

Court-2

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL NO.183 OF 2020

Dated: 03.07.2026

Present: Hon'ble Ms. Seema Gupta, Officiating Chairperson
Hon'ble Mr. Virender Bhat, Judicial Member

In the matter of:

Maruti Clean Coal and Power Limited
7th Floor, Office Tower, Ambience Mall,
NH-8, Gurgaon-122002
Through its Authorised Signatory

... Appellant

VERSUS

1. Central Electricity Regulatory Commission
Through its Secretary
3rd & 4th Floor, Chanderlok Building,
36, Janpath, New Delhi- 110001
2. Jaipur Vidyut Vitran Nigam Limited
Through its Managing Director
Vidyut Bhavan, Jyoti Nagar
Near New Vidhan Sabha Bhawan
Jaipur-302 005, Rajasthan
3. Ajmer Vidyut Vitran Nigam Limited
Through its Managing Director
Vidyut Bhavan, Makarwali Road,
Panchsheel Nagar, Ajmer-305 004,
Rajasthan
4. Jodhpur Vidyut Vitran Nigam Limited
Through its Managing Director
New Power House, Industrial Area,

Jodhpur-342 003 (Rajasthan)

5. Rajasthan Urja Vikas Nigam Limited
Through its Chairman-cum-Managing Director
Vidyut Bhavan, Janpat Jaipur-302005
Rajasthan
6. PTC India Limited
Through its Managing Director
2nd Floor, NBCC Tower 15,
Bhikaji Cama Place,
New Delhi-110066
7. Chhattisgarh State Power Trading Co. Ltd.
Through its Managing Director
2nd Floor, Vidyut Sewa Bhawan
Dangania, Raipur-492 013,
Chhattisgarh
8. Chhattisgarh State Power Distribution Co. Ltd.
Through its Managing Director
Vidyut Sewa Bhawan
Dangania, Raipur-492 013,
Chhattisgarh

... Respondents

Counsel on record for the Appellant(s) : Matrugupta Mishra
Swagatika Sahoo
Sonakshi
Sudha Reddy
Nipun Dave
Akanksha V. Ingole
Vanshika Saraf
Kushagra Kundan
Naman Poddar
for App. 1

Counsel on record for the Respondent(s) : Ranjitha Ramachandran
Poorva Saigal
Anushree Bardhan
Shubham Arya
Arvind Kumar Dubey
for Res. 2 to 5

J U D G M E N T

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. The appellant M/s Maruti Clean Coal and Power Limited has, in this appeal, impugned the order dated 27.11.2019 passed by 1st respondent Central Electricity Regulatory Commission (hereinafter referred to as "the Commission") in appellant's petition no.183/2018 thereby rejecting the prayers of the appellant for revising/extension of Scheduled Delivery Date under the Power Purchase Agreement (PPA) dated 01.11.2013 from 30.11.2016, as fixed in the said PPA, to 01.04.2017 and to declare that the first contract year under the PPA commenced from 01.04.2017.

Description of the Parties:

2. The appellant is a generating company and runs a coal based thermal power project at Korba in the State of Chhattisgarh with installed capacity of 300MW.

3. The respondent nos.2, 3 & 4 are the distribution licensees in the State of Rajasthan and are carrying on the business of distribution and retail supply of electricity in the State. The respondent no.5 is a company which has been established for purchase of power on behalf of

the distribution licensees in the State of Rajasthan i.e. the respondent nos.2 to 4.

4. Respondent no.6 is PTC which is an inter-state trading licensee through which appellant has executed PPA for back-to-back sale of power to the respondent nos.2, 3 & 4. Respondent no.7 is an inter-state trading licensee with whom the appellant has executed PPA dated 09.12.2013 for supply of 15MW of power at variable charges whereas respondent no.8 is the distribution licensee within the state of Chhattisgarh with whom respondent no.6 has executed PPA for the purchase of supplying power to be charged from the appellant.

5. The brief facts and circumstances of the case leading to the filing of the instant appeal have been encapsulated in the following list of dates and events:-

Sr. No.	DATE	PARTICULARS
1.	07.08.2009	The Central Commission notified the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009 ('Connectivity Regulations, 2009'). The 5 th Proviso to

		Regulation 12, <i>inter-alia</i>, reads as under: <i>“12. Application for long-term access (1)</i> <i>The application for grant of long-term access shall contain details such as name of the entity or entities to whom electricity is proposed to be supplied or from whom electricity is proposed to be procured along with the quantum of power and such other details as may be laid down by the Central Transmission Utility in the detailed procedure:</i> <i>.....</i> <i>Provided also that in cases where there is any material change in location of the applicant or change by more than 100 MW in the quantum of power to be interchanged using the inter-State transmission system or change in the region from which electricity is to be procured or to which supplied, a fresh application shall be made, which shall be considered in accordance with these regulations.”</i>
2.	31.12.2009	The Central Commission approved the Detailed Procedure of Central Transmission Utility under Regulation 27(1) of the Connectivity Regulations, 2009, which provided for the Format of No Objection Certificate (NOC) to be given by the State

		Transmission Utility (STU).
3.	24.02.2010	The Appellant executed a Bulk Power Transmission Agreement (' BPTA ') with PGCIL/CTU along with 6 other LTA customers for evacuating 171 MW from its power plant having target region of WR (126 MW) and NR (45 MW).
4.	28.05.2012 (also amended on 03.08.2012)	RRVPNL initiated a competitive bid process and issued the Request for Proposal document (amended on 03.08.2012) for procurement of 1000MW of base load power for maintaining the distribution retail supply of electricity in the State of Rajasthan. Thus, the delivery point for the supply of power by the selected bidder and generator was Rajasthan periphery which is in the northern region. The Appellant herein participated in the bidding process with the full knowledge that the Appellant has the obligation to arrange for Transmission of Electricity from the place of its generating facilities (at Chhattisgarh within the western region to Rajasthan within the Northern Region) right from the beginning. The obligation to arrange for the inter-state transmission services from Chattisgarh to Rajasthan (inter-region - WR to NR) was specifically contained in the Draft PPA issued as a part

		of the Bidding document.
5.	24.09.2013	RRVPNL issued the Letter of Intent (LOI) in favour of PTC on 24.09.2013.
6.	01.11.2013	The Appellant entered into a PPA with PTC for supply of 250 MW, with the Schedule Delivery date as 30.11.2016 for the supply of Aggregate Contracted Capacity of 250 MW power for a period of 25 years i.e. up to 29.11.2041 for resale on a back-to-back basis to Rajasthan Discoms (the ultimate procurers).
7.	01.11.2013	PTC signed back-to-back PPA with the Respondent Nos. 2 to 5 – Rajasthan Discoms i.e. “Procurer-PPA,” with the Schedule Delivery date as 30.11.2016 for the supply of Aggregate Contracted Capacity of 250 MW power for a period of 25 years i.e. up to 29.11.2041. The said PPA was entered into pursuant to the selection of PTC/Appellant under the Competitive Bidding initiated by RRVPNL for procurement of power on long term basis under Case – I.
8.	09.12.2013	The Appellant entered into a PPA with Respondent No. 7 – Chhattisgarh State Power Trading Co. Ltd. (CSPDCL) for supply of 15 MW of power.
9.	18.01.2014	The Appellant issued a letter to PGCIL/CTU stating that the Appellant has signed PPA for

		sale of 250 MW for a term of 25 years and, therefore, the Long-Term Access (LTA) may now be revised to NR for 250 MW (PTC) and to WR for 15 MW (CSPTCL).
10.	07.02.2014	The Hon'ble High Court of Rajasthan passed an Order in SB Civil Writ Petition No. 19699/13 and SB Civil Writ Petition No. 19437/13 filed by SKS Power Generation Ltd. and M/s Athena Chhattisgarh Power Ltd. before the Hon'ble Rajasthan High Court challenging the LOI awarded pursuant to the bidding conducted by RRVPNL. The relevant extracts of the Order read as under: <i>"1. The petitioners have alleged violation and deviation from the RFP and the Bidding Guidelines of 2005, which may then be considered and decided by the Rajasthan Electricity Regulatory Commission (RERC) after providing an opportunity of hearing to the petitioners though objection regarding locus in respect of petitioner - Athena Chhattisgarh Power Limited has been raised but it is not of substantial nature at this stage as the issues would otherwise be determined by the Commission in reference to the petitioner SKS Power Generation (Chattisgarh) Ltd. The respondents</i>

		<i>have agreed not to raise objection for hearing of the petitioners before the Commission.</i> <i>2. The Commission would consider and decide the allegation of deviation and violation of the RFP and the Bidding Guidelines of 2005. While determining the issues, it would exercise power as given under the Act of 2003 and pass necessary order as deem fit in the facts and circumstances of the case.</i> <i>3. The letters of intent (LOI) shall remain subject to final outcome of the order of the Commission.</i> <i>4. The Commission would take a proper decision in the matter after considering all the aspects and while doing so, it will take care of the objects of the Bidding Guidelines of 2005 for determination of tariff."</i>
11.	08.10.2014	The Hon'ble Supreme Court passed an Order in SLP No.12325 of 2014 and SLP (C) No.12548 of 2014, observing as under order: <i>".....The Letters of Intent (LOIs) issued by respondent no.2 in favour of respondent nos.3-6, which is the subject matter of these Petitions, is subject to the result of these Special</i>

		<i>Leave Petitions.</i> <i>The pendency of the Special Leave Petition(s) will not come in the way of the appropriate Commission in proceeding to pass appropriate orders after hearing the parties in the Writ petition.”</i> Note: The SLP was filed by M/s Athena Chhattisgarh Power Ltd. and Anr. challenging the Order dated 07.02.2014 passed by the Hon’ble Rajasthan High Court in SB Civil Writ Petition No. 19699/13 and SB Civil Writ Petition No. 19437/13 filed by SKS Power Generation Ltd. and M/s Athena Chhattisgarh Power Ltd.
12.	16.02.2015	The Central Commission passed Order in Petition No. 92/MP/2014 stating that for change in the target region of LTA for more than 100 MW, a fresh application has to be made. The relevant extracts of the Order read as under <i>“115. From the above regulations, it is apparent that the application for grant of long term open access shall contain the details of the name of the entity or entities to whom electricity is proposed to be supplied or from whom electricity is proposed to be procured, and quantum of power and</i>

		other details as may be required by CTU in the Detailed Procedure. First proviso to Regulation 12 (1) provides that where the quantum of power has not been firmed up either for supply or for procurement, the applicant shall give an indicative quantum of power along with the target region. As per second proviso the liability of the applicant for transmission charges shall be determined on the basis of the indicative quantum of power along with the target region to which power is proposed to be supplied or from which power is proposed to be procured. Third and fourth provisos relate to long term customers who have been granted LTA. Third proviso as it existed prior to amendment mandates the long term customers to firm up the exact source of supply or destination of off take at least three years prior to the indented date of availing long term access or such lesser period as indicated by CTU for augmentation of the transmission system. However, the amended provision requires the CTU or transmission licensees to
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		take up the augmentation in phases corresponding to capacity which is likely to be commissioned in a given timeframe. The newly added proviso requires the generating company to inform the CTU about the beneficiaries after signing of the long term PPA. Fourth proviso to Regulation 12 (1) provides for the circumstances under which fresh application shall be made by the LTA customers which shall be considered in accordance with the Regulations. These circumstances are as under:- (a) Where there is any material change in location of the applicant. (b) Where there is change by more than 100 MW in the quantum of power to be interchanged using inter-State transmission system. (c) Where there is change in the region from which electricity is to be procured or to which electricity is to be supplied. Change of location of the applicant will materially affect the point of injection or point of drawal which
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		<i>will require system studies to decide the connectivity or additional system strengthening for scheduling the power. Since it involves change of injection or drawal points, fresh applications will be required. Change by more than 100 MW in quantum of power to be interchanged using the inter-State transmission system, will have to be considered in the context of the LTA granted to the target region. For example, if a generator has taken LTA to three regions namely, Northern, Western and Eastern Regions for a particular quantum for each region and intends to change the quantum of injection by more than 100 MW in any of these regions, it will be required to make a fresh application. This is based on the premise that quantum of power of less than 100 MW is likely to be adjusted within the margin available in the regions for which LTA has been granted on the basis of system studies. In this connection, the following observations in the Statement of Reasons are relevant:</i>
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		<i>“44. A number of persons have suggested that a fresh application should not be made a requirement for small changes of locations and small variations in injection. We are in agreement with the above suggestion and only material change in location and deviation of injected power greater than 100 MW will require submission of fresh application. Similar change in the regulation for long term access has been made.</i> <i>66. POWERGRID has commented that change in destination/beneficiary also affects planning. Regulation, as modified, provide for submission of a fresh application in case of any major change in location or change in quantum of power by more than 100 MW.”</i> <i>Therefore, whenever there is change in injection of power by more than 100 MW, there is a requirement for fresh system studies to determine the capacity of the transmission system. Similarly, a distribution company or a</i>
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		consumer seeking change of quantum of drawal by more than 100 MW for which LTA has been granted will be required to make a fresh application to facilitate necessary system studies to decide the capacity of the transmission system. In other words, change in injection or drawal of power of less than 100 MW to the target region for which LTA has been granted will not require fresh application. Situations may arise when an LTA customer requests for change in quantum of less than 100 MW, say 90 MW, but subsequently he requests for change of quantum by another 90 MW. In such cases, CTU shall seek fresh application when the second request is made as both the requests taken together are more than 100 MW. However, this limit of 100 MW will not be applicable if the LTA customer is seeking LTA to a new target region either for supply of power or for procurement of power as such cases will be covered under the third scenario i.e. where there is change of region to which power is to be supplied or from which power is to
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		be procured. 116. In the light of the above discussion, the Fourth proviso (fifth proviso after the amendment) shall be implemented by CTU as under: (d)In cases of change in quantum of power to the same region(for which LTA has been granted)by less than 100 MW, written requests shall be considered by CTU. If a subsequent request is made for the same region and the quantum of change of power in the first and second requests taken together exceeds 100 MW, then CTU shall ask for fresh application when the second request is made. <i>139.The summary of our decisions in these petitions is enumerated below:</i> (k)For change of region or for injection of power of more than 100 MW in the region in which LTA has been granted, fresh applications will be required to be made. The LTA customers will be
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		<i>required to relinquish the capacity surrendered in the previous region in accordance with the Connectivity Regulations and Detailed Procedure.”</i> [Emphasis Supplied]
13.	17.02.2015	The 20th Western Region Standing Committee Meeting was held wherein, <i>inter-alia</i>, duly recorded that CTU had duly intimated the Appellant that <i>the balance quantum of 205MW can be considered for grant of LTA after receipt of a fresh application in line with CERC regulation/procedure</i>. The relevant extracts read as under : <i>“10. Maruti Clean Coal and Power Limited, Chhattisgarh, (1x300MW).</i> <i>CTU informed that LTOA for 171MW was granted to M/s Maruti Clean Coal and Power Ltd. (MCCPL) vide letter dated 24.02.2010 with target beneficiaries as WR-126MW and NR-45MW. Further, LTA from this power plant to CSPTTrCL was also granted for 96MW. Bulk Power Transmission Agreement (BPTA) was signed by MCCPL earlier with POWERGRID. As per BPTA, the IPP was granted</i>

		<i>LTA subject to commissioning of High Capacity Power Transmission Corridor (HCPTC-IV), Bina-Gwalior 765kV S/c (3rd), Gwalior-Jaipur 765kV S/c (2nd) & Jaipur-Bhiwani 765 kV S/c. The transmission elements namely, Vadodara 765/400kV substation, Gwalior-Jaipur 765kV S/c (2nd) & Jaipur-Bhiwani 765kV S/c are under construction and remaining lines are commissioned.</i> <i>CTU further informed that M/s MCCPL vide their letter dated 18.01.2014 informed CTU that PPA was signed with PTC for selling 250MW to beneficiaries in NR (Jaipur Vidyut Vitran Nigam Ltd - 97.5MW, Ajmer Vidyut Vitran Nigam Ltd - 72.5 MW, Jodhpur Vidyut Vitran Nigam Ltd - 80 MW) with effect from 30.11.2016. Also PPA was signed with CSPTCL (WR) for LTA of 15MW. Thus the firm beneficiaries of above LTA as indicated by MCCPL are Rajasthan Discoms 250MW and Chhattisgarh 15MW. Hence M/s MCCPL has requested to approve the change in quantum in the earlier granted LTA. In the 19th Meeting of WR constituents</i>
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		regarding LTA and connectivity, it was informed that MCCPL's PPA with Rajasthan Discoms had gone into litigation and it was agreed that the matter shall be taken up after the settlement of court case. M/s MCCPL informed that their PPA with Rajasthan Discoms is pending with Rajasthan Electricity Regulatory Commission (RERC) and that they would revert back as soon as the litigation is cleared. CTU stated that the quantum of firm PPA with Rajasthan (250MW) is more than the target LTA quantum for NR (45MW). Thus, LTA for 45MW can be regularized in line with CERC regulation. The balance quantum of 205 MW can be considered for grant of LTA after receipt of a fresh application in line with CERC regulation / procedure." [Emphasis Supplied]
14.	22.07.2015	The Rajasthan Commission passed an Order approving the PPA and quantum of power in Petition No. being RERC-431/13 as under: "77. Accordingly, Commission adopts

		<i>the tariff arrived at in the bid process for purchase of 500 MW power which as follows:</i> <i>(a) M/s PTC India Ltd. (through Developer M/s Maruti Clean Coal & Power Ltd.) for 250 MW (195 MW +55 MW) at the levelized tariff of Rs. 4.51 and subject to the other terms of PPA.</i> <i>(b) M/s PTC India Ltd. (through Developer M/s DB Power Ltd.) for 250 MW at the levelized tariff of Rs. 4.81 and subject to the other terms of PPA.</i> <i>78. The order passed by the Commission as above is subject to the decision of the Hon'ble Supreme Court in the Special Leave Petitions referred to at para (6) of this order.”</i>
15.	31.07.2015	The Appellant's Plant achieved COD.
16.	13.08.2015	The Appellant issued a letter to PGCIL/CTU for grant of LTA w.e.f. the Scheduled Delivery Date as per Article 4.1.1 of the Procurer-PPA. As only 45 MW LTA in NR was available with the Appellant, an additional 205 MW LTA was required to be obtained after the approval of the PPA by RERC.
17.	17.08.2015	The Appellant applied for LTOA for 205 MW

		for the period from 30.11.2016 to 30.11.2041.
18.	03.11.2015	PGCIL/CTU issued a letter to the Appellant rejecting the LTOA Application dated 17.08.2015 on account of non-submission of LTOA Format-3/No Objection Certificate which was to be obtained from Rajasthan State Transmission Utility/STU.
19.	09.11.2015	The Appellant issued a letter to PGCIL/CTU, <i>inter-alia</i> , requesting to withdraw the letter dated 03.11.2015 and further requested to process the LTOA application.
20.	14.11.2015	The Appellant issued a letter to PTC seeking NOC for application for grant of LTOA and MTOA with respect to the remaining 205 MW for supply to the Rajasthan Discoms.
21.	03.12.2015	PGCIL/CTU <i>vide</i> its letter in response to the Appellant's letter dated 09.11.2015, stated that obtaining the NOC from the Rajasthan STU/SLDC is a mandatory requirement and thus, in view of the same the LTOA Application of the Appellant was rejected.
22.	08.12.2015	NOC to apply for MTOA was issued by the Rajasthan SLDC.
23.	31.12.2015	The Appellant submitted its request for Medium Term Open Access (MTOA) from PGCIL for transfer of 205 MW based on available capability towards meeting its

		requirements under the Procurer- PPA from 30.11.2016 to 29.11.2019.
24.	06.01.2016	RVPN issued a letter to PTC, wherein the RVPN sought for certain clarifications, prior to due processing the grant of NOC (Format LTOA-3) qua the LTOA.
25.	07.01.2016	The Appellant issued a letter to PTC responding to the clarifications sought by RVPN <i>vide</i> letter dated 06.01.2016.
26.	05.02.2016	RVPN <i>vide</i> its letter to the Appellant issued the NOC for LTOA for 205 MW.
27.	10.02.2016	PGCIL/CTU issued a letter granting MTOA to the Appellant for supply of 205 MW to Rajasthan Discoms subject to commissioning of Champa-Kurukshetra+ 800 kV HVDC 1 st pole of 3000 MW capacity having likely date of commissioning of final phase of the said line as December, 2016.
28.	18.02.2016	The Appellant issued a letter to PTC informing the grant of 205 MW MTOA for the purposes of evacuation of the said quantum of power.
29.	25.02.2016	The Appellant filed a fresh LTOA application to PGCIL/CTU.

30.	24.05.2016	PGCIL/CTU vide its letter, issued agenda note for 23 rd meeting of WR constituents regarding connectivity and LTA applications of IPPs in the WR.												
31.	01.06.2016	The 23rd Meeting of Western Region (WR) Constituents regarding connectivity and Long-Term Access Applications was held. In terms of the Application for grant of LTOA, the Appellant in the Priority List was at Sr. No. 15. In terms of the Application made by the Appellant it was informed that the “3.9new WR – NR inter-regional corridor i.e., Vindhyachal – Varanasi 765 kV D/c line has been agreed in the NR Standing Committee meeting held on 30.05.2016 and accordingly, it was proposed to grant the LTA to the following balance application with the new WR-NR corridor: <table><tr><th>Sl No.</th><th>Name of the Applicant</th><th>Inject ing Regi on</th><th>Quant um of LTA soug ht for NR (MW)</th><th>Applic ation Month</th><th>LTA soug ht from</th></tr><tr><td colspan="6">.....</td></tr></table>	Sl No.	Name of the Applicant	Inject ing Regi on	Quant um of LTA soug ht for NR (MW)	Applic ation Month	LTA soug ht from						
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		3.	Maruti Clean Coal & Power Ltd.	WR	305	1-Mar- 2016	3- Nov- 2016”
32.	11.07.2016	The Appellant issued a letter to PGCIL/CTU stating that the commissioning of 3000 MW Champa-Kurukshetra 800 kV HVDC in December, 2016 does not match the date on which MTOA was granted to be operationalized i.e. 30.11.2016 and requested for operationalization of MTOA from the date of grant i.e. 30.11.2016 out of the existing margin.					
33.	28.07.2016	PGCIL/CTU issued a letter to the Appellant, stating that the MTOA can be operationalized only after implementation of the identified system (Champa Kurukshetra HVDC Pole-1) which has been considered for the grant of MTOA. Request for delinking was rejected.					
34.	29.07.2016	PGCIL/CTU issued a letter to the Appellant in respect of the Appellant's Application dated 25.02.2016 (physically received on 01.03.2016), granting Long Term Access of 205 MW for transfer of Power to Rajasthan, subject to signing of LTA Agreement etc., from 30.11.2016 or the Availability of Transmission System, whichever is later.					

35.	16.08.2016	PGCIL/CTU issued a letter to the Appellant in response to the Appellants request for regularisation of 45 MW from the NR target region to Rajasthan as a firm beneficiary, and conveyed the latter that it would require NOC from Rajasthan STU as per regulatory provisions, independent of the Appellants right and obligations under the PPA.
36.	22.08.2016	The Appellant issued a notice of force majeure under Article 9.2.2 to PTC, informing that only 45 MW of power can be supplied from 30.11.2016 on account of non-availability of the transmission system as on the Schedule Delivery Date.
37.	23.08.2016	PTC issued a Force Majeure Notice to the Respondent Procurers – Rajasthan Discoms under Article 9.2.2 of the PPA, requesting them for extension of Schedule Delivery Date for supply of the Aggregated Contracted Capacity in terms of Article 4.7.1 of the PPA, till the operationalization of the MTOA/LTA and in the meantime allow it to supply only 45 MW of electricity for which the Appellant already had an LTA.
38.	26.09.2016	The Appellant issued an advance preliminary notice under Article 4.1.2 for commencement of supply of power of 45

		MW specifying the “ <i>Schedule Delivery Date</i> ” as 30.11.2016 under the Procurer PPA stating that the date for commencement of supply of power is to be considered as 30.11.2016 which was further communicated by PTC to Rajasthan Discoms.
39.	27.10.2016	The Appellant served a notice for commencement of supply for commencement of supply again of power to PTC under Article 4.1.2 of the PPA specifying the “ <i>Schedule Delivery Date</i> ” as 30.11.2016 and based on the aforesaid notice, PTC sent a letter to the Procurers.
40.	08.11.2016	Respondent No. 5 – Rajasthan Urja Vikas Nigam Limited (RUVNL) issued a letter to PTC, duly denying the occurrence of Force Majeure events.
41.	18.11.2016	The Appellant entered into an LTA Agreement with PGCIL/CTU for 205 MW for the purposes of supplying full quantum of power to Rajasthan Discoms.
42.	24.11.2016	The Appellant issued a letter to PTC allegedly offering to supply 205 MW quantum of power from an alternative source for supplying the same to Rajasthan Discoms.

43.	29.11.2016	Rajasthan Discoms vide their letter reiterated its stand in so far as the Appellant's alleged claim of Force Majeure is concerned and specifically responded to the alleged offer of alternate supply as under: <i>“3. As regards the balance 205 MW, as at present there is no LTA available from the CTU. Accordingly, the conditions mentioned in Article 3.1.1 (c) read with the Seller's obligation under Article 4.2.1 (c) have not been fulfilled. You have of LTA for the 205 MW. The claim of Force Majeure has to be considered by the Rajasthan Electricity Regulatory Commission and adjudicated in accordance with Article 9 of the PPA. Pending the same, we do not accept your claim for Force Majeure. We reserve our right to make appropriate submissions before the Rajasthan Electricity Regulatory Commission.”</i>
44.	30.11.2016	Schedule Delivery Date for supply of Aggregate Contracted Capacity of 250 MW power for a period of 25 years i.e. up to 29.11.2041. Effective the said date, the Appellant commenced supply of 45MW to PTC (onwards sale to Respondent Discoms) and thus, the supply of Power under the PPA commenced. The commencement of the

		balance 205MW was not operationalised.
45.	29.12.2016 and 17.02.2017	The Appellant issued letters to PGCIL/CTU with regard to operationalization of LTA/MTOA, for status of assignment of MTOA to the identified beneficiaries.
46.	22.02.2017	PGCIL/CTU issued a letter inviting applicants for utilization of capacity likely to be available on account of commissioning of Champa-Kurukshetra Line. The said letter proposed to carry out an exercise for upgradation of LTA for such LTA customers who had earlier been granted LTAs for transfer of power from Northern Region to Western Region utilising the WR-NR corridor with Champa-Kurukshetra Line and/or the Jabalpur-Orai Line. It further emphasised that the upgradation to be granted in accordance to the relative priority on the basis of the LTA Application Month and sought for undertakings from LTA customers.
47.	28.02.2017	Meeting with the LTA customers was held for utilization of capacity likely to be available on account of relinquishment of LTA granted with the commissioning of 1 st Pole (3000 MW) + 800kV Champa - Kurukshetra HVDC link. In terms of the priority list on the basis of the month of application the Generators at Sr. No. 1 to 5 were agreed to be upgraded with Champa-Kurukshetra HVDC Pole-I

		(3000MW), the Appellant was at Sr. No. 6.: <i>“5. Accordingly with the available ATC of 1707 MW the LTAs can be upgraded as per the priority of their application month. As per the priority the LTAs from Sl. No. 1 to 5 were agreed to be upgraded with the Champa-Kurukshetra HVDC Pole-I (3000 MW) link.</i> <i>6. After upgradation of above LTAS, ATC of 76 MW only shall be available for upgradation. Under such circumstances, the part LTA of Sl. No. 6 of M/s. Maruti Clean Coal & Power Ltd. (MCCPL) to the extent of 76 MW can be upgraded. However representative of MCCPL enquired about their MTOA granted for 205 MW against the same PPA with the Champa-Kurukshetra HVDC Pole-i (3000 MW) link and also requested that efforts may be made to upgrade their entire LTA, however in case LTA for entire quantum could not be upgraded then their MTOA may be made operational.</i> <i>After detailed deliberations, it was decided that taking into consideration above upgraded LTAs & changed load-generation scenario, revised system studies shall be carried out for</i>
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		<i>determination of ATC between WR & NR grid. With the revision in ATC, if the LTA of MCCPL for entire quantum can be accommodated then the same may be upgraded, however, in case the same is not feasible then MTOA of MCCPL shall be made operationalized. In such case, the ATC of 76 MW shall be utilized for upgradation of LTA of Sl. No. 7 of M/s. Dhariwal Infrastructure Ltd. (DIL) for 20 MW.”</i>
48.	15.03.2017	PGCIL/CTU issued a letter to the Appellant in reference to the meeting dated 28.02.2017 and the Appellant's undertaking therein for upgradation with respect to revision to the Transmission System of LTA to the Appellant.
49.	18.03.2017	The Appellant issued a letter to PGCIL/CTU stating that the LC of Rs. 7.7 Crs. established with respect to the 45MW earlier NR capacity which will be expiring on 31.03.2017, and that the LC corresponding to 250MW would be revised/enhanced.
50.	23.03.2017	The Appellant issued a letter to PGCIL/CTU giving its consent towards operationalisation of the LTOA of 205 MW to Rajasthan.
51.	24.03.2017	A meeting was held by PGCIL/CTU with the LTA customers for operationalisation of the LTA with the commissioning phase-I (1500

		MW) 1 st Pole (3000 MW) + 800kV Champa - Kurekshetra HVDC link wherein it was discussed and deliberated that a payment security mechanism would be required in terms of the Sharing Regulations, 2010.
52.	24.03.2017	PGCIL/CTU <i>vide</i> its Letter to the Appellant intimated the requirement to open a Letter of Credit (LC) for Rs. 1990 Lakhs towards payment security mechanism.
53.	01.04.2017	The Appellant commenced Supply of 250 MW power (the Aggregated Contracted Capacity).
54.	05.05.2017	The Appellant issued a letter stating that the 1 st Contract Year for the purpose of supply of Aggregate Contracted Capacity of 250 MW should be considered as starting from 01.04.2017 and accordingly non-escalable capacity charge for the 1 st contract year should be payable from 01.04.2017 as per Schedule 8 of the Procurer-PPA.
55.	17.07.2017	The Appellant issued a letter to PTC alleging that since the supply of the Aggregated Contracted Capacity commenced from 01.04.2017 to Rajasthan Discoms, the year commencing from 01.04.2017 is to be considered as the 1 st Contract year for purposes of computation of tariff.
56.	04.11.2017	The Appellant issued a letter to PTC,

		reiterated its request that the first contract year should be considered from 01.04.2017 only.
57.	12.12.2017	Rajasthan Discoms <i>vide</i> its letter duly denying the claim of appellant for considering 1 st contract year from 01.04.2017 for applicability of tariff.
58.	22.02.2018	The Central Commission passed an Order in Petition No. 13/TT/2017 filed by PGCIL determining the transmission tariff <i>inter-alia</i> , for Champa-Kurukshetra Line. The Champa Kurukshetra Line was declared under Commercial Operation on 24.03.2017.

6. Feeling aggrieved by the denial on the part of the Rajasthan discoms i.e. respondent nos.2,3&4 to consider first contract year under the PPA from 01.04.2017, the appellant approached the Central Commission with petition no.183/2018 claiming following reliefs:-

“ ...

(a) *Hold and declare that the Revised Schedule Delivery Date is 01.04.2017 in terms of Article 4.1.1 of the Procurer – PPA;*

(b) Hold and declare that the 1st contract under the procurer PPA has commenced from 01.04.2017, on which the Petitioner started supplying the Aggregate Contracted Capacity to the Respondents No. 1 to 3

(c) Direct the Respondent Nos. 1 to 3 and Respondent No. 5 to make payments of the power supplied by the Petitioner in terms of the Revised Scheduled Delivery Date; and ...”

7. The petition was disposed of by the Commission vide order dated 27.11.2019, thereby rejecting all the prayers of the appellant, which order has been assailed in this appeal.

8. The reasoning given by the Commission in rejecting the prayers of the appellant can be found in Paragraph nos.64-74 of the impugned order which are, for the sake of convenience, extracted hereinbelow: -

“64. The Petitioner has attributed the reasons for its not being able to supply power from 30.11.2016 (Scheduled Delivery Date) to non-operationalization of LTA/MTOA for balance quantum of 205 MW by PGCIL/CTU. This event of non-operationalization of LTA/MTOA by PGCIL/CTU has been argued by the Petitioner to be an

event of Force Majeure. However, we note that there is no such provision in the PPA that can be invoked to consider non-operationalization of LTA/MTOA by PGCIL/CTU as a Force Majeure event. In terms of Clause 9.2.2 read with Clause 9.3.1 of the PPA, the Petitioner can claim benefit of Force Majeure only when CTU/STU or any other agent of the Petitioner is affected by Force Majeure event. Thus, we need to see if the Petitioner's case is covered under the Clause 9.2.2 of the PPA (i.e. if the Petitioner's case has been delayed due to Force Majeure events affecting CTU/ STU or any other agent of the Petitioner as regards transmission facilities) or any other Clause under provisions of Clause 9.3.1 of the PPA.

65. We note that after submitting a deficient LTA application on 18.01.2014, the Petitioner did not follow up with PGCIL/CTU on its application. It was only on 13.08.2015, the Petitioner followed up the application, with PGCIL/CTU, when PGCIL/CTU asked the Petitioner to submit a fresh application for LTA since the case of the Petitioner involved change of region (from Western

Region to Northern Region) for more than 100 MW. It was only on 25.02.2016, two years after the initial application dated 18.01.2014 and signing of PPA dated 01.11.2013 that the Petitioner made a fresh LTA application as per the provisions of Connectivity Regulations. Its MTOA application was also submitted to PGCIL/CTU only on 31.12.2015 and even that is more than two years after the PPA was signed on 01.11.2013. Having submitted the applications for MTOA/LTA after over two years of signing PPAs, the Petitioner cannot now claim that non-operationalization of LTA/MTOA by PGCIL/CTU was a Force Majeure event.

66. We also note that consequent upon MTOA application of the Petitioner dated 31.12.2015, the PGCIL/CTU vide its letter dated 10.02.2016 granted MTOA to the Petitioner for 205 MW subject to commissioning of Champa-Kurukshetra+ 800 kV HVDC 1 st pole of 3000 MW capacity. The Petitioner was aware that the likely date of commissioning of this line was December 2016 and it wrote a letter to this effect to PGCIL/CTU on 11.07.2016 contending that the SDD was

30.11.2016 and that the likely date of commissioning of the line did not match with its SDD. Thus, the Petitioner was aware right from the time it was granted MTOA that the transmission system on which it has been granted MTOA will not be commissioned before December 2016. MTOA granted to the Petitioner never got materialized as the Petitioner was granted and operationalized LTA on the same line against its application dated 25.02.2016 to PGCIL/CTU.

67. Similarly, when the Petitioner was offered LTA by PGCIL/CTU on 765 kV Jabalpur-Orai transmission line on 29.07.2016, the Petitioner was aware that the line would be commissioned only in April 2018 and that its LTA can be operationalized only after that.

68. Thus, the Petitioner was aware that its MTOA can be operationalized earliest by December 2016 and its LTA can be operationalized in April 2018 right at the time of grant of MTOA and LTA respectively. Therefore, the Petitioner was aware that it would not be able to supply balance quantum of 205 MW w.e.f. 30.11.2016 in

absence of LTA/MTOA. In fact, the Petitioner wrote to the Respondent No. 5/ PTC on 22.08.2016 (which PTC communicated to the Rajasthan Discoms on 23.08.2016) that it would be able to supply power only to the extent of 45 MW w.e.f. SDD and not the full quantum of 250 MW. The Petitioner claimed occurrence of Force Majeure event as reasons for not being able to supply full quantum of 250 MW while the Respondents 1 to 4 denied existence of any such Force Majeure event vide its letters dated 08.11.2016 and 29.11.2016.

69. The Petitioner has submitted that PGCIL/CTU operationalized the LTA for balance 205 MW on 31.03.2017 (with commissioning of Champa-Kurukshetra+ 800 kV HVDC 1st pole of 3000 MW capacity) and supply of full quantum of 250 MW started w.e.f. 01.04.2017. We note that PGCIL vide its earlier letter dated 29.07.2016 had offered to grant LTA to the Petitioner on the 765 kV Jabalpur-Orai transmission line that was likely to be commissioned in April 2018. Thus, the Petitioner's LTA having been operationalized in March 2017 was, in fact, almost one year earlier than the

earlier communicated date by PGCIL vide letter dated 29.07.2016. In such a situation, in terms of provisions of Clause 9.2.2 of the PPA, we do not find that any case is made out by the Petitioner that Force Majeure event affected the PGCIL/CTU as far as providing transmission access to the Petitioner is concerned.

70. Though Force Majeure in respect of the Petitioner as regards the transmission line has to be seen only after it applied for LTA, any Force Majeure event affecting the PGCIL/CTU in commissioning of the + 800 kV HVDC 1st pole Champa-Kurukshetra transmission line got over on 24.03.2017 with declaration of COD of the line. The Commission approved COD of transmission line as 24.03.2017 vide Order dated 22.02.2018 in Petition No. 13/TT/2017; the relevant extract is as under:

“4. xxxx

Asset 1: Pole-I of the ± 800 kV, 3000 MW
Champa Pooling Station and Kurukshetra HVDC
Terminals along with ± 800 kV Champa Pooling
station -Kurukshetra HVDC Transmission Line

XXXX

16. We have considered the submissions of the petitioner regarding the COD of the instant assets. In support of COD of Asset-1, the petitioner has submitted the RLDC Certificate regarding trial operation, CEA Certificate for energisation of the transmission element and CMD certificate as required under grid code. Taking into consideration the RLDC certificate, CEA certificates and CMD certificate, the COD of Asset-I is approved as 24.3.2017 and considered for the purpose of tariff computation.”

71. The Petitioner has enclosed letter of PGCIL/CTU dated 24.03.2017 (Ref.No.C/Comm1/LTA:205MW/MCCPL/LC/2017) that required the Petitioner to open an LC for Rs. 1990 lakhs. This letter of PGCIL/CTU dated 24.03.2017 has referred to two other letters (copies of which have not been supplied by the Petitioner), one dated 15.03.2017 (ref. no.C/CTU-Plg/LTA/W/2016

/MCCPL/Up) and another dated 24.03.2017 (ref. no. C/CTU-Plg/LTA/W/2016/ MCCPL/Op). While the letter dated 15.03.2017 related to revised intimation of LTA, the letter dated 24.03.2017 referred to operationalization of LTA for 205 MW. The Petitioner has not placed on record any documents to explain why it could not open LC and did not start supplying power immediately after receiving letter of PGCIL/CTU dated 24.03.2017. Petitioner started supplying 250 MW w.e.f 01.04.2017. Thus, the Petitioner had sufficient opportunity, after the communication dated 24.03.2017 from PGCIL/CTU, to start supplying the full quantum of 250 MW before 01.04.2017, i.e., in the financial year 2016-17, the first contract year as per the PPA dated 01.11.2013.

72. The Petitioner has not stated any Force Majeure event affecting the STU or any of its other agents for its case to be covered under Clause 9.2.2 of the PPA.

73. Further, we do not find that the case of the Petitioner is covered under any of the provisions of Clause 9.3.1 of the PPA either.

74. In view of the above, the Petitioner has failed to establish that it is affected by any event of Force Majeure in terms of Clause 9.3.1 or Clause 9.2.2 of the PPA. Accordingly, its claim of relief under Force Majeure in terms of the PPA is not sustainable and hence rejected.”

(Emphasis Supplied)

9. We have heard Mr. Matrugupta Mishra, learned counsel for the appellant and Mr. M.G. Ramachandran, learned senior counsel appearing for respondent nos.2 to 5. We have also perused the impugned order as well as the written submissions filed by the learned counsels.

10. Mr. Mishra, advocate, appearing for the appellant vehemently argued that the observations of the Commission in the impugned order that appellant failed to follow up its LTA revision request dated 18.01.2014 for over 18 months and that the order dated 16.02.2015 passed in petition no.92/MP/2014 merely reiterated the existing law, suffers from serious legal as well as factual infirmities which he illustrated as under: -

“

- i. *“Until the 20th WR LTA Constituents Meeting held on 31.03.2015, CTUIL/PGCIL had not pointed out any defect or regulatory insufficiency in the Appellant’s LTA application dated 18.01.2014. It was only pursuant to the Ld. CERC Order dated 16.02.2015 in Petition No. 92/MP/2014 that a regulatory clarification was issued, stipulating that a change in region exceeding 100 MW would necessitate a fresh application.*
- ii. *At the time of filing the initial application, the power procurement arrangement with Rajasthan Discoms was under judicial scrutiny in Petition No. 431/2013 before the RERC, which contested the reduction in bid quantum from 1000 MW to 500 MW. This constraint was well within the knowledge of CTU and was duly recorded in both the 19th and 20th LTA Constituents Meetings.*
- iii. *The regulatory landscape prior to the 2015 CERC ruling lacked clarity. The requirement of a fresh LTA application for changes exceeding 100 MW in target region was not an established mandate. Therefore, the Respondent Commission’s conclusion that the Appellant ‘ought to have known’ about the regulatory deficiency in its 2014 application is both factually and legally untenable. Moreso, when CTUL never raised any objection on the application dated 18.01.2014 made by Appellant prior to the 20th WR Meeting dated 31.03.2015.*

- iv. *The Order dated 16.02.2015 in Petition No. 92/MP/2014 did not merely reaffirm existing provisions; rather, it provided the first express clarification that a fresh application was required in case of regional change above 100 MW. This position was explicitly acknowledged by CTU in the 20th Meeting.*
- v. *The alleged “delay” between January 2014 and February 2016 arose not from inaction by the Appellant, but from legal uncertainty and procedural ambiguity. The Appellant’s ability to act was effectively constrained until the RERC issued its final order on 22.07.2015 in Petition No. 431/2013, following which the Appellant acted diligently by applying for MTOA and subsequently for fresh LTA.*
- vi. *It is imperative to note that the 23rd Meeting of WR Constituents expressly recorded the commissioning timelines of (i) Champa–Kurukshetra Phase–I in November 2016, (ii) Phase–II in March 2018, and the (iii) Jabalpur–Orai 765 kV D/c line in April 2018. The Minutes of the meeting shows that the Appellant’s LTA Application was not singled out, and was considered along with all other applications received between 29.11.2013 and 06.05.2016. Thus, even assuming arguendo that the Appellant had not encountered procedural hurdles relating to NOC or re-filing of fresh application, the Appellant would have stood in the*

same position as other pending applicants awaiting commissioning of the transmission systems.

- vii. *The Impugned Order fails to recognize that regulatory norms must be interpreted in the context and understanding prevailing at the relevant time — not with the benefit of hindsight. The absence of clarity in the regulatory framework prior to the Ld. CERC's 2015 decision has been conveniently ignored by the Respondent Commission, resulting in unjustified findings against the Appellant."*

11. He would further submit that the Commission has erroneously attributed the two year delay from 18.01.2014 to 25.02.2016 to the appellant. According to the learned counsel, the LTA which was eventually granted on 26.07.2016 was made contingent upon the commissioning of the Jabalpur-Orai corridor, which itself was not expected to be ready before April, 2018, and therefore, the said delay of about two year had no material impact on the operational timeline. He further pointed out that the CTU itself recorded in the 19th meeting that the appellant's LTA application could not be processed in the absence of firm beneficiaries and therefore, the delay was attributable to procedural and regulatory hurdles, which were beyond the control of the appellant. He further argued that the finding of the Commission in the impugned order that the case of the appellant is not covered by *force majeure*

event affecting CTU/STU is contradictory to its own order dated 26.02.2018 passed in petition no.26/TT/2017 whereby the delay in commissioning of 800kV Champa-Kurukshetra line was condoned. He submitted that the Commission has reached a wrong conclusion in this regard even after referring to the said order in Paragraph no.70. The learned counsel also drew our attention to the orders dated 22.07.2019 and 23.07.2019 passed by the Commission in petition nos.117/MP/2017 DB Power Ltd v. TANGEDCO and 222/MP/2017 KSK Mahanadi Power Company Ltd. v. TANGEDCO respectively whereby non-availability of LTA has been held to be a force majeure event in terms of the PPA.

12. It is the submission of the learned counsel that since the appellant's inability to supply aggregated contracted capacity of 250MW by the Scheduled Delivery Date i.e. 30.11.2016 arose solely due to non-availability of the identified transmission system i.e. Champa-Kurukshetra 800kV HVDC 1st Pole, 01.04.2017 i.e. the date from which full supply was commenced by the appellant ought to be treated as a revised Scheduled Delivery Date. He would argue that although the appellant's generating station commenced on 30.07.2015 and was fully ready to deliver power, it was unable to commence supply on the Scheduled Delivery Date due to admitted non-availability of transmission access, which squarely falls within the definition of force majeure under

Article 9.1.2 of the PPA executed between the appellant and the PTC. He submitted that the Commission has erroneously drawn a distinction between non-operationalization of LTA/MTOA due to delayed commissioning of the transmission system and the occurrence of force majeure event affecting CTU which distinction is artificial and not only unsupported by the provisions of the PPA but also contrary to the binding principles. Referring to the Article 9.3.1 read with Article 9.2.2 and Article 3.4.3 of the PPA, the learned counsel submitted that the force majeure event envisaged therein includes the non-availability of the open access or transmission infrastructure, whether due to delay in system readiness or external constraints beyond the seller's control.

13. According to the learned counsel, the observation of the Commission that since the appellant was aware that Jabalpur-Orai transmission line would only be commissioned in April, 2018, it cannot claim force majeure, is fundamentally flawed for the reason that the determinative factor is not the appellant's awareness of the delay but its inability to perform its contractual obligations due to events outside its control. He submitted that whether the delay is due to commissioning timelines or regulatory bottlenecks or physical non-readiness of the assets, end result is the same i.e. "*supervening impossibility*" which

prevents performance and squarely attracting the definition of force majeure during the PPA.

14. On these submissions, the learned counsel sought setting aside of the impugned order of the Commission and allowing the prayers made by the appellant in the petition.

15. Per contra, Mr. Ramachandran, learned senior counsel appearing for the respondent nos.2 to 5 refuted all the submissions made by the learned counsel for the appellant. He would argue that Scheduled Delivery Date has been defined and fixed in the PPA dated 30.11.2016 and therefore, there cannot be any question of considering any other date as Scheduled Delivery Date unless there is an extension of the same in terms of agreement between the parties. According to the learned senior counsel, there has been no such agreement between the parties. He would further point out that admittedly, regular supply of power was commenced by the appellant on 30.11.2016 even though it was only 45MW. It is his submission that inability of the appellant to get access to deliver further capacity, even though the same is assumed for the sake of arguments, cannot extend the fixed Scheduled Delivery Date for the reason that Scheduled Delivery Date cannot be said to have been achieved till the supply of 100% of the aggregate contracted capacity is claimed by the appellant. It is argued that the reference to

aggregate contracted capacity in the PPA is only with regards to the obligations of the appellant and does not mean that the appellant can claim extension of the fixed Scheduled Delivery Date.

16. Referring to Article 4.1.1 of the PPA which states that the term “available capacity” shall have the meaning ascribed thereto in Availability Based Tariff (ABT), the learned senior counsel submitted that ABT mechanism also deals with availability capacity and not with installed capacity or contracted capacity but with what is capable of being made available by the generator during each settlement period. Similarly, Article 9.7.1(c) of the PPA also deals with force majeure not being applicable to capacity that could be made available. In this context, the learned senior counsel argued that the conceptual and salient aspect in the electricity sector is that capacity can be declared available by a Generator up to the extent of contracted capacity and does not have to be the entire contracted capacity. It is his submission that when the quantum of 45MW power supply commenced by the appellant to the three Rajasthan discoms in proportion to the allocated aggregate contracted capacity as per Schedule 1, there was a commencement of supply of power within the scope of Articles 4.1.1 and 4.2.1 (b) and Article 4.4.1 of the PPA. He further submitted that the availability has to be in terms of the ABT and, therefore, is not with

reference to 100% of the contracted capacity of 250 MW. According to the learned senior counsel, the PPA nowhere envisaged that the aggregate contracted capacity of 250MW will always be declared available and/or scheduled or that until the aggregate contracted capacity is declared available, there will not be commencement of supply and such an interpretation would go contrary to the Article 4.1.1. He further submitted that the aggregate contracted capacity cannot be interpreted as a starting point for supply of electricity, particularly, in the context that the obligation of the appellant is to supply the quantum of the contracted capacity up to the aggregate contracted capacity.

17. The learned senior counsel further argued that since the entire power plant of the appellant with capacity of 300MW including the contracted capacity of 250MW to the Rajasthan discoms, was duly commissioned before the Scheduled Delivery Date, it was for the appellant to decide on the manner of commencement of supply. If the appellant proceeded to commence supply of a specific quantum of power on a regular basis adopting the scheduling and dispatch mechanism under the ABT, the same duly constitute “commencement of supply”. Since such commencement of supply would be within the meaning of Schedule 8, the first contract year would be from said date which is 30.11.2016 in this case. It is his submission that the supply of

45MW of power on regular basis cannot be treated as infirm power or *ad hoc* supply when such power was duly scheduled and dispatched from 30.11.2016 to 31.03.2017 knowing fully that the tariff shall be paid at the rate applicable for the first contract year. It is pointed out that such scheduling was accepted by the appellant and during this entire period appellant functioned as a generating company supplying power to the distribution licensees through an Intermediary Trader in terms of the provisions of Section 62 read with Section 79(1)(b) of the Electricity Act, 2003. The appellant even raised monthly invoices which were paid by the Rajasthan discoms pursuant to the said scheduling and despatch of power. The appellant did not claim that the bills were raised pursuant to Clause 4.6.1 to Schedule 4 of the PPA which refers to the tariff for the period prior to commencement of supply. It is, thus, contended that in view of such admitted factual position, it is not appropriate for the appellant to selectively read the definition of the term “Scheduled Delivery Date” in the PPA to contend that unless the supply commences with the aggregate contracted capacity of 250MW in absolute terms, there is no supply of electricity.

18. It is further argued by the learned senior counsel that the appellant has been unable to provide any reasonable justification within the meaning of Article 9.2.2 of the PPA as to why the supply of complete

250MW capacity commenced on 01.04.2017 when the Champa-Kurukshetra line was declared under Commercial Operation on 24.03.2017. Thus, it is submitted that the appellant deliberately did not furnish the requisite LC until 30/31.03.2017 and did not commence supply of power before 01.04.2017 in order to gain undue commercial advantage from shifting of first contract year to 01.04.2017 instead of 30.11.2016 as originally fixed in the PPA. It is pointed out that in view of Schedule 8 of the PPA., tariff for the first contract year is higher i.e. Rs. 1.633/kWh than Rs. 1.558/kWh applicable for the second contract year, and thus, the appellant intended to expand the first contract year to 12 months by shifting the Scheduled Delivery Date to 01.04.2017 which otherwise would be of four months only considering the Scheduled Delivery Date as 30.11.2016.

19. It is further argued that the appellant's claim that the delay in operationalization of the LTA constitutes a force majeure event, is erroneous. It is submitted that since the appellant, for its own advantage unilaterally decided to commence supply of power to the Rajasthan discoms to the capacity of 45 MW, it cannot claim that commencement of such supply does not constitute commencement of supply envisaged under Articles 4.1 and 4.2 read with Schedule 8 of the PPA as at that time it was never conveyed by the appellant that the Scheduled Delivery

Date envisaged in the PPA should be suspended or kept in abeyance on account of force majeure event till the transmission capacity for the full 250 MW is available or that the Scheduled Delivery Date should be split in phases with the first phase dealing with 45 MW capacity and the second phase be deferred till the transmission capacity for the remaining 205 MW is available.

20. It is further argued that even assuming for the sake of arguments that supply of power by the appellant was affected by any force majeure event, that should be restricted to only 205 MW for the reason that no force majeure event prevented the appellant from commencement of supply of 45MW power on 30.11.2016. Further, it is also argued that if the force majeure plea of the appellant is accepted, it has to be dealt with as provided under Article 9 of the PPA, and therefore, the appellant, at best, would be entitled to claim relief in relation to the capacity of power, the supply of which was prevented by the force majeure event.

21. On these submissions, the dismissal of the appeal has been sought.

Our Analysis:

22. In view of the rival contentions/submissions advanced on behalf of the parties by their learned counsels following two issues arise for our consideration and decision in this appeal: -

(a) Whether the delay in operationalization of the LTOA constitutes a force majeure event under Article 9.3.1 of the Procurer PPA dated 01.11.2013 executed between the PTC and the Rajasthan discoms?

(b) Whether Scheduled Delivery Date under the said PPA stipulated as 30.11.2016 is liable to be shifted to 01.04.2017 on account of any such force majeure event, as claimed by the appellant?

23. We find that the consideration and interpretation of various articles of the PPA dated 01.11.2013 (PTC-PPA) executed between appellant and PTC as well as the subsequent back-to-back PPA of even date (Procurer-PPA) executed between the PTC and the Rajasthan discoms, would be necessary for arriving at a proper decision on these issues.

24. We may note here that Procurer PPA is an elaborate agreement describing the rights and obligations of the developer i.e. the Appellant, PTC and the procurers i.e. the Rajasthan Discoms. In Article 5.1(b) & Schedule 1 of the PTC-PPA, the appellant has agreed to abide and adhere to the terms & conditions of the Procurer-PPA. Therefore, we shall be extracting and discussing the provisions of Procurer-PPA alone.

25. Article 1.1 of the Procurer-PPA defines “Aggregate Contracted Capacity” with respect to the seller to mean the aggregate capacity of 250MW contracted with the procurer(s) for supply at the interconnection point from the power station’s net capacity.

26. This article also specifies that “Availability Based Tariff” (ABT) shall mean all the regulations contained in the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004, as amended or revised from time to time, to the extent applicable as per the terms of the PPA.

27. This article also specifies that “Availability Factor” or “Availability” shall have the meaning ascribed thereto in ABT provided that in place of installed ‘capacity’ and ‘normative auxiliary consumption’, it shall be ‘Aggregate Contracted Capacity’. This clause also specifies that “Available Capacity” shall have the meaning ascribed thereto in ABT. This clause also defines “Contract Year” as under:-

““Contract Year” Shall mean the period commencing on the Effective Date (as defined hereunder) and ending on the immediately succeeding March 31 and thereafter each period of twelve (12) months commencing on April 1 and ending on March 31;

Provided that:

(i) in the financial year in which the Scheduled Delivery Date would occur, the Contract Year shall end on the date immediately before the Scheduled Delivery Date and a new Contract Year shall commence once again from the Scheduled Delivery Date and end on the immediately succeeding March 31, and thereafter each period of twelve (12) months commencing on April 1 and ending on March 31, and

(ii) Provided further that the last Contract Year of this Agreement shall end on the last day of the Term of this Agreement;

And further provided that for the purpose of payment, the Tariff shall be the Quoted Tariff for the applicable Contract Year as per Scheduled 8 of the Agreement;”

28. “Contracted Capacity” is defined with respect to each procurer, to mean the allocation of the Aggregate Contracted Capacity to each of the procurers as provided in Schedule 1 of PPA subject to adjustment as per terms of the PPA.

29. “Delivery Date” is specified to mean the date on which the seller commences supply of Aggregate Contracted Capacity to the procurers.

30. Article 4 relates to supply of power and is as under: -

“4 ARTICLE 4: SUPPLY OF POWER

4.1 Commencement of Supply of Power to Procurer(s)

4.1.1 The Seller shall be responsible to commence supply of power up to the Aggregated Contracted Capacity by the Scheduled Delivery Date in accordance with the provisions of this Agreement, which is 30.11.2016. However, the Seller and the Procurer(s) may mutually agree for commencement of supply of power in a phased manner from the Revised Scheduled Delivery Date(s) as specified in Article 3.3 of this Agreement.

4.1.2 The Seller shall give the Procurer(s) and the concerned RLDC at least sixty (60) days advance preliminary written notice and at least thirty (30) days advance final written notice, of the date on which it intends to commence supply of power.

4.2 Seller's Obligations

4.2.1 Subject to the terms and conditions of this Agreement, the Seller undertakes to be responsible, at Seller's own cost and risk, for:

- a) *obtaining all Consents, Clearances and Permits other than those obtained under Article 3.1.1 and maintaining all Consents, Clearances and Permits in full force and effect during the Term of this Agreement; The Seller shall further ensure that the Developer maintains all Consents, Clearances and Permits in full force and effects during the Term of this Agreement.*
- b) *the commencement of supply of power, up to the Aggregated Contracted Capacity, to the Procurer(s) no later than the Scheduled Delivery Date or the Revised Scheduled Delivery Date(s), as the case may be, such that as much of the Contracted Capacity as can be made available through the use of Prudent Utility Practices will be made available reliably to meet the Procurers' scheduling and dispatch requirements throughout the Term of this Agreement;*
- c) *obtaining all the necessary permissions for the long term open access for the intrastate transmission system for evacuation of power from the Power Station bus bar to the Injection Point (except in case*

- of dedicated transmission lines) and execute all necessary agreements for such transmission access and provide a copy of the same to the Procurer(s);*
- d) obtaining open access for transmission of Aggregated Contracted Capacity of power from the Injection Point to the Delivery Point;*
 - e) Ensuring that the Power Station is owned by the Developer throughout the Term of this Agreement free and clear of encumbrances, except those expressly permitted by the Seller through the power purchase agreement between the Seller and Developer;*
 - f) Ensuring that the Developer of the Power Station procures electricity at the Power Station (including construction, commissioning and start-up power) and complies in a timely manner all formalities for getting such a supply of electricity;*
 - g) providing on a timely basis, all relevant information to the Procurer(s) which may be required for receiving power at the Delivery Point; and*
 - h) fulfilling all obligations undertaken by the Seller under this Agreement.*

- i) *Seller to ensure that the Developer(s) has executed the Fuel Supply Agreement and further ensure that a copy of the same is provided to the Procurer(s) atleast 18 months prior to the Scheduled Delivery Date.*

.....

4.7 Extensions of Time

4.7.1 In the event that the Seller is prevented from performing its obligations under Article 4.1.1 by the Revised Scheduled Delivery Date(s) or the Scheduled Delivery Date, as the case may be, due to:

- a) any Procurer Event of Default; or*
 - b) Force Majeure Events affecting the Procurer(s), or*
 - c) Force Majeure Events affecting the Seller,*
- the Revised Scheduled Delivery Date(s), Scheduled Delivery Date and the Expiry Date shall be deferred, subject to the limit prescribed in Article 4.7.2, for a reasonable period but not less than 'day for day' basis, to permit the Seller or the procurer(s) through the use of due diligence, to overcome the effects of the Force Majeure Events affecting the Seller or the procurer(s), or*

till such time such Event of Default is rectified by the Procurer(s).

4.7.2 In case of extension occurring due to reasons specified in Article 4.7.1(a), any of the dates specified therein can be extended, subject to the condition that the Scheduled Delivery Date would not be extended by more than twelve (12) Months or the date on which the Seller elects to terminate this Agreement, whichever is later.

4.7.3 In case of extension due to reasons specified in Article 4.7.1(b) and (c), and if such Force Majeure Event continues even after the maximum period of twelve (12) Months, any of the Parties may choose to terminate the Agreement as per the provisions of Article 11.5.

4.7.4 If the Parties have not agreed, within thirty (30) days after the affected party's performance has ceased to be affected by the relevant circumstance, on the time period by which the Revised Scheduled Delivery Date(s), Scheduled Delivery Date or the Expiry Date should be deferred by, any Party may raise the Dispute to be resolved in accordance with Article 14.

4.7.5 As a result of such extension, the Scheduled Delivery Date and the Expiry Date newly determined shall be deemed to be the Scheduled Delivery Date and the Expiry Date for the purposes of this Agreement.”

(Emphasis supplied)

31. Article 9 is with regards to the force majeure and its relevant portion is as under: -

“9 ARTICLE 9 : FORCE MAJEURE

9.1 Definitions

9.1.1 In this Article, the following terms shall have the following meanings:

9.2 Affected Party

9.2.1 An affected Party means any of the Procurers or the Developer whose performance has been affected by an event of Force Majeure.

9.2.2 An event of Force Majeure affecting the CTU/STU or any other agent of the Seller, which has affected the transmission facilities from the Power Station to the Delivery Point, shall be deemed to be an event of Force Majeure affecting Seller.

9.2.3 Any event of Force Majeure affecting the performance of the Developer's contractors shall be deemed to be an event of Force Majeure affecting Seller only if the Force Majeure event is affecting and resulting in:

- a) late delivery of plant, machinery, equipment, materials, spare parts, Fuel, water or consumables for the Power Station; or
- b) a delay in the performance of any of the Developer's contractors.

9.2.4 Similarly, any event of Force Majeure affecting the performance of the Procurers' contractor for setting up or operating Interconnection Facilities shall be deemed to be an event of Force Majeure affecting Procurer(s) only if the Force Majeure event is resulting in a delay in the performance of Procurer's contractors.

9.3 **Force Majeure**

9.3.1 A 'Force Majeure' means any event or circumstance or combination of events and circumstances including those stated below that wholly or partly prevents or unavoidably delays an Affected Party in the performance of its obligations under this Agreement, but only if and to the extent that such events or

circumstances are not within the reasonable control, directly or indirectly, of the Affected Party and could not have been avoided if the Affected Party had taken reasonable care or complied with Prudent Utility Practices:

.....

9.5 Notification of Force Majeure Event

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

Provided that such notice shall be a pre-condition to the Affected Party's entitlement to claim relief under

this Agreement. Such notice shall include full particulars of the event of Force Majeure, its effects on the Party claiming relief and the remedial measures proposed. The Affected Party shall give the other Party regular (and not less than monthly) reports on the progress of those remedial measures and such other information as the other Party may reasonably request about the Force Majeure Event.

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

9.6 Duty to Perform and Duty to Mitigate

9.6.1 To the extent not prevented by a Force Majeure Event pursuant to Article 9.3, the Affected Party shall continue to perform its obligations pursuant to this Agreement. The Affected Party shall use its

reasonable efforts to mitigate the effect of any Force Majeure Event as soon as practicable.

9.7 Available Relief for a Force Majeure Event

9.7.1 Subject to this Article 9:

- (a) no Party shall be in breach of its obligations pursuant to this Agreement except to the extent that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure Event;*
- (b) every Party shall be entitled to claim relief in relation to a Force Majeure Event in regard to its obligations, including but not limited to those specified under Article 4.7;*
- (c) For the avoidance of doubt, it is clarified that no Tariff shall be paid by the Procurer(s) for the part of Contracted Capacity or part thereof affected by a Natural Force Majeure Event affecting the Developer, for the duration of such Natural Force Majeure Event affecting the Developer. For the balance part of the Contracted Capacity, the Procurer(s) shall pay the Tariff to the Seller, provided during such period of Natural Force Majeure Event affecting the Developer,*

the balance part of the Power Station is declared to be Available for scheduling and dispatch as per ABT for supply of power by the Seller to the Procurer(s);

In case of a Natural Force Majeure Event affecting the Procurer(s) no Tariff shall be paid by the Procurer(s) to the Seller for the duration of such Natural Force Majeure Event affecting the Procurer(s);

.....”

(Emphasis Supplied)

32. Now, coming to the facts of the instant case. It is the case of appellant itself that its power plant achieved Commercial Operation Date on 31.07.2015 and it commenced supply of 45MW power to PTC on 30.11.2016 (Scheduled Delivery Date fixed in the procurer PPA) for onward sale to the respondent discoms as by that time LTA for only 45MW power in northern region was available with the appellant.

33. It is also not disputed that vide letter dated 24.02.2010, CTU had granted LTOA for 171MW to appellant with target beneficiaries as WR-126MW and NR-45MW. Subsequently the appellant, vide letter dated 18.01.2014, sought revision of LTA to NR for 250 MW and WR for 15MW (CSPTCL) in view of PPA having been executed by it with PTC

for supply of 250MW power to PTC for onward sale to the Rajasthan discoms. What is manifest from the record is that thereafter the appellant just adopted a wait and watch approach. It neither sent any reminder to the PGCIL/CTU nor made any other effort to ensure that LTA for total 250MW power is granted to it expeditiously. It is only on 13.08.2015 that the appellant issued a follow up letter to PGCIL/CTU with the request for grant of LTA for additional 205 MW. Subsequently, the appellant applied on 17.08.2015 for LTOA for 205MW for the period from 30.11.2016 to 30.11.2041 which was rejected by PGCIL/CTU vide communication dated 03.11.2015 as it was not accompanied by NOC from STU/SLDC which was a mandatory requirement. The rejection of the application was reiterated by PGCIL/CTU vide communication dated 03.12.2015 in response to appellant's request letter dated 09.11.2015.

34. PGCIL/CTU had also asked the appellant to submit a fresh application for LTA for the reason that the appellant had sought change of region from western region to northern region and the quantum of power for which LTA was sought exceeded 100MW. It was only on 25.02.2016 that appellant submitted a fresh LTOA application to the PGCIL/CTU for grant of LTA for 205MW in northern region.

35. Taking note of this fact that the appellant had submitted a proper application for LTA after two years of signing of PPAs and even the

application for MTOA also was submitted on 31.12.2015 i.e. more than two years after signing the PPA dated 01.11.2013, the Commission observed that the appellant cannot claim that non-operationalization of the LTA/MTOA by PGCIL/CTU was force majeure event.

36. In this regard, the learned counsel for the appellant argued that CTUIL/PGCIL had not pointed out any defect or regulatory insufficiency in the appellant's LTA application dated 18.01.2014 until order dated 16.02.2015 was passed by the Commission in Petition No. 92/MP/2014 whereby regulatory clarification was issued stipulating that a change in region exceeding 100 MW would necessitate a fresh LTA application. It is argued that delay of almost two years between January 2014 and February, 2016 occasioned not from inaction by the appellant but from legal uncertainty and procedural ambiguity which were clarified by the Commission in order dated 16.02.2015 in petition no.92/MP/2014. We are unable to countenance these submissions advanced on behalf of the appellant. There was no legal uncertainty and procedural ambiguity as claimed by the appellant. The fifth proviso to Regulation 12(1) of the Connectivity Regulations, 2009, clearly provided that a fresh LTA application would be required where there is a change by more than 100MW in the quantum of power to be interchanged using inter-state transmission system and where there is change in the region from where electricity is to be procured to which the electricity is to be supplied. We

do not see any ambiguity in the contents of this proviso. The appellant was aware that it had earlier been granted LTOA for 171 MW with target beneficiaries as western region for 126MW and northern region for 45MW and now vide application dated 18.01.2014 it is seeking LTA for 205MW for the target beneficiaries located in northern region. Therefore, manifestly, the change in the quantum of LTA sought for northern region was more than 100MW which also involved change in the region where the target beneficiaries were located i.e. from western region to northern region, and therefore, it ought to have filed a fresh application seeking LTA for 205MW for northern region instead of seeking revision of the earlier LTA vide letter dated 18.01.2014. In so far as the order dated 16.02.2015 passed by the Commission in petition no.92/MP/2014 is concerned, it only elaborates and explains what the fifth proviso to Regulation 12(1) of Connectivity Regulations, 2009, provides and has, not in any manner, effected any change in context of the said regulation.

37. Therefore, the contention agitated on behalf of the appellant that the delay of two years from January, 2014 to February, 2016 happened only due to purported legal uncertainty and procedural ambiguity, is absolutely farfetched and without any basis.

38. The fact that the LTA eventually granted to the appellant on 26.07.2016 was made contingent upon the commissioning of Jabalpur-

Orai corridor which was not expected to be ready before April, 2018, is totally immaterial for the reason that it does not absolve the appellant to avoid delay in pursuing of its request for revision of LTA dated 18.01.2014 in order to claim the benefit of force measure under Article 9.3.1 of the Power Purchase Agreement. We have already extracted Article 9.3.1 of the PPA hereinabove. It provides that an affected party is entitled to agitate an event as force majeure for getting relief under it only when such an event was not within its control, directly or indirectly, and could not have been avoided if the affected party had taken reasonable care and complied with prudent utility practices. In the instant case, we have explained hereinabove that the appellant neither took reasonable care nor acted prudently in pursuing its request dated 18.01.2014 whereby it had sought revision of LTA from 45MW to 205MW for northern region. The appellant had adopted a laidback attitude at least till 13.08.2015 i.e. even after its plant had achieved Commercial Operation on 31.07.2015.

39. We also do not find any justification for the appellant to invoke Article 9.2.2 which provides that an event of force majeure affecting CTU/STU or any other agent of the seller affecting the transmission facilities from power station to the delivery point, shall be deemed to be an event of force majeure affecting the seller. As per this provision in

the PPA, the appellant could claim benefit of force majeure only when CTU/STU or any other agent of the appellant was affected by any force majeure event. It is the case of appellant itself that in 23rd meeting of WR Constituents, it was expressly recorded that the phase-1 and phase-2 of Champa-Kurukshetra HVDC line would be commissioned in November, 2018 & March, 2018 respectively and Jabalpur-Orai DC line would be commissioned in April, 2018. Despite the same, the LTA of the appellant has been operationalized in March, 2017 (31.03.2017 to be precise) upon commissioning of Champa-Kurukshetra HVDC 1st Pole of 3000MW capacity which is almost one year earlier than the expected commissioning timelines for these two transmission lines. Therefore, in these circumstances, it cannot be said that there was any force majeure event affecting the PGCIL/CTU for providing transmission access to the appellant.

40. Further, we are in agreement with the submissions of the learned senior counsel for respondent discoms that when the quantum of 45MW power supply was commenced by the appellant to Rajasthan discoms in proportion to the allocated aggregate contracted capacity as per Schedule 1 w.e.f. 30.11.2016, there was commencement of supply of power within the scope of Article 4.1.1 and 4.2.1(b) of the PPA. For the

sake of convenience, we find it apposite to reproduce the Articles 4.1 and 4.2 of the PPA herein again at the cost of repetition: -

“4 ARTICLE 4: SUPPLY OF POWER

4.1 Commencement of Supply of Power to Procurer(s)

4.1.1 The Seller shall be responsible to commence supply of power up to the Aggregated Contracted Capacity by the Scheduled Delivery Date in accordance with the provisions of this Agreement, which is 30.11.2016. However, the Seller and the Procurer(s) may mutually agree for commencement of supply of power in a phased manner from the Revised Scheduled Delivery Date(s) as specified in Article 3.3 of this Agreement.

4.1.2 The Seller shall give the Procurer(s) and the concerned RLDC at least sixty (60) days advance preliminary written notice and at least thirty (30) days advance final written notice, of the date on which it intends to commence supply of power.

4.2 Seller's Obligations

4.2.1 Subject to the terms and conditions of this Agreement, the Seller undertakes to be responsible, at Seller's own cost and risk, for:

- a) *obtaining all Consents, Clearances and Permits other than those obtained under Article 3.1.1 and maintaining all Consents, Clearances and Permits in full force and effect during the Term of this Agreement; The Seller shall further ensure that the Developer maintains all Consents, Clearances and Permits in full force and effects during the Term of this Agreement.*
- b) *the commencement of supply of power, up to the Aggregated Contracted Capacity, to the Procurer(s) no later than the Scheduled Delivery Date or the Revised Scheduled Delivery Date(s), as the case may be, such that as much of the Contracted Capacity as can be made available through the use of Prudent Utility Practices will be made available reliably to meet the Procurers' scheduling and dispatch requirements throughout the Term of this Agreement;*

..... “

41. Article 4.1.1 envisages that seller shall be responsible to commence supply of power up to the aggregated contracted capacity by

the Scheduled Delivery Date i.e. 30.11.2016. The expression used before “aggregate contracted capacity” is “up to”. The use of this expression clearly indicates that the seller may commence supply of power of any quantum, the maximum limit being the aggregated contracted capacity. Therefore, it was not mandatory for the power generator i.e. the seller to supply the entire aggregated contracted capacity of power by the Scheduled Delivery Date i.e. 30.11.2016 in order to constitute commencement of supply of power in terms of the said Article 4.1.1. Article 4.2.1(b) also embodies the undertaking on behalf of the seller to commence supply of power ‘**up to**’ the aggregated contracted capacity to the procurers not later than Scheduled Delivery Date so that the supplied quantum of power can be made available readily to meet the scheduling and dispatch requirements of the procurers in accordance with the terms of the PPA.

42. A meaningful reading of Article 4.2.1(b) along with Article 4.1.1 of the PPA would reveal that once the seller begins to supply power under the PPA to the procurers, even though of the quantum lesser than the aggregated contracted capacity, that would constitute commencement of power supply in terms of Article 4.1.1 and the first contract year would be reckoned from that date itself. In the instant case, admittedly, appellant had commenced supply of 45MW of power to PTC on

30.11.2016 for onward sale to Rajasthan discoms. Since the entire power plant of the appellant with capacity of 300MW including the contracted capacity of 250MW to Rajasthan discoms, was duly commissioned much before 30.11.2016, it was for the appellant to decide on the manner of commencement of supply. Once the appellant proceeded to supply specific quantum of power on regular basis adopting the scheduling and dispatch mechanism under the ABT, it duly constitutes “commencement of supply” under Article 4.1.1 of the PPA. It is not the case of the appellant that such supply of 45MW of power on regular basis should be treated as infirm power or *adhoc* supply. To the contrary, such scheduling and dispatch of power from 30.11.2016 to 31.03.2017 was accepted by the appellant in pursuance to which the appellant even raised monthly invoices at the tariff payable for the first contract year which were duly paid by the Rajasthan discoms. It is not the case of the appellant that these bills were raised in terms of the clause 4.6.1 to Schedule 4 of the PPA which refers to the tariff for the period prior to commencement of supply. In view of such admitted factual position, we concur with the submissions of the learned senior counsel for the respondent discoms that such commencement of power supply would be within the meaning of Schedule 8, and therefore, the first contract year would commence from the said date i.e. 30.11.2016.

43. We may also note in this regard that at the time of commencement of power supply of 45MW w.e.f. 30.11.2016, the appellant never conveyed to the respondent discoms that the same is being supplied dehors the Scheduled Delivery Date fixed in the PPA or that the Scheduled Delivery Date envisaged in the PPA should be suspended or kept in abeyance or that Scheduled Delivery Date should be split in phases with the first phase dealing with 45MW capacity and the second phase to be deferred till transmission capacity for the remaining 205MW is available.

44. The fact that the supply of 45MW of power w.e.f. 30.11.2016 by the appellant was of regular supply of power in terms of Article 4.1.1 of the PPA is also borne out from the fact that the said supply was made by the appellant in pursuance to the advanced preliminary notice dated 26.09.2016 and final written notice dated 27.10.2016 as provided under Article 4.1.2 of the PPA. We find it apposite to extract the contents of these two notices served by the appellant upon PTC hereunder: -

(i) Notice dated 26.09.2016:

"Ref. MCCPL/PTC/16-17/2265

Date: 26th September, 2016

Sh. Harish Saran

Executive Director

*PTC India Limited
2nd Floor, NBCC Tower
15 Bhikaji Cama Place
New Delhi – 110066*

Sub: Advance Preliminary Notice (Article 4.1.2 of PPA) for Commencement of Supply of Power to Procurers-PPA dated 01.11.2013 between Rajasthan Discoms and PTC for sale of 250 MW Power from 1x300 MW MCCPL TPS.

Dear Sir,

M/s. PTC has signed the PPA dated 01.11.2013 for sale of 250 MW power to Rajasthan Discoms from 1x300 MW MCCPL w.e.f scheduled delivery date i.e 30.11.2016.

As per Article 4.1.2, the seller has to give the Procurers and the concerned RLDC at least 60 days advance preliminary notice of the date on which it intends to commence supply of power.

Keeping in view above, M/s. Maruti Clean Coal & Power Ltd. is hereby serves 60 days advance preliminary notice for commencement of 250 MW supply to Rajasthan Discoms w.e.f 30.11.2016 i.e scheduled delivery date.

It may be mentioned that MCCPL had been granted LTOA on Tentative Target Region basis for 171 MW (WR-126MW+NR-45MW) vide CTU letter no. C/ENG/SEF/TA/L/W/09/001/R1 dated 24.02.2010. So, 45 MW LTOA is

already available and the same shall be scheduled w.e.f scheduled delivery date i.e 30.11.2016 as under:-

<i>Jaipur Vidyut Vitran Nigam Ltd.</i>	<i>- 17.55 MW</i>
<i>Ajmer Vidyut Vitran Nigam Ltd.</i>	<i>- 13.05 MW</i>
<i>Jodhpur Vidyut Vitran Nigam Ltd.</i>	<i>- 14.4 MW</i>

The LTOA/MTOA for balance 205 MW has been granted vide CTU letter no. C/CTU-Plg/LTA/W/2016/MCCPL dated 29.07.2016 and CTU letter no. C/CTU-Plg/M/32 dated 10.02.2016. However, the MTOA has been linked to commissioning for HVDC 800 KV Champa-Kurukshetra Pole-I. The copy of CTU letter no. C/CTU-Plg/LTA/MCCPL dated 16.08.2016 (copy enclosed) wherein it has been intimated that the MTOA may be operationalized in Nov./Dec'2016.

So the supply of 205 MW shall be read in conjunction with M/s MCCPL letter no. MCCPL/PTC/16-17/2238 dated 26.08.2016 intimating the Force Majeure conditions as per Article 9.2.2 and 9.3.1 of the PPA dated 01.11.2013.

Thanking you,

Yours Sincerely

For Maruti Clean Coal & Power Ltd.

H.M Jain

Authorised Signatory

Encl: as above"

(ii) Notice dated 27.10.2016:

"Ref. MCCPL/PTC/16-17/2278

Date: 27th October, 2016

*Sh. Harish Saran
Executive Director
PTC India Limited
2nd Floor, NBCC Tower
15 Bhikaji Cama Place
New Delhi – 110066*

*Sub: Final Written Notice (Article 4.1.2 of PPA) for
Commencement of Supply of power to procurers-PPA
dated 01.11.2013 between Rajasthan Discoms and PTC
for sale of 250 MW Power from 1x300 MW MCCPL TPS.*

Dear Sir,

*M/s. PTC has signed the PPA dated 01.11.2013 for sale of
250 MW power to Rajasthan Discoms from 1x300 MW
MCCPL w.e.f scheduled delivery date i.e 30.11.2016.*

*As per Article 4.1.2, the seller has to give the Procurers
and the concerned RLDC at least 30 days advance final
written notice of the date on which it intends to commence
supply of power.*

Keeping in view above, M/s. Maruti Clean Coal & Power Ltd. hereby serves 30 days advance final written notice for commencement of 250 MW supply to Rajasthan Discoms w.e.f 30.11.2016 i.e scheduled delivery date.

It may be mentioned that MCCPL had been granted LTOA on Tentative Target Region basis for 171 MW (WR-126MW+NR-45MW) vide CTU letter no. C/ENG/SEF/TA/L/W/09/001/R1 dated 24.02.2010. So, 45 MW LTOA to NR is already available and the same shall be scheduled w.e.f scheduled delivery date i.e 30.11.2016 as under:-

<i>Jaipur Vidyut Vitran Nigam Ltd.</i>	<i>- 17.55 MW</i>
<i>Ajmer Vidyut Vitran Nigam Ltd.</i>	<i>- 13.05 MW</i>
<i>Jodhpur Vidyut Vitran Nigam Ltd.</i>	<i>- 14.4 MW</i>

The LTOA/MTOA for balance 205 MW has been granted vide CTU letter no. C/CTU-Plg/LTA/W/2016/MCCPL dated 29.07.2016 and CTU letter no. C/CTU-Plg/M/32 dated 10.02.2016. However, the MTOA has been linked to commissioning for HVDC 800 KV Champa-Kurukshetra Pole-I. The copy of CTU letter no. C/CTU-Plg/LTA/MCCPL dated 16.08.2016 (copy enclosed) wherein it has been intimated that the MTOA may be operationalized in Nov./Dec'2016.

So the supply of 205 MW shall be read in conjunction with M/s MCCPL letter no. MCCPL/PTC/16-17/2238 dated

26.08.2016 intimating the Force Majeure conditions as per Article 9.2.2 and 9.3.1 of the PPA dated 01.11.2013.

Thanking you,

Yours faithfully,

For Maruti Clean Coal & Power Ltd.

H.M Jain

Authorised Signatory

Encl.: as above”

(Emphasis supplied)

45. The manner in which these two notices have been sent by the appellant and the purpose for which these were issued by the appellant leaves no doubt that the supply of 45MW of power was commenced by the appellant w.e.f. 30.11.2016 in terms of clause 4.1.1 of the PPA thereby marking the beginning of the first contract year as per the PPA.

46. Otherwise also, even if the commencement of power supply is not reckoned w.e.f. 30.11.2016, then also the case of appellant that such commencement shall be reckoned w.e.f. 01.04.2017 which would, then, be the start of first contract year, is devoid of any force. We find from the record that the appellant had given consent towards operationalization of

the LTOA for 205MW to Rajasthan discoms on 23.03.2017 and that Champa-Kurukshetra line was declared under commercial operation on 24.03.2017. On the same date i.e. 24.03.2017 PCGIL/CTU sent a letter to the appellant intimating the requirement to open a Letter of Credit (LC) for Rs.1909 lakhs towards payment security mechanism. The LC appears to have been submitted by the appellant on 31.03.2017 and accordingly, the supply of the balance 205MW of power was commenced by the appellant on 01.04.2017. No justification has been provided by the appellant for not furnishing the requisite LC between 24.03.2017 and 31.03.2017. Had the appellant furnished the LC immediately after the Champa-Kurukshetra line was declared under commercial operation on 24.03.2017, the power supply of balance 205MW would have commenced earlier than 01.04.2017. It appears that the appellant deliberately delayed the furnishing of requisite LC and did not commence the supply of balance 205MW power before 01.04.2017 with an ulterior motive that the first contract year would begin on 01.04.2017 thereby extending it to full 12 months period. Had the appellant commenced power supply on any date between 24.03.2017 and 01.04.2017 the first contract year would have been merely of a few days which the appellant avoided so that it gets higher tariff of Rs.1.633/kWh for the period of entire 12 months. Such conduct of the appellant is not acceptable.

47. In the light of above discussion, both the issues formulated in Paragraph No.22 of the judgment are answered in negative.

Conclusion: -

48. Hence, we do not find any error or infirmity in the impugned order of the Commission. The appeal is sans any merit and is dismissed as such.

Pronounced in the open court on this the 03rd day of July, 2026.

Virender Bhat
Judicial Member

(Seema Gupta)
Officiating Chairperson

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~~REPORTABLE / NON-REPORTABLE~~

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