

**BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY  
COMMISSION SHIMLA**

In the matter of :-

M/s Tangling Mini Hydel Power Project, having  
its corporate office at Sai Bhawan, Sector-IV,  
New Shimla, HP-1701009

**.... ....Petitioner**

Versus

1. The HP State Electricity Board Ltd. thro' its,  
Chief Engineer (Commercial)  
Vidyut Bhawan, Shimla-171004
  
2. The HP Power Transmission Corporation Ltd. thro' its  
Managing Director, Himfed Bhawan, Panjari  
(Below Old MLA Quarters), Shimla,-171005

**....Respondents**

Petition No. 38 of 2018

(Decided on **25<sup>th</sup> April, 2019**)

**CORAM**

**S.K.B.S NEGI  
CHAIRMAN**

**BHANU PRATAP SINGH  
MEMBER**

Counsels: -

for Petitioner:	Sh. Vikas Chauhan, Advocate
for Respondent No.1 :	Sh. Surinder Saklani, Standing Counsel a/w Sh. Kamlesh Saklani (authorised Representative)
for Respondent No.2:	Sh. I.P. Singh, Consultant (Legal)

**ORDER**

(Last heard on 2<sup>nd</sup> March, 2019 and Orders reserved)

M/s Tangling Mini Hydel Power Project, Sai Bhawan, Sector-IV, New Shimla-09, a generating Company, registered under the Societies Registration Act, 1860, through its authorised representative Sh. Munish Sharma, the Senior General Manager, (hereinafter referred as 'the petitioner') operating and maintaining Tangling Mini Hydel Power Project of 3 MW capacity, located in Kinnaur Distt. (hereinafter referred as 'the project') has moved an application for adjudication, of its claim for compensation, by the

Commission itself, under section 86(1)(f) of the Electricity Act, 2003 (hereinafter referred as “the Act”) or for reference to an Arbitrator for adjudication of the dispute concerning the evacuation of power generated from the said project stating that due to poor power evacuation arrangement, the petitioner has faced the loss of generation; and the Respondents i.e. the Himachal Pradesh State Electricity Board Ltd. (hereinafter referred as “the Respondent No.1” or “the Respondent Board”) and the Himachal Pradesh Power Transmission Corporation Ltd. (hereinafter referred as Respondent No.2 or “the Respondent Corporation”) are liable to pay an amount of Rs. 9,93,15,880/- on account of unreasonable, unlawful or wrongful acts and breach of obligations, under the terms and conditions of the Power Purchase Agreement dated 26.05.2010 executed between the parties for the period from 13.12.2010 to 31.03.2016 to the petitioner, being suffered the financial loss alongwith the interest @ 18% till the date when the said amount is realized from the Respondents.

2. The petitioner has earlier filed a petition bearing No. 53 of 2017 against Respondent No. 1 i.e. the Himachal Pradesh State Electricity Board Ltd. (HPSEBL) for adjudication of the aforesaid dispute and the same was dismissed vide this Commission’s Order dated 08.12.2017. In that petition, the Respondent No. 2 i.e. the Himachal Pradesh Power Transmission Corporation Ltd. (HPPTCL) was not impleaded as a party. Now the petitioner has again moved the present petition impleading both the Respondent Board (HPSEBL) and the Respondent Corporation (HPPTCL).

3. The petitioner in support of its claim submits-

- (a) that the petitioner signed the Implementation Agreement (IA) with the Govt. of HP on 20<sup>th</sup> July, 2004 and Supplementary Implementation Agreements dated 30.05.2008, 12.01.2009, 19.05.2009, 04.09.2009, 08.09.2009 and 11.08.2015 in respect of Tangling Mini Hydel Power Project of 3 MW capacity in Distt. Kinnaur and also executed the Power Purchase Agreement (PPA) on 26<sup>th</sup> May, 2010 with the HPSEB the predecessor of the Respondent Board and the Supplementary Power Purchase Agreement dated 10.11.2010 with Respondent No. 1 i.e. HPSEBL for a period of 40 years after the Synchronisation Date of the first unit of the project;
- (b) that per Clause 2.2.46 of the PPA, the parties agreed to connect the power to be evacuated from the said project at 220/66/22 kV Sub-station of the Respondent No. 1 (HPSEBL) at Bhoktoo and as per Clause 9.2 of the PPA, the Respondent Board had to provide the suitable arrangements beyond the interconnection point to evacuate the power from the project;

- (c) that the project was commissioned on 13/12/2010;
- (d) that the petitioner vide its letter dated 23.10.2009 requested the predecessor of the Respondent No.1 (HPSEBL) to make necessary arrangements for evacuation of its power and timely completion of the Bhoktoo Sub-station and the said letter of the petitioner was forwarded to the Respondent No. 2 i.e. HP Power Transmission Corporation Ltd., for necessary action, by the Respondent No. 1 vide its letter dated 02.12.2009, in furtherance of the trifurcation of the erstwhile HPSEBL and in view of the Government notification No. MPP-A-(1)-4/2006(Loose) dated 03.12.2008 entrusting various works /business including works of construction of sub-stations of 66 kV and above, laying/construction of transmission lines of 66 kV and above, etc to the Respondent No.2. However, nothing fruitful was done on the ground with regard to the request made;
- (e) that in furtherance of the Government Notification dated 03.12.2008 (Supra) and the trifurcation of the erstwhile HPSEB, a meeting was held on 27.01.2010 to finalize the scope of works under the Transmission Master Plan and assignment of different schemes for execution by HPSEBL, HPPTCL, IPPs etc. wherein the respondents arrived at a consensus for the execution of the 66/220 kV, 31.5 MVA Sub-station at Bhoktoo (GIS) a/w LILO of 220 kV Kashang-Bhaba line at Bhoktoo as per which the Sub-station was to be established/executed by the Respondent No.2. Further, the consensus arrived at between the respondents was also conveyed to the Principal Secretary (MPP & Power) to the Government of Himachal Pradesh by the Respondent No.1 vide its letter dated 02.03.2010 with a request to accept the recommendations and order necessary amendments in the notification;
- (f) that the aforementioned Sub-station at Bhoktoo for the evacuation of power from the Project had not come into existence uptill the end of the financial year 2015-2016 (i.e. 31.03.2016) even after the lapse of six years down the line and its construction was still underway. As a result, certain disputes had arisen between the petitioner and the respondents on account of willful acts, omissions and conduct on the part of the Respondents, inter-alia including non-availability of proper evacuation system, frequent tripping, unstable grid etc., which had resulted in huge generation loss as well as the financial loss in terms of enhanced energy availability and growth;
- (g) that though the project was commissioned by the petitioner as per schedule but the Sub-station at Bhoktoo was not available for evacuation of power from the project at the time of its commissioning, therefore, temporary interim arrangement was made by the Respondent No.1 on 30.11.2010 for the interconnection of the project as per the directions of the HPERC in its 4<sup>th</sup> meeting held on 11.10.2010 at Shimla, by way of solid tap provided near Shongtong with the HPSEBL Grid i.e. 22 kV New

Kinnaur feeder for commissioning of the Tangling Mini HEP. The said fact is also evident from the letter dated 04.04.2011 from the office of the Sr. Executive Engineer, Electrical Division, HPSEBL, Reckong-Peo to the office of the Superintendent Engineer (OP) Circle, HPSEBL, Rampur. Therefore, the petitioner had to commission the project with the help of the temporary interim arrangement till the time the proposed Bhoktoo Sub-station is got constructed/ commissioned;

- (h) that the petitioner vide its letter dated 25.03.2011 apprised the Respondent No. 1 about the poor availability of grid at the project which was duly replied by the office of the Sr. Executive Engineer, Electrical Division, HPSEBL, Reckong-Peo vide its letter dated 11.04.2011 and from the office of the Chief Engineer (OP) South, HPSEBL, Shimla vide its letter dated 29.04.2011, wherein no permanent solution or way out was suggested to overcome the issue in hand;
- (i) that the various problems and difficulties, which have resulted in the improper functioning and operation of the project, on account of the unreasonable acts and conduct of Respondents. The respondents have failed to provide the reliable interconnection facilities for the evacuation of power and hence the actions of the respondents are in complete violation of the terms and conditions of the PPA dated 26.05.2010;
- (j) that all the surges of 22kV transmission line in Kinnaur Valley were passed on to the project, resulting into frequent trippings and effect being passed on to the project, effecting the viability of the project and thus caused huge generation loss;
- (k) that the plant load factor was very low due to the inefficient evacuation arrangement in the absence of the project's interconnection facility at Bhoktoo. As per calculations of the petitioner, it was 45% PLF, during the period w.e.f. the CoD of the project i.e. 13.12.2010 to 31.03.2016, the petitioner has suffered the generation loss which works out 3,36,66,400 kWh resulting into Rs. 9,93,15,880/- (Rupees Nine Crores, Ninety Three Lakh Fifteen Thousand, Eight Hundred and Eighty only);
- (l) that on account of huge financial losses suffered by the petitioner due to the acts/omissions of the Respondents, in maintaining the transmission lines necessary for evacuation of the energy from the project, the continuance and sustenance of the project became difficult due to the recurring losses suffered by the petitioner and consequent accumulation of balance unpaid loan amount payable by the petitioner to its lenders;
- (m) that the petitioner, time and again, has represented/raised personally and in writing with the Respondent No.1, its grievances/problems being faced in the project due to the non-commissioning of the Bhoktoo Sub-station, resulting in congestion and trippings in the evacuation arrangement ultimately leading to the loss of generation in the project. However, nothing in affirmative has been heard by the petitioner from the

respondents with regard to the same. Finally the petitioner vide its letter dated 01.03.2016 requested the Respondent No. 1 to invoke Article 13 of PPA i.e. "Resolution of Dispute Clause" for Good Faith Negotiations, and the Respondent No.1 completely failed to respond the aforesaid letter till date. It is clear that the Respondents have no intention of looking into the grievances of the petitioner or to settle the issues or disputes raised;

- (n) that the petitioner is having no other option but to file the present petition, before this Commission for resolution of the disputes between the parties by this Commission under Section 86(1)(f) of the Act itself or for reference to an Arbitrator for adjudication.

4. In response to the petition, the Respondent No.1 i.e. the HPSEBL, submits-

- (a) that the petition as preferred under Section 86(1)(f) of the Act, read with Regulations 53 and 68 of the HPERC (Conduct of Business) Regulations, 2005, is neither competent nor maintainable, in as much as, the petitioner has already preferred same and similar petition and the same was registered as petition No. 53 of 2017 and the Commission vide its Order dated 08.12.2017 has dismissed the said petition by passing a detailed Order, hence the present petition is not maintainable, as the same is barred by *res judicata* and under Order 2 Rule 2 of the CPC;
- (b) that the present petition is an abuse of process of law, as despite the fact that earlier the petition, which was filed on the same and similar ground was dismissed by this Commission vide Order dated 08.12.2017 and neither any liberty was reserved or given to the petitioner to file the petition on same and similar grounds, nor there is any jurisdictional error on the part of the Commission. Accordingly, the present petition is liable to be dismissed;
- (c) that it is emphatically denied that the Respondent Board has either failed to commission the project in terms of conditions of the PPA or has failed at any point of time to keep the transmission line fully functional for proper evacuation of power, rather the petitioner is trying to shift his failure to Respondent No.1, which cannot be allowed. Accordingly, the present petition is liable to be dismissed;
- (d) that the petitioner is trying to level false allegations rather bald allegations, without substantiating the same with a sole motive to prejudice the mind of this Commission. There is no improper maintenance on the part of the Respondent Board;
- (e) that it is denied that there is any kind of violation of the terms and conditions of PPA dated 26.05.2010 on behalf of the Respondent Board ;
- (f) that it is denied that the petitioner suffered any financial loss due to any act or omission on the part of the Respondent Board and if there is any

unpaid loan by the petitioner, the Respondent Board cannot be held liable for the same;

- (g) that there is no occasion for the petitioner to file and maintain the present petition, specifically keeping in view the fact that already the petition of the petitioner has been dismissed by this Commission on the same and similar grounds and the Respondent Board cannot be held liable for any financial loss;
- (h) that there is no doubt this Commission has stated that the HPPTCL has not been impleaded as party to this petition but at no point of time, this Commission has come to the conclusion that the petition is dismissed on this ground whereas, as a matter of fact, this Commission was pleased to pass a detailed Order whereby the petition of the present petitioner has been dismissed on merits, as such the present petition is not maintainable on same and similar grounds and further no liberty has been taken by the petitioner to challenge in the present petition on the same and similar ground, as such the present petition is liable to be dismissed with heavy cost.

5. In response to the petition, the Respondent No.2 i.e. the HPPTCL submits-

- (a) that the present petition filed by the petitioner is not maintainable against the Respondent No. 2. The fact remains that the petitioner did not sign any agreement qua connection agreement with the Respondent Corporation. Therefore, in the absence of any agreement, the petitioner herein cannot make out any claim whatsoever against the Respondent Company;
- (b) that the petitioner entered into a Power Purchase Agreement (PPA) with Respondent No.1 in May 2010 followed by various supplementary agreements on the basis of which the petitioner is seeking compensation for financial loss on account of alleged breach of terms of the aforesaid PPA. Therefore, the present petition is not maintainable against the Respondent Corporation;
- (c) that while deciding **petition No. 52 of 2017- titled M/s Sahu Hydro Power Ltd. V/s HPPTCL and Anr.**, the Commission in its Order dated 15<sup>th</sup> September, 2018 has held that the Respondent Corporation, being State Transmission Utility (STU), is a statutory authority performing statutory functions and is to build the transmission system in the State in terms of statutory mandate, there cannot be any claim for compensation against it for any delay, particularly for the compensation for loss of generation, without there being any agreement about the terms and conditions and the PERT Charts for all the works required for evacuation of power for indemnification;
- (d) that a communication dated 02.12.2009 was received by the Respondent Corporation from the Respondent No.1 with regard to assignment and

distribution of works by the Government of HP after trifurcation of erstwhile Electricity Board and in a meeting held on 27.01.2010 to finalize transmission master plan and assignment of different schemes, it was recommended that the work of 22/66/220 KV Sub-station at Bhoktoo will be executed by the Respondent Corporation;

- (e) that after taking over the work of the Sub-station by the Respondent Corporation, there was initial delay in handing over the land. The site clearance including removal of existing structures, trees, tendering and award of work took time. It is further submitted that unprecedented rains, and cloudburst in the year 2013 created force majeure conditions which resulted in considerable delay in construction activities. Because of these extra-ordinary conditions, fresh detailed site investigation was got conducted from experts of IIT Rourkee between October, 2013 to March, 2014. As per recommendations of the experts, the Respondent Corporation had to undertake strengthening of hill slopes caused by land slide/stabilization measures at site. The Sub-station has been commissioned on 01.03.2017;
- (f) that no sooner the project of the petitioner was commissioned, the power generated by the plant was permitted to be evacuated through 22 KV New Kinnaur feeder system of the Respondent No.1 as an interim arrangement. Therefore, it is totally wrong on the part of petitioner to suggest that it has suffered generation loss due to non availability of the permanent evacuation system;
- (g) that the grievances made out by the petitioner are commercial hardships, which any prudent IPP would expect while working in power Sector. The delay, if any, occurred in the construction of Bhoktoo Sub-station was due to the reasons totally beyond the control of the Respondent Corporation;
- (i) that the Respondent Corporation is in no way responsible for the alleged losses suffered by the petitioner;
- (j) that the petitioner has no claim against the Respondent Corporation and the present petition filed by the petitioner deserves to be dismissed in the interest of justice.

6. The petitioner has filed the rejoinder to the response of the HPSEBL, i.e. Respondent No. 1 and the HPPTCL i.e. Respondent No. 2.-

- (a) In relation to the response of HPSEBL, it states that it is wrong that the present petition is barred by resjudicata under section 11 and under Order 2 Rule 2 CPC, as section 11 of the CPC applies in terms to cases where the matter in issue is a subsequent 'suit' was in issue in former 'suit'. A 'suit' is a proceedings which is commenced by a plaint (Sec. 26 CPC) and hence the present petitioner cannot be said to be a 'suit'. Also, the principle of resjudicata applies to "Courts" and the Commission do not fall well within the definition of the expression "Court". Furthermore, the

principle of resjudicata will apply only if the former suit was between the same parties, the same is not the case in the present petition as HPPTCL (present Respondent No. 2) was not a party to the earlier petition filed by the petitioner. As far as the submission of the Respondent No. 1 with respect to the petitioner being barred by the Order 2 Rule 2 CPC – ‘Suit to include the whole claim’ is concerned the same is also misconceived by the Respondent No. 1, as the present petitioner has raised the same amount/set of claim in its earlier petition as claimed vide the present petition and never omitted any portion of the claim therein.

- (b) In relation to the response of HPPTCL submits-
- (i) that it is wrong and denied that the petitioner did not sign any agreement qua connection agreement with the Respondent No.2. The Connection Agreement between the petitioner and the Respondent No. 2 stands duly executed on dated 18.04.2017;
  - (ii) that the petitioner was not a party to the aforesaid mentioned case (**M/s Sahu Hydro V/s HPPTCL– Petition No. 52/2017**) and therefore a straitjacket formula/ decision cannot be enforced in the present case, despite having different facts all together;
  - (iii) that the work of execution of the Sub-station at Bhoktoo was entrusted upon the Respondent No. 2 vide the Government Notification dated 03.12.2008 and after the trifurcation of the erstwhile HPSEB, which suggests it took around 8 long years for the Respondent No. 2 to commission the Bhoktoo Sub-station as the same was commissioned on 01.03.2017. Resultantly, the petitioner had to suffer huge generation loss due to the non-availability of the proper evacuation system only for the reason as the Respondent No. 2 had failed to commission the Sub-station within a reasonable time frame;
  - (iv) that it is wrong and denied that the petitioner did not suffer generation loss due to the non availability of the permanent evacuation system. The interim arrangement as provided for the evacuation of power in absence of the suitable/efficient evacuation system was highly unreliable and resulted in low plant load factor;
  - (v) that it is wrong and denied that the Respondent No. 2 has given a vague description of the issues which led to the delay in the commissioning of the Bhoktoo Sub-Station for around 8 years, which cannot be taken into consideration by any prudent individual. It is further denied that the grievances made out by the petitioner are commercial hardships, which any prudent IPP would expect while working in power sector. Moreover a delay of around 8 years in commissioning the Bhoktoo Sub-Station by the Respondent No.2 cannot be equated with the commercial hardships;

- (vi) that as per the terms and conditions of the PPA executed between the petitioner and the Respondent No. 1, the Inter-Connection Point for the purposes of evacuation of power from Tangling MHP was decided to be 220/66/22kV Sub-station proposed at Bhoktoo. However, in absence of the inter-connection point, the interim facility was provided to the petitioner for the evacuation of the power generated and the same was highly unreliable. The said interim arrangement continued till April, 2017 when the Connection Agreement between the petitioner and the Respondent No. 2 got executed with regard to the Bhoktoo Sub-Station;
- (vii) that it is wrong and denied that the Respondent No. 2 cannot comment on generation figures given by the petitioner in para 20 of the petition and also on the alleged financial loss. It is submitted that the generation figures as mentioned vide para 20 of the petition are correct in terms of the losses suffered by the petitioner due to the non-availability of the proper evacuation system i.e. the Bhoktoo Sub-station. Moreover, after the trifurcation of the erstwhile HPSEB, the Respondent No. 2 is duly liable/ bound to contest the present legal proceedings being the transferee of the work entrusted of the construction of the Bhoktoo Sub-station as per the Transfer Scheme, in terms of Section 131(6) and (7) of the Act.

7. (1) The matter was heard on 02.03.2019. During the hearing, Sh. Vikas Chauhan, the Learned Counsel for the petitioner, recapitulated the factual matrix of the case stating-

- (a) that the petitioner and the Government of Himachal Pradesh had entered into an Implementation Agreement (IA) dated 20.07.2004 for the development of the Tangling Hydro Electric Project located in Distt. Kinnaur, (HP). As per clause (xiv) of the TEC dated 09.03.2009, the petitioner was supposed to interface its Tangling HEP with the 22/66/220 kV Sub-station of HPSEB proposed at Bhoktoo at 22 kV level in joint mode with Shyang HEP (3.00MW). Thereafter, the PPA was entered into between the petitioner and the Respondent No.1 with regard to the said project on 26.05.2010. As per the PPA the Interconnection Facilities (Clause 2.2.45) were to be installed and maintained by the Respondent No.1 at 22/66/220 kV Sub-station at Bhoktoo to enable the evacuation of the electrical output from the project. The petitioner's project got commissioned on 13.12.2010 in compliance to the terms and conditions of the IA as well as the PPA;
- (b) that despite the fact that the Govt. had issued a notification dated 03.12.2008 entrusting to the Respondent No.2 various works of construction of Sub-station of 66 kV and above, laying/construction of transmission lines of 66 kV and above etc., the Respondent No.1 stepped

further to sign the PPA with the petitioner wherein as per Clause 2.2.45 “Interconnection Facility” at Bhoktoo Sub-Station was to be provided by the Board. Also, despite the consensus arrived at between the Respondents No.1 and 2 for the execution of Bhoktoo Sub-station at a meeting held on 27.01.2010 the Respondent No.1 entered into the PPA with the petitioner with the Clause 2.2.45 whereby the ‘Interconnection facility’ at Bhoktoo Sub-Station was to be provided by the Board;

- (c) that the Respondents No.1 and 2 failed to abide by the terms and conditions of the PPA and specifically the Respondent No.2 was unable to install the Interconnection Facilities at 22/66/220 kV Sub-station at Bhoktoo, therefore, the petitioner was provided with the interim arrangement for the evacuation of the energy which was highly unreliable and the said interim arrangement continued till the year 2017 causing huge financial losses to the petitioner.

7.2 Sh. Vikas Chauhan, keeping in view the facts set out in the preceding sub-para, submits-

- (i) that as per the SIA, TEC and the PPA the Interconnection Facilities were to be installed and maintained by the Respondent No. 1 at 22/66/220 kV Sub-station at Bhoktoo to enable the evacuation of the electrical output from the Tangling HEP. However, as per the Govt. notification dated 03.12.2008 and the consensus arrived at between the Respondents No.1 and 2 in a meeting held on 27.01.2010, the Sub-station was to be installed and executed by the Respondent No.2;
- (ii) that further, as per the provisions of Section 131 Electricity Act, 2003 the erstwhile HPSEB was trifurcated into HPSEBL, HPPTCL and the HPPCL. Therefore, the function of the evacuation of power was entrusted to HPPTCL (Respondent No.2) vide the HP Power Sector Reforms Transfer Scheme, 2010 dated 10.06.2010. Therefore, as per the Transfer scheme the Respondent No.2 was liable to execute/install the Sub-station at Bhoktoo to which it failed completely and it was only in the year March, 2017 that the Sub-station at Bhoktoo was commissioned.

7.3 In relation to the liability of Respondent No.1 (i.e. HPSEBL) the petitioner states that in view of the provisions of Section 11 (*res-judicata*) and Order 2 Rule 2 of the Civil procedure Code, 1908 that the specific pleas taken by the Respondent No.1 with regard to the non-maintainability of the petition are wrong. Moreover, in the earlier petition filed by the petitioner i.e. petition No. 53 of 2017 the Respondent No.1 had categorically put the onus upon the present Respondent No.2 (not a party to the earlier petition) for the installation/execution of the Sub-station at Bhoktoo.

7.4 In his support, the Learned Counsel for the petitioner has cited the following judgements:-

- (i) **U.P. Power Corporation Ltd. v/s National Thermal Power Corporation Ltd. & others (2009 6SCC 235**, wherein the Hon’ble Apex

Court has vide paras 36 and 37 has held that the principles of *res judicata* will have no application in matters under the Electricity Act, 2003 strict rules contained in Section 11 of the CPC are not applicable but general principles of *res judicata* may be applicable,

- (ii) **Gujarat Urja Vikas Nigam Ltd. V/s Solar Semiconductor Power Company (India) Pvt. Ltd. & others (2018) ELR (SC) 0032; Nabha Power Ltd. Chandigarh V/s Punjab State Power Corporation Ltd. Patiala & another (2018) ELR (APTEL) 0750. Gujarat Vikas Nigam Ltd. V/s Emoco Ltd. & another (2016) 11 SC 182, and Transmission Corporation of AP Limited & another V/s Sai Renewable Power Pvt. Ltd. & others (2011) 11 SCC 34**, wherein it is held that PPA being binding and statutory instruments, both parties had to honour the same in true spirit and no stipulations as per PPA can be ignored.

7.5 Sh. Vikas Chauhan, in relation to the liability of Respondent No.2 (i.e. HPPTCL) submits-

- (a) that the Respondent No.2 was entrusted with the installation and the execution of the Sub-station at Bhoktoo and the Respondent No.2 failed in its early commissioning, therefore, is liable to compensate the petitioner in terms of the claim filed vide the present petition;
- (b) that even though the petitioner had not entered directly into any kind of agreement or understanding with the Respondent No.2 with regard to the installation/execution of the Sub-station at Bhoktoo, still the Respondent No.2 was liable towards the petitioner for its early commissioning and in its absence to compensate the petitioner. Further due to the fact that the Respondent No.2 had entered into the shoes of the Respondent No.1 i.e. HPSEB after the Govt. Notification dated 03.12.2008 and the HP Power Sector Reform Transfer Scheme, 2010 dated 10.06.2010;
- (c) that as per the provisions of section 131 (6) of the Act, the Respondent No.2 is charged/obligated with the installation/execution of the Sub-station at Bhoktoo after coming into existence the HP Power Sector Reform Transfer Scheme, 2010 dated 10.06.2010, which reads as under:
- “Section 131 (6):** *All debts and obligations incurred, all contracts entered into and all matters and things engaged to be done by the Board, with the Board or for the Board, or the State Transmission Utility or generating company or transmission licensee or distribution licensee, before a transfer scheme becomes effective shall, to the extent specified in the relevant transfer scheme, be deemed to have been incurred, entered into or done by the Board, with the Board or for the State Government or the transferee and all suites or other legal proceedings instituted by or against the Board or transferor, as the case may be, may be continued or instituted by or against the State Government or concerned transferee, as the case may be”*
- (d) that the first submissions of the Respondent No.2 against the present petition is the Order passed by this Commission in petition No. 52 of 2017 titled as **M/s Sahu Hydro Vs. HPPTCL** being applicable to this

petition as well, which is wrong and denied as a straight jacket formula/decision cannot be applied in all cases as the present case has a set of different facts all together. Moreover, as per Section 131 (6) and (7) of the Act, the Respondent No.2 had stepped into the shoes of the Respondent No.1 after the Transfer Scheme, 2010 and hence, is liable to compensate the petitioner;

- (e) that the Respondent No.2 has submitted that the delay in commissioning the interconnection facility was due to Force Majeure conditions. However, the Respondent No.2 failed to comply with the terms and conditions of Article 12 Force majeure of the PPA whereby it was obligated to notify the petitioner of any such situation but the Respondent No.2 failed to do so. Moreover, Article 12 Force Majeure clause of the PPA nowhere includes the cloudburst, unprecedented rains or landslides within its definition. The Respondent No.2 was to abide by the terms and conditions of the PPA after the Transfer Scheme, 2010 as it has entered into the shoes of the Respondent No.1 in furtherance of Section 131 (6) and (7) of the Act. Therefore, this stand of the Respondent No.2 be set aside by this Commission.

8. In rebuttal, Sh. Surinder Saklani Advocate, representing the Respondent No.1 i.e. HPSEBL, reiterates the contents of the response, filed on behalf the Respondent No.1, as narrated in para 4 of this Order and he further submits-

- (a) that the Respondent No.1 i.e. HPSEBL is one of the successor companies of the erstwhile H.P. State Electricity Board, which has been unbundled in terms of the Transfer Scheme made under Sections 131(2), 132 and 133 and other provisions of the Act, and notified by the Government of HP under Section 131 of the Act. The HPSEBL is performing functions and duties pertaining to the distribution of power in the State of Himachal Pradesh;
- (b) that the Respondent No. 2 i.e. HPPTCL has been incorporated as a successor entity to undertake/ execute various transmission works of voltage level of 66 kV and above i.e. for evacuation of power etc. Since the Transfer Scheme is framed under Section 131 of the said Act. Further, section 131(1) provides that the State Government can notify Transfer Scheme for transfer of property, interest in property, rights and liabilities of the State Electricity Board to vest in the State Government on such terms and conditions as may be agreed between the State Government and the Board. Section 131 (2) provides that property, interest in property, rights and liabilities vested in the State Government under sub-section (1) shall be re-vested by the State Government in a Govt. Company/ Companies, in accordance with the Transfer Scheme on such terms and conditions as may be agreed between the State Government and such company/companies. Under Section 131(3)(b) a transaction in pursuance of a Transfer Scheme shall be binding on all persons including third

parties even if such persons or third parties have not consented to it. Section 131 (7) provides that the Board shall cease to be charged with the functions and duties with regards to transfer made on and after the effective date.

The bare reading of the said provisions makes it clear that from the effective date, which in this case is 10<sup>th</sup> June, 2010, any property, interest, rights in property and liabilities of the Respondent Board which vested in the State Government under Section 131(1) were re-vested in the HPPTCL under Section 131 (2) and the Respondent Board ceased to be charged with its functions/duties with regards to the construction/establishment of the 22/66/220 kV Sub-station at Bhoktoo and the rights and liabilities in relation thereto stood transferred to the HPPTCL on such terms and conditions as would have been agreed between the State Government and the HPPTCL;

- (c) that earlier to the COD of the project i.e. 13.12.2010, it was clear to the petitioner, as per the site condition, the 22/66/220 kV Sub-station Bhoktoo was not likely to come up timely and the interim arrangements for evacuation from Shyang HEP till the commissioning of the Sub-station at Bhoktoo was allowed after the petitioner Company furnished the undertaking to the extent that the petitioner Company shall not claim any deemed energy generation loss charge to their machinery/equipments, and the parties in the agreement clearly stipulated that during the period of interim arrangement, they will not be allowed any deemed energy benefits. Moreover, in exercise of the powers conferred under Section 131(2) of the Act, the Govt. of H.P. has notified the Transfer Scheme vide notification No. MPP-A(3)/2001-IV dated 10<sup>th</sup> June 2010 whereby all assets, liabilities, rights and obligations of the erstwhile HPSEB, in relation to execution of various evacuation of power works of voltage level of 66 kV and above, were transferred and re-vested in new successor entity i.e. HPPTCL as Respondent No.2. Thus any transaction in pursuance of the Transfer Scheme is binding on all persons under Section 131(3)(b) and the Respondent Board ceases to be charged with the functions and duties in regard to the transfer of execution of the 22/66/220 kV Sub-station at Bhoktoo;
- (d) that there is no Connection Agreement executed between the petitioner and the Respondent Board for the evacuation of the power. As this Commission in the case titled as **M/s Sahu Hydro Vs. HPPTCL and another** petition No. 52 of 2017 decided the akin issue in the detail and held that in absence of the Connection Agreement between the parties, the contractual obligations cannot be performed and the parties cannot be entitled to the relief of the damages;
- (e) that the petitioner had earlier filed the petition No. 53 of 2017 titled as **M/s Tangling Mini Hydro Vs. HPSEBL** which stands dismissed by the Commission by passing the detailed reasoned Order and the petitioner

herein did not seek the liberty to file the fresh petition, hence, the present petition is not maintainable in the eyes of law as specifically hit by the res-judicata.

Shri Surinder Saklani, Learned Counsel for the Respondent No.1, concludes his arguments stating that in view of the facts and circumstances narrated herein before the petition filed by the petitioner may be dismissed in the interest of justice and fair play.

9. This case has got a chequered history. In order to understand the core of the issues and conduct of the parties, it would be necessary to refer to the chronological events, leading to filing of this petition. It was in the knowledge of the petitioner that-

- (a) the State Government vide notification No. MPP-A-(1)4/2006 (Loose) dated 03.12.2008, entrusted various works/business including works of construction of Sub-Station of 66kV and above and laying/construction of transmission line of 66 kV above etc. to the Respondent No. 2 i.e. HPPTCL;
- (b) a meeting was held on 27.01.2010 to finalise the scope of works under the Transmission Master Plan and assignment of different schemes for execution by the HPSEBL, HPPTCL, IPPs etc. wherein the respondents arrived at a consensus for the execution of 22/66/220 kV, 31.5 MVA Sub-station at Bhoktoo (GIS) a/w LILO of 220kV Kashang-Bhaba line at Bhoktoo, as per which the Sub-station was to be established by the Respondent No. 2;
- (c) the HPSEBL (Respondent No. 1) vide its letter dated 02.03.2010 had requested the State Government to accept the recommendations and consensus arrived at the meeting dated 27.01.2010 and to order necessary amendments in the notification dated 03.12.2008;
- (d) the power Purchase Agreement (PPA) was executed on 26.05.2010 with the HPSEBL with the clause 2.2.46 wherein evacuation point was fixed at Bhoktoo. Clause 3.3 of the PPA specifically provides that the IPP shall enter into separate agreement with the Board within a period of six (6) months from the Effective Date of execution, operation and maintenance of the Interconnection Facilities. That agreement shall inter-alia lay down the detail of the execution, operation and maintenance of the Interconnection facilities, and also the charges and other terms and conditions for the execution, operation and maintenance of the Interconnection facilities. Further per clause 9 (1)(g) of the PPA, the petitioner Company had undertaken to enter into a separate agreement with the Board for the implementation of inter connection facilities;
- (e) the HP Power Sector Reforms Transfer Scheme, 2010 was issued on 10.06.2010, whereby all assets, liabilities, rights obligations of the erstwhile HPSEB (in relation to execution of evacuation of power works of voltage level of 66kV and above were transferred to successor entity

HPPTCL and the HPSEBL ceased to be charged with the functions and duties with regard to transfers made on and after the 10.06.2010;

- (f) the Supplementary Power Purchase Agreement (SPA) executed on 10.11.2010 was only for change of the tariff and other conditions in the PPA remained unchanged;
- (g) the Project was commissioned on 13.12.2010;
- (h) the earlier to the COD of the project, i.e. 13.12.2010, it was clear to the petitioner, as per the site conditions, that the 220/66/22 kV Sub-station Bhoktoo was not likely to come up in time and the interim arrangement for evacuation of Shyam HEP till the commissioning of the sub-station at Bhoktoo was allowed on 13.12.2010 after the petitioner company furnished the undertaking to the extent that the petitioner company shall not claim any deemed energy generation loss and during the period of interim arrangement, they will also not be allowed any deemed energy benefits;
- (i) the petitioner moved petition No 53 of 2017 against the Respondent No.1 (HPSEBL), without impleading Respondent No. 2 (HPPTCL) as a party, claiming the financial loss w.e.f. 13.12.2010 to 31.03.2016 and the same was considered on merit and was dismissed on 08.12.2017;
- (j) the petitioner has not executed any Agreement for execution and maintenance of the Interconnection facility with the HPSEBL as contemplated under clause 3.3 of the PPA. The petitioner has executed the Connection Agreement only on 18.04.2017 with the Respondent No. 2 (HPPTCL) after the commissioning of the Bhoktoo Sub-station on 01.03.2017 i.e. to say after the expiry of the period in relation to which the petitioner is claiming the deemed energy generation loss.

The curious part to be noted in this context is that prior to the execution of the PPA and also immediately on the execution of the PPA, the petitioner was aware that on the transfer of power works of 66 kV Voltage level and above, the 22/66/220 kV Bhoktoo Sub-station was to be set up and to be executed by the HPPTCL and by virtue of the provisions contained in Section 131(7) of the Act, the HPSEBL ceased to be charged with the functions and duties in regard to the transfer of execution of the 220/66/22 kV Sub-station at Bhoktoo. Further, the petitioner did not execute the Connection Agreement either with the HPSEBL or the HPPTCL in lines of the PPA.

10. (1) Now we shall come to the aspect relating to the proceedings barred by *res judicata*.

- (a) The Respondent No.1 contends that the petitioner has already preferred a same and similar petition No. 53 of 2017, based on same facts and grounds, seeking the same relief and the Commission vide its Order dated

8<sup>th</sup> Dec., 2017 has dismissed the said petition by passing a detailed Order. The decision of the Commission has not been challenged by the petitioner by way of appeal or a review and it has attained finality. Hence the present petition is not maintainable, as the same is barred by *res judicata* under Order 2 Rule-2 of the CPC.

- (b) The petitioner in its rejoinder, in relation to the response of HPSEBL, states that it is wrong that the present petition is barred by *res judicata* under section 11 and Order 2 Rule 2 CPC as the principle of *res judicata* applies to the courts and the Commission do not fall well within the definition of “Court”. Furthermore, the principle of *res judicata* will apply only if the former suit was between the same parties, the same is not the case in the present petition as the HPPTCL was not the party in the earlier petition filed by the petitioner.

10.2 Section 11 of the Code of Civil Procedure reads as under:-

*“No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court”.*

It is a settled Law that the principle of *res judicata* applies when a Judicial decision attains finality on any issue between two parties in earlier proceedings and then both the parties would not be allowed to canvass the issue again in future proceedings between the same parties. In other words, the Court having decided the issue in one way or other at the earlier stage will not allow the parties to reargue the matter at a subsequent stage of the same proceedings.

The Hon’ble Supreme Court of India in the case of **Satyadhhan Ghosal V/s Smt. Deorajin Debi (1960) 3 SCR 590** has observed as under:-

*“7. The principle of res judicata is based on the need of giving finality to Judicial decisions. What it says is that once a res is judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter – whether on a question of fact or a question of law- has been decided between two parties in one suit or proceedings and the decision is final, either because no appeal was taken to a higher Court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceedings between the same parties to canvass the matter again. This principle of res judicata is embodied in relation to suits in Section 11 of the Code of Civil Procedure, but even where Section 11 does not apply, the principle of res judicata has been applied by Courts for the purpose of achieving finality in litigation. The result of this is that the original Court as well as any*

*higher Court must in any future litigation proceed on the basis that the previous decision was correct.”*

10.3 The argument of the Respondent No.1 is that the present petition qua Respondent No.1 would be barred by the provisions of Order 2 Rule 2 of the CPC. Let us quote Order 2 Rule 2 of CPC, which reads as under:-

**“2. Suit to include the whole claim.**

*(1) Every suit shall include the whole of the claim which the Plaintiff is entitled to make in respect of the cause of action, but a Plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.*

*(2) Relinquishment of part of claim- Where a Plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim he shall not afterwards sue in respect of the portion so omitted or relinquished.*

*(3) Omission to sue for one of several reliefs- A person entitled to more than one relief in respect of the same cause of action may sue for all or any such reliefs, but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.*

**Explanation:** *For the purposes of this rule an obligation has a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action.”*

The reading of the above provisions would make it evident that the bar under Order 2 Rule 2 of CPC would apply only to cases where the party fails to make a claim which sought to have been a part of the earlier claim. In determining such a question, we have to see whether the same evidence has to be led in for both the claims.

It is settled law that if the second suit has been filed, the defendant has to prove that second suit is based on the same cause of action on which the earlier suit was filed. Only then, the bar of Order 2 Rule 2 Code of Civil Procedure would apply. This principle has been laid down in the case of **Kunjan Nair Sivaraman Nair Vs. Narayanan Nair (2004) 3 SCC 277**. The relevant portion of the judgment in this case is as under:

*“8. A mere look at the provisions shows that once the Plaintiff comes to a Court of law for getting any redress basing his case on an existing cause of action, he must include in his suit the whole claim pertaining to that cause of action. But, if he gives up a part of the claim based on the said cause of action or omits to sue in connection with the same, then he cannot subsequently resurrect the said claim based on the same cause of action, So far, as Sub-rule (3) is concerned, before the second suit of the Plaintiff can be held to be barred by the same, it must be shown that the second suit is based on the same cause of action on which the earlier suit was based and if the cause of action is the same in both the suits and if in the earlier suit the Plaintiff had not sued for any of the reliefs available to it on the basis of that cause of action, the reliefs which it had field to press into service in that suit cannot be subsequently*

*prayed for except with the leave of the Court. It must, therefore, be shown by the defendants for supporting their plea of bar of Order 2 Rule Sub rule (3) that the second suit of the Plaintiff filed is based on the same cause of action on which its earlier suit was based and that because it had not prayed for any relief and it had not obtained leave of the Court in that connection, it cannot sue for that relief in the present second suit.”*

- 10.4 The above observation would clearly indicate that the Hon'ble Supreme Court mandates that whenever the question arises as to whether the cause of action in the subsequent proceedings is identical with that of the first proceedings, it has to be firstly found out as to whether the same evidence would maintain both the actions. In such a case leave of the Court is necessary to maintain the subsequent proceedings.
- 10.5 In reply of the said principle, if we look at the facts of the present case, it can be safely held that the evidence for the claims in relation to the specified claim is the same from the evidence to the present claim for damages. Therefore, the bar under Order 2 Rule 2 of the CPC would be applicable in the present case. Any how the Commission has entertained the subsequent petition.
- 10.6 At the outset it shall be mentioned that the Electricity Act by itself is a complete Code under which the disputes are resolved between the parties. Even though there are some provisions in the Electricity Act by which Civil Court powers have been conferred on the State Commission to deal with some aspects under some sections of the Electricity Act, it is not mandatory for the State Commission to follow all the procedures contained in various provisions of the Code of Civil Procedure. Therefore, the procedure contemplated in the Code of Civil Procedure is not binding on the State Commission while exercising the powers under the Electricity Act.
11. We have heard both the petitioner and the Respondents in detail and also gone through the petition, replies, and written arguments, including the supporting documents and the cases cited, and we find that entire thrust of arguments of the petitioner is that the interconnection point allotted to the petitioner as per the PPA dated 26.05.2010 was at 22kV bus-bars on the proposed 22/66/220kV Substation of the Respondent Board at Bhoktoo and the same was to be installed and maintained by the Respondent No.1 i.e. the Respondent Board itself and by the Respondent No. 2 i.e. HPPTCL, as it by virtue of the provisions of section 131(6) of the Electricity Act, 2003 has entered into the shoes of the Respondent No. 1 and to provide suitable transmission arrangement beyond the interconnection point for evacuation of the power generated at the project. Even when the petitioner approached, through the HPSEBL Respondent No.1 the HPPTCL (Respondent No.2) to whom the execution of works in relation to the Sub-station at Bhoktoo were transferred in furtherance of the trifurcation of the erstwhile HPSEB,

nothing fruitful was done. The project achieved the COD on 13.12.2010.. As the Sub-station at Bhoktoo was not in picture, the petitioner approached the Respondent Board for temporary arrangement and the Respondent Board agreed to provide the interim arrangements to facilitate the evacuation of power from the project from 13.12.2010 to 31.03.2011. The Respondent Board continued the temporary arrangement beyond the specified period, as the Sub-station at Bhoktoo was not established till 31.03.2016. The petitioner alleges to have suffered the loss due to poor availability of Grid and frequent trippings in the interim power evacuation arrangements. It is pertinent to note that the petitioner did not execute the Connection Agreement either with the HPSEBL or the HPPTCL its successor entity in terms of clauses 3.3 and 9 (1)(g) of the PPA. The relief as prayed for by the petitioner in its petition is for the claim against the respondents as the petitioner had suffered huge financial losses due to the acts/omissions of the Respondents in maintaining the transmission lines necessary for evacuation of the energy from the project.

12. It is pertinent to point out that the petitioner earlier filed petition No. 53 of 2017 seeking adjudication of its claim of amount of Rs. 9,93,15,880/- only against the Respondent No. 1 i.e. the Respondent Board on the same facts and similar grounds as are now being raised in the present petition knowingly that the Respondent No.2 (i.e. HPPTCL) had stepped into the shoes of the Respondent No.1, after the enforcement of the Transfer Scheme 2010 i.e. 10.06.2010, read with section 131 (6) of the Act. The said petition No. 53 of 2017, was considered and dismissed on merits, vide Order dated 08.12.2017, the paras, 11, 12 and 13 of the said Order read as under:-

*“11. Reading of the above provisions makes it clear that from the effective date, which in this case is 10<sup>th</sup> June, 2010, any property, interest, rights in property and liabilities of the Respondent Board which vested in the State Government under section 131(1) were re-vested in the HPPTCL under section 131(2) and the respondent Board ceased to be charged with its functions/duties with regard to the construction/establishment of the 220/66/22kV Substation at Bhoktoo and the rights and liabilities in relation thereto stood transferred to the HPPTCL on such terms and conditions as would have been agreed between the State Government and the HPPTCL.*

*12. It is pertinent to note that earlier to the COD of the project i.e. 13/12/2010, it was clear to the petitioner, as per the site condition, the 220/66/22kV Sub-station Bhoktoo was not likely to come up timely and the interim arrangements for evacuation from Shyang HEP till the commissioning of the Sub-station at Bhoktoo was allowed after the petitioner Company furnished the undertaking to the extent that the petitioner Company shall not claim any deemed energy generation loss charges to their machinery/equipments, the parties in the agreement clearly stipulated that during the period of interim arrangement, they will not be allowed any deemed energy benefits. Moreover, in exercise of the powers conferred under section 131(2) of*

*the Electricity Act, 2003, the Govt. of HP has notified the Transfer Scheme vide Notification No. MPP-A(3)/2001-IV dated 10<sup>th</sup> June, 2010 whereby all assets, liabilities, rights and obligations of the erstwhile HPSEBL, in relation to execution of various evacuation of power works of voltage level of 66kV and above, were transferred and re-vested to new successor entity i.e. HPPTCL. Thus any transaction in pursuance of the transfer scheme is binding on all persons under section 13(3)(b) and the Respondent Board ceases to be charged with the functions and duties in regard to the transfer of execution of the 220/66/22 kV Sub-station at Bhoktoo.*

*“13. In view of the foregoing discussion and conclusion drawn, we find no logic in the submissions of the petitioner that the inter connection point allotted to the petitioner, as per the PPA dated 26.05.2010 was at 22kV bus bars on the 220/66/22kV Sub-station of the Board at Bhoktoo and the same was to be installed and maintained by the Board itself. It is wrong to say that the Respondent Board arrived at the mutual consensus with the HPPTCL in the meeting held on 27.01.2010 and transferred the commissioning of the Bhoktoo Sub-station to the HPPTCL at its own sweet will. The respondent Board, in order to facilitate the evacuation of the power, agreed to transmit the same through the solid tap provided near Shong Tong with HPSEBL Grid i.e. 22kV New Kinnaur feeder, duly approved by the State Commission vide its order dated 11.10.2010, subject to conditions as stated in sub-para (a) of para 3 of this order which inter-alia stipulated that the petitioner will not claim any deemed generation benefits. Moreover, the HPPTCL, has not been impleaded as a party to this petition.”*

13. Here it would be appropriate to refer para 75 of the decision of the Hon'ble ATPEL, rendered in **Tata Motors Limited, Mumbai V/s Maharashtra Electricity Regulatory Commission Mumbai & another 2015 ELR (APTEL) 0073** which reads as under:-

*“The Judicial propriety and discipline demands that there is certainty in decision making process, the consistency and the earlier Orders passed by the State Commission must be respected by the same State Commission .”*

14. In light of the above, we do not feel any need to make any alteration or change in the earlier decision dated 08.12.2017 rendered in earlier petition No. 53 of 2017 moved by the petitioner.

15. Now dealing with the liability of Respondent No.2 (i.e. HPPTCL) we observe that the issue whether the earlier Orders passed in other matters, where a party was neither heard nor at fault, can be applied/followed in the subsequent cases, has been dealt with by Hon'ble APTEL in **Punjab State Power Corporation Limited Punjab V/s Patran Transmission Company Ltd. New Delhi & others 2018 ELR (APTEL) 0502** and it has been laid down that the earlier Orders of the Commission laying down the principles for dealing the situation as in the present case are the judicial Orders. The applicability of those Orders depends upon the circumstances of the case.

Further we also take note, as stated in para 13 (Supra) “*the Judicial propriety and discipline demands that there is certainty in decision making process, the consistency and the earlier Orders passed by the State Commission must be respected by the same State Commission.*”

16. In a similar matter, i.e. **petition No. 52 of 2017- M/s Sahu Hydro Power Ltd. V/s HPPTCL and another**, this Commission vide para 32 of its order dated 15.09.2018, in relation to the HPPTCL, has observed as under:-

*“32. The Respondent No.1 (HPPTCL) is a statutory authority performing statutory functions and has to build the transmission system in the State in terms of statutory mandate. However, there cannot be any claim for compensation against it for any delay, particularly for the compensation for the loss of generation, without there being any agreement about the terms and conditions and the PERT Charts for all the works required for evacuation of power for indemnification.”*

17. In that case the statutory requirement to execute the requisite agreement, containing agreed timelines and detailed terms and conditions including indemnification etc. was duly addressed. The Commission also put reliance on the Hon’ble APTEL decision rendered on 31<sup>st</sup> April, 2015 in **Appeal No. 54 of 2014 the Himachal Sorang Power Ltd. Vs. The Central Electricity Regulatory Commission and others**, emphasizing that it is the general practice that a time margin is provided in the commissioning of the transmission system and generating units so as to enable completion of pre-commissioning tests of generating units prior to the final synchronization of the generating plants with the grid. Indemnification Agreements also incorporate the reciprocal obligation between the parties in case of delay in completion of their respective works and was concluded that in the absence of mutual agreement between the parties to the Connection Agreement on the issues, which were to be decided mutually, it cannot be concluded that there was any default on the part of the HPPTCL.

18. In present case the petitioner entered into the PPA with the HPSEBL only a few months before the commissioning of the project. This clearly shows that there was no seriousness on the part of the petitioner to tie up the evacuation system by entering in to suitable agreements with any of the Respondents and to firm up the rights and obligations of the concerned parties in case of delay on their part. As a matter of fact the petitioner had, while finalising the interim arrangement, agreed that no deemed, generation loss shall be claimed by him. The petitioner also had not executed, either with the Respondent No.1 i.e. HPSEBL or the Respondent No. 2 i.e. HPPTCL any agreement for execution and maintenance of the interconnection facilities, as contemplated under clauses 3.3 and 9(1)(g) of the PPA within the period stipulated therein. The petitioner has

executed the Connection Agreement only on 18.04.2017, with the HPPTCL, after the commissioning of the Bhoktoo Sub-Station on 01.03.2017, i.e. to say after the expiry of the period in relation to which the petitioner is claiming the deemed generation loss. Apart from this, the petitioner, at no point of time, prior to the filing of the present petition, has registered any claim with the Respondent No.2 i.e. HPPTCL for the loss of generation due to the non-availability of the evacuation facility. We feel that even if the delay has taken place in completion of the evacuation network by the HPPTCL, which is a STU also, no claim for loss of generation, due to such delays, can be made against it, unless there is a specific agreement between the parties about the timelines for completing such work and the detailed terms and conditions particularly with regard to the compensation which either party shall be liable to pay to the other party in case of delays. Hence in the absence of requisite agreement, no claim for compensation can be raised against the respondents.

19. As observed by us in the petition No. 52 of 2017 also, we will like to add here that this shall not in any way undermine the necessity of completion of the various ongoing transmission works by the HPPTCL/STU in time bound and expeditious manner so that the incidents of loss of generation are avoided.

20. Therefore, the petitioner failed to establish dispute for adjudication under Section 86 (1) (f) of the Electricity Act, 2003 and its entitlement for any claim against the Respondents No. 1 and 2.

The petition is dismissed accordingly without any cost.

--Sd/-  
**(Bhanu Pratap Singh)**  
**Member**

--Sd/-  
**(S.K.B.S. Negi)**  
**Chairman**