

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

Petition No: 134 of 2024
Date of Institution: 23.10.2024
Arguments Heard on: 05.12.2025
Decided on: 01.01.2026

CORAM

Yashwant Singh Chogal
MEMBER (Law)-cum-CHAIRMAN

Shashi Kant Joshi
MEMBER

In the matter of:-

M/s Nanti Hydro Power Private Limited
Gyamba House, South End, Lane-IV, Sector-IV,
New Shimla, H.P-171009.

.....**Petitioner**

Versus

The Himachal Pradesh Power
Transmission Corporation Limited (HPPTCL)
Himfed Bhawan, Below Old MLA's Quarters,
Tutikandi (Panjiri), Shimla, H.P-171005.

.....**Respondent No. 1**

The Himachal Pradesh State Electricity Board Limited,
Vidyut Bhawan, Shimla, H.P-171004.

.....**Respondent No. 2**

The Himachal State Load Despatch Center,
Totu, Shimla, H.P-171011.

.....**Respondent No. 3**

The Directorate of Energy,
M.C. Parking Building, 2nd Floor,
Near Tutikandi Crossing,
Shimla, H.P.-171005.

.....**Respondent No. 4**

Petition under Sections 86(1)(a), (f), (k) and Section 62 (6) of Electricity Act, 2003 for declaring that the occurrence of certain subsisting events in the State of Himachal Pradesh from August, 2024 tantamount to force majeure events and quashing the invoices dated 02.09.2024, 01.10.2024, 03.10.2024 and 30.09.2024 by the Respondents No. 1, 2 and 3 for the months of August and September, 2024 levying transmission charges and related charges upon the Petitioner on account of occurrence of such force majeure events.

Present:-

Sh. Hemant Singh, Ms. Supriya Rastogi and Sh. Vipul Sharda, Ld. Counsel for the Petitioner.

Sh. Vikas Chauhan, Ld. Counsel for the Respondent No. 1.

Sh. Kamlesh Saklani, Authorised Representative for the Respondent No. 2.

Sh. Surinder Saklani, Ld. Counsel for the Respondent No. 3.

Sh. Shanti Swaroop, Ld. Legal Consultant for the Respondent No. 4.

ORDER

This Petition has been filed by M/s Nanti Hydro Power Private Limited (the Petitioner for short) under Sections 86(1)(a), (f) and (k) and Section 62 (6) of Electricity Act, 2003 (Act for short) for declaring that the events occurring from 01.08.2024 tantamount to force majeure events, as per Clause 9 of the Long Term Open Access Agreement dated 09.05.2019 and Connection Agreement dated 06.08.2014 and for quashing the invoices dated 02.09.2024,

01.10.2024, 03.10.2024 and 30.09.2024 for the months of August and September, 2024 issued by the Himachal Pradesh Power Transmission Corporation Limited (the Respondent No. 1/ HPPTCL for short), Himachal Pradesh State Electricity Board Limited (the Respondent No. 2/ HPSEBL for short) and the Himachal Pradesh State Load Despatch Centre (the Respondent No. 3/ HPSLDC for short).

2. The Petitioner owns and operates 13.50 MW Upper Nanti Small Hydro Project, situated at Village Nanti, District Shimla, Himachal Pradesh (Project for short) which was commissioned on 26.10.2017 and the power thereof is being wheeled through the transmission systems belonging to the Respondents No. 1 and 2 for onward sale to Tata Power Delhi Distribution Limited since 01.09.2019 as per the Power Purchase Agreement (PPA) dated 31.08.2016 signed between the Petitioner and Tata Power Delhi Distribution Limited. The Respondent No. 1/ HPPTCL is a Transmission Licensee, the Respondent No. 2/ HPSEBL is a Distribution Licensee and the Respondent No. 3/ HPSLDC is an apex body which manages and oversees the electrical grid within the State of H.P.

3. The Respondent No. 1 has allocated a comprehensive transmission system for the evacuation of power from the Project, which *inter-alia* contained elements of existing system of the Petitioner and those belonging to the HPSEBL i.e. 66 kV D/C line from Ghanvi-II to Ghanvi-I HEP, 66 kV D/C line from Ghanvi-I HEP to 66/220 kV Sub-station at Kotla and 220 kV Bhaba-Kunihar D/C line by LILoing one circuit at Kotla Sub-station.

4. The Petitioner has signed the Connection Agreement with the HPPTCL and the HPSEBL on 06.08.2014 whereby the HPPTCL and the HPSEBL had granted connectivity to the Project which was initially for a capacity of 12 MW. Thereafter, the capacity of the Project was enhanced to 13.50 MW and an addendum was made to the Connection Agreement on 20.03.2017 (Annexure P-2) and the HPPTCL and the HPSEBL agreed to connect the Project to the electrical and communication system located at 66 kV yard of Ghanvi-II SHP of the HPSEBL.

5. Further, the Petitioner was granted Long Term Access (LTA/ LTOA) by the HPPTCL and the HPSEBL from 01.09.2019 for a period of 18 years and 2 months uptill 31.10.2037 for which the

following transmission system was required to facilitate the operationalization as sought by the Petitioner:-

Name of Transmission System	Responsibility
33kV S/C line from Upper Nanti 13.50 MW HEP to Common Interfacing Point at Kurmi HEP	Existing system of M/s Nanti Hydro Private Limited Power
33kV D/C line from Common Interfacing Point at Kurmi HEP to 33/66 kV existing sub-station at Nanti including terminal equipment	Existing system of M/s Nanti Hydro Power Pvt. Ltd. in joint Mode with developer of kurmi HEP
66KV S/C line on D/C towers from Nanti to 66kV yard of Ghanvi-II HEP	Existing System developed by Existing system of M/s Nanti Hydro Power Pvt. Ltd. and other IPPS in joint mode
66kV D/C line from Ghanvi-II to Ghanvi-I HEP	Existing system of HPSEBL (Discom)
66kV D/C line from Ghanvi-I HEP to 66/229kV sub-station at Kotla	Existing System of HPSEBL (Discom)
220KV Bhaba-Kunihar D/C line with one circuit LILO at Kotla Sub-Station	Existing System of HPSEBL (Discom)

6. As per the Petitioner, the Project was running smoothly but on 31.07.2024 at 23:10 hours, the intake team reported high discharge and silt levels prompting the closure of intake gates as per the Standard Operating Procedure (SOP). Shortly, around midnight on 31.07.2024, the employees of the Petitioner were evacuated to a safer place due to massive flash floods and the generating units at the powerhouse were taken under force shutdown closing the intake

gates. The flash floods were so threatening that some of properties located at site were severely damaged.

7. Thereafter, a preliminary inspection was carried out to gather information about damages incurred due to the above incident and it was noted as under:-

- a) There was damage to the trench weir, and the weir raft extent was unclear due to inaccessibility;
- b) Both sides of the flood protection walls at the intake weir were severely damaged;
- c) Three phase DB box and other electrical instruments, as well as 35 KVA DG set were washed out in the flood;
- d) The staff accommodation at the weir site also damaged;
- e) The bridge leading to the powerhouse was also washed away;
- f) The powerhouse approach road near the existing bridge was damaged;
- g) In fact, landslide occurred in penstock line between AB-3 & AB-4; and
- h) Most pertinently, the 66 kV Ghanvi Stage I (HPSEB) to Stage II tower had collapsed, through which, the Petitioner's sub-station was connected to the grid.

8. It is averred that the aforesaid situation tantamount to force majeure events within the Clauses 9 of the LTA agreement and the Connection Agreements which exempt the Petitioner from any liabilities including the liability to pay the transmission charges which will continue till the Petitioner is in a place to generate the power.

Further, averred that it was noticed that the power plant cannot be restored to generate power until the effects of the above force majeure events subsist. Further, the transmission system in place for the petitioner's connectivity to the grid also suffered substantial damage and was rendered inoperable and could not be used to transmit any power.

9. According to the Petitioner, it promptly informed the Respondents vide letters dated 08.08.2024, 09.08.2024 and 17.08.2024 about the aforesaid occurrence and change in law events. The newspaper article evidencing flash flood has been annexed as Annexure P-4. On 02.08.2024, a report was issued by the Patwari, Sub-Tehsil Palwar, Distt. Kullu, H.P. (Annexure P-5) confirming the events that occurred at the Project site on 01.08.2024.

10. Thus, in the circumstances as mentioned above, the Petitioner was constrained to issue a Force Majeure notice to the HPPTCL and the HPSEBL on 08.08.2024 (Annexure P-6) stating the following:-

"As you are well aware that many areas in Himachal Pradesh experienced devastating heavy rainfall and floods due to severe weather conditions. On account of the same, 13.50 MW Upper Nanti SHP (Nanti Hydro Power Pvt. Ltd.) has to go under forced shutdown owing to the aforesaid force majeure event from 1st August 2024

onwards. Even as of the day of writing this letter, the local weather condition continues to be turbulent and has not normalized resulting in heavy rains being experienced in the vicinity of the project.

It is stated that on account of the prevailing monsoon season in the State of Himachal Pradesh, and with the onset of consequent heavy and devastating rainfall, massive flooding and landslides have resulted in the forced outage of 13.50 MW Upper Nanti SHP since 01.08.2024.

Therefore, the present notice is issued as a consequence of the above force majeure events and to inform your good office of the occurrence of the said force majeure events. For this, it is stated that NHPPL is invoking Clause 9 of the captioned Agreements, which are set out herein under:

... ..

Considering the above, it is reiterated herein that NHPPL, vide the present notice, is giving notice of the occurrence of force majeure events to HPSEBL and HPPTCL under Clause 9 of the Connection Agreement as well as Clause 9 of the LTA Agreement, thereby invoking the force majeure clause(s) pursuant to abovementioned event.

Further, as per the above provisions, it is emphasized that NHPPL is exempted from being levied any claims, whatsoever, under the captioned Agreements. Accordingly, HPSEBL and HPPTCL is hereby requested not to levy any charges, including open access or any other charges, upon NHPPL till the subsistence of the effect of the aforementioned force majeure events, starting from 01.08.2024."

11. Similarly, the Petitioner informed the HPSLDC on 09.08.2024 (Annexure P-7) about the aforesaid force majeure events and requested the HPSLDC not to levy any charges including the open access or any other charges till the subsistence of such force majeure events.

12. On 17.08.2024 (Annexure P-8), the Petitioner also informed the HPPTCL, the HPSEBL and the HPSLDC about the force majeure events and submitted photographs of the Project site and while drawing the attention of the authorities, it was reiterated that the Petitioner is exempted from the levy of charges including open access or transmission charges till the subsistence of the force majeure events.

13. In the meanwhile, the HPSEBL on 28.08.2024 (Annexure P-9) submitted an investigation report on the collapse of Tower No. 12 of 66 kV D/C transmission line on 132 kV towers with Panther Conductor from Ghanvi Stage-I to Ghanvi Stage-II, after site visit by its internal committee on 23.08.2024, wherein the HPSEBL came to a clear and unambiguous conclusion that the damage to the tower was on account of force majeure events on account of natural calamity which could not be prevented. The relevant portion of the report has been reproduced as under:-

“Present Situation/Extent of Losses /Probable cause of damage:

Damaged 132KV DIC Tower Structure (Tower No. 12: adjacent to 66KV Ghanvi HEP Switchyard):

- *At present, power evacuation of IPPs namely Samej: 14MW, Upper Nanti: 14MW, Lower Nanti: 13.5MW,*

Kurmi: 8MW & Ghanvi Stage-II (HPSEBL): 10MW has been affected due to the damaged T/Line. Moreover, intake site's of all the IPP's also got damaged during the cloudburst/flooding of Ghanvi Khad leading to complete shutdown of their HEPS. As 23.08.2024, there is no generation loss due to same. However, restoration works have been started by the IPP's which are likely to get completed on or before 05.09.2024.

CONCLUSIONS & RECCOMENDATIONS:-

The committee concluded the cause of damage as "Force Majeure" natural calamity which couldn't be prevented."

14. Thus, the Project was adversely affected due to the force majeure events which led to the destruction of aforesaid transmission asset. Further, having accepted the aforesaid events as force majeure events for its own assets, the Respondents are precluded from denying the applicability of the same to the Petitioner as no party can be allowed to approbate and reprobate at the same time on the same issue.

15. According to the Petitioner, the Respondent No. 3 in blatant disregard to the aforesaid incident responded to the letter dated 09.08.2024 vide letter dated 31.08.2024 (Annexure P-10) that no provision for exemption of charges on account of force majeure events is permissible under the Himachal Pradesh Electricity Regulatory Commission (Levy and Collection of Fees and Charges

by State Load Despatch Centre) Regulations, 2011 (SLDC Regulations, 2011 for short) and that it would continue to raise the monthly SLDC charges bill for August, 2024 onwards in terms of Clauses 29 (4) and 29 (5) of the aforesaid Regulations in proportion to the contracted capacity.

16. As per the Petitioner, on 02.09.2024 (Annexure P-11 Colly) the following invoices were raised upon the Petitioner for August, 2024:-

- a) Invoice raised by HPPTCL upon the Petitioner towards the transmission charges for an amount of Rs. 4,93,193/-;
- b) Invoice raised by HPSEBL upon the Petitioner towards Long-term Wheeling Charges to the tune of Rs. 11,63,673.50/-; and
- c) Invoice raised by HPSLDC upon the Petitioner towards SLDC charges for Rs. 21,690.73/-.

17. It is also averred that on 12.09.2024 (Annexure P-12 Colly), the Petitioner issued letters to the HPPTCL and the HPSLDC, stating that:-

- a) The claims of the transmission charges and Long-term Wheeling charges for the month of August, 2024 are wholly untenable and contrary to the terms of the LTA and the connection agreement.

- b) The Respondents No. 1 and 2 were further apprised of the judgment of the Hon'ble APTEL in Appeal No. 169 of 2018, which essentially exempted the generator from paying transmission and related charges during a force majeure event that made its hydroelectric project non-operational.

It is also informed that till date the Respondents No. 1 and 2 have neither expressly nor impliedly denied or disputed the existence of the force majeure events as enumerated by the Petitioner in letters dated 08.08.2024 and 17.08.2024. Thus, the same amounted to deemed acceptance of the same and sought withdrawal of the above invoices.

18. On 12.09.2024 (Annexure P-13), the Petitioner again responded to HPSLDC's letter dated 02.09.2024 for withdrawal of the claim of SLDC charges. The HPSLDC on 28.09.2024 (Annexure P-14) in response to letter dated 12.09.2024 of the Petitioner reiterating the earlier stand qua the payment of SLDC charges for August, 2024.

19. It is averred that in continuance of unsustainable and illegal stance, the following invoices were raised by the HPPTCL, the HPSEBL and the HPSLDC on 01.10.2024, 03.10.2024 and 30.09.2024 respectively for the month of September, 2024 (Annexure P-15 Colly):-

- a) Invoice raised by HPPTCL upon the Petitioner towards transmission charges for an amount of Rs. 5,05,332/-.
- b) Invoice raised by HPSEBL upon the Petitioner towards Long-term wheeling charges to the tune of Rs. 11,63,673/-.
- c) Invoice raised by HPSLDC upon the Petitioner towards SLDC charges for Rs. 22,177.29/-.

20. It is claimed that the following transmission charges are disputed by the Petitioner:-

Particular	Bill/ invoice amount (in Rs.)	Due date
August,2024		
HPPTCL	4,93,193.00	18.10.2024
HPSEBL	11,63,673.50	02.10.2024
HPSLDC	21,691.00	01.11.2024
September,2024		
HPPTCL	5,05,322.00	31.10.2024
HPSEBL	11,63,673.50	15.11.2024
HPSLDC	22,177.00	29.11.2024

21. Also averred that the Petitioner in terms of the LTA dated 09.05.2019 has executed a Bank Guarantee dated 04.03.2024 (Annexure P-16) bearing BG No. 0076NDDG00025624 for an amount of Rs. 9,86,386/- and Letter of Credit dated 22.05.2024 (Annexure P-17) bearing LC No. 0076NDSG00004125 for an amount of Rs. 5,17,853/-.

22. According to the Petitioner, no transmission and related charges are payable for the period covered under the force majeure events and the Respondents are precluded from denying the

occurrence of force majeure events to the Petitioner. Further, even amended Regulation 3 of the SLDC Regulations, 2011 contemplate the occurrence of force majeure events and in case the Respondents are allowed to raise the invoices, the Petitioner will be compelled to pay the same despite that such events were beyond its control. Further, the Petitioner would suffer irreparable damages and injury if any coercive action qua the Bank Guarantee and Letter of Credit is taken by the Respondents.

REPLY OF THE RESPONDENTS

23. The Petition has been resisted by the Respondents No. 1, 2, 3 and 4 by filing separate replies. The Respondent No. 4 was not initially made a party to the Petition. Being a necessary party for the adjudication of the Petition, the Commission vide order dated 25.09.2024 arrayed the Directorate of Energy (DoE) as Respondent No. 4 to the Petition.

REPLY OF RESPONDENT NO. 1

24. The Respondent No. 1/ HPPTCL in its reply has raised preliminary submissions that the Petitioner has no cause of action to maintain the Petition as the Petitioner has failed to prove any force

majeure events till date by placing any cogent record/ evidence leading to force shutdown of the Project on 01.08.2024 and that the Petition has been filed to avoid the liability which has been accrued in favour of the Respondent No. 1. Further, the Petitioner has failed to satisfy the Respondent No. 1 with respect to the continuance of the force majeure events, being necessary condition contained in the LTA agreement dated 09.05.2019.

25. According to the Respondent No. 1, the Petitioner has failed to place on record any evidence/ certificate from any Government Authority with respect to suffering of any force majeure events at its Project leading to forced shutdown on 01.08.2024 and subsistence of the same till date which was necessary to determine a claim of impossibility to perform the contract under the force majeure clause. Also, no evidence, whatsoever, has been brought on record about the efforts made by the Petitioner after 01.08.2024 to tackle the effect of force majeure events. The investigation report dated 23.08.2024 (Annexure P-9) as produced by the HPSEBL, highlighting the investigation qua the Project of the Petitioner has been reproduced as under:-

“At present, power evacuation of IPP’s namely Samej: 14 MW, Upper Nanti: 14 MW, Lower Nanti: 13.5 MW, Kurmi: 8 MW & Ghanvi Stage-II (HPSEBL): 10 MW has been affected due to the damaged transmission line. Moreover, intake site’s of all IPP’s got damaged during the cloudburst/ flooding of Ghanvi Khad leading to complete shutdown of their HEPs. As on 23.08.2024, there is no generation loss due to same. However, restoration works have been started by the IPP’s which are likely to get completed on or before 05.09.2024.”

26. According to the Respondent No. 1, Clause 9 of the LTA dated 09.05.2019 provides that the transmission/ drawl of power shall be started as soon as applicable by the parties after such event has come to an end/ cease to exist but the Petitioner has failed to intimate the necessary steps taken for generating the power from the Project at the earliest.

27. On merits, the contents of the Petition have been denied that the Petitioner was unable to evacuate the power due to unprecedented rains/ floods. It has been denied that the Petitioner is entitled to invoke Clause 9 (Force Majeure Clause) of the LTOA. Further, the Petitioner has failed to give the date of tentative ceasation of the force majeure events and not entitled to seek exemption to pay the transmission charges on account of force majeure events in terms of Clause 9 of the LTOA. The receipt of

letters dated 08.08.2024 and 14.08.2024 has not been disputed but the contents thereof have been denied. Regarding the report (Annexure P-9) referred to by the Petitioner, it is averred that said report is silent qua the extent of exact damages or losses suffered by the Project due to force majeure events on 01.08.2024. However, said report only refers that the restoration works have been undertaken by the IPP's which will be completed on or before 05.09.2024. Further, the Petitioner has no cause of action against the Respondent No. 1. Also that the report of Patwari dated 01.08.2024 nowhere suggests about the extent/ effect of the force majeure events and its subsistence. In a nutshell, the case of the Petitioner has been denied.

REPLY OF RESPONDENT NO. 2

28. The Respondent No. 2 in its reply has also raised preliminary submissions that the invocation of the force majeure clause by the Petitioner is both procedurally and substantially flawed as the Petitioner has failed to meet the mandatory requirements under the terms of the connection agreement and LTOA. Further, the claim for exemption of wheeling charges is contrary to the express provisions

of the agreements and settled regulatory principles. Further, the wheeling charges being fixed costs associated with the use of the transmission infrastructure are levied to recover the costs incurred by the HPSEBL for maintaining and operating the infrastructure and cannot be waived solely on the ground of force majeure. Also, the Petitioner has notified the alleged force majeure events to the HPSEBL on 08.08.2024, after a gap of seven days and delay in notifying the force majeure is critical to enable the other party to assess the situation and make necessary adjustment to its operations.

29. According to the Respondent No. 2, as per Clause 15 of the LTOA dated 30.12.2022, any party claiming the benefit of the force majeure events must satisfy the other parties of the existence of such events and resume the operation as soon as the event ceases to exist and that no comprehensive/ satisfactory evidence of the extent of damage and its impact on fulfillment of the obligations or steps taken to mitigate the consequences have been provided to the HPSEBL.

30. According to the HPSEBL, mere reliance on occurrence of natural calamities without substantiating specific impact on the Project is insufficient to justify the relief. Also, the wheeling charges are levied to recover the Operation and Maintenance (O&M) cost of the transmission and distribution infrastructure, regardless of the quantum of power transmitted or the operational status of the generating plant and as per the Regulations framed by the Commission, these charges are fixed and binding and not contingent upon the operational capacity or output of the generating station. Further, the agreements executed between the parties do not provide any exemption or waiver of wheeling charges during the force majeure events.

31. It is also averred that the regulatory principles and precedents establish that the fixed charges including wheeling and transmission charges are recoverable irrespective of the operational disruptions faced by the generating companies and granting an exemption to the Petitioner would set an unfavorable precedent leading to financial instability for transmission and distribution utilities and disruption of regulatory framework and waiving the wheeling charges would

unfairly shift the financial burden on the other stakeholders/consumers.

32. On merits, the contents of the Petition have been denied that the Petitioner has failed to discharge its obligations as per the agreements. Regarding damage to Tower No. 12, it is averred that the said tower was restored on 24.09.2024 but the Petitioner cannot absolve from its liability of paying the wheeling charges as per the agreement which cannot be waived. Further, the Petitioner has no cause of action.

REPLY OF RESPONDENT NO. 3

33. The Respondent No. 3 in its reply has also raised preliminary submissions that the Petition is neither competent nor maintainable and the Petitioner has concealed material facts. Further, the relief as claimed is not admissible as the bills for SLDC fee/ charges have been raised by the Replying Respondent as per Regulations 29 (4) and 29 (5) of the Himachal Pradesh Electricity Regulation Commission (Levy and Connection of Fees and Charge by the State Load Dispatch Centre) Regulations, 2011 (SLDC Regulations, 2011 for short) (Annexure R-3/1) in proportion to the contracted capacity,

for recovering the service charges of the SLDC in line with the ARR of the HPSLDC approved by the Commission in MYT order dated 15.03.2024 for the 5th MYT control period.

34. On merits, the contents of the Petition have been denied averring that the letters of the Petitioner have been responded on 28.09.2024. Also that the bills for SLDC fee and charges for September have been raised on 30.09.2024 as per the SLDC Regulations, 2011 and amendments thereof and that the SLDC charges cannot be exempted on account of force majeure events.

35. It is also averred that as per Regulation 36 of the Central Electricity Regulatory Commission (Fees and Charges of Regional Load Despatch Centre and Other Related matters) Regulations, 2024 (CERC RLDC Regulations, 2024 for short), the Petitioner was required to request the NRLDC for de-registration which reads as under:-

“36. Settlement of Fees and Charges dues for users under long outage: In case of complete isolation from the grid due to natural calamities for a long duration, the user may request the concerned RLDC for de-registration on a temporary basis. The users will have to apply for re-registration as per Regulation 5 (1) of these regulations prior to the commencement of the grid access.”

36. According to the Respondent No. 3, it has not received any communication from the Petitioner or the NRLDC regarding such de-registration. Not only this, the NRLDC issued bills for August, 2024 and September, 2024 in respect of HP seller, which also included the Petitioner's Project and the Replying Respondent has made payment to the NRLDC for the same. Accordingly, the Replying Respondent raised the bills as per the SLDC Regulations, 2011 and amendments thereof for recovering the service charges of the SLDC in line with the ARR of the HPSLDC approved by the Commission in MYT order dated 15.03.2024 for the 5th MYT control period for meeting the legitimate expenses of the HPSLDC for its smooth functioning. Therefore, the Petition is misconceived and is liable to be dismissed.

REPLY OF RESPONDENT NO. 4

37. The Respondent No. 4 in its short reply has submitted that the Respondent No. 4 has been receiving free power from Project of the Petitioner and as per the record maintained in the office of DoE. The actual generation and free power schedule to the GoHP by Upper Nanti HEP (13.50 MW) w.e.f. April, 2024 to October, 2024 has been annexed as Annexure R-X. As per the Respondent No. 4, the Petition

be decided on merits and as per the LTA executed between the Petitioner and the Respondent No. 1/ HPPTCL.

REJOINDER

38. In separate rejoinders, the contents of the replies have been denied and those of the Petition have been reaffirmed.

SUBMISSIONS OF THE PARTIES

39. We have heard Sh. Hemant Singh, Ld. Counsel for the Petitioner, Sh. Vikas Chauhan, Ld. Counsel for the Respondent No. 1, Sh. Kamlesh Saklani, Authorised Representative for the Respondent No. 2, Sh. Surinder Saklani, Ld. Counsel for the Respondent No. 3 and Sh. Shanti Swaroop, Ld. Legal Consultant for the Respondent No. 4.

40. It has been submitted by the Ld. Counsel for the Petitioner that Nanti Hydro Power Project was affected by a series of force Majeure events on the night of intervening on 31.07.2024/ 01.08.2024 as flash floods occurred at the site which has caused extensive damage to the project. According to him, the force majeure events prevailed till 25.09.2024 and during said period, the project remained forced shut down. He has also submitted that due to the cloud burst and flash

floods on the fateful night, not only the project of the Petitioner suffered the damage, other projects in the vicinity were also damaged and the event was extensively covered in the Media. According to him, even the power evacuation tower of 66 kV Ganvi-II Stage-I of HPSEBL was also damaged and on account of the damage to said evacuation tower, the Petitioner could not have evacuated the Power even if no damage had occurred to the Project and that the events happening on 31.07.2024 and 01.08.2024 were beyond the control of the Petitioner. According to him, Clause 9 of the Connection Agreement dated 16.08.2014 modified by Connection Agreement dated 20.03.2017 and LTA dated 09.05.2019 signed between the HPPTCL and HPSEBL, provide that any event which is beyond the reasonable control of the parties shall be a Force Majeure event which absolves the Contracting Parties from the obligations under the Contract. He has also submitted that a Force Majeure notice was issued to the Respondents No. 1, 2 and 3 on 08.08.2024, 09.08.2024 and 17.08.2024 but despite this, the invoices for the payment of transmission, wheeling and SLDC charges have been issued which are not liable to be paid by the Petitioner due to suffering of the Force

Majeure Events. He has also relied upon the law laid down by the Hon'ble APTEL in Appeal No. 169 of 2018 decided on 14.05.2024 titled as Himachal Sorang Power Pvt. Ltd. v. CERC & Ors. He has also submitted that appropriate steps have been taken for making the damage good and there is no delay.

41. Sh. Vikas Chauhan Ld. Counsel for the Respondent No. 1 has submitted that the Petitioner has failed to prove the existence of the force majeure events by placing sufficient cogent evidence on record. Further, no record, certificate or report from any expert or Government Authority with respect to the suffering of any force majeure event or forced shut down of the project has been placed on record. Further, even no evidence has been led about the efforts made for restoration of project and cessation of force majeure event at the earliest justifying the exemption from the payment of the charges and thus, the bills have been rightly issued.

42. Sh. Kamlesh Shaklani, Authorised Representative for the HPSEBL has submitted that waiving of the wheeling charges would unfairly shift the financial burden on other stakeholders and consumers. Further except citing cloudburst and torrential rainfall as

the basis for invoking force majeure, no satisfactory evidence has been produced that such incident was unforeseeable and beyond the control of the Petitioner. He has also submitted that as per the Regulations framed by the Commission, these charges are fixed and binding and not contingent upon the operational capacity or output of the generating station. Further, the agreements executed between the parties do not provide for any exemption or waiver of wheeling charges during the force majeure events.

43. Sh. Surinder Saklani Ld. Counsel for HPSLDC on the other hand has been submitted that the bills qua SLDC charges have been raised as per Regulation 29 (4) and 29 (5) of the SLDC Regulations, 2011 and that there is no provision in Regulation 29 (4) and 29 (5) of the SLDC Regulations, 2011 for exemption of SLDC charges on account of force majeure event. Sh. Surinder Saklani, Ld. Counsel has further submitted that as per Clause 36 of the Centre Electricity Regulatory Commission (Fees and Charges of Registered Load Dispatch Centre and other related matter) Regulations, 2024 the Petitioner was required to request NRLDC for de-registration of the project but no communication has been received by the Replying

Respondent either from the Petitioner or from the NRLDC regarding de-registration and since the Respondent has made payment of charges in respect of the Project to the NRLDC, the charges are required to be recovered.

44. We have done through the submissions of Ld. Counsel and Authorised Representative of the parties as also the written submissions made by the Petitioner and perused the entire record carefully. On the basis of pleadings, submissions and record, the following points arise for determination in the present Petition:-

Point No.1: Whether the flood events occurring on the night intervening on 31.07.2024/01.08.2024 at Nanti Hydro Power Pvt. Ltd. were beyond the control of Petitioner and were force majeure events as per Clause 9 of the Connection Agreement and LTA agreement?

Point No. 2: If Point No. 1 is answered in affirmative, whether Petitioner is exempted from the payment of Transmission Charges, wheeling Charges and SLDC Charge to Respondent No. 1, 2, 3 and invoices dated 02.09.2024, 01.10.2024, 03.10.2024 and 30.09.2024 for the months of August and

September, 2024 issued by Respondent No. 1, 2 and 3 are liable to be quashed ?

Point No. 3: Final Order.

45. For the reasons to be recorded herein after in writing out point wise finding also as under:-

Point No. 1: Yes.

Point No. 2: Yes.

Point No. 3: The Petition allowed per operative part of the Order.
(Final Order)

REASONS FOR FINDINGS

Points No. 1 and 2:

46. Both these points being interconnected and interlinked are taken up together for disposal.

47. Undisputedly, the Petitioner has signed the LTA agreement with the HPSEBL and the HPPTCL on 09.05.2019 and Connection Agreement on 06.08.2014 with the HPSEBL and the HPPTCL.

Clauses 9 of said agreements read as under:-

LTA Agreement dated 09.05.2019

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

events such as war, rebellion, mutiny, civil commotion, riot, strike, lockout, fire, flood, forces of nature, major accident, act of God, change of law and any other causes beyond the control of the defaulting party. But any party claiming the benefit of this clause shall satisfy the other party of the existence of such an event and give written notice of 30 days to the other party to this effect. Transmission/ drawl of power shall be started as soon as practicable by the parties concerned after such eventualities has come to an end or cease to exist."

Connection Agreement dated 06.08.2014

"9. Force Majeure

Force Majeure herein is defined as any clause which is beyond the control of the STU or the applicant or Distribution licensee as the case maybe, which could not be foreseen or with a reasonable amount of diligence could not have been foreseen and which substantially affects the performance of the agreement. Force Majeure events would include:

- *Natural phenomenon including but not limited to floods, droughts, earthquake and epidemics;*
- *....*
- *Any event or circumstances of nature analogous to any events set forth above within India. Provided either party shall within fifteen (15) days from the occurrence of such a force majeure event notify the other in writing of such clauses. Neither of the parties shall be liable for delays in performing obligation on account of any force majeure causes as referred to and/or defined above."*

48. It is, therefore, apparent from the above said clauses 9 of the agreements that if any force majeure events occurs which could not have been foreseen with reasonable amount of due diligence and beyond the control of the parties and substantially affect the performance of the agreement and are notified within 30 or 15 days, as the case may be, such force majeure events absolve the

contracting party(ies) from performing the obligations under agreements. It is not in dispute that the events happening on the fateful night have not been duly notified to the Respondents by the Petitioner. In this regard, the Petitioner has placed on record the letters dated 08.08.2024, 09.08.2024 and 17.08.2024 as Annexures P-6 to P-8 and has also reproduced the contents of the notice/ letter dated 08.08.2024 in the Petition as under:-

"As you are well aware that many areas in Himachal Pradesh experienced devastating heavy rainfall and floods due to severe weather conditions. On account of the same, 13.50 MW Upper Nanti SHP (Nanti Hydro Power Pvt. Ltd.) has to go under forced shutdown owing to the aforesaid force majeure event from 1st August 2024 onwards. Even as of the day of writing this letter, the local weather condition continues to be turbulent and has not normalized resulting in heavy rains being experienced in the vicinity of the project.

It is stated that on account of the prevailing monsoon season in the State of Himachal Pradesh, and with the onset of consequent heavy and devastating rainfall, massive flooding and landslides have resulted in the forced outage of 13.50 MW Upper Nanti SHP since 01.08.2024. Therefore, the present notice is issued as a consequence of the above force majeure events and to inform your good office of the occurrence of the said force majeure events. For this, it is stated that NHPPL is invoking Clause 9 of the captioned Agreements, which are set out herein under:

.....

Considering the above, it is reiterated herein that NHPPL, vide the present notice, is giving notice of the occurrence of force majeure events to HPSEBL and HPPTCL under Clause 9 of the Connection Agreement as well as Clause 9 of the LTA Agreement, thereby invoking the force majeure clause(s) pursuant to abovementioned event.

Further, as per the above provisions, it is emphasized that NHPPL is exempted from being levied any claims, whatsoever, under the captioned Agreements. Accordingly, HPSEBL and HPPTCL is hereby requested not to levy any charges, including open access or any other charges, upon NHPPL till the subsistence of the effect of the aforementioned force majeure events, starting from 01.08.2024."

49. Thus, the Petitioner in order to bring the case within the ambit of force majeure events, is required to establish that the incident was beyond its reasonable control and could not have been prevented by the exercise of due diligence and was not attributable to the negligence, omission or failure and also that the incident was not foreseeable with exercise of due diligence.

50. Substantiating its case, the Petitioner has place on record Connection Agreement dated 06.08.2014 with addendum dated 20.03.2017, LTA agreement dated 05.09.2019, copy of newspaper articles evidencing the flash floods (Annexure P-4), report of the Patwari dated 02.08.2024, force majeure notices dated 08.08.2024, 09.08.2024 and 17.08.2024 issued to the Respondents No. 1, 2 and 3, investigation report dated 28.08.2024 in respect of the Ghanvi-I to Ghanvi-II transmission line conducted by the HPSEBL, copy of letter dated 31.08.2024 issued by the Respondent No. 3 to the Petitioner,

copy of letter dated 02.09.2024 issued by the Respondent to the Petitioner. Copy of letters dated 12.09.2024, 28.09.2024, copy of letters dated 01.10.2024, 03.10.2024 and 30.09.2024 containing invoices. Copies of bills/ invoices for the months of August and September, 2024 (Annexure R-1 Colly), invoices for the months of October, November and December, 2024 (Annexure R-2 Colly), copy of e-mail dated 03.01.2025 issued to the Respondent No. 1 (Annexure R-3), copy of Situation Reports 1 and 3 issued by Sphere India on 01.08.2024 and 08.08.2024 in respect of H.P. Cloudburst and flash floods (Annexure R-4 Colly) and copy of last 22 hours situation report issued by the H.P. State Emergency Operation Centre on 01.08.2024 (Annexure R-5). On the strength of the aforesaid evidence on record, the Ld. Counsel for the Petitioner has vigorously contended that there is overwhelming evidence on record that the force majeure event which had happened on the night intervening on 31.07.2024/ 01.08.2024 was not within the control of the Petitioner nor foreseeable and falls within the definition of the force majeure event under Clauses 9 of the Connection and LTA

agreements and exempt the Petitioner from payment of transmission, wheeling and SLDC charges.

51. It is the case of the Petitioner that the Project was running smoothly but on 31.07.2024 at 23:10 hours, the intake team reported high discharge and silt levels prompting the closure of intake gates as per the Standard Operating Procedure (SOP). Shortly, around midnight on 31.07.2024, due to massive flood, the employees of the Petitioner were evacuated to a safer place and the generating units at the powerhouse were taken under force shutdown and the intake gates were closed and the staff was asked to go to a safe location. Further, the flash floods were so threatening that some of properties located at site were severely damaged.

52. According to the Petition, on preliminary inspection, it was gathered as under:-

- a) There was damage to the trench weir, and the weir raft extent was unclear due to inaccessibility;
- b) Both sides of the flood protection walls at the intake weir were severely damaged;
- c) Three phase DB box and other electrical instruments, as well as 35 KVA DG set were washed out in the flood;
- d) The staff accommodation at the weir site also damaged;

- e) The bridge leading to the powerhouse was also washed away;
- f) The powerhouse approach road near the existing bridge was damaged;
- g) In fact, landslide occurred in penstock line between AB-3 & AB-4; and
- h) Most pertinently, the 66 kV Ghanvi Stage I (HPSEB) to Stage II tower had collapsed, through which, the Petitioner's sub-station was connected to the grid.

53. As per the Petitioner, the aforesaid situation tantamount to an event of force majeure within the meaning of Clauses 9 of the LTA agreement and connection agreement which absolve the Petitioner from any liability including the liability of payment of transmission and related charges and accordingly, the Petitioner notified the Respondent No. 1 of the happening of force majeure events on 08.08.2024 requesting the Respondents No. 1 and 2 not to levy any charges including open access charges.

54. It is evident from the record that not only the Project sustained huge loss/ damage, the evacuation line of the Respondent No. 2/ HPSEBL was also damaged as a tower of 66 kV Ghanvi Stage-I to Stage-II line was also collapsed through which the Petitioner's Sub-station was connected to the grid. In the circumstances, investigation

of the incident was carried out by the HPSEBL and investigation report dated 28.08.2024 has been placed on record. The committee of the HPSEBL on carrying out the investigation of the damage to the line of the HPSEBL has observed as under:-

“Present Situation/Extent of Losses /Probable cause of damage:

Damaged 132 KV D/C Tower Structure (Tower No. 12: adjacent to 66KV Ghanvi HEP Switchyard):

- *The committee observed that due to landslide/ erosion, the tower No. 12 has been completely collapsed with sag of circuit-1 intact with the fallen structure and breakdown of sag of circuit-2 alongwith tilting and bending of various channels/ beams in 66 kV Ghanvi HEP- switchyard. This landslide triggered due to torrential rainfall and cloudburst in the Ghanvi Khad on 01.08.2024.*
- *Total span length damaged from Tower No. 11 to Tower No. 12 is 445.10 Mtrs. And from Tower No. 12 to 66 kV Ghanvi HEP switchyard is 30 Mtrs. ACSR “Panther” conductor has been damaged completely. The photographs of damages have been attached for reference.*
- *At present, power evacuation of IPPs namely Samej: 14MW, Upper Nanti: 14MW, Lower Nanti: 13.5MW, Kurmi: 8MW & Ghanvi Stage-II (HPSEBL): 10MW has been affected due to the damaged T/Line. Moreover, intake site's of all the IPP's also got damaged during the cloudburst/flooding of Ghanvi Khad leading to complete shutdown of their HEPS. As 23.08.2024, there is no generation loss due to same. However, restoration works have been started by the IPP's which are likely to get completed on or before 05.09.2024.*

CONCLUSIONS & RECCOMENDATIONS:-

The committee concluded the cause of damage as "Force Majeure" natural calamity which couldn't be prevented."

55. It is thus apparent from the investigation report that extensive damage was sustained to the evacuation system of the Respondent No. 2 through which the Petitioner's Sub-station was connected to the grid, meaning thereby that even if no damage had been sustained by the Petitioner's Project, the power could not have been evacuated until the evacuation system of the Respondent No. 2 was restored. It is also mentioned in the investigation report that the restoration works have been started by the Project developers which is likely to be completed and that the restoration work of the damaged evacuation system of the HPSEBL will take approximately 3 to 4 weeks to mitigate any possibility of generation loss. Though, it is not mentioned as to when the evacuation system was restored by the HPSEBL but the reply of the Respondent No. 2 shows that said tower No. 12 was restored on 24.09.2024. The Petitioner has claimed the exemption till 25.09.2024 as mentioned in paras 1 and 3 of the written submissions of the Petitioner. It is also evident from the Investigation report that

many Projects have sustained damage leading to complete shutdown of the Projects.

56. As per the Petitioner, the damage was so devastating that it was extensively covered in the newspapers and besides the Project of the Petitioner, many other Project in the vicinity sustained huge damage. In this regard, the Petitioner has placed on record a news item published in Himachal Dastak that on 31.07.2024 due to the floods in Sumez and Ghanvi rivers, as many as five power Projects suffered loss and one of the Projects has become extinct. The news item shows that the Project also sustained damage due to flash floods. The Petitioner has also placed on record situation report 1 and 3 issued by Sphere India on 01.08.2024 and 08.08.2024 in respect of cloudburst and flash floods in Himachal Pradesh which read as under:-

Situation Report-1

Himachal Pradesh Cloudburst & Flash Floods

Date : 01st Aug, 2024 (Thus) Time:6:00 PM (IST)

- ***Multiple cloudbursts, flash floods have hit Himachal Pradesh's Shimla, Mandi and Kullu districts during the past 24 hours,***

following torrential overnight rains that have left the State rivers in a spate.

- *In Shimla district's Samesh village, near a hydro project Jhakri in Rampur around 33 people have gone missing after cloudburst led to a flash food.*
- *Another incident of cloudburst occurred at village Jaon in Kullu district, where one person was killed and nine people went missing, while eleven houses were washed away by gushing water besides causing damage to two bridges.*
- *The incidents of clouds bursts occurred in the higher mountain reaches, resulting in a rise in the water level in Pin Parvati River. Additionally, a flash flood was reported at Malana village in Kullu. Nine persons were stranded near village Charuru in Kullu as water in River Beas swelled.*
- *According to the State's Emergency Operation Centre, so far four people have died while one was injured and around nine people were stranded at different places following incessant rains in different parts of the State. The incidents of cloud bursts, and flash floods amid heavy rains have badly hit normal life across the State, resulting in loss of lives and property.*
- *State Emergency Operation Centre, Govt. of HP released Situation Report on 01.08.2024 at 4:00 PM.*
- *Movement of staff, school and college children, and trainees may not be safe and should be restricted, "the Deputy Commissioner said, announcing that all educational institutions and vocational training centres in Padhar subdivision must remain shut.*
- *The authorities opened the floodgates at Pandoh dam, resulting in a rise in the water level in river Beas. The gushing waters washed away portions of the Manali-Chandigarh highway.*

Government Responses:

- Chief Minister convened an emergency meeting at the Secretariat following the cloudburst.
- NDRF, 01 Team along with Police and Fire Brigade carried out Search and Rescue operation.
- The CM has sought help from the Army and Air Force.
- A possibility of heavy rains based on weather department forecast during the next 36 hours (Friday Morning). The CM has appealed to people to stay away from rivers and rivulets that are in spate right now.
- Mountain Forum Himalayas supporting the DEOC with their team. Sphere India is in coordination with state and district IAGs.
- Humanitarian needs anticipated once the Search & Rescue operations get over that include but not limited to, Water, Electricity, Food, Dignity Kit, etc.
- A coordination meeting is expected by district IAG to understand the emerging needs and to carry out a coordinated humanitarian response.

Situation Report-3

Himachal Pradesh Cloudburst & Flash Floods

Date : 08th Aug, 2024 (Thus) Time: 11:00 PM (IST)

Overview of Cloudburst and Landslide Incidents:

Himachal Pradesh has been severely impacted by continuous and heavy rainfall, resulting in multiple cloudbursts and landslides across various districts, including Shimla, Kullu and Mandi. These incidents have led to significant loss of life, displacement of communities, and extensive damage to infrastructure.

Impact and Damage Assessment:

- *As of the latest reports, a total of 14 individuals have tragically lost their lives due to the severe weather conditions. Additionally, around 45 persons remains unaccounted for, and search operations are ongoing to locate these missing individuals. A total of 55 people have been successfully evacuated from the affected areas to safer locations.*
- *The widespread devastation has resulted in the destruction or severe damage of 95 residential houses, 14 bridges, 10 shops, 4 schools, 19 cattle sheds, and 16 vehicles. The Kullu-Manali Highway, a critical route in the region, was partially washed away during the cloudburst, severely disrupting transportation. Restoration efforts are currently underway to repair the highway and other damaged infrastructure.*
- *In addition, a total of 85 roads, including 2 national highways, have been rendered impassable due to landslides and flooding, further complicating rescue and relief operations.*
- *The natural disaster has also impacted essential services, with 116 electricity transformers and 65 water supply schemes being affected. Efforts are being made to restore these services as quickly as possible to ensure that affected communities receive the necessary support.*
- *Preliminary assessments indicate that the state has suffered economic losses amounting to approximately Rs 748 crore due to the destruction caused by the ongoing monsoon.*

CLOUDBURST IN SHIMLA DISTRICT (RAMPUR TEHSIL):

- *On August 1, 2024, at approximately 04:47 hours, a cloudburst occurred near the Hydro Power Project in Rampur Tehsil, Shimla district. This catastrophic events has led to 33 individuals being reported missing, while 10 others have been*

safely evacuated. The disaster has caused extensive damage, including the destruction of 30 houses, 3 bridges, 1 school, and 4 vehicles.

- *The response to this incident has been swift, with 3 teams from NDRF, 1 team each from the Indo-Tibetan Border Police (ITBP), SDRF, and the Home Guard, being mobilized to the site. These teams are working in coordination with local authorities to carry out search and rescue operations.*

Government Responses

- *Additional resources, including 3 rescue dogs, 2 drones, and Recco radar, have been deployed to aid in locating individuals who may be trapped under the debris. Efforts are also being made to strengthen and construct footbridge to facilitate movement and access for both rescue teams and villagers.*

CLOUDBURST IN MANDI DISTRICT (PADHAR TEHSIL):

- *In the early hours of August 1, 2024, at approximately 02:28 hours, a cloudburst occurred near Village Tikkan Thalukot in Padhar Tehsil, Mandi District. This event has resulted in the unfortunate deaths of 9 individuals, with 1 person still missing and another successfully evacuated. The incident also caused the destruction of 4 houses and 1 cattle shed.*

Government Response.

- *A team from the NDRF, equipped with necessary rescue tools, has been deployed to the site to conduct search and rescue operations. Local police and administrative officials are also involved in these efforts to ensure the safety and well-being of the affected residents.*

CLOUDBURST IN KULLU DISTRICT (NIRMAND TEHSIL):

- *Another significant cloudburst incident was reported on August 1, 2024 at 01:38 hours near Village Jaon in Nirmand Tehsil, Kullu district. The Cloudburst led to a dramatic rise in the water level of the Kurpan canal, situated behind Singhad Base Camp near the Shrikhand Mahadev Yatra route. This incident has resulted in the death of 1 individual, with 11 others reported missing and 44 people being evacuated to safety. The disaster has caused widespread damage, including the destruction of 61 houses, 18 cattle sheds, 11 bridges, 10 shops, 3 schools, and 12 vehicles.*
- *Additionally, a flash flood incident occurred on the same day at approximately 05:42 hours near Malana, Sub-Tehsil Jari in Kullu district. This flash flood has led to a flood-like situation in the Parvati River, with a bridge being washed away and nearby roads becoming completely blocked. Fortunately, no loss of life has been reported in the specific incident.*

Government Response

- *Rescue and relief operations in Kullu, are being coordinated by multiple teams from the NDRF, with 4 teams currently engaged in search and rescue activities. As of now, these teams have successfully retrieved 10 bodies, evacuated 26 individuals, and rescued 11 people and 4 livestock. One NDRF team was de-inducted from Kullu on August 2, 2024, following the completion of its assigned tasks.*

57. This situation report is in corroboration of the report prepared by the HP State Emergency Operation Centre of the last 22 hours on 01.08.2024 (Annexure R-5), hence there is no reason to doubt Annexure R-4.

58. It is apparent from the aforesaid news items that extensive damage of life and property was suffered on account of the cloudbursts and the flash floods on the night intervening on 31.07.2024/ 01.08.2024 and besides causing havoc to the Upper Nanti Hydro Electric Project, some other Projects were also damaged in the vicinity and one of the Project has become extinct. It is also apparent from the copies of the photographs annexed to letter dated 17.08.2024 that the river on which the Project is situated has caused severe havoc, not reasonably foreseeable and read with newspaper items, there leaves no doubt that the fury of flood was so severe that it was not within the reasonable control of the Petitioner to prevent the damage. The Petitioner had also made report of the incident with the Patwari, a copy whereof has been placed on record.

59. It is apparent on record that after assessing the damage, the Petitioner issued notices dated 08.08.2024, 09.08.2024 and 17.08.2024 to the Respondents No. 1, 2 and 3 notifying the aforesaid force majeure events that the events being force majeure, the transmission and other charges be not levied upon the Petitioner till the subsistence of the force majeure events starting w.e.f 01.08.2024.

60. However, despite fully aware of the situation arising at Upper Nanti Hydro Electric Project on account of aforesaid cloudburst and flash floods, when even the evacuation system of the Respondent No. 2 was not working due to damage to Tower No. 12, the Respondents No. 1, 2 and 3 have proceeded to issue the invoices/ bills levying the transmission, wheeling and SLDC charges which were not leviable. The letters dated 12.09.2024 written separately to the Respondents No. 1, 2 and 3 show that the Petitioner has repeatedly drawn the attention of the Respondents No. 1, 2 and 3 to the situation but ignoring the magnitude of the damage sustained due to the events which were beyond the control of the Petitioner, the Respondents have kept on raising the invoices for the period upto 25.09.2025 uptill when the Project was under force majeure.

61. No doubt, the HPSLDC/ Respondent No. 3 has claimed that the SLDC Regulations, 2011 do not provide for the waiver/ exemption of the SLDC charges but once the Project was under force majeure events which had been duly notified, the invoices for the SLDC charges were not required to be issued. In the present case, the

SLDC charges are said to have been paid to the NRLDC which will have to be taken back from the NRLDC.

62. It is, therefore, established on record that the incident/ events occurring on the fateful night on 31.07.2024/ 01.08.2024 were neither within the reasonable control of the Petitioner nor foreseeable nor preventable and were of the nature of force majeure events. As mentioned above, Clause 9 of the LTA dated 09.05.2019 and Connection Agreement dated 06.08.2014 provide that no party shall be liable for any claim for any loss or damage whatsoever arising out of failure to carry out the terms of agreement on account of any event which was beyond the control of the party or which could not be foreseen with a reasonable amount of diligence. Certainly, the force majeure event has substantially affected the performance of agreement. It is further established from the investigation report that the damage to the evacuation system was severe and the occurrence which happened on 01.08.2024 was “force majeure” natural calamity which could not be prevented. It is also established on record that the evacuation system of the Respondent No. 2 was restored on 24.09.2024 and the force majeure events have prevailed upto

25.09.2024. It is also established on record that prompt steps were taken for termination of the effects of force majeure events and in the circumstances, the charges were not liable to be levied.

63. The Petitioner has also relied upon the law laid down by the Hon'ble APTEL in Appeal No. 169 of 2018 decided on 14.05.2024 titled as Himachal Sorang Power Pvt. Ltd. v. CERC & Ors. and the ratio laid down therein is applicable to the facts and circumstances of the case.

64. In the circumstances, the Petitioner has proved on record that the flood events occurring on the night intervening on 31.07.2024/01.08.2024 at Nanti Hydro Power Pvt. Ltd. were beyond the control of Petitioner and were force majeure events as per Clauses 9 of the Connection Agreement and LTA agreement and the Petitioner is exempted from the payment of Transmission Charges, wheeling Charges and SLDC Charges to Respondents No. 1, 2, 3 and invoices dated 02.09.2024, 01.10.2024, 03.10.2024 and 30.09.2024 for the month of August, 2024 and uptill 25.09.2024 issued by Respondent No. 1, 2 and 3 are illegal and liable to be

quashed. Points No. 1 and 2 are decided in favour of the Petitioner and against the Respondents No. 1, 2 and 3.

FINAL ORDER

65. In view of the above discussions and findings, Petition succeeds and allowed. The flood events occurring on the night intervening on 31.07.2024/01.08.2024 at Nanti Hydro Power Pvt. Ltd. are declared as force majeure events being beyond the control of the Petitioner as per Clauses 9 of the Connection Agreement and LTA agreement and the Petitioner is exempted from the payment of Transmission Charges, wheeling Charges and SLDC Charges to Respondents No. 1, 2, 3. Further, the invoices dated 02.09.2024, 01.10.2024, 03.10.2024 and 30.09.2024 for the months of August, 2024 and uptill 25.09.2024 issued by Respondent No. 1, 2 and 3 are illegal and are ordered to be quashed.

66. The Respondent No. 3 has already made the payment of SLDC charges in respect of the Nanti Hydro Power Pvt. Ltd. for the month of August, 2024 and uptill 25.09.2024 to Northern Regional Load Despatch Centre (NRLDC). Since, the Project was under force majeure events during said period, the charges were not liable to be

paid. The Respondent No. 3 is accordingly directed to approach the NRLDC for refunding said charges for the month of August, 2024 and upto 25.09.2024 to HPSLDC. On being so approached, the NRLDC shall consider such request and refund such charges to the HP State Load Despatch Centre.

67. Let a copy of the order be supplied to the parties forthwith.

The file after needful be consigned to the records.

Announced
01.01.2026

-Sd-

(Shashi Kant Joshi)
Member

-Sd-

(Yashwant Singh Chogal)
Member (Law)-cum-Chairman