the issues of wheeling charges and wheeling losses by HPCL did Tata Power filed a petition for amendment of its license, i.e. Case No. 137 of 2016, before the MERC. The said petition was filed in October 2016 which was after HPCL had written to Tata Power in January 2016 and March 2016.

6.11 There is no bar on a consumer directly being connected to a transmission licensee. In this regard reliance is placed upon the definition of a consumer under section 2 (15) of the Electricity Act. The said definition makes it clear that a consumer is a person who is supplied electricity by a licensee. A licensee has been defined under section 2 (39) to mean a person granted a license under section 14 which also includes a transmission licensee. Therefore, as per the definition of a consumer, a transmission licensee can also supply electricity to a consumer.

6.12 This Tribunal in a line of judgments have interpreted a load centre to include a consumer as the phrase/term load centre has not been defined under the Act. Reliance is placed on one such judgement of this Tribunal in Dakshin Haryana Bijli Vitran Nigam Ltd. *v*. Toshiba Corporation, 2015 SCC OnLine APTEL 94(Appeal No. 254 of 2013,

judgment dated May 29, 2015) (Civil appeal dismissed against this order by order dated July 20, 2015 passed by the Hon'ble Supreme Court in Civil Appeal No(s). 5318/2015):

> "*24. The main contention of the learned counsel for the appellant is that the 'dedicated transmission line' can only be used for supply to consumers directly when there is only one consumer and the same is considered to be a load centre. Therefore, a generating station can sell electricity to a consumer through dedicated transmission lines up to the load centre. Thus this Tribunal had earlier also taken a view that a generating station who intends to supply power to a group of consumers through its 'dedicated transmission lines' and the intended activity, does not become distribution.*" ..... (Emphasis Supplied)

6.13 Reference is made to judgment dated November 20, 2015 in Appeal No. 84 of 2015**,** GUVNL *v*. GERC & Anr. wherein this Tribunal while deciding on the question of additional surcharge clearly notes that the consumer was directly connected to the transmission network of Central Transmission Utility. Reliance is placed upon paragraphs 3 (i), 3 (iii) and 4. Reliance is placed on judgment dated May 20, 2009 passed by this Tribunal in Appeal No. 139 of 2007 and Appeal No. 140 of 2007, Nalwa Steel *v*. CSPDCL & Ors., wherein this Tribunal

clearly held that a transmission licensee could supply power to a consumer and as such the said judgment is directly applicable to the facts of the instant case. Main reliance is placed upon the judgment of this Hon'ble Tribunal in Appeal No. 245 of 2012, Steel Furnace Association of India *v*. PSERC & Anr. wherein this Hon'ble Tribunal held that wheeling charges are not applicable when a consumer is directly connected to the system of the transmission licensee. Reliance is placed upon paragraphs 12 (a), 16 to 28, 34-35, 37, 54-55 and 59 of the said judgment**.**

6.14 The fact that a transmission licensee can be connected directly to a consumer is further reflected from the various Transmission & Distribution Regulations framed by MERC.

6.15 Judgement dated December 14, 2012 in Appeal No. 30 of 2012, OPTCL v. OERC & Ors. not applicable:

The reliance placed by the Appellant on the said decision [Orissa Power Transmission Corporation Ltd v. Orissa Electricity Regulatory Commission to claim that the consumer premises cannot be connected to the Transmission Line is not correct. In the said decision, the issue considered was the obligation was the distribution

licensee to supply electricity and to make arrangement of the same. In Para 31 of the above decision, the Tribunal considers the issue as to whether the line connecting the Transmission network to the OPTCL and the consumer's premises (last mile connection) is part of the transmission network of the transmission licensee or part of the distribution network of the distribution licensee. The Tribunal in Para 35 of the said decision, holds the last mile connectivity to the consumer's premises as a distribution network. In Para 37 of the above decision, it has been held that a distribution network is not a transmission line. Further, in Para 38, what has been considered is that the supply to consumer is not transmission of electricity but the supply to consumer is an obligation of the distribution licensee. In Para 42, the Tribunal has dealt with mandate of law in terms of section 42 and 43 of the Electricity Act 2003 to maintain the last mile connectivity and not "whether a transmission licensee can supply/transmit electricity to a consumer directly even when the consumer continues to be a consumer of the distribution licensee".

6.16 A consumer can be a consumer of a distribution licensee while being connected to the transmission network of a transmission licensee:

(i) It is settled law that a distribution licensee deals with a consumer but equally settled is the law regarding the fact that a consumer can be directly connected to the network of a transmission licensee and therefore, can be supplied power by a transmission licensee. This is the case with many big consumers many of whom are sometimes connected directly to the STU/CTU networks. There are also cases where sometimes, like with other consumers of Tata Power, who are connected to the transmission licensee directly.

ii). Tata Power has not been satisfactorily able to answer as to why BARC has been directly connected to the transmission network of Tata Power and admittedly, Tata Power has not taken the argument of inadvertence with respect to BARC, thus, admittedly, BARC has been deliberately connected to the transmission network of Tata Power.

6.17 The contention of the Appellant that MERC was under an obligation to decide both Case No. 58 of 2018 and Case No. 137 of 2016 together and not individually is without any basis and factually incorrect as no such request was ever made before MERC. If at all Tata Power wanted both the matters to be decided together then an appropriate application should have been made by Tata Power. Admittedly, no such application was ever filed by Tata Power.

6.18 Tata Power (Distribution) has not satisfactorily shown as to why the 110 kV lines should be considered as its distribution assets more than 2 years after their inclusion in Tata Power's (Transmission) licence and in the face of the practice in many states, including Maharashtra, of treating the EHV (as is the present case) network of 66 kV and above as part of the transmission network.

6.19 Tata Power (Distribution), Tata Power (Transmission) and Tata Power (Generation) are all constituents of a single corporate entity, which is Tata Power. MERC in the Impugned Order notes the submission of Tata Power (Distribution) Case No. 47 of 2016 that the assets of Tata Power (Distribution) do not include any part of Tata Power (Transmission) Network. MERC further notes that for all distribution licensees, including Tata Power (Distribution), it had separately determined wheeling charges for LT and HT (11/22/33 kV), apart from other charges and that it had not determined or even recognized any 66 /110/220/400/765 kV levels for wheeling charges in the respective tariff orders. This is in line with the principle and practice of segregation between High Tensions and Extra High Tensions levels in Maharashtra. This is a clear finding of fact which

has been given against the Appellant and therefore, the Appellant is wrong in alleging that the Impugned Order violates any tariff orders.

6.20 MERC has given a factual finding that even if it is assumed that such EHV Lines are considered as distribution assets even then no wheeling charges were determined by it for 110 kV lines in the multi-year tariff order in respect of Tata Power (Distribution).

6.21 Any consequence in terms of applicable tariff qua the Impugned Order can always be considered at the time of true-up by MERC. MERC in the Impugned Order clearly notes that Tata Power (Distribution) in its revised network roll-out Plan in Case No. 182 of 2014 had clearly stated that its existing distribution network was only up to 33kV, meaning thereby that the network of voltages above 33 kV clearly and admittedly was not a part of its distribution network.

6.22 Many consumers of distribution licensees in Maharashtra and elsewhere in the country who are connected at 110 kV, 220 kV and even 400 kV. The 110 kV, 220 kV and 400 kV Lines are owned, operated and maintained by the transmission licensees, but the metering equipment is installed by the distribution licensees for supply to their consumers. This arrangement does not per se amount

to such consumers being connected to the distribution networks. The supply voltage of a consumer is determined on the basis of its load requirement. If a consumer is given supply at a voltage level of 66 kV and above, that does not by itself imply that such network is a distribution asset. This is an established principle and practice in the power sector in India, barring a few exceptions.

6.23 Under the provisions of the Act it is clear that the EHV Feeders emanating from the Trombay Generating Station's EHV sub-station is connected through 110 kV Lines to the EHV sub-station of HPCL and therefore, these lines fall squarely within the definition of 'transmission lines' under Section 2 (72) of the Act. Further, CEA has framed CEA (Technical Standards for Construction of Electrical Plants and Electric Lines) Regulations, 2010 (hereinafter "CEA Technical Standards Regulations") and the CEA (Manual on Transmission Planning Criteria), 2013 (hereinafter "CEA Manual"). The CEA Technical Standards Regulations and the CEA Regulations demarcate distribution and transmission boundaries on the basis of voltage levels. Voltage levels from 0.415 kV to 33 kV are included under the distribution head, and 66 kV to 765 kV AC and 500 kV DC voltage levels in transmission. In the CEA Manual for Transmission

Planning Criteria, voltages from 66 kV to 765 kV are considered under the transmission head. Further, the MERC Transmission Open Access Regulations, 2016 specify that connecting feeder above 33 KV would be a part of the transmission lines as defined in Section 2(72) of the Act. The MERC Distribution Open Access Regulations, 2016 also provide that wheeling charges shall not be applicable in case a consumer or generating station is connected to the transmission system directly or using dedicated lines owned by the consumer or generating Station. Thus, the regulations framed by MERC also demarcate and distinguish between the transmission and distribution boundaries.

6.24 In any event, HPCL is connected through lines which are, admittedly, at present a part of TPC-T's transmission licence and thereby a part of the intra-state transmission system and therefore, till such time as that remains the case, wheeling charges and losses are not payable by HPCL to TPC-D.

6.25 Admittedly, in the present case, Tata Power has set-up a case based on inadvertence. Therefore, assuming this Tribunal were to hold the 110 kV lines in question as part of the distribution network then in

such a scenario, Tata Power should not benefit out of its mistake and the said change should take place prospectively and not retrospectively. Under the provisions of the Electricity Act change to a transmission license cannot be made retrospectively and if the plea of the Appellant was accepted in toto even then the said change can only be allowed prospectively. However, this will impinge upon the Subsequent Order wherein the change in the Transmission License has been rejected and as such the said order has to be challenged subsequently (being a new cause of action) by Tata Power, which challenge is not before this Hon'ble Tribunal in the present case.

6.26 The present appeal is, therefore, devoid of merit and may be dismissed by this Tribunal.

7. Mr. Anand K. Ganesan, learned counsel for the Respondent No.3/ Sai Wardha Power Generation Limited has filed his written submission as follows:-

7.1 The 110 KV transmission line is in fact part of the transmission license of Tata Power and not part of the distribution license. Tata Power cannot claim contrary to the statutory license granted. There was also no mistake made by Tata Power in classification of the line as a transmission line. This is a conscious decision taken by Tata Power

as is evident by various pleadings and filings of Tata Power in various proceedings.

7.2 The State Commission has, in line with the license granted, determined the wheeling charges only for 33 KV (HT) and 11 KV (LT) and not for 110 KV (EHT Network) of Tata Power in the distribution tariff order. The network cost for 110 KV is determined in the transmission tariff orders. The users of the network have to pay the charges for the line used. When 110 KV line is used, 33 KV charges cannot be levied.

7.3 The distribution (wheeling losses) are not applied on the electricity supplied by Tata Power to its EHT consumers. Only transmission losses are applied. However, Tata Power is seeking to apply distribution/wheeling losses and charges for the open access supply of its consumers, which is impermissible.

7.4 The issue of transmission or distribution license arises only after 2014. Prior to 2014, the Appellant had an integrated license under the Indian Electricity Act, 1910 and there was no differentiation in the license between transmission line and distribution line.

7.5 The very definition of 'consumer' and 'works' in the Electricity Act and also other provision permits a consumer to be connected to either a transmission licensee's works or distribution licensee's works.

7.6 The Open Access Regulations framed by the State Commission expressly permit a consumer having load of 5 MW or above to connect directly to a transmission licensee and no wheeling charges would be applicable in such an event. This is not disputed nor are the Regulations under challenge.

7.7 The matter is squarely covered by the decision of the Tribunal in the case of Steel Furnace Association v. Punjab State Electricity Regulatory Commission, Appeal No. 245 etc. of 2012 dated 12.09.2014, wherein the specific issue of whether wheeling charges can be applied to consumers at 66 KV or higher connected to the transmission system was decided by the Tribunal. This is also followed in the case of in the matter of Mawana Sugars Limited v. Punjab State Electricity Regulatory Commission, Appeal No.142 and 168 of 2013 dated 17.12.2014.

7.8 The transmission charges from the generating station of the answering Respondent to the Respondent No. 2 over 800 KM including the system of MSETCL at 220 KV and transmission system of Tata Power at 220 KV and 110 KV is much less than the charges sought to be levied by Tata Power for 1.90 km of 110 KV line is 80 paise/unit treating the line as 33 kv HT line.

7.9 The issue-wise submissions of the Answering Respondent on the propositions are as under:

A. The 110 KV transmission line is in fact part of the transmission license of Tata Power and not part of the distribution license. Tata Power cannot claim contrary to the statutory license granted.

7.10 The Appellant had applied for issue of the Transmission Licence in the year 2014 by including specifically the line in issue and also the BARC line. This is the first time where the Appellant was required to segregate the TPC-T (Transmission) and TPC-D (Distribution). The application for grant of licence was filed on 23.05.2014. In the application and in the proceedings for grant of such transmission

license the Appellant itself classified the line in issue as Transmission Line and sought the transmission license for the same.

7.11 The Appellant had made presentation before the State Commission not only in the proceedings for grant of Transmission licence but also in two other proceedings namely the petition for grant of distribution license and in the proceedings for approval of roll out plan for establishing distribution network that the 110 kV line would be a Transmission line of TPC-T and did not treat any of the 110kV line as a part of the distribution Licensee TPT-D Line.

7.12 The Transmission licence was granted to the Appellant on 12.08.2014 and the Appellant duly accepted the same. The Transmission licence granted include the line in issue and BARC Line as Transmission line.

7.13 In. Case No 90 of 2014 dealing with the application for grant of distribution licence TPC -D a presentation was made by the Appellant with the schematic diagram and other presentations. The perusal of the same will establish without any two opinion that Tata Power Company Limited intended the 110 kV feeder line to be part of TPC-T and not part of TPC-D. The specific classification is that 110 KV lines

are part of the transmission system and 33 KV and below lines are part of the distribution system.

7.14 In the petition for network roll out plan filed by the Appellant in February, 2015, the Appellant had specifically stated that the distribution network of the Appellant comprises of HT network at 33 KV, 22 KV, 11 KV and 6.6 KV and LT Network. EHT network of 110 KV was not included in the distribution network of TPC-D.

7.15 The above shows a conscious application of mind to treat the line in issue connecting to HPCL as a Transmission System of TPC-T and not of TPC-D.

B. The State Commission has, in line with the license granted, determined the wheeling charges only for 33 kv (HT) and 11 kv (Lt) and not for 110 kv (EHT network) of tata power in the distribution tariff order. The network cost for 110 kv is determined in the transmission tariff orders. The users of the network have to pay the charges for the line used. When 110 kv line is used, 33 kv charges cannot be levied.

AND

C. The distribution (wheeling losses) are not applied on the electricity supplied by Tata Power to its EHT consumers. Only transmission losses are applied. However, Tata Power is seeking to apply distribution/wheeling losses and charges for the open access supply of its consumers, which is impermissible

7.16 The Appellant is wrongly relying on the decision of the State Commission in the Retail Supply Tariff order dated 21/10/2016 of TPC-D passed by the State Commission to claim that the line in issue should be treated as part of the TPC-D and not TPC-T. The Appellant is mixing up the issue with regard to the supply of electricity and the network used for the supply of electricity. As mentioned herein above, the supply of electricity is undoubtedly by the distribution licensee, in the present case, by TPC-D. This is why EHT Sales is always accounted to the distribution licensee all over the country. The transmission licensee cannot supply electricity.

7.17 There are no cost or charges for the EHT network determined in the said order, as the EHT line cost is incurred by the transmission licensee and the 110 KV EHT charges are determined in the transmission tariff order and not the distribution tariff order. In case the EHT Network was classified in the distribution license, the State Commission would have in each tariff order determined the EHT Network Cost, EHT Wheeling Cost and EHT Wheeling Charges.

7.18 In case the State Commission was to determine the charges for use of the 110 KV line in the distribution tariff order, the same would be

separately determined as EHT cost and EHT wheeling cost, which would be based on the cost of the 110 KV line. This would obviously be much lower than the 33 kv line cost. The transmission tariff order already determines the 110 KV line cost, which would be the same irrespective of which legal entity owns and operates the said line. The Appellant only seeks to apply to the cost of the 33 KV lines and the 11 KV lines on the open access supply to HPCL, when only the 110 KV lines are used.

D. The issue of transmission or distribution license arises only after 2014. Prior to 2014, the Appellant had an integrated license under the Indian Electricity Act, 1910 and there was no differentiation in the license between transmission and distribution.

7.19 Till 2014, Tata Power Company had an integrated license which was granted prior to the Electricity Act, 2003 for supply of electricity, under the provisions of the Indian Electricity Act, 1910. The previous licenses were granted on 1907, 1919, 1921 and 1953. This license was for supply of electricity and included the authorization for laying down electric lines, LT, HT and EHT.

7.20 Thus till 2014, Tata Power Company had one license, an integrated supply license which included the conveyance and transmission of

electricity. There was no separate transmission license or divisions as TPT-D and TPT-T. The revenue requirements of Tata Power was only notionally divided by the State Commission for tariff purposes between transmission and distribution, whereas the license remained common.

7.21 The above earlier Supply license granted to the Appellant expired in the year 2014. The present Transmission license and the distribution license have been granted to the Tata Power in the year 2014 under the provisions of the Electricity Act, 2003. In the circumstances it is incorrect on the part of the appellant to argue on the basis that TPC-T was being in existence as a separate licensee for number of years. The matter raised by the appellant has to be considered in the light of licenses having been granted in the year 2014.

7.22 It is also incorrect for Tata Power to contend that the approval, captialisation of the line was granted to the distribution licensee and not transmission licensee. The line was constructed when it was a single license. All the works were part of the same licensee and not different licensees.

E. The electricity act permits a consumer to connect directly to the works of a transmission licensee. The very definition of 'consumer' and 'works' in the electricity act permits a consumer

***to be connected to either a transmission licensee's works or distribution licensee's works*.**

AND

F. The open access regulations framed by the state commission expressly permit a consumer having load of 5 mw or above to connect directly to a transmission licensee and no wheeling charges would be applicable in such an event. This is not disputed nor are the regulations under challenge.

7.23 The provisions of section 2(72) of the Electricity Act, 2003 which defines Transmission Line and provides for an exclusion *namely for 'not being an essential part of the distribution system of a licensee'* has the effect that a Distribution Licensee can also establish extra high pressure lines, may be 132 or 220 kV etc. as an essential part of the distribution system, wherever feasible. The essential part of the distribution system will not be a transmission line as defined and therefore can be established by distribution Licensee also. It does not mean that the Transmission Licensee cannot lay down a line to connect to the consumer from the transmission line.

7.24 There is an essential distinction between "distribution" and "supply" of electricity. The distribution is wire activity. The supply is commercial supply and not maintaining the wires. The Transmission Licensee is not authorised to undertake supply of electricity. As mentioned

above, supply is defined in section 2 (70) of the Act as sale of electricity. Section 2 (71) of the Electricity Act, 2003 defines Trading as the purchase and resale of electricity. Such resale of electricity necessarily involves supply of electricity to the consumer and therefore would be trading. The trading in electricity is prohibited for a transmission Licensee under section 40 of the Electricity Act.

7.25 The transmission Licensee such as TPC-T is not undertaking the supply of electricity but only conveyance of electricity. The Transmission Licensee is rather prohibited from Undertaking trading [section 41 last proviso] and distribution necessarily involve trading as there will be Purchase and resale of electricity as per the definition of the term trading as defined in Section 2 (71) of the Act.

7.26 The commercial act of supply of electricity to the consumers will always be of the distribution Licensee and not of the Transmission Licensee. It is in the above context sections 42 and 43 of the Act cast a duty or Universal Service Obligation on the Distribution Licensee for supply of electricity.

7.27 In the circumstances, the contention of the appellant that the consumer cannot be connected to the works of a transmission licensee is contrary to the very definition of consumer in the Electricity Act and also the scheme of the Electricity Act.

G. The matter is squarely covered by the decision of the Tribunal in the case of Steel Furnace Association v. Punjab State Electricity Regulatory Commission, appeal no. 245 etc. Of 2012 dated 12.09.2014, which is also followed in the case of in the matter of Mawana Sugars Limited v. Punjab State Electricity Regulatory Commission, appeal no.142 and 168 of 2013 dated 17.12.2014.

7.28 The specific issue of whether wheeling charges could be levied on a consumer taking open access being directly connected to the transmission line has been considered and decided by the Tribunal in the case of Steel Furnace Association v Punjab State Electricity Regulatory Commission, Appeal No. 245 etc. of 2012 dated 12.09.2014. In the above decision, the specific issue that was raised was on the imposition of wheeling charges on the consumers getting power supply directly through the transmission network of the transmission licensee.

7.29 The Tribunal has dealt with in detail on the Scheme and provisions of the Electricity Act and the National Tariff Policy. This tribunal in para 54 and 58 has held that wheeling charges cannot be levied on a

consumer who is connected at high voltage and directly connected to the system of a transmission licensee.

7.30 The contrary view that every consumer need to be connected only to the line of the distribution Licensee will lead to unintended and disastrous results. Technically the premises of the consumers having large demand such as an industrial consumer who are called EHT consumers cannot be connected to the lines operated and maintained by the distribution Licensee. These include consumer in the area of the supply of the Tata Power – Distribution such as HPCL and also BARC. Further Bombay Dyeing an EHT Consumer is also connected to the 220 kV system of TPC-T by a LILO Line. Similarly a large number of HT and EHT consumers such as Delhi Metro, Steel Plants, Cement Plants, car manufacturers etc. including group companies of the Appellant itself such as TELCO, Tata Chemicals, Tata Steel, Tata Motors are connected to the Transmission line. If the contention of the Appellant is accepted there is bound to be persistent and wholesale violation of the Electricity Act 2003 throughout the country.

7.31 Other distribution licensees including MSEDCL do not levy wheeling charges on consumers taking open access who are connected directly to the transmission licensee's system.

7.32 The reliance placed by the Appellant on the decision of the Tribunal dated 14.12.2012 [Orissa Power Transmission Corporation Ltd v. Orissa Electricity Regulatory Commission to claim that the consumer premises cannot be connected to the Transmission Line is not correct. The said decision is distinguishable. In the said decision, the issue considered was the obligation of the distribution Licensee to supply electricity and to make arrangement for the same. In Para 31 of the above decision, the Tribunal considers the issue as to whether the line connecting the Transmission network of the OPTCL and the consumer's premises (last mile connection) is part of the transmission network of the transmission licensee or part of the distribution network of the distribution licensee. A distinction is to be made between the duty of a transmission licensee to lay down the last mile connectivity as a mandate of law to provide supply of electricity to consumer and the entitlement of the transmission licensee to connect to the consumer's premises.

7.33 The latest decision of the Tribunal is in the case of *Steel Furnace Association's* case which settles the precise issue raised in the present case on the applicability of wheeling charges.

7.34 The above decision of the Tribunal dated 12.09.2014 has been followed in a subsequent decision dated 17.12.2014 passed by this Tribunal in Appeal No.142 and 168 of 2013 in the matter of Mawana Sugars Limited v. Punjab State Electricity Regulatory Commission.

H. The transmission charges from the generating station of the answering respondent to the respondent no. 2 over 800 km including the system of MSETCL at 220 kv and transmission system of Tata Power at 220 kv and 110 kv is much less than the charges sought to be levied by Tata Power for 1.90 km of 110 kv line of more than 80 paise/unit treating the line as 33 Kv Ht Line.

7.35 The intention of the Appellant to shift the stand from representing the line in issue to be transmission line to call it as a distribution line is obvious. The Appellant uses only 110 KV Line being a part of the transmission line and as a contiguous line of the transmission system to convey electricity from Trombay to the premise of the Respondent No. 2. The distance is only 1.90 KMs. In the Open Access, the Respondent No. 2 and 3 are liable to pay the charges for the use of the transmission system which is only 110 KV. The Appellant maintains the extensive distribution network of 33 KV, 11 KV, 400

volts etc. which are not being used in any manner for conveyance of electricity to Respondent No. 2.

7.36 The total transmission charges for conveyance of power from the generating station of the Answering Respondent in Warora in Maharashtra to the Respondent No. 2 in Mumbai is only about 30 paise, which includes the transmission system of MSETCL and also the 110 KV and 220 KV transmission system of the Appellant.

7.37 However, only for a small portion of 1.90 KM 110 KV line, the charges sought to be levied are more than 80 paise per unit, applying the 33 kv HT wheeling charges, which are not applicable. This itself establishes the perversity in the claim of Tata Power. The charges for use of the network are based on the cost of the network. A small portion of 1.90 KM 110 KV line cannot be much higher than the entire network of 110 KV and 220 KV of Tata Power and also the 220 KV system of MSETCL.

MISCELLANEOUS

7.38 The transmission licence issued by the State Commission 14.8.2014 in pursuance to the application made by the Appellant on 23.5.2014 specifically includes the line in issue in TPC-T. The petition filed by

the Appellant for amendment of the license has been rejected by the State Commission. The license as of today provides for such line to be considered only as a TPC-T.

7.39 The Appellant has not challenged the Order of the State Commission dated 01.08.2018 rejecting the amendment of the license. In the absence of any challenge to the amendment of the license, the present appeal cannot succeed. The appellant cannot proceed on the basis that the impugned Order be set aside and consequently the order passed thereafter by the State Commission rejecting the amendment application should also be considered a nullity, whereas the basic right of the Appellant to treat a particular line as belonging to the transmission licensee or distribution licensee flows from the license granted by the State Commission.

7.40 The allegations made against Respondent No. 3 as being alien to the proceedings is also completely misplaced. The wheeling charges are applied on the open access supply of power by the Respondent No. 3 to the Respondent No. 2 and therefore the Respondent No. 3 is a necessary party to the proceedings.

7.41 The treatment in the books of accounts by the Appellant is its internal matter and would not change the nature of the line or the specific terms of the transmission license granted by the State Commission.

8. We have heard learned Counsel appearing for the Appellant and the learned Counsel appearing for the Respondents at considerable length of time and gone through the written submissions carefully and after thorough critical evaluation of the relevant material available on records, the principal two issues that arise for our consideration are as follows:

Issue No.1: Whether the 110 kV HPCL Feeders are part of the Distribution System of TPC-D or can qualify as Transmission Lines in terms of the statutory framework and in the facts of the present case?

Issue No.2: Whether the erroneous submission of TPC- regarding 110 kV HPCL Feeders in the transmission licence No.1 exempt HPCL from payment of wheeling charges?

Our Consideration & Findings:-

9. Issue No.1:-

9.1 Learned counsel Mr. Amit Kapur, appearing for the Appellant, Tata Power Company Limited (Distribution) outrightly submitted that the contentions of the Respondents as the well as the State Commission

are wrong and contrary to the extant statutory framework. Quoting the definitions of various systems/provisions of the Electricity Act relating to the distribution system, transmission system, substation, obligations of distribution licensees, etc., the learned counsel contended that HPCL has been the consumer of TPC-D since 1956 and has been receiving the supply at 22kV level which was upgraded to 110 kV level during 2005-08 in order to meet HPCL's additional load requirement of approximately 70 MW. Being an integral part of the distribution system, the State Commission had duly capitalised the said 110kV HPCL Feeders in TPC-D books of accounts. Learned counsel further submitted that these feeders continued to be integral part of the distribution system but due to inadvertence, the same were erroneously included in the application for transmission licence filed by Tata Power Company. Learned counsel quick to point out that immediately after coming across the said mistake, TPC-T had filed Petition No.137 of 2016 before the State Commission on 10.10.2016 seeking an amendment of the transmission license explaining the aforesaid error. However, without hearing/deciding the amendment application (Petition No.137 of 2016), the State Commission passed the impugned order on 12.03.2018, inter-alia,

erroneously holding that the EHV feeders emanating from the Trombay Generation Station/Sub-station fall squarely within the definition of transmission lines in terms of Section 2(72) of the Act. The State Commission has determined wheeling charges for LT&HT(11/22/33 kV) for all distribution licensees including TPC-D but has not determined or even recognized any 66/110/220/400/765 kV levels(EHT) for Wheeling Charges. Learned counsel vehemently submitted that even assuming that such EHV Lines are considered as distribution assets, no Wheeling Charges are determined by the State Commission for 110 kV Lines in the Multi Year Tariff ("MYT") Order in respect of TPC-D. The State Commission in its findings has also referred to CEA Regulations which demarcate the distribution and transmission boundaries on the basis of voltage level as from 0.415 kV to 33 kV in distribution head, and 66 kV onwards in transmission head. Accordingly, the State Commission ruled that 110kV HPCL feeders are part of the transmission system in TPC-T transmission license and thus TPC-D, as a distribution licensee cannot claim wheeling charges or losses from HPCL for its use as the consumer.

9.2 Learned counsel further submitted that the Act has clearly defined the transmission lines under Section 2(72) as under:-

> "2(72)*transmission lines" means all high pressure cables and overhead lines (not being an essential part of the distribution system of a licensee) transmitting electricity from a generating station to another generating station or a sub-station, together with any step-up and step-down transformers, switch-gears and other works necessary to and used for the control of such cables or overhead lines, and such buildings or part thereof as may be required to accommodate such transformers, switch-gear and other works.*"

It is thus evident that all EHV/high pressure cables and overhead lines which are not an essential part of the distribution system are transmission lines. Learned counsel ,to substantiate his arguments, placed reliance on this Tribunal's judgment dated 14.12.2012 in Appeal No.30 of 2012 (OPTCL vs. OERC) which held that if a line is not a part of distribution network / system , only then it could be a transmission line. In this regard, it is quite relevant that selection of the supply voltage is purely a technical requirement and it cannot change the nature and character of the line. Learned counsel further contended that in the present case, the 110 kV HPCL Feeders originate from Tata Power Trombay Generation Bus-Bar and connect

to HPCL through which HPCL has been availing supply of power since 2008 without any demur. In terms of definition of the distribution system under Section 2(19) of the Act, these feeders are essential part of TPC-D supply of HPCL and specifies a criteria laid down under the Act. Learned counsel quick to submit that the findings of the State Commission and contentions of the Respondents that HPCL's sub-station is a sub-station as defined under Section2(69) of the Act are not only erroneous but also contrary to the judgment of this Tribunal dated 14.12.2012 in Appeal No.30 of 2012 which categorically held that:-

> *"an arrangement for stepping down electricity at consumer's installations (i.e., Consumer Sub-station) cannot be held as 'sub-station' as defined in Section 2(69) of the Electricity Act, since the said arrangement is not meant for further transmission or distribution of electricity".*

This Judgment has attained finality as it has not been challenged. Regarding the Respondents' contentions that prior to 2012, Tata Powers function was not segregated are not factually correct to the facts of the case as there was no change in the GFAs of the Transmission and Distribution Licenses made on account of grant of separate licenses in 2014 during the subsequent tariff applications.

9.3 Learned counsel further relied on the judgment of this Tribunal dated 23.05.2012 in Appeal No.75 of 2011 *(Union of India – Southern Railways vs. TNERC & Anr,)* which held that drawal of power at 110 kV or above for consumers with heavy power demand is a technical requirement as at lower voltage levels, there would be requirement of large number of circuits depending upon the power requirement and managing such large number parallel circuits would be technically unfeasible besides being techno-economically unviable and impractical. Even the State Commission through its SoP Regulations mandates that, the Distribution Licensees shall provide connection/ installed equipment at EHV level, in case the consumers contract demand exceeds 5 MVA. Thus, in the instant facts and circumstances of the case, it is evidently clear that the reference 110kV Feeders connecting to HPCL premises are necessarily part of Distribution System and in no way qualify as part of transmission network.

9.4 ***Per contra,*** learned counsel, Mr. Anand K.. Ganesan, appearing for Respondent No.3 and Mr. Varun Pathak, learned counsel appearing for Respondent No.2/HPCL submitted that the 110 KV feeders supplying power to HPCL are in fact part of the transmission license

of Tata Power and not part of the distribution license and as such Tata Power cannot claim anything contrary to the statutory license granted by the State Commission. The State Commission has in line with the license granted determined the wheeling charges only for LT & HT level and not for 110 KV (EHT Network) of Tata Power in the distribution tariff order. Learned counsel further submitted that distribution losses are not applied on the electricity supplied to its EHT consumers wherein only transmission losses are applied. However, Tata Power is seeking to apply distribution/wheeling losses and charges for the open access supply of its EHT consumers, which is not permissible under the law. Advancing their arguments, learned counsel drew attention to various definitions and provisions in the Act and also Open Access Regulations framed by the State Commission which expressly permit a consumer having load of 5 MW and above to connect directly to a transmission licensee and no wheeling charges is applicable in such an event. Learned counsel vehemently submitted that the matter is squarely covered by the decision of this Tribunal in the case of Steel Furnace Association v. Punjab State Electricity Regulatory Commission, Appeal No. 245 etc. of 2012dated 12.09.2014, wherein the specific issue of whether

wheeling charges can be applied to consumers at 66 KV or higher connected to the transmission system was decided by this Tribunal.

9.5 Learned counsel further contended that the Appellant made presentations before the State Commission not only in the proceedings for grant of Transmission license but also in two other proceedings namely the petition for grant of distribution license. As such, the Appellant was well aware what he was proposing and accordingly accepted the transmission license granted by the State Commission on 12.08.2014 which also included 110 kV BARC Lines as Transmission lines. Learned counsel quick to point out that in the petition for network roll out plan filed by the Appellant in February, 2015, it was specifically stated that the distribution network of the Appellant comprises of HT and LT Network. EHT network of 110 KV was not included in the distribution network of TPC-D. Learned counsel for the Respondents further submitted that in view of the above facts, it was a conscious decision to treat the line in issue connecting to HPCL as a Transmission System of TPC-T and not of TPC-D. Learned counsel for the Respondents vehemently submitted that in case the State Commission was to determine the charges for use of 110 kV line in distribution tariff order, the same

would be separately determined as EHT cost and EHT wheeling cost and the same would obviously be much lower than the LT & HT wheeling charges and losses.

Our Findings:-

9.6 We have considered the rival submissions of the learned counsel for the Appellant as well as learned counsel for the Respondents and also took note of the various judgments of this Tribunal on the subject. It is not in dispute that the reference 110kV HPCL Feeders were upgraded from 22kV level during 2005-08 to cater the increased load of HPCL to the tune of 70 MW. Historically, HPCL is connected to TPC-network at 22kV level since 1956 and there was no dispute regarding payment of wheeling charges/losses till the license for transmission and distribution system was bifurcated in 2014 wherein TPC had inadvertently shown 110 kV HPCL feeders in the transmission network. As regard to the various definitions and provisions of the Electricity Act and Open Access Regulations of the State Commission, It is noticed that transmission line is clearly defined as under:-

Section 2(72) of the Electricity Act – Transmission Lines:

> *"transmission lines" means all high pressure cables and overhead lines (not being an essential part of the distribution system of a licensee) transmitting electricity from a generating station to another generating station or a sub-station, together with any step-up and step-down transformers, switch-gears and other works necessary to and used for the control of such cables or overhead lines, and such buildings or part thereof as may be required to accommodate such transformers, switch-gear and other works.*"

Further, this Tribunal in its judgment dated 14.12.2012 in Appeal No. 30 of 2012 OPTCL vs. OERC had categorically held that:

> *"The said interpretations are squarely in teeth of this Tribunal's Judgment dated 14.12.2012 in Appeal No.30 of 2012 (OPTCL vs. OERC) which categorically holds that, an arrangement for stepping down electricity at consumer's installations (i.e., Consumer Sub-station) cannot be held as 'sub-station' as defined in Section 2(69) of the Electricity Act, since the said arrangement is not meant for further transmission or distribution of electricity".*

While taking note of the said judgments, we find that the issue framed in the said judgments and ruling of this Tribunal are squarely applicable to the issue involved in the present Appeal. In fact, learned counsel for the Respondents have raised the same issues that were made in the OPTCL case and after due analysis, the same were rejected by this Tribunal. The said judgment has attained

finality and re-agitation by Respondents for the same issues in the present appeal tantamount to the review of this Tribunal's judgment which is not permissible under the Law. It is crystal clear from the aforesaid judgment that an arrangement for stepping down electricity at consumers installation (i.e. consumers sub-station) cannot be held as "sub-station", as defined in Section 2(69) of the Act since the said arrangement is not meant for further transmission or distribution of electricity. It is relevant to note that 110 kV HPCL Feeders are connected from the Trombay Generation Station Bus-Bar to HPTCL installation at its premises for primarily use for distribution/supply of electricity to HPCL and are an essential part of TPC-D Distribution System without which HPCL could not receive power supply for the desired load. Undisputedly, these feeders from their inception are being used for supplying electricity to consumer/HPCL and hence, are integral part of the TPC-D Distribution System. The Technical Regulations framed by CEA defining level of voltage for distribution and transmission heads are generic in nature and voltage level for supply of power are decided keeping in view the techno-economic criteria and other commercial parameters. As held by this Tribunal in OPTCL case,

there is no embargo that the distribution network of a distribution licensee cannot include a line at 110 kV level which is primarily meant for distribution of electricity. Moreover, as provided in the Act, the distribution can be undertaken at high voltage levels forming High Voltage Distribution System. We, therefore, find that the impugned order of the State Commission suffers from infirmity and perversity being passed not in accordance with the extant statute.

10. Issue No.2:-

10.1 Learned counsel for the Appellant submitted that the reference 110kV HPCL Feeders were envisaged and constructed as a part of TPC-D Distribution System during the year 2005-08 and accordingly capitalised as a distribution asset in TPC-D book of accounts by the State Commission. It was only in the year 2014 while providing details for a line specific transmission license, these feeders were inadvertently listed out and accordingly recorded in TPC-T transmission license no.-1. Learned counsel further submitted that apart from the mere paper-mistake of listing HPCL Feeders as part of the Transmission License, there has been no change in the nature and accounting of the feeders and accordingly exclusion of these

Feeders from the Transmission License has no bearing on the prospectivity/ retrospectivity of application. He vehemently submitted that the State Commission apart from considering these lines part of the transmission license has also held that TPC-D as a distribution licensee cannot claim Wheeling Charges or losses for its use from HPCL as the consumer. Learned counsel contended that if a line is not a transmission line in terms of the statute, it cannot be recorded/continued to appear in the transmission license just because it was erroneously recorded therein. Learned counsel further pointed out that even otherwise the State Commission in its MYT Order dated 21.10.2016 had determined the Wheeling Charges considering HPCL's share for utilization of the said 110 kV Feeders. Regarding the contention of the Respondents that a transmission licensee can set up a distribution system and a service line can be installed by a transmission licensee from its transmission system to the installation of the consumer (i.e., consumer sub-station), learned counsel submitted that it is for the first time at the appellate stage, the Respondents have submitted these arguments which is nothing but seeking amendment of the Electricity Act itself. He contended that under the Act, both transmission and distribution activities are

separate and distinct activities for which the statute undisputedly contemplates different licenses.

10.2 Learned counsel advancing his contentions further submitted that various provisions of the Act relating to transmission, distribution, universal service obligation, service line mains etc. have been duly interpreted by this Tribunal in its OPTCL judgment dated 4.12.2012 and do not need further elucidation of any kind. Learned counsel further placed reliance on the settled position of law laid down by this Tribunal in its judgment dated 14.11.2013 in Appeal No.140 of 2011 in the case of Reliance Infrastructure Ltd. Vs. MERC & Others which read as under:-

> *"35. The reading of the above two provisions would make it clear that any electrical system connecting delivery point on the transmission line and the consumer's premises is a part of distribution system of the distribution licensee.*
>
> *36 There cannot be supply of electricity without the use of distribution system."*
>
> *[Emphasis supplied]*

In view of these facts, learned counsel reiterated his contentions that as per the Act, a Transmission Licensee cannot set up a Distribution System since distribution of electricity is a licensed activity, which can only be undertaken by a Distribution Licensee.

10.3 ***Per contra,*** learned counsel for the Respondents submitted that while seeking the grant of transmission license during 2014, the Appellant on his own included the line in issue and also the BARC line in its application and also made presentations on the same during proceedings before the State Commission. Learned counsel further submitted Tata Power is erroneously relying on the approval and capitalisation of the said lines in the distribution system by the State Commission as when the line was constructed, it had a single license and all the works relating to the said lines were part of the same licensee and not different licensees. Learned counsel vehemently submitted that the reference lines were constructed when there was a single license and all works were part of the same licensee i.e. TPC. The Act permits the consumer to connect directly to the works of a transmission licensee or to the works of a distribution licensee as the case may be. Besides, the Open Access Regulations framed by the State Commission duly permit a consumer having load of 5 MW or above to connect directly to a transmission licensee and in that case, no wheeling charges would be applicable.

10.4 Learned counsel for Respondents further submitted that the matter is squarely covered by the decision of this Tribunal in the case of Steel

Furnace Association v. Punjab State Electricity Regulatory Commission, appeal no. 245 of 2012 dated 12.09.2014. This is also followed in the case of Mawana Sugars Limited v. Punjab State Electricity Regulatory Commission, (Appeal no.142 and 168 of 2013) dated 17.12.2014. In these decisions of this Tribunal, the specific issue that was raised was on the imposition of wheeling charges on the consumers relating to power supply through the transmission network of the transmission licensee and it was categorically held that in such a scenario, wheeling charges cannot be levied on a consumer who is connected at high voltage directly to the system of transmission licensee. Learned counsel quick to point out that the reliance placed by the Appellant on the decision of this Tribunal in OPTCL case to claim that the consumer premises cannot be connected to the Transmission Line is not correct and the said decision is distinguishable from the instant case in hand. Learned counsel further contended that the total transmission charges for conveyance of power from the generating station of the Answering Respondent in Warora in Maharashtra to the Respondent No. 2 in Mumbai is only about 30 paise, which includes the transmission system of MSETCL and also the 110 KV and 220 KV transmission

system of the Appellant. However, only for a small portion of 1.90 KM 110 KV line, the charges sought to be levied are more than 80 paise per unit, applying the 33 kv HT wheeling charges, which in fact, are not applicable. Further, learned counsel submitted that the allegations made against Respondent No. 3 as being alien to the proceedings is also completely misplaced due to the fact that wheeling charges are applied on the open access supply of power by the Respondent No. 3 to the Respondent No. 2 and therefore the Respondent No. 3 is a necessary party to the proceedings. Summing up their submissions, learned counsel for the Respondents pointed out that the treatment in books of accounts by the Appellant is its internal matter and would not change the nature of the line or the specific terms of the transmission license granted by the State Commission. In view of the above facts, learned counsel contended that there is no merit in the Appeal filed by the Appellant and deserves to be dismissed.

Our Findings:-

10.5 We have considered the rival submissions of the learned counsel for the Appellant as well as learned counsel for the Respondents and also took note of the various judgments relied upon by the learned

counsel. While making reference to the various provisions under the Act for supply and distribution of electricity, it is crystal clear that a consumer depending on his requirement in terms of consumption can be connected to the works of either a transmission licensee or to a distribution licensee. The Definition of transmission line under section 2(72) of the Act clearly stipulates that "Transmission Lines" means all high pressure cables and overhead lines (not being essential part of the distribution system of a licensee) transmitting electricity from a generating station to another generating station or a sub-station along with other essential elements. The reference HPCL 110 kV Feeders remained a part of the distribution network of TPC since its supply connection at 22kV level and the dispute only arose due to its upgradation to 110 kV during 2005-08 and more distinctively, when the licenses for transmission and distribution were separated during 2014. Having regard to the provisions under the Act and various interpretations made by this Tribunal through a catena of judgments, it can be concluded that these lines are integral part of TPC-D's Distribution network and merely on the basis of voltage level defined in CEA Technical Regulation, the status and character of these lines cannot be changed from distribution to

transmission. We also note from the judgment of Hon'ble Supreme Court dated 25.04.2014 in the case of Sesa Sterilite Ltd. Vs. OERC & Ors which held that the transmission line connecting the generating station to the consumer is a part of the distribution system of the distribution licensee of the area in which the consumer is located.

10.6 Admittedly, we find force in the submissions of the learned counsel for the Respondents that for a mere distance of 1.90 kms., the consumer-HPCL is being made liable to pay much higher wheeling charges than the transmission charges for the entire network of 110 kV and 220 kV of Tata Power and also the 220 kV system of MSETCL. This is because of the fact that 33 kV (HT) wheeling charges are being applied to a consumer of 110 kV. In view of these facts, we are of the opinion that in case the State Commission was to determine the charges for use of 110 kV line in the distribution tariff order, the same ought to have been separately determined as EHT cost and EHT wheeling charges, which would be based on the cost of the 110 kV lines. This would obviously be lower than the 33 kV wheeling charges and would be the same , irrespective of which legal entity owns and operates the said line. Thus, after deciding that the said 110 kV lines connecting to HPCL are part of the distribution

network of TPC-D, we consider that it would be prudent on the part of the State Commission to determine wheeling charges at EHT level (110 kV) along with computation of wheeling charges at LT/HT levels so that the visible disparity is appropriately addressed in a judicious manner.

11. Summary of Our Findings:-

In view of the findings and analysis brought out in the above mentioned paras, we are of the considered view that the reference 110 kV HPCL Feeders are part of the distribution network of the TPC-D. Further, to arrive at a balanced decision and evolving judicious principles for safeguarding interests of all stakeholders, the wheeling charges are required to be determined at EHT (110 kV) level also along with determination of other wheeling charges at LT/HT levels in accordance with law. Accordingly, we hold that the instant Appeal deserves to be allowed to the extent mentioned as above.

ORDER

For the foregoing reasons, we are of the considered opinion that the issues raised in the present appeal being Appeal No.84 of 2018 have merit. Hence, the Appeal is allowed and the impugned order dated

12.03.2018 passed by the Maharashtra Electricity Regulatory Commission in the Case No. 58 of 2017 is set aside to the extent, as stated in Para 11 above. The State Commission is directed to pass consequential orders as per the above findings, as expeditiously as possible within a period of three months from the receipt of a copy of the judgment.

In view of the above, IA No.419 of 2018 stands disposed of, as having become infructuous.

No order as to costs.

Pronounced in the Open Court on this **18th day of March, 2019.**

(S.D. Dubey) **(Justice Manjula Chellur)**

Technical Member **Chairperson**

REPORTABLE / ~~NON-REPORTABLE~~

Pr