

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

**APPEAL No. 185 of 2018**

**Dated: 08.01.2026**

**Present: Hon'ble Mr. Justice Ramesh Ranganathan, Chairperson  
Hon'ble Mr. Ajay Talegaonkar, Technical Member**

**IN THE MATTER OF:**

1. The Director,  
Aryan Renewable Energy Private Pvt. Ltd.  
Registered Office:  
129, Transport Centre,  
Rohtak Road, Punjabi Bagh, New Delhi-110035. ....**Appellant(s)**

**Versus**

1. The Secretary,  
Central Electricity Regulatory Commission  
3rd & 4th Floor, Chanderlok Building,  
36, Janpath, New Delhi- 110001.
2. The Chairman,  
Power Grid Corporation of India  
B-9, Qutab Institutional Area,  
Katwaria Sarai, New Delhi-110016.
3. The Chairperson,  
Central Electricity Authority  
Sewa Bhawan, Rama Krishna Puram,  
New Delhi-110066.
4. The Executive Director  
Cetnral Transmission Utility of India Ltd.  
Floors No. 5-10, Tower-1,  
Plot No.16, IRCON International Tower,  
Institutional Area, Sector-32, Gurugram,  
Haryana – 122 001. ....**Respondent(s)**

Counsel for the Appellant(s) : Mr. Hemant Singh  
Ms. Shikha Ohri  
Mr. Matrugupta Mishra  
Ms. Ankita Bafna  
Mr. Nishant Kumar  
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Mr. Shubham Arya  
Ms. Poorva Saigal  
Ms. Pallavi Saigal  
Ms. Reeha Singh  
Mr. Rishabh Saxena  
Mr. Shirin Gupta  
Mr. Harshvardhan Singh for R-4

## **JUDGEMENT**

### **PER HON'BLE MR. AJAY TALEGAONKAR, TECHNICAL MEMBER**

1. The Appellant, Aryan Renewable Energy Private Ltd. has preferred this Appeal challenging the order dated 31.10.2017 ("Impugned Order") passed by the Central Electricity Regulatory Commission ("CERC" or "Respondent No. 1") in Petition No. 69/MP/2014.

### **Description of the Parties**

2. The Appellant, Aryan Renewable Energy Private Limited is a company incorporated under the provisions of the Companies Act and is engaged in the business of development of renewable energy projects.

3. Respondent No. 1, the Central Electricity Regulatory Commission (CERC), is a statutory regulatory body constituted under Section 76 of the Electricity Act, 2003.

4. Respondent No. 2, Power Grid Corporation of India Limited (POWERGRID), is a Government of India enterprise, which was discharging the functions of the Central Transmission Utility under the Electricity Act, 2003 for the period in question.

5. Respondent No. 3, the Central Electricity Authority (CEA), is a statutory authority constituted under Section 70 of the Electricity Act, 2003.

6. Respondent No. 4, Central Transmission Utility of India Limited (CTUIL), is the entity notified as the Central Transmission Utility under the Electricity Act, 2003, inter-alia responsible for granting connectivity and long-term access to the inter-State transmission system and for execution and administration of transmission related agreements. We note here that CTUIL, which is presently discharging functions of the Central Transmission Utility, was not originally a party to the Appeal and got impleaded later.

### **Factual Matrix of the Case**

7. On 16.01.2007, ACB, formerly known as Aryan Coal Beneficiation Pvt. Ltd., entered into a Memorandum of Understanding (MoU) with the State Government of Madhya Pradesh for establishing and operating a 500 MW ( $2 \times 250$  MW) thermal power station at Amelia, District Siddhi, Madhya Pradesh.

8. On 28.11.2007, ACB applied to the Chairman, Standing Linkage Committee (SLC) and the Additional Secretary (Coal), Ministry of Coal for grant of long-term coal linkage of 2.576 million tonnes for the proposed 500 MW project.

9. Further on 26.12.2007, the MoU was amended whereby the installed capacity of the project was enhanced to 1200 MW (4 × 300 MW) and on 08.02.2008, ACB addressed a letter to the Executive Engineer, Water Resource Department, Division-I, Siddhi, Madhya Pradesh, seeking enhancement of water requirement from the in-principle approved quantity of 32.60 CUSEC to 44 CUSEC.

10. On 03.03.2008, ACB applied for enhancement of coal requirement to 6.20 million tonnes per annum and on 27.05.2008, ACB and the Government of Madhya Pradesh entered into an Implementation Agreement for setting up the project in terms of the MoU.

11. ACB applied to POWERGRID on 28.05.2008 for grant of Long-Term Access (LTA) for evacuation of power from its 1200 MW thermal power plant to MSEDCCL, GUVNL, Madhya Pradesh, PSEB, HUVPNL, and RUVPNL.

12. On 12.06.2008, ACB resubmitted its application for long-term coal linkage of 6.2 million tonnes per annum of Grade 'F' coal from nearby mines of NCL along with a feasibility report and supporting documents.

13. On 04.07.2008, POWERGRID informed ACB that augmentation and strengthening of the transmission network would be required and that detailed system studies were necessary.

14. Further on 01.08.2008, ACB deposited an amount of ₹16,43,518 towards consultancy charges for carrying out system studies for identifying transmission strengthening requirements.

15. On 29.07.2009, POWERGRID granted Long-Term Open Access for the 1200 MW project and requested ACB to execute a Bulk Power Transmission Agreement (BPTA).

16. ACB conveyed its acceptance of the Long-Term Open Access granted from the VindhyaChal pooling station on 06.08.2009.

17. On 02.02.2010, ACB informed POWERGRID regarding a revision in the commissioning schedule of the project indicating March 2014 for Unit-I (600 MW) and September 2014 for Unit-II (600 MW) along with a revised project status report.

18. On 08.02.2010, POWERGRID requested ACB to furnish a bank guarantee at the rate of ₹5,00,000 per MW for the total power proposed to be transmitted and on 09.02.2010, ACB informed POWERGRID that a Special Purpose Vehicle, namely M/s Aryan M.P. Power Generation Private Limited had been incorporated and that the Bulk Power Transission Agreement (BPTA) would be executed in the name of the said entity.

19. Then on 23.02.2010, a bank guarantee amounting to ₹ 56.10 crores issued by Axis Bank Limited was furnished by ACB in favour of POWERGRID.

20. On 24.02.2010, a BPTA was executed between POWERGRID and the Appellant along with five other independent power producers under which Long-Term Access of 1122 MW was granted to the Appellant.

21. On 24.09.2010, the first Joint Coordination Committee (JCC) meeting was held. During the meeting, the status of land acquisition, coal linkage and environmental clearance was discussed and the commissioning schedule of the project was reviewed.

22. On 17.02.2011, the second Joint Coordination Committee meeting was held with the participation of the CEA and representatives of other developers.

23. The Appellant informed POWERGRID on 24.05.2012 that the Project has not been granted coal linkage and the environment clearance has also been linked

with the grant of coal linkage. It further indicated that the Project is a non-starter at present.

24. On 09.07.2012, the fourth Joint Coordination Committee meeting was held wherein the Appellant provided an update on land acquisition, fuel linkage, environmental clearance and EPC arrangements. POWERGRID, during the meeting indicated that in the absence of progress, the LTA application could be closed after 01.11.2012.

25. On 27.07.2012, the Appellant informed POWERGRID regarding the non-commissioning of the project in view of the non-availability of Environmental Clearance and on 19.02.2013, the fifth Joint Coordination Committee meeting was held during which the status of coal linkage and environmental clearance was discussed.

26. The Central Water Commission, Irrigation Planning (North), Government of India issued a communication declining no-objection for the use of water from the Banas River for the project on 11.09.2013.

27. On 21.07.2015, in Petition No. 92/MP/2015, the Central Electricity Regulatory Commission (CERC) by Record of Proceedings, directed all concerned Long-Term Access applicants to keep their bank guarantees valid pending a decision on relinquishment charges.

28. On 02.05.2017, CERC directed that individual petitions relating to force majeure and determination of relinquishment charges would be adjudicated after disposal of Petition No. 92/MP/2015.

29. On 23.10.2017, POWERGRID invoked the bank guarantee furnished by the Appellant.

30. Further on 25.10.2017, the Appellant filed Writ Petition (C) No. 9386 of 2017 which was disposed of as withdrawn on the same date.

31. On 31.10.2017, CERC passed the Impugned Order disallowing the Appellant from discharge of payment of transmission charges and relinquishment charges.

32. On 13.11.2017, the Appellant filed Petition No. 242/MP/2017 before CERC seeking recovery of the amount encashed under the bank guarantee and on 05.02.2018, the Appellant filed a review petition bearing Diary No. 62 of 2018 before CERC.

33. Aggrieved by the Impugned Order dated 31.10.2017 passed by the CERC in Petition No. 69/MP/2014, the Appellant has preferred the present Appeal.

34. The Appellant has prayed for the following relief before us:

*“a) set aside the Impugned Order dated 31.10.2017 to the extent it directs the Appellant to pay relinquishment charges and transmission charges, passed by the Ld. Central Electricity Regulatory Commission in Petition No. 69/MP/2014; and  
to pass such other or further orders as this Respondent Tribunal may deem appropriate.”*

### ***Submissions of the Appellant***

35. The Appellant submits that the Impugned Order accepts that the Appellant's 1200 MW thermal power project at Amelia, District Sidhi, Madhya Pradesh was rendered impossible to implement due to force majeure events specifically the

refusal of Water NOC by the Central Water Commission (“CWC”) vide letter dated 11.09.2013.

36. However, the Commission declined to grant consequential relief under Clause 9.0 of the Bulk Power Transmission Agreement (“BPTA”) dated 24.02.2010 and held that the Appellant remains liable for transmission/ relinquishment charges under Regulation 18 of the Central Electricity Regulatory Commission (Grant of Connectivity, Long term Access and Medium term Open Access in inter-State Transmission and related matters) Connectivity Regulations, 2009 (“CERC Connectivity Regulations, 2009”).

37. The undisputed position on facts is that the Project was affected by Force Majeure event on account of refusal of NoC from CWC. Consequently, neither any unit of the Appellant’s generating station ever achieved Commercial Operation Date (COD) or nor any power was ever scheduled or injected under the Long-Term Access (“LTA”)/ BPTA. Consequently, the LTA rights were never availed even for a single day and the project was a non-starter due to reasons beyond Appellant’s control as recorded in JCC Meetings and communications dated 24.05.2012 and 27.07.2012.

38. As a matter of fact, CERC has noted at Para 19 that the concerned transmission line(s) were commissioned only on 01.04.2014, i.e., approximately seven months after the Appellant’s project stood abandoned/ ceased to be implementable due to the FM event (11.09.2013, CWC’s refusal of NoC).

39. The Appellant raises an issue as to whether Regulation 18 of the Connectivity Regulations, 2009 applies to a “zero-day failure” case, where LTA was never availed due to Force Majeure, and submits that the aforesaid issue falls to be answered on the following two, independent basis:

- a) Whether the field is covered by the binding precedents of this Tribunal which hold that Regulation 18 has no application in such cases?
- b) Whether, independent of the binding precedents, the text of Regulation 18 contains a *casus omissus* regarding zero-use scenarios due to force majeure events which is governed exclusively by the BPTA?

## A: THE FIELD IS COVERED BY BINDING PRECEDENTS

40. The Impugned Order's finding that Clause 9.0 (Force Majeure) of BPTA is merely a temporary amnesty and cannot absolve liability for transmission charges is directly contrary to the subsequent binding law laid down by this Tribunal.

41. In the case of *Brahmani Thermal Power Pvt. Ltd. vs. CERC & Ors.* (Appeal No. 235 of 2017, Judgment dated 20.03.2025), this Tribunal interpreted Regulation 18 in the context of a generator compelled to exit due to force majeure. The findings in Paras 55, 56 and 57 apply squarely to the Appellant:

- a) At Para 55, this Tribunal categorically held that Regulation 18 applies only when a customer relinquishes LTA "*voluntarily and out of its wish*". It explicitly held that Regulation 18 "has no application" where the customer is "*compelled to relinquish its LTA rights due to the reasons which could not be foreseen and which were beyond its control*" (i.e., force majeure).
- b) At Para 56, this Tribunal further held that Regulation 18 "*presupposes stranded capacity*" on account of relinquishment. Where the transmission lines were not commissioned or were being "*utilized*" by others, Regulation 18 is not triggered.
- c) At Para 57, this Tribunal also observed that, "*It is axiomatic that LTA granted to a generator can be put to use... only after start of*

*operation of the generating station.*" Therefore, a generator "cannot be made liable to pay transmission charges where the power project remains to be established due to some Force Majeure events."

42. The Appellant claims that it's case is identical to that of Brahmani. The relinquishment was compelled by the CWC's refusal of Water NOC (Force Majeure). Since the project never started operation, LTA could never be "put to use" or was "availed" (per Brahmani Para 57). Thus, Regulation 18 has "no application". Further, consistent view has been taken by this Tribunal in case of *PEL Power Ltd. vs. CERC* (Appeal No. 266 of 2016) and *Himachal Sorang Power Pvt. Ltd. vs. CERC* (Appeal No. 169 of 2018, "Sorang- 2") wherein it has been affirmed that no compensatory charges are payable where Force Majeure prevents operation. Notably, Sorang- 2 has also been affirmed by Hon'ble Supreme Court in *CTUIL vs. CERC & Ors*, in Civil Appeal No. 8494 of 2024 vide its Order dated 27.08.2024.

43. The Appellant further submits that any reliance by Respondents on the earlier decision of this Tribunal in *Himachal Sorang Power Pvt. Ltd. vs. CERC & Ors.* (Appeal No. 54 of 2014, "Sorang- 1") is wrong as the same is inapplicable to the facts of the present case and creates no bar to the relief sought. In Sorang-1, the dispute was not a "zero-use/ non-operationalised LTA" exit at all; rather, the issue was whether the generator was entitled to postponement/ extension of the date for commencement of long-term open access under the BPTA and consequentially, a restraint against billing/ claims for transmission charges for the intervening period (Paras 2, 8, 11 and 33 of Sorang - 1).

## **B: REGULATION 18 DOES NOT COVER “ZERO-DAY FAILURE” (CASUS OMISSUS)**

44. Notwithstanding the submissions made above, the plain text of Regulation 18 demonstrates it does not cover the Appellant’s situation. Regulation 18(1) creates only two categories for compensation:

- a) Customers who “*have availed access rights for at least 12 years*”; and
- b) Customers who “*have not availed access rights for at least 12 years*”.

45. Both categories use the phrase “*have availed access rights*”. This implies LTA must have been operationalized. The regulation distinguishes between *long usage* ( $\geq 12$  years) and *short usage* ( $< 12$  years). It does not contain a third category being “*Customers who have never availed access rights*”.

46. Even as per the Statement of Reasons dated 30.10.2009 to the Connectivity Regulations, 2009, it is clear that Regulation 18 is an early-exit/ relinquishment mechanism permitting a LTA customer to surrender access rights before expiry of the full term upon payment of compensation for stranded transmission capacity. Further, it was redrafted specifically to create an “*incentive*” structure tied to whether the customer has “availed access rights” for at least 12 years or not.

47. Undisputedly, the Appellant never availed its access rights. This is a “zero-day failure”. Such a scenario is a *casus omissus* (omitted case) in Regulation 18. It falls outside the text of “availed access rights”. It is settled law that a Court/Tribunal cannot supply a *casus omissus* to create a liability not expressly provided by the statute (*Padma Sundara Rao vs. State of T.N.*, (2002) 3 SCC 533). To apply Regulation 18(1)(b) to the Appellant is to impermissibly rewrite the regulation to read “has been granted LTA” instead of “has availed access rights”. This omission is deliberate because pre-COD failures are governed by a different mechanism:

- a) BPTA Clause 6.0: Construction BG (Rs. 5 Lakh/MW) specifically for “failure to construct” or “abandonment” before COD.
- b) BPTA Clause 9.0: Force Majeure discharge.

48. Accordingly, the Appellant’s pre-COD, zero-day/ zero-use non-performance is governed by the pre-operational contractual framework under the BPTA and not by the post-operational relinquishment regime contemplated under Regulation 18. Hence Regulation 18 is not triggered in a situation where the Generator has not availed the access rights at all due to existence of FM events.

49. Further, Clause 9.0 (Force Majeure) operates as a general overriding provision (horizontal clause) within the BPTA where the non-performance is occasioned by a Force Majeure event. It supersedes and controls the operation of otherwise applicable provisions dealing with default-based consequences including Clause 6.0 which is premised on failure/ abandonment attributable to the generator’s default.

50. Further, BPTA is not a private arrangement operating outside the Regulations; it is a regulation-mandated instrument executed under the Connectivity framework. The regulatory scheme itself requires execution of the long-term access agreement and contemplates Commission’s regulatory approval under Regulation 15 of the Connectivity Regulations, 2009. Therefore, Regulation 18 cannot be read as nullifying the Force Majeure allocation embedded in the very agreement the Regulations requires and the same is approved by the CERC; instead, the two must be construed harmoniously.

51. Thus, properly construed, Regulation 18 is a compensatory mechanism for voluntary relinquishment (stranded-capacity compensation) whereas Clause 9.0 of BPTA addresses involuntary non-performance/ impossibility due to Force Majeure; the former does not abrogate the latter. In a zero-day/ zero-use case

where LTA was never operationalised/ availed and the project became impossible due to Force Majeure, the Regulation 18 trigger does not arise and the consequence must follow the Force Majeure regime under the BPTA.

52. Without prejudice to above, if this Tribunal were to hold that Regulation 18 applies to the Appellant (despite the Force Majeure/ Zero-Use defence) any liability would strictly be for “stranded transmission capacity” as defined in Regulation 2(1)(v). The methodology for computing such stranded capacity and the resultant relinquishment charges was laid down by CERC in its Order dated 08.03.2019 in Petition No. 92/MP/2015 and the correctness of the same is currently sub-judice before this Tribunal in a batch of appeals (Appeal No. 251 of 2019 & Ors.).

53. Applying the current (Impugned) methodology of 92/MP/2015, CTUIL has computed the Appellant’s liability at Rs. 24.58 Crores. Despite this, POWERGRID encashed the entire Rs. 56.10 Crores BG on 23.10.2017 resulting in immediate over-recovery. Since the very basis of quantification is under challenge, any liability fastened upon the Appellant in the present appeal may be made subject to the final decision in those batch of appeals, pending sub-judice before this Tribunal.

54. In view of the above, the Appellant prays that this Tribunal may be pleased to allow the Appeal and set aside the Impugned Order to the extent it imposes liability for relinquishment charges and declare that Regulation 18 does not apply to the Appellant's zero-day, force-majeure failure and direct consequential relief thereof.

### ***Submissions of the Respondent No. 4***

55. By the Impugned Order, the Central Commission, though has held that the Appellant was affected by force majeure from 11.09.2013, however, has rejected the claim of the Appellant on the following basis:

- a) Losses or damages referred to in Clause 9 of the BPTA shall not cover the liability of transmission charges which is provided in Clause 6 of BPTA;
- b) Clause 9 cannot be used to relinquish the LTOA under the BPTA;
- c) Clause 9 of BPTA only covers a temporary phase when the project developer is unable to utilise the transmission system or when the licensee is unable to make its transmission system available due to any force majeure event, therefore, the Appellant cannot use Clause 9 for making an exit from the BPTA;
- d) The investment approval for the transmission system was made on 02.09.2011 which is 10 months prior to the request of the Appellant made on 27.07.2012 regarding not making any investment in the transmission system relating to the generation project of the Appellant;
- e) Considering a timeframe of 9 months for selection of the contractor, the actual execution of the transmission lines would have possibly started in June 2012 which is prior to 27.07.2012;
- f) Since the common transmission system is for a number of generation developers including the Appellant, it would not have been possible for Powergrid to abandon the project or modify the project on account of the request of the Appellant; and
- g) Regulation 18 of the Connectivity Regulations, 2009 does not envisage any exception from paying relinquishment charges on account of relinquishment of LTA on any ground.

56. The primary claim of the Appellant based on Clause 9 of BPTA dated 24.02.2010 is that it should not be liable to pay any relinquishment charges once the CERC has held that the Appellant was affected by force majeure events. The Appellant has further submitted that in such a case, Regulation 18 does not apply. In this regard, the Appellant has referred to the following judgments:

- i. Judgment dated 19.05.2020 in Appeal No. 266 of 2016- PEL Power Limited vs. CERC ('PEL Power')
- ii. Judgment dated 20.03.2025 in Appeal No. 235 of 2017- M/s Brahmani Thermal Power Private Limited vs. PGCIL ('Brahmani')
- iii. Judgment dated 28.01.2025 in Appeal No. 400 of 2017- Sarda Energy and Minerals Limited vs. CERC ('Sarda')
- iv. Judgment dated 14.05.2024 in Appeal No. 169 of 2018- Himachal Sorang Power Private Limited vs. CERC ('Sorang -2')

Except the Sorang-2 judgment, the other matters are pending before the Hon'ble Supreme Court.

#### EARLIER JUDGMENTS OF THIS TRIBUNAL

57. The Respondent No. 4 submits that the above judgments in the cases of PEL Power, Sarda and Sorang-2 cannot be treated as binding precedent since the above judgments have not dealt with:

- a) Regulation 18 of the CERC Connectivity Regulations, 2009
- b) Clauses 5 and 6 of BPTA dated 24.02.2010
- c) Para 22 of the judgment dated 30.04.2015 in Appeal No. 54 of 2014 in Himachal Sorang Power Private Limited vs. CERC ('Himachal Sorang 2015')

58. The above judgments have solely proceeded on the interpretation of Clause 9 of BPTA pertaining to force majeure. It is submitted that even Clause 9 has been

wrongly interpreted since Clause 9 only provides for temporary amnesty and does not deal with the force majeure of a permanent nature.

59. As regards the Judgment of this Tribunal in Brahmani, it is submitted that the interpretation of Regulation 18 of the Connectivity Regulations, 2009 by this Tribunal is erroneous. This Tribunal in Para 55 of the Brahmani Judgment has added words to the statutory Regulation which is impermissible and has rendered the applicability of Regulation 18 redundant in cases where force majeure situation exists. It is submitted that Regulation 18 is absolute in nature does not provide for any exception to be carved out for projects who are affected by force majeure or otherwise. This Tribunal has given supremacy to Clause 9 of BPTA over Regulation 18 of Connectivity Regulations, 2009.

60. It is well settled that Courts cannot make inroads into the statutory Regulations. Reference is made to PTC India Limited vs. CERC (2010) 4 SCC 603.

61. In any event, an interim order has been passed by the Hon'ble Supreme Court maintaining status-quo during the pendency of the Appeal filed by CTUIL challenging the judgment passed by this Tribunal in Brahmani. Reference is made to Orders dated 24.09.2025 and 06.10.2025 passed in CA No. 12282 of 2025.

62. In regard to the above judgments reference may be made to the judgment dated 11.12.2025 in Appeal No. 272 of 2018 and Batch- Bhopal Dhule Transmission Company Limited vs. CERC wherein this Tribunal has dealt with various authorities on what constitutes a binding precedent.

**GRANT OF LONG-TERM ACCESS, RELINQUISHMENT OF SUCH ACCESS AND OTHER IMPLICATIONS IN TERMS OF CONNECTIVITY REGULATIONS, 2009 READ WITH DETAILED PROCEDURE APPROVED BY THE CENTRAL COMMISSION**

63. The long-term access is granted to a long-term customer in terms of Connectivity Regulations, 2009. A long-term customer is defined in Regulation 2(1)(i)(m) as a person who has been granted long-term access. The long-term access is granted in terms of Regulation 12-15 of the Connectivity Regulations, 2009 read with the Detailed Procedure approved by the Central Commission. Reference is made to Clause 24.1.6 b(ii). The relinquishment of such long-term access right is provided for in Regulation 18 of the Connectivity Regulations, 2009.

64. The process involved in the grant of long-term access is as under:

- a) An application is made by the generating company seeking grant of long-term open access.
- b) On such application, CTU conducts system studies to ascertain whether system strengthening is required or whether the existing system can accommodate transmission of desired quantum of power.
- c) On such basis, long-term open access is granted to the Applicant.
- d) Pursuant to the above, a Bulk Power Transmission Agreement is entered into between CTU and the Long-Term Transmission Customer.
- e) Thereafter, a regulatory approval for execution of evacuation systems required in connection with grant of long-term open access is sought for by CTU and
- f) Upon grant of regulatory approval, Powergrid in its capacity as a transmission licensee obtained investment approval for implementation of the evacuation system.

65. In terms of the above, two parallel activities commence. One is the construction of the generating station and allied infrastructure falling within the scope of the generator and the other is the construction of the evacuation system agreed for in the BPTA.

66. The construction of the evacuation system is required to commence simultaneously so that it can be commissioned within the timeline stipulated under the BPTA/ grant for facilitating long-term open access. Once implementation has begun, the transmission system cannot be halted merely because the generating company abandons its project whether due to reasons attributable to it or otherwise. This is because:

- (a) the transmission licensee would have already initiated construction activities, and/ or
- (b) the transmission system is a common system being developed for multiple generators including the one that has subsequently abandoned its project.

67. It is for this reason that Regulation 18 of the Connectivity Regulations, 2009 providing for relinquishment of access rights and does not leave a scope for force majeure events (if any).

68. The contention raised by the Appellant that Regulation 18 of the Connectivity Regulations, 2009 does not deal with the situation where the generator is affected by the force majeure event would defeat the very object and philosophy of the Connectivity Regulations, 2009. If the Appellant is not made responsible for the relinquishment charges, the obligation to bear the corresponding transmission charges will unfairly shift to other generators or the common pool even though they are not at fault.

69. The non-payment of relinquishment charges erodes the statutory objective of the Electricity Act, 2003 which provides for non-discriminatory open access to the ISTS subject to payment of transmission charges so as to ensure that the transmission assets comprised in the ISTS network are duly serviced and no undue burden is caused to the various ISTS users owing to defaults in payment of transmission charges and/ or relinquishment charges.

#### CLAUSE 9 OF THE BPTA

70. The Appellant has placed reliance on Clause 9 of BPTA to contend that Clause 9 deals with a situation of a permanent force majeure and applies to situations not covered by Regulation 18 of the Connectivity Regulations, 2009.

71. The above reliance is baseless for the following reasons:

- a) Regulation 18 of the Connectivity Regulations, 2009 is absolute in nature and does not provide for any exception to be carved out for projects who are affected by force majeure or otherwise.
- b) Regulation 18 of the Connectivity Regulations, 2009 creates a statutory liability which cannot be avoided on the ground of alleged frustration of the LTA/ BPTA. There is no impossibility whatsoever on the part of the inter-State transmission licensee in providing the contracted transmission services. Equally, nothing prevents the Appellant from discharging its payment obligations including the payment of the prescribed surrender charges in circumstances where the Appellant-Generator is unable or unwilling to utilise the transmission services.
- c) The BPTA is governed by the provisions of the Connectivity Regulations, 2009 and is approved by the Central Commission as an Annexure to the Detailed Procedure. BPTA cannot be read in a manner to supersede the

statutory Regulations from which its provisions fleshes out of the Connectivity Regulations, 2009.

- d) In addition to the above, Clause 9 only covers a temporary phase when the project developer is unable to utilise the transmission system or when the licensee is unable to make its transmission system available due to any force majeure event, therefore, the Appellant cannot use Clause 9 for making an exit from the BPTA.
- e) Clause 9 only relieves the Appellant from liability of losses or damages referred to in Clause 9 of the BPTA and not the liability of transmission/ relinquishment charges which is provided in Clause 6 of BPTA and
- f) In any event, Clause 9 cannot be read in isolation and independent of Clause 5 and 6 of the BPTA. Clause 5 provides that the long-term customer shall not relinquish its rights without prior approval and payment of compensation in accordance with CERC Regulations. In terms of Clause 5, the BPTA incorporates the relinquishment charges determined under Regulation 18 of the Connectivity Regulation as compensation for relinquishment. Clause 6 further provides in case a developer fails to construct a station or makes an exist or abandons, CTU will have the right to collect the charges in terms of the Connectivity Regulations, 2009.

#### RESPONSE TO OTHER CONTENTIONS OF THE APPELLANT

72. The contention raised by the Appellant that relinquishment charges are payable only when long-term access has commenced and such access is thereafter relinquished would lead to absurd and anomalous results. If such a contention is accepted then any developer, whether affected by force majeure or not, would be able to relinquish such access rights without any corresponding liability. Such relinquishment could happen on the first day and even on the last

day prior to the commencement of the long-term access. It is well settled that if the interpretation leads to absurdity, it must be ignored and instead, the statute must be interpreted harmoniously and in contextual manner to gather the true intention of the statute.

73. In regard to the above, the Appellant has ignored the definition of long-term customer, long-term access and opening part of Regulation 18 which provides an option to the long-term customer (admittedly Appellant) to relinquish the long-term access rights fully or partly before the expiry of the full term of long-term access. It is submitted that upon signing of the BPTA, the access rights have been vested into the Long-term Customer i.e., the Appellant and since the Appellant has relinquished such rights before the expiry of long-term access, the Appellant would fall within the opening part of Regulation 18. Thereafter, the compensation is to be computed in the manner as provided for in Regulation 18(1)(b) and the methodology as specified by the Central Commission in Order dated 18.03.2019 in Petition No. 92/MP/2015.

74. The reliance placed on Regulation 18(1)(a) and Regulation 18(1)(b) to contend that LTA must have been operationalised for Regulation 18 to apply is wholly misconceived and untenable. Neither the opening part of Regulation 18 nor Regulation 18(1)(b) stipulates any start date or makes the applicability of the provision contingent upon the commencement of LTA.

75. The opening portion of Regulation 18 deals with relinquishment of access rights prior to the expiry of the full term while Regulation 18(1)(b) specifically applies to customers who have not availed access rights for a period of at least twelve (12) years. In both situations, the access rights stand vested upon execution of the BPTA and the Regulation 18 would apply to capacity relinquished pursuant thereto and not only upon once LTA has commenced. In any event, Clause 5 of the BPTA incorporates the relinquishment charges determined under

Regulation 18 of the Connectivity Regulation as compensation for relinquishment if such rights are relinquished.

76. Any interpretation restricting Regulation 18 only to cases arising after commencement of LTA and excluding relinquishment upon execution of the BPTA, would lead to patently absurd and unworkable results. Such a construction would permit access rights to be relinquished without any financial liability, irrespective of whether such relinquishment is on account of force majeure or otherwise. This would not only cause serious disruption and uncertainty in Inter-State transmission planning but would also defeat the very object and scheme of Regulation 18. Further, such an interpretation would render CTUIL remediless and unjustly saddle other DICs with the financial burden for no fault of theirs.

77. The reliance placed by the Appellant on the 1<sup>st</sup> and 2<sup>nd</sup> JCC is baseless. In the above JCCs, the Appellant did not request stoppage of work by the Transmission Licensee but rather declared the progress status. The letter dated 27.07.2012 has been rightly construed by the Central Commission for ascertaining whether the work on the evacuation system had commenced and further whether on that date the work could be stopped. The Central Commission has held that the work had commenced prior to the letter dated 27.07.2012.

78. In any event, the finding of the fact by the Central Commission that Powergrid had commenced work prior to 27.07.2012 has not been challenged by the Appellant.

### ***Our Analysis and Conclusion***

79. Before we proceed with analysis, it would be worthwhile to reproduce the relevant provisions of CERC Connectivity Regulations, 2009 and that of BPTA:

## A. CERC Connectivity Regulations, 2009

### 2. Definitions

“(b) “Applicant” means

- (i) a Generating station of installed capacity 250 MW and above, including a captive generating plant of exportable capacity of 250 MW and above or a bulk consumer in respect of grant of connectivity and
- (ii) a generating station including a captive generating plant, a consumer, an Electricity Trader or a distribution licensee, in respect of long-term access or medium-term open access , as the case may be;”

“(l) “long-term access” means the right to use the inter-State transmission system for a period exceeding 12 years but not exceeding 25 years;

(m) “long-term customer” means a person who has been granted long-term access and includes a person who has been allocated central sector generation that is electricity supply from a generating station owned or controlled by the Central Government;”

“(v) ‘Stranded transmission capacity’ means the transmission capacity in the inter-State transmission system which is likely to remain unutilized due to relinquishment of access rights by a long-term customer in accordance with regulation 16.”

**“14. Communication of Estimate of Transmission Charges, etc.**  
While granting long-term access, the nodal agency shall communicate to the applicant, the date from which long-term access shall be granted and an estimate of the transmission charges likely to be payable based on the prevailing costs, prices and methodology of sharing of transmission charges specified by the Commission.”

**“15. Execution of Long-term Access Agreement**

*The applicant shall sign an agreement for long-term access with the Central Transmission Utility in case long-term access is granted by the Central Transmission Utility, in accordance with the provision as may be made in the detailed procedure. While seeking long-term access to an inter-State transmission licensee, other than the Central Transmission Utility, the applicant shall sign a tripartite long-term access agreement with the Central Transmission Utility and the inter-State transmission licensee. The long-term access agreement shall contain the date of commencement of long-term access, the point of injection of power into the grid and point of drawal from the grid and the details of dedicated transmission lines, if any, required. In case augmentation of transmission system is required, the long-term access agreement shall contain the time line for construction of the facilities of the applicant and the transmission licensee, the bank guarantee required to be given by the applicant and other details in accordance with the detailed procedure.”*

#### **“18. Relinquishment of access rights**

*(1) A long-term customer may relinquish the long-term access rights fully or partly before the expiry of the full term of long-term access, by making payment of compensation for stranded capacity as follows:*

**(a) Long-term customer who has availed access rights for at least 12 years**

*(i) Notice of one (1) year – If such a customer submits an application to the Central Transmission Utility at least 1 (one) year prior to the date from which such customer desires to relinquish the access rights, there shall be no charges.*

*(ii) Notice of less than one (1) year – If such a customer submits an application to the Central Transmission Utility at any time lesser than a period of 1 (one) year prior to the date from which such customer desires to relinquish the access rights, such customer shall pay an amount equal to 66% of the estimated transmission charges (net present value) for the stranded transmission capacity for the period falling short of a notice period of one (1) year.*

**(b) Long-term customer who has not availed access rights for at least 12 (twelve) years** – such customer shall pay an amount equal to 66% of the estimated transmission charges (net present value) for the stranded transmission capacity for the period falling short of 12 (twelve) years of access rights:

*Provided that such a customer shall submit an application to the Central Transmission Utility at least 1 (one) year prior to the date from which such customer desires to relinquish the access rights;*

*Provided further that in case a customer submits an application for relinquishment of long-term access rights at any time at a notice period of less than one year, then such customer shall pay an amount equal to 66% of the estimated transmission charges (net present value) for the period falling short of a notice period of one (1) year, in addition to 66% of the estimated transmission charges (net present value) for the stranded transmission capacity for the period falling short of 12 (twelve) years of access rights.*

*(2) The discount rate that shall be applicable for computing the net present value as referred to in sub-clause (a) and (b) of clause (1) above shall be the discount rate to be used for bid evaluation in the Commission's Notification issued from time to time in accordance with the Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees issued by the Ministry of Power.*

*(3) The compensation paid by the long-term customer for the stranded transmission capacity shall be used for reducing transmission charges payable by other long-term customers and medium-term customers in the year in which such compensation payment is due in the ratio of transmission charges payable for that year by such long-term customers and medium-term customers."*

## **B. BPTA**

*3.0 POWERGRID agrees to provide Long Term Open Access required by Long term transmission customer as per the details mentioned above and in accordance with the Regulations under the Central Electricity Regulatory Commission (Open Access in Interstate Transmission -Regulations 2004) and conditions specified by the CERC from time to time.*

*However, during the tenure of this agreement if any of the covenants and conditions recited in this agreement including agreements A, B, C and D found inconsistent with the provisions of the Electricity Act 2003 and/or applicable notifications/rules/regulations issued either by CERC or by Gol as per the provisions of the Electricity Act then notwithstanding any thing contained in the agreement referred to above, the said rules and regulations shall prevail." (emphasis supplied)*

*"9. The parties shall ensure due compliance with the terms of this Agreement. However, no party shall be liable to any claim for any loss or damage whatsoever arising out of failure to carry out the terms of this*

*Agreement to the extent that such a failure is due to force majeure events such as war, rebellion, mutiny, civil commotion, riot, strike, lock out, fire, flood, forces of nature, major accident, act of God, change of law and any other causes beyond the control of the defaulting party. But the party claiming the benefit of this clause shall satisfy the other party of the existence of such an event and give written notice of 30 days to the other party to this effect. Transmission/drawal of power shall be started as soon as practicable by the parties conferred after such eventuality has come to an end or ceased to exist."*

80. We note that the Appellant's contention mainly relies on the case of *Brahmani Thermal Power Pvt. Ltd. vs. CERC & Ors.* in Appeal No. 235 of 2017, Judgment dated 20.03.2025 (herein after referred to as "Brahmani Judgment"), where this Tribunal interpreted Regulation 18 of the CERC Connectivity Regulations 2009 as- (i) it applies solely to voluntary relinquishment of LTA "out of its wish", having "no application" to compulsory exits due to unforeseeable force majeure events beyond control; (ii) it presupposes actual stranded transmission capacity from such relinquishment, which is absent if lines are not commissioned or are utilized by others; and (iii) LTA granted to generators activates only post-commercial operation, so no transmission charges liability arises where force majeure prevents project establishment altogether. Further, Appellant contends that consistent view has been taken by this Tribunal in case of *PEL Power Ltd. vs. CERC* (Appeal No. 266 of 2016) and *Himachal Sorang Power Pvt. Ltd. vs. CERC* (Appeal No. 169 of 2018, "Sorang- 2 Judgement") also. It points out that the latter judgement has been affirmed by the Hon'ble Supreme Court also. The Appellant also argues that in Regulation 18 of the CERC Connectivity Regulations, both categories use the phrase "*have availed access rights*". This implies LTA must have been operationalized, which is not applicable in the case of Appellant. It is further contended that the case of the Appellant is a *casus omissus* (omitted case) in Regulation 18. It further argues that Clause 9.0 (Force Majeure) operates as a general overriding provision and hence absolves it from any liability.

81. On the other hand, sum and substance of the contention of the Respondent No. 4 is that the Brahmani Judgment wrongly interprets Regulation 18 by inserting words absent from the statutory text in Para 55 of the judgement, rendering it inapplicable to force majeure scenarios. Regulation 18 is absolute and admits no exceptions, even for force majeure, and the Judgment errs in elevating Clause 9 of the BPTA above Regulation 18's express provisions. The Respondent meticulously delineates the comprehensive procedure for LTA processing under the Connectivity Regulations 2009- from the generating company's initial application, CTU's system studies assessing accommodation or strengthening needs, formal LTA grant, BPTA execution, CTU's securing regulatory approval for evacuation systems, to POWERGRID's investment approval for implementation. Thereby emphasizing that this process triggers parallel construction activities: the generator's power plant and allied infrastructure running concurrently with the CTU's evacuation system, both timed for synchronized commissioning per BPTA stipulations. Regulation 18 unequivocally governs relinquishment without carving exceptions for force majeure, because transmission construction cannot be halted mid-stream once initiated as the transmission licensee has committed resources and the system serves multiple generators including the abandoning one. Moreover, access rights vest upon BPTA execution, not only upon LTA commencement or transmission system readiness; Regulation 18(1)(b) specifically applies to customers who have not availed access for twelve years, and Clause 5 of the BPTA contractually incorporates Regulation 18's relinquishment compensation, making stranded capacity charges enforceable immediately upon relinquishment post-BPTA, regardless of project commissioning status. Exempting force majeure would defeat the Regulation's core philosophy and the Electricity Act 2003's mandate for non-discriminatory ISTS open access

with equitable charge recovery, unfairly shifting stranded costs to innocent users or the common pool from defaults attributable to individual generators.

82. We begin our analysis by noting that clause 3 of the BPTA, *inter alia*, expressly stipulates that the regulations, as prevailing from time to time or as amended in future, shall prevail. Ordinarily, the provisions of the BPTA and the Regulations are required to be interpreted harmoniously. **The deliberate use of the expression “prevail” in the aforesaid clause reflects a clear contractual intent to accord primacy to the Regulations in the event of any inconsistency or any void.** The CERC Connectivity Regulations, 2009 have the force of law as they are in the nature of subordinate legislation having been made in the exercise of the powers conferred on the CERC under Section 178 of the Electricity Act. As held by the Constitution Bench of the Supreme Court, in **PTC India Ltd. v. Central Electricity Regulatory Commission, (2010) 4 SCC 603**, a regulation made under Section 178 is in the nature of subordinate legislation and can even override the existing contracts including power purchase agreements which should be aligned with the regulations made under Section 178 as the Regulations make an inroad into even the existing contracts; all contracts, coming into existence after making of the Regulations, should factor in the provisions of the Regulations; as held in **Jagdamba Paper Industries (P) Ltd. v. Haryana SEB**: (1983) 4 SCC 508, all contracts should be in terms of such regulations as they are in the nature of subordinate legislation; and a regulation under Section 178, as a part of regulatory framework, intervenes and even overrides the existing contracts between the regulated entities inasmuch as it casts a statutory obligation on the regulated entities to align their existing and future contracts with the said regulation. In the light of the law declared by the Constitution Bench of the Supreme Court, in **PTC India Ltd. v. Central Electricity Regulatory Commission, (2010) 4 SCC 603**, in

case of conflict, it is the statutory Regulations which would prevail over any contractual provision to the contrary.

83. The argument of the Respondent No. 4, particularly that the rights vest upon BPTA execution, not upon LTA commencement or transmission system readiness, led us to other relevant Regulations of CERC Connectivity Regulations, 2009. We also note from the definitions under the CERC Connectivity Regulations, 2009 that an “applicant” is the person who applies for long-term access and, upon grant of such access by the CTU after due process, the same person acquires the status of a “long-term customer”. A harmonious reading of the definitions of “long-term access” and “long-term customer” leads to the conclusion that **the right to use the inter-State transmission system is conferred upon the grant of long-term access by the Central Transmission Utility, which grant is thereafter formalised and governed through the execution of the long-term access agreement (BPTA) in accordance with Regulation 15**. Regulation 14, when properly construed, reinforces this position. The expression “while granting long-term access” in Regulation 14 refers to the act of conferment of the right by the nodal agency upon approval of the application, whereas the subsequent reference to “the date from which long-term access shall be granted” is to be understood as denoting the date from which the already granted right becomes operational and capable of being exercised, depending upon the readiness and commissioning of the transmission system and the date indicated in the approval, whichever is later. Further, the definition of “stranded transmission capacity” leaves no manner of doubt that such a situation can arise only after the transmission system is commissioned and available for use. In this context, the expression “availing access rights” used in Regulation 18 must be clearly distinguished from the mere “grant of access rights” and the former expression must be understood as referring to the stage of operational enjoyment of the transmission access, rather than its

initial conferment. Therefore, where a long-term customer relinquishes long-term access after it has been granted but before the transmission system is commissioned and the access becomes operational, such relinquishment would be governed by Regulation 18(1)(b), which applies to cases where the long-term customer has not availed access rights for a period of at least twelve years. In such a situation, the access, though granted, has not been put to use at all, and the period of utilisation can only be regarded as zero years, which is plainly less than the minimum period of twelve years prescribed under the above mentioned Regulation. In view of this finding, the contention of the Appellant that it's case is a *casus omissus* under Regulation 18 is without merit.

84. We notice that the arguments now put forward by Respondent No 4, and interplay of Regulations other than Regulation 18 of the CERC Connectivity Regulations 2009 was not brought out for consideration of the bench in case of Brahmani. This led to the situation that in the Brahmani Judgment, the expressions "grant of transmission access" and "availment of transmission access" appear to have been understood in the same sense, and the conclusion of the Bench proceeded on that basis.

85. We find considerable force in the submission urged by the Learned Counsel for the Respondent No. 4 that this Tribunal has added words to Regulation 18 of the 2009 Regulations in Para 55 of the judgement in **Brahmani Thermal Pvt Ltd vs CERC** (Judgement in Appeal No. 235 of 2017 dated 20.03.2025) which is impermissible. It is settled law that a construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided. (**Grasim Industries Ltd. v. Collector of Customs, (2002) 4 SCC 297; Crawford v. Spooner: (1846) 6 Moore PC 1**).

86. It is also well settled that a judgment is only an authority for what it actually decides. What is of the essence in a decision is its ratio, and not every observation found therein nor what logically follows from the various observations made in the judgment. As a case is only an authority for what it actually decides, it cannot be quoted for a proposition that may seem to follow logically from it. (**Quinn v. Leathem [1901] A.C. 495; State of Orissa v. Sudhansu Sekhar Misra, (1968) 2 SCR 154**). The judgment of this Tribunal, in **Brahmani Thermal Pvt Ltd vs CERC** (Judgement in Appeal No. 235 of 2017 dated 20.03.2025), does not consider all the relevant provisions of the 2009 Regulations. Contrary to the law declared by the Constitution Bench of the Supreme Court, in **PTC India Ltd. v. Central Electricity Regulatory Commission, (2010) 4 SCC 603**, the judgement in **Brahmani Thermal Pvt Ltd vs CERC** gives primacy to the contractual provision over that of the Statutory Regulations. The said judgement does not amount to a declaration of law or authority of a general nature constituting a binding precedent. The opinion expressed in the said judgment is without reference to, much less on an analysis of, the relevant statutory provisions. A decision is binding not because of its conclusions, but in regard to its ratio and the principles laid down therein. Any declaration or conclusion, arrived at without being preceded by the consideration and analysis of the relevant statutory provisions, cannot be deemed to be the declaration of law or authority of a general nature binding as a precedent. A decision rendered without reference to the crucial words of the rule/regulation is not a binding precedent. (**Lancaster Motor Company (London) Ltd. v. Bremith Ltd; (1941) 2 All ER 11; Jaisri Sahu v. Rajdewan Dubey; AIR 1962 SC 83; Municipal Corporation of Delhi v. Gurnam Kaur (1989) 1 SC 101; B. Shama Rao v. Union Territory of Pondicherry AIR 1967 SC 1480; State of Uttar Pradesh v. Synthetics and Chemicals Ltd. (1991) 4 SCC 139**). The view, if any, expressed without analyzing the statutory provision cannot be treated as a binding

precedent. **(N. Bhargavan Pillai v. State of Kerela (2004) 13 SCC 379).** Uniformity and consistency are undoubtedly the core of judicial discipline. But that which escapes in the judgment without any occasion is not the ratio decidendi. **(Synthetics and Chemicals Ltd. (1991) 4 SCC 139; Gurnam Kaur (1989) 1 SC 101).** Restraint in dissenting or overruling is for the sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law. **(Synthetics and Chemicals Ltd. (1991) 4 SCC 139; B. Shama Raov. Union Territory of Pondicherry AIR 1967 SC 1480; Rachakonda Nagaiah v. Govt. of A.P., 2012 SCC OnLine AP 447; Mandava Rama Krishna v. State of A.P., 2014 SCC OnLine AP 294).**

87. Based on the preceding analysis, we have come to the conclusion that we are not bound by the conclusions arrived in Brahmani Judgment. Further, certain arguments, which are put forward by CTU in the present Appeal were apparently not made in case of Brahmani. We agree with the contention of the Respondent No. 4 that this Tribunal's PEL Power Judgement and Sorang-2 Judgement, which were cited by the Appellant, cannot be treated as a binding precedent since the above judgments have not dealt with even Regulation 18, and have solely proceeded on the interpretation of Clause of BPTA dealing with force majeure.

88. We note that the Appellant states that the Sorang-2 Judgement has been affirmed by Hon'ble Supreme Court in *CTUIL vs. CERC & Ors*, in Civil Appeal No. 8494 of 2024 vide its Order dated 27.08.2024. In the said order, the Supreme Court, after observing that they found no error in the order of this Tribunal in the Sorang-2 Judgement, dismissed the appeal. As the judgement of this Tribunal, in the Sorang-2 Judgement, did not consider the relevant provisions of the 2009 Regulations, including Regulation 18 thereof, the said judgement does not

constitute a precedent binding on this Tribunal. As the said judgement of this Tribunal is itself inapplicable, its affirmation by the Supreme Court matters little.

89. The Appellant has pointed out that in the Impugned Order, CERC has noted at Para 19 that the concerned transmission line(s) were commissioned only on 01.04.2014, i.e., approximately seven months after the Appellant's project stood abandoned/ceased to be implementable due to the FM event. However, we find force in the contention of the Respondent No. 4 that the construction of transmission system cannot be stopped, not only because construction related activities would have started but also because it was a common system planned for multiple generators. We also note that the Appellant has not specifically challenged conclusion drawn by CERC in its Impugned Order – *“For the purpose of this order, it suffices that investment approval for the transmission system was made on 2.9.2011 which is more than 10 months prior to the request of the Petitioner on 27.7.2012 not to make any investment in the transmission system relating to the generation project of the Petitioner. Considering a timeframe of 9 months for selection of the contractor, the actual execution of the transmission lines would have possibly started in June 2012 which is prior to 27.7.2012. Since the common transmission system is for a number of generation developers including the Petitioner, it would not have been possible for PGCIL to abandon the project or modify the project on account of the request of the Petitioner.”*

90. The BPTA in the present case is an agreement between POWERGRID and five long-term customers (all generating companies) including the Appellant. The clause 9 of the BPTA only absolves parties from payment of any claim for any loss or damage due to force majeure event. As pointed out by the Respondent No. 4, the transmission charges are not a matter limited between the parties to BPTA. We note that the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations were notified in June 2010, which

broadly speaking, require pooling of transmission charges payable to all the transmission licensees and deals with the apportionment of the same among Designated ISTS Customers (DICs) by a prescribed methodology. Therefore, transmission charges, if applicable after relinquishment, were not to be retained by POWERGRID and hence cannot, by any stretch of imagination, be put in the category of claim for loss of damage to POWERGRID. Also, when we go through the Regulation 18 carefully, we do not find any exception carved out for force majeure conditions. We have already concluded in the paragraph 83 that the right to use the inter-State transmission system is conferred upon the grant of long-term access by the Central Transmission Utility, which grant is thereafter formalised and governed through the execution of the BPTA. Further, in view of our finding in paragraph 82 that Regulations enjoy primacy over BPTA, we conclude that clause 9 of the BPTA cannot have overriding effect, if it is in conflict with provisions of the CERC Connectivity Regulation, 2009. **In view of the forgoing analysis, we conclude that the Appellant is liable to pay transmission charges in accordance with Regulation 18 (1) (b) which is consistent with the finding of CERC in the Impugned Order. Accordingly, we find that the Appeal is devoid of any merit and is liable to be dismissed.**

**91. Needleess to add that the liability for transmission charges shall be subject to outcome of the bunch of appeals against CERC's Order dated 08.03.2019 in Petition No. 92/MP/2015.**

**92. It is pertinent to observe that the Appellant contends that the quantum of the Bank Guarantee encashed exceeds the liability assessed by the CTU. However, in the absence of a specific prayer seeking relief on this count, we are constrained from issuing any specific direction in this regard. Nevertheless, we expect the CTU to accord the Appellant treatment at par with other similarly situated entities that have relinquished their Long-Term Access, ensuring a non-discriminatory**

application of the relevant regulations. In the event of any deviation or anomaly, it shall be open to the Appellant to approach the CERC for appropriate relief in accordance with law.

**ORDER**

For the foregoing reasons, we have come to the conclusion that the captioned Appeal No. 185 of 2018 lacks merit and is accordingly dismissed.

The quantum of transmission charges payable by the Appellant shall be subject to outcome of the bunch of appeals against CERC's Order dated 08.03.2019 in Petition No. 92/MP/2015.

As regards the issue of the Bank Gurantee exceeding the liability assessed by the CTU, we grant the Appellant liberty to file a Petition afresh before the Commission in case the CTU does not accord the Appellant treatment at par with other similarly situated entities that have relinquished their Long-Term Access, ensuring non-discriminatory application of the relevant regulations.

The Captioned Appeal and pending IAs, if any, are disposed of in the above terms.

**PRONOUNCED IN THE OPEN COURT ON THIS 08<sup>th</sup> DAY OF JANUARY, 2026.**

**(Ajay Talegaonkar)  
Technical Member**

**(Justice Ramesh Ranganathan)  
Chairperson**

**REPORTABLE / NON-REPORTABLE**

*kns/mkj/kks*