

# **ANNEXURE - I**

**[COPY OF APPEAL  
(DFR NO. 52 OF 2020)  
AGAINST CERC ORDERS IN  
PETITION NO.  
175/TT/2017 DATED  
29.06.2018 AND REVIEW  
PETITION NO.  
40/RP/2018 DATED  
29.11.2019 BEFORE  
HON'BLE ATE]**

**RECEIPT**  
**APPELLATE TRIBUNAL FOR ELECTRICITY**

Core 4,7th Floor,SCOPE Building,Lodhi Road,New Delhi-110003

DFR/52/2020

Date: 31/01/2020

Case Type:-APL

Appellant Name:- Delhi Transco Limited

Respondent Name:- Central Electricity Regulatory Commission

**Impugned order Details**

Commission Name	Case No	Case Year	Date of Order
Central Electricity Regulatory Commission	175	2017	29/06/2018


No. of IA :- 1

Amount Received:- 242000

**Caveat Details**

Caveater No	Caveator Name :	Filed By :	Date of Caveat Filing
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COUNTER ASSISTANT

  
General Manager (C & RA)  
DELHI TRANSCO LIMITED  
(Govt. of NCT of Delhi Undertaking)  
33KV Grid S/Stn. Building  
I.P. Estate, New Delhi-110002

**OPENING SHEET**  
(To be enclosed at the time of filing)

Appeal/ DFR No.	Date of filing	Appellant	Respondents	Counsel of Appellant	Full DD/Cheque Details	Relief sought-briefly & accurately for permanent record purpose with provisions of law involved.
	31.01.2020	Delhi Transco Limited	1. Central Electricity Regulatory Commission 2. Power Grid Corporation of India Ltd. 3. Rajasthan Rajya Vidyut Prasaran Nigam Limited. 4. Ajmer Vidyut Vitran Nigam Limited. 5. Jaipur Vidyut Vitran Nigam Limited 6. Jodhpur Vidyut Vitran Nigam Limited 7. Himachal Pradesh Electricity Board Limited 8. Punjab State Power Corporation Limited 9. Haryana Power Purchase Centre 10. Power Development Department 11. Uttar Pradesh Power Corporation Limited 12. BSES Yamuna Power Limited 13. BSES Rajdhani Power Limited 14. Tata Power Delhi Distribution Limited 15. Chandigarh Electricity Department, Chandigarh Administration 16. Uttarakhand Power Corporation Limited 17. North Central Railway 18. New Delhi Municipal Council	Mr. Anand K. Ganesan, Mrs. Swapna Seshadri & Mr. Utkarsh Singh	Bank draft No. 010720 Dated 29.01.2020 for Rs. 242000/- drawn on SBI Bank in favour of Pay & Account Officer, Ministry of Power, New Delhi	(a) Allow the appeal and set aside the Impugned Order dated 29.6.2018 passed by the Central Commission in Petition No. 175/TT/2017 to the extent challenged in the present appeal; (b) Direct the Central Commission to modify the Tariff Order dated 29.6.2018 on the aspects of calculation of capital cost, rate of interest on loan and grossing up of return on equity; (c) Direct the Central Commission to recompute the tariff of Appellant's ISTS line - 400 KV D/C Mandaula-Bawana Line and 400 KV D/C Bamnauli- Ballabhgarh Line for the period 01.04.2014 till 31.03.2019. (d) Pass any further order (s) as deemed fit;

Remarks:-

Signature of Verificant

  
 General Manager (C & RA)  
 DELHI TRANSCO LIMITED  
 (Govt. of NCT of Delhi Undertaking)  
 33KV Grid S/Sin. Building  
 I.P. Estate, New Delhi-110002



**IN THE HON'BLE APPELLATE TRIBUNAL FOR ELECTRICITY, NEW DELHI**  
**APPELLATE JURISDICTION**  
**APPEAL NO. .... OF 2019**

**IN THE MATTER OF:**

Delhi Transco Limited

... Appellant

**VERSUS**

Central Electricity Regulatory Commission & Ors.

... Respondents

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FILED BY:-



(MSA PARTNERS)  
ADVOCATES FOR THE APPELLANT  
D-246, DEFENCE COLONY  
NEW DELHI - 110024

DATED: 31.01.2020  
PLACE: NEW DELHI



General Manager (C & RA)  
DELHI TRANSCO LIMITED  
(Govt. of NCT of Delhi Undertaking)  
33KV Grid S/Stn. Building  
I.P. Estate, New Delhi-110002

**IN THE HON'BLE APPELLATE TRIBUNAL FOR ELECTRICITY, NEW DELHI**  
**APPELLATE JURISDICTION**  
**APPEAL NO. .... OF 20120**

**IN THE MATTER OF:**

Delhi Transco Limited

... Appellant

**VERSUS**

Central Electricity Regulatory Commission & Ors.

... Respondents

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## SYNOPSIS

The present Appeal is being filed under Section 111 of the Electricity Act, 2003 against the Order dated 29.06.2018 (hereinafter referred to as the '**Impugned Order**') passed by the Respondent No. 1- Central Electricity Regulatory Commission (hereinafter referred to as the 'Central Commission') in Petition No. 175/TT/2017. The Central Commission in the Impugned Order has erred in applying the methodology devised by Central Commission in its Order dated 19.12.2017 passed in 88/TT/2017, 173/TT/2016 and 168/TT/2016, wherein the Central Commission has devised a methodology for determination of tariff for the State Transmission Utilities wherein they had not provided the details of their respective ISTS lines.

The case of the Appellant cannot be equated to the other STUs who have neither submitted details of capital cost nor provided any supporting evidence to enable the Central Commission to determine tariff for their ISTS lines. The Central Commission has also not followed the provisions of its own Regulations while determining interest on loan and grossing up of Income Tax. The Appellant had initially filed a Review Petition being 40/RP/2018 before the Central Commission. The Central Commission has by Order dated 29.11.2019 dismissed the Review Petition filed by the Appellant and the same was received to the Appellant on 18.12.2019.

The Central Commission has failed to appreciate that the general principles developed by Central Commission in Order dated 19.12.2017 are for cases wherein no information was available including on the capital cost, financing cost etc. If the Appellant has made out a special case, the Central Commission, being the Court of first instance ought to have recognized this distinction and should have accordingly fixed the proper tariff for the Appellant.

The Central Commission has erroneously observed that the Appellant has not submitted the Audited Capital Cost Certificates. It is relevant to note that since both the lines were not green fields projects and their tariff had

**B**

been determined by earlier Tariff Orders of the State Commission (prior 2011) as well as the Central Commission (2011-14), the Appellant had submitted the Audited Acquisition Cost of the said lines before the Central Commission and nobody had disputed the Audited Cost submitted by the Appellant.

The Central Commission has ignored that it had itself accepted and confirmed the Capital Cost/Audited Acquisition Cost in terms of Regulation 9 (3) of CERC Tariff Regulations 2014, submitted by the Appellant for the period 2011-2014 for 400 kV D/C Transmission Lines for Mandaula-Bawana and Bamnauli- Ballabhgarh vide its Order dated 21.03.2016 in Petition No. 218/TT/2013.

In view of the circumstances mentioned above, the Appellant is filing the present reply.





## LIST OF DATES

DATE	PARTICULARS
01.04.2007	The Appellant since 01.04.2007 discharges only the functions of Transmission of Electricity in NCT of Delhi, the State Transmission Utility and State Load Dispatch Centre
14.03.2012	The Central Commission in Petition No. 15/SM/2012 had listed several Inter-State Transmission (ISTS) Lines including those of the Appellant calling upon them to file appropriate Tariff Petitions for determination of tariff
14.06.2012	In compliance of the Order dated 14.03.2012, the Appellant had filed Petition No. 218/TT/2013 seeking Transmission Tariff for the Asset 1 (Mandaula- Bawana 400 KV D/C Line) and Asset 2 (Bamnauli- Ballabhgarh 400 KV D/C Line) for the period 2011-2014. The Appellant had sought the capital cost based on the Apportioned Audited Cost of the (Mandaula- Bawana 400 KV D/C Line) at Rs. 3743 Lakh and of the Bamnauli- Ballabhgarh 400 KV D/C line at Rs. 5904 Lakh.
21.03.2016.	The Central Commission decided Petition No. 218/TT/2013 and determined the tariff for the period for 2011-2014 at the Capital Cost sought for by the Appellant. The Apportioned Audited Acquisition Cost was accepted by the Central Commission as valid Capital Cost and the tariff computations were based on the same.
21.07.2017	The Appellant filed the Petition No. 175/TT/2017 before the Central Commission for the determination of inter-State transmission tariff for the above ISTS transmission lines for the tariff period 2014-19.
19.12.2017	The Central Commission devised a methodology for allowing transmission tariff during the 2014-19 period. The methodology was applied by the Central Commission vide

	Order dated 19.12.2017 in Petitions 88/TT/2017, 173/TT/2016 and 168/TT/2016 filed by Madhya Pradesh Power Transmission Corporation Limited, Maharashtra State Electricity Transmission Company Limited and Uttar Pradesh Power Transmission Corporation Limited respectively.
29.06.2018	Central Commission vide the Order 29.06.2018 disposed of Petition 175/TT/2017 and determined the tariff for the Appellant's ISTS transmission lines for the tariff period 2014-19 and held in Para 7 of the Impugned Order that Para <i>"DTL has not submitted the audited capital cost certificates in case of the instant assets"</i>
31.08.2018	Appellant filed a Petition seeking review being 40/RP/2018 before the Central Commission.
30.01.2019	The Central Commission condoned the delay of 18 days and admitted review petition being Petition No. 40/RP/2018
02.05.2019	After the pleadings got completed heard the final arguments and reserved its Order in 40/RP/2018.
29.11.2019	The Central Commission has dismissed 40/RP/2018 and confirmed the Impugned Order dated 29.06.2018.
31.01.2020	Hence, the present Appeal challenge before this Hon'ble Tribunal.

E

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI**

**APPELLATE JURISDICTION**

**APPEAL NO. .... OF 2019**

**IN THE MATTER OF:**

Delhi Transco Limited

... Appellant

**VERSUS**

Central Electricity Regulatory Commission & Ors.

... Respondents

**MEMO OF PARTIES**

**IN THE MATTER OF:**

Delhi Transco Limited  
Shakti Sadan, Kotla Road,  
New Delhi - 110002

...Appellant

**VERSUS**

1. Central Electricity Regulatory Commission,  
Through its Secretary,  
3rd and 4th Floor, Chanderlok Building  
36, Janpath, New Delhi - 110001
2. Power Grid Corporation of India Ltd.,  
Through its Chairman & Managing Director,  
SAUDAMINI, Plot No. 2, Sector-29,  
Gurgaon - 122001 (Haryana)
3. Rajasthan Rajya Vidyut Prasaran Nigam Limited  
Through its Chairman,  
Vidyut Bhawan, Vidyut Marg, Janpath  
Jaipur - 302005 (Rajasthan)
4. Ajmer Vidyut Vitran Nigam Limited  
Through its Chairman,  
132 KV GSS RVPNL Sub-Station Building,  
Caligiri Road, Malviya Nagar,  
Jaipur - 300017 (Rajasthan)
5. Jaipur Vidyut Vitran Nigam Limited  
Through its Chairman,



**F**

132 KV GSS RVPNL Sub-Station Building,  
Caligiri Road, Malviya Nagar,  
Jaipur – 300017 (Rajasthan)

6. Jodhpur Vidyut Vitran Nigam Limited  
Through its Chairman,  
132 KV GSS RVPNL Sub-Station Building,  
Caligiri Road, Malviya Nagar,  
Jaipur – 300017 (Rajasthan)
7. Himachal Pradesh Electricity Board Limited  
Through its Chief Engineer  
Vidyut Bhawan,  
Kumar House, Complex Building II,  
Shimla – 171004 (Himachal Pradesh)
8. Punjab State Power Corporation Limited  
Through its Chairman & Managing Director,  
PSEB Head Office, The Mall,  
Patiala – 147001 (Punjab)
9. Haryana Power Purchase Centre  
Through its Chief Engineer  
Shakti Bhawan, Sector-6  
Panchkula – 134109 (Haryana)
10. Power Development Department  
Through its Commissioner/Secretary,  
Government of Jammu & Kashmir,  
Civil Secretariat,  
Jammu – 180001 (Jammu and Kashmir)
11. Uttar Pradesh Power Corporation Limited  
Through its Chairman,  
Shakti Bhawan, 14, Ashok Marg,  
Lucknow – 226001 (Uttar Pradesh)
12. BSES Yamuna Power Limited  
Through its Chief Executive Officer,  
B-Block, Shakti Kiran Building,  
Near Karkardooma Court, 2nd Floor  
New Delhi – 110092
13. BSES Rajdhani Power Limited  
Through its Chief Executive Officer,  
BSES Bhawan, Nehru Place,  
New Delhi – 110019

G

14. Tata Power Delhi Distribution Limited  
Through its Chief Executive Officer,  
NDPL House, Hudson Lines, Kingsway Camp, New  
Delhi - 110009
15. Chandigarh Electricity Department,  
Chandigarh Administration  
Through its Superintending Engineer  
Electricity 'OP' Circle, UT Secretariat,  
Sector 9, Chandigarh - 160009
16. Uttarakhand Power Corporation Limited  
Through its Chairperson  
Victoria Cross Vijeyta Gabar Singh Urja Bhawan ,  
Kanwali Road, Balliwala Chowk,  
Dehradun - 248001 (Uttarakhand)
17. North Central Railway  
Through its General Manager  
Subedar Ganj Road, Subedarganj  
Prayagaraj - 211015 (Uttar Pradesh)
18. New Delhi Municipal Council  
Through its Chairman  
Palika Kendra, Parliament Street,  
New Delhi - 110001


...Respondents

FILED BY:-



(MSA PARTNERS)  
ADVOCATES FOR THE APPELLANT  
D-246, DEFENCE COLONY  
NEW DELHI - 110024

DATED: 31.01.2020  
PLACE: NEW DELHI



General Manager (C & RA)  
DELHI TRANSCO LIMITED  
(Govt. of NCT of Delhi Undertaking)  
33KV Grid S/Stn. Building  
I.P. Estate, New Delhi-110002

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI****APPELLATE JURISDICTION****APPEAL NO. .... OF 2020****IN THE MATTER OF:**

Appeal against the Order dated 29.06.2018 passed by the Central Electricity Regulatory Commission in Petition No. 175/TT/2017.

**AND****IN THE MATTER OF:**

Delhi Transco Limited  
Shakti Sadan, Kotla Road,  
New Delhi - 110002

...Appellant

**VERSUS**

1. Central Electricity Regulatory Commission,  
Through its Secretary,  
3rd and 4th Floor, Chanderlok Building  
36, Janpath, New Delhi - 110001
2. Power Grid Corporation of India Ltd.,  
Through its Chairman & Managing Director,  
SAUDAMINI, Plot No. 2, Sector-29,  
Gurgaon - 122001 (Haryana)
3. Rajasthan Rajya Vidyut Prasaran Nigam Limited  
Through its Chairman,  
Vidyut Bhawan, Vidyut Marg, Janpath  
Jaipur - 302005 (Rajasthan)
4. Ajmer Vidyut Vitran Nigam Limited  
Through its Chairman,  
132 KV GSS RVPNL Sub-Station Building,  
Caligiri Road, Malviya Nagar,  
Jaipur - 300017 (Rajasthan)
5. Jaipur Vidyut Vitran Nigam Limited  
Through its Chairman,  
132 KV GSS RVPNL Sub-Station Building,  
Caligiri Road, Malviya Nagar,  
Jaipur - 300017 (Rajasthan)
6. Jodhpur Vidyut Vitran Nigam Limited



General Manager (C & RA)  
DELHI TRANSCO LIMITED  
(Govt. of NCT of Delhi Undertaking)  
33KV Grid S/Stn. Building  
I.P. Estate, New Delhi-110002



Through its Chairman,  
132 KV GSS RVPNL Sub-Station Building,  
Caligiri Road, Malviya Nagar,  
Jaipur - 300017 (Rajasthan)

7. Himachal Pradesh Electricity Board Limited  
Through its Chief Engineer  
Vidyut Bhawan,  
Kumar House, Complex Building II,  
Shimla - 171004 (Himachal Pradesh)
8. Punjab State Power Corporation Limited  
Through its Chairman & Managing Director,  
PSEB Head Office, The Mall,  
Patiala - 147001 (Punjab)
9. Haryana Power Purchase Centre  
Through its Chief Engineer  
Shakti Bhawan, Sector-6  
Panchkula - 134109 (Haryana)
10. Power Development Department  
Through its Commissioner/Secretary,  
Government of Jammu & Kashmir,  
Civil Secretariat,  
Jammu - 180001 (Jammu and Kashmir)
11. Uttar Pradesh Power Corporation Limited  
Through its Chairman,  
Shakti Bhawan, 14, Ashok Marg,  
Lucknow - 226001 (Uttar Pradesh)
12. BSES Yamuna Power Limited  
Through its Chief Executive Officer,  
B-Block, Shakti Kiran Building,  
Near Karkardooma Court, 2nd Floor  
New Delhi - 110092
13. BSES Rajdhani Power Limited  
Through its Chief Executive Officer,  
BSES Bhawan, Nehru Place,  
New Delhi - 110019
14. Tata Power Delhi Distribution Limited  
Through its Chief Executive Officer,  
NDPL House, Hudson Lines, Kingsway Camp,  
New Delhi - 110009
15. Chandigarh Electricity Department,  
Chandigarh Administration



General Manager (C & RA)  
DELHI TRANSCO LIMITED  
(Govt. of NCT of Delhi Undertaking)  
33KV Grid S/Stn. Building  
I.P. Estate, New Delhi-110002

Through its Superintending Engineer  
Electricity 'OP' Circle, UT Secretariat,  
Sector 9, Chandigarh - 160009

16. Uttarakhand Power Corporation Limited  
Through its Chairperson  
Victoria Cross Vijeyta Gabar Singh Urja Bhawan ,  
Kanwali Road, Balliwala Chowk,  
Dehradun - 248001 (Uttarakhand)
17. North Central Railway  
Through its General Manager  
Subedar Ganj Road, Subedarganj  
Prayagaraj - 211015 (Uttar Pradesh)
18. New Delhi Municipal Council  
Through its Chairman  
Palika Kendra, Parliament Street,  
New Delhi - 110001

...Respondents

#### APPEAL UNDER SECTION 111(1) OF THE ELECTRICITY ACT, 2003

#### MOST RESPECTFULLY SHOWETH:

##### 1. DETAILS OF APPEAL

The present Appeal is being filed under Section 111 of the Electricity Act, 2003 against the Order dated 29.06.2018(hereinafter referred to as the '**Impugned Order**') passed by the Respondent No. 1- Central Electricity Regulatory Commission (hereinafter referred to as the '**Central Commission**') in Petition No. 175/TT/2017. The Central Commission in the Impugned Order has erred in applying the methodology devised by Central Commission in its Order dated 19.12.2017 passed in 88/TT/2017, 173/TT/2016 and 168/TT/2016, wherein the Central Commission has devised a methodology for determination of tariff for the State Transmission Utilities wherein they had not provided the details of their respective ISTS lines. The case of the Appellant cannot be equated to the other STUs who have neither submitted details of capital cost nor provided any supporting evidence to enable the Central Commission to determine tariff for their ISTS lines. The Central Commission has also not followed the

General Manager (C & RA)  
DELHI TRANSCO LIMITED  
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provisions of its own Regulations while determining interest on loan and grossing up of Income Tax.

The Appellant had initially filed a Review Petition being 40/RP/2018 before the Central Commission. The Central Commission has by Order dated 29.11.2019 dismissed the Review Petition filed by the Appellant and the same was received to the Appellant on 18.12.2019.

A certified copy of the Impugned Order dated 29.06.2018 is attached hereto and marked as **Annexure A**.

2. The Impugned Order was communicated to the Appellant on 12.07.2018.

3. **THE ADDRESS OF THE APPELLANT FOR SERVICE IS SET OUT HEREUNDER:**

- i) Delhi Transco Limited (DTL)  
Regd. Office : Shakti Sadan Building  
Kotla Road, New Delhi - 110002
- ii) Name and Address of the Counsel,  
Mr. Anand K. Ganesan, Mrs. Swapna Seshadri & Utkarsh Singh  
MSA Partners, Advocates,  
D-246, Defense Colony,  
New Delhi - 110013  
Phone: 011-41403716  
Email: [office@msapartners.in](mailto:office@msapartners.in)

4. **THE ADDRESS OF THE RESPONDENTS FOR SERVICE OF ALL NOTICES IN THE APPEAL ARE AS SET OUT HEREUNDER:**

1. Central Electricity Regulatory Commission,  
Through its Secretary,  
3rd and 4th Floor, Chanderlok Building  
36, Janpath, New Delhi - 110001
2. Power Grid Corporation of India Ltd.,  
Through its Chairman & Managing Director,  
SAUDAMINI, Plot No. 2, Sector-29,  
Gurgaon - 122001 (Haryana)



General Manager (C & RA)  
DELHI TRANSCO LIMITED  
(Govt. of NCT of Delhi Undertaking)  
33KV Grid S/Stn. Building  
I.P. Estate, New Delhi-110002



3. Rajasthan Rajya Vidyut Prasaran Nigam Limited  
Through its Chairman,  
Vidyut Bhawan, Vidyut Marg, Janpath  
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Kumar House, Complex Building II,  
Shimla – 171004 (Himachal Pradesh)
8. Punjab State Power Corporation Limited  
Through its Chairman & Managing Director,  
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Patiala – 147001 (Punjab)
9. Haryana Power Purchase Centre  
Through its Chief Engineer  
Shakti Bhawan, Sector-6  
Panchkula – 134109 (Haryana)
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Through its Commissioner/Secretary,  
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Jammu – 180001 (Jammu and Kashmir)
11. Uttar Pradesh Power Corporation Limited  
Through its Chairman,  
Shakti Bhawan, 14, Ashok Marg,  
Lucknow – 226001 (Uttar Pradesh)



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Through its Chief Executive Officer,  
BSES Bhawan, Nehru Place,  
New Delhi - 110019
14. Tata Power Delhi Distribution Limited  
Through its Chief Executive Officer,  
NDPL House, Hudson Lines, Kingsway Camp,  
New Delhi - 110009
15. Chandigarh Electricity Department,  
Chandigarh Administration  
Through its Superintending Engineer  
Electricity 'OP' Circle,  
UT Secretariat,  
Sector 9, Chandigarh - 160009
16. Uttarakhand Power Corporation Limited  
Through its Chairperson  
Victoria Cross Vijeyta Gabar Singh Urja Bhawan ,  
Kanwali Road, Balliwala Chowk,  
Dehradun - 248001 (Uttarakhand)
17. North Central Railway  
Through its General Manager  
Subedar Ganj Road,  
Subedar Ganj  
Prayagraj - 211015 (Uttar Pradesh)
18. New Delhi Municipal Council  
Through its Chairman  
Palika Kendra, Parliament Street,  
New Delhi - 110001

**5. JURISDICTION OF THE APPELLATE TRIBUNAL**

The Appellant declares that the subject matter of the appeal is within the jurisdiction of this Hon'ble Tribunal.

**6. LIMITATION**



The Impugned Order dated 29.06.2018 was communicated to the Appellant on 12.07.2018. There is a delay in approaching this Hon'ble Tribunal against the Impugned Order as compared to the period of limitation prescribed in Section 111 of the Electricity Act, 2003. The Appellant is filing a separate Application seeking condonation of delay of 523 days.

## 7. FACTS OF THE CASE

- A. The Appellant-Delhi Transco Limited is a Company incorporated under the Companies Act, 1956 and is engaged in the business of transmission of electricity in the National Capital Territory (NCT) of Delhi, having its registered office in the State of Delhi.
- B. The Appellant initially came to be vested with the functions of Transmission and Bulk supply of electricity pursuant to the unbundling of the Delhi Vidyut Board (DVB) under the provisions of the Delhi Electricity Reform Act, 2000 and the Statutory Transfer Scheme notified by the Government of NCT of Delhi under the said Act as was prevalent at the relevant time. The Appellant till 31.03.2007 was also the bulk purchaser of electricity to be then given to the distribution licensees for supply to consumers.
- C. The Appellant since 01.04.2007 discharges only the functions of Transmission of Electricity in NCT of Delhi, the State Transmission Utility and State Load Dispatch Centre. As stated above, prior to 01.04.2007, the Appellant was also undertaking the functions of Bulk Purchase of Electricity from Generating Stations and Bulk Sale of Electricity to the Distribution Licensees in the NCT of Delhi. The liability to pay for the bulk power purchase was also of the Appellant for this prior period.
- D. The Respondent No. 1 (hereinafter referred to as "**Central Commission**") is the Central Electricity Regulatory Commission

  
General Manager (C & RA)  
DELHI TRANSCO LIMITED  
(Govt. of NCT of Delhi Undertaking)  
33KV Grid S/Stn. Building  
I.P. Estate, New Delhi-110002



established under the Electricity Act, 2003. The Appellant discharges its functions under the regulatory control of the Central Commission. The tariff for the services rendered by the Appellant is also determined by the Central Commission.

- E.** The Respondent Nos. 2 is the Power Grid Corporation of India Limited (hereinafter referred to as "PGCIL") that is the Central Transmission Utility (CTU) as per Section 38 of the Electricity Act, 2003 and Respondent Nos. 3 - 18 are the Distribution Licensees, Electricity Departments or Power Procurement Companies of the States receiving the Transmission Services from the Appellant, in the North Eastern Region and paying the tariff for the same.
- F.** The Central Commission vide Order dated 14.03.2012 in Petition No. 15/SM/2012 had listed several Inter-State Transmission (ISTS) Lines including those of the Appellant calling upon them to file appropriate Tariff Petitions for determination of tariff. A copy of the Order dated 14.03.2012 is attached and marked as **Annexure B**.
- G.** The transmission system of the Appellant which are being used for inter-State transmission of power consist of the following assets:

S. No.	Particulars	Date of Acquisition
Asset-1	400 KV D/C Mandaula-Bawana Transmission Line	01.07.2002
Asset-2	400 KV D/C Bamnauli-Ballabhgarh Transmission Line	10.03.2004

- H.** In compliance of the Order dated 14.03.2012, the Appellant had filed Petition No. 218/TT/2013 seeking Transmission Tariff for the Asset-1 (400 KV D/C Mandaula-Bawana Transmission Line) and Asset-2 (400 KV D/C Bamnauli-Ballabhgarh Transmission Line) for the period 2011-2014. The Appellant had sought the Capital Cost based on the Apportioned Audited Cost of the 400 KV D/C Line Mandaula-Bawana Transmission Line at Rs. 3743 Lakh and of the 400 KV D/C Bamnauli-Ballabhgarh Transmission Line at Rs. 5904 Lakh.

- I. The Central Commission decided Petition No. 218/TT/2013 vide Order dated 21.03.2016. The tariff was determined for the period for 2011-2014 at the Capital Cost sought for by the Appellant. The Apportioned Audited Acquisition Cost was accepted by the Central Commission as valid Capital Cost and the tariff computations were based on the same. Relevant extract from the Order dated 21.03.2016 are as under:

*"11.As discussed at para-6, the petitioner has submitted the acquisition cost of these lines vide their letter dated 1.7.2014 duly certified by their Auditors. The petitioner has also submitted the ARR for the period 2009-14 excluding 2013-14 as approved by SERC. However, the approved ARR of `58568 lakh for 2012-13 submitted by the petitioner was trued-up by DERC at `50616 lakh later i.e. after submission by the petitioner. The details are as given below:-*

***Procedure for calculating YTC for the transmission lines***

*12. In case where the capital cost of the transmission lines connecting two states and carrying inter-state power is not available, the Commission has adopted the indicative cost based on the ARR approved by the respective State Commission to arrive at the annual transmission charges. However, in the present case, the acquisition cost of the transmission lines as on the date of transfer is available, the Commission has determined the annual transmission charges in accordance with the 2009 Tariff Regulations. The details of acquisition cost of the instant lines is as follows:-*

S. No.	Name of the line	Acquisition cost (₹ in lakh)	Date of acquisition
1	400 kV D/C Mandaula-Bawana	3743	1.7.2002
2	400 kV D/C Bamnauli-Ballabhgarh	5904	10.3.2004

*13. Annual transmission charges of the two D/C transmission lines calculated on the methodology discussed above is as follows:-*

S. No.	Line Name	Length (Ckt. km)	(₹ in lakh)		
			2011-12	2012-13	2013-14
1	400 kV D/C Mandaula-Bawana	23.801	439.97	581.58	562.36
2	400 kV D/C Bamnauli-Ballabhgarh	52.803	724.87	961.48	931.37
Total			1164.84	1543.06	1493.73



A copy of the Order dated 21.03.2016 passed in Petition No. 218/TT/2013 is enclosed and marked as **Annexure C**.

- J. Thereafter, the Appellant had on 21.07.2017 filed the Petition No. 175/TT/2017 before the Central Commission for the determination of Inter-State Transmission Tariff for the above ISTS Transmission Lines for the tariff period 2014-19. A copy of the Petition No. 175/TT/2017 is attached hereto and marked as **Annexure D**.
- K. During the proceedings in Petition 175/TT/2017, the Appellant had filed several clarifications and additional data as per sought by the office of the Central Commission. Copies of the filings done by the Appellant before the Central Commission in Petition No. 175/TT/2017 is enclosed and marked as **Annexure E**.
- L. In the meanwhile, the other State Transmission Utilities had also filed petitions claiming tariff for their ISTS lines. Some of these lines were more than 25 years old and the States were not having the details of capital cost, funding, etc. It is understood that, these petitions were bereft of essential details required for tariff determination.
- M. In order to deal with such petitions, the Central Commission vide its Order dated 19.12.2017 had devised a methodology for allowing transmission tariff during the 2014-19 period. The methodology was applied by the Central Commission vide Order(s) dated 19.12.2017 (hereinafter referred to as the "**Base Order(s)**") in Petition Nos. 88/TT/2017, 173/TT/2016 and 168/TT/2016 filed by Madhya Pradesh Power Transmission Corporation Limited, Maharashtra State Electricity Transmission Company Limited and Uttar Pradesh Power Transmission Corporation Limited respectively. A copy of the Order(s) dated 19.12.2017 are enclosed and collectively marked as **Annexure F**.
- N. In the Petition No. 175/TT/2017 as opposed to the above, the entire details sought by the Central commission had been filed by the



Appellant. The Appellant had duly filed in the tariff filing formats as prescribed by the Central Commission and as per the Tariff Regulations, 2014.

O. However, the Central Commission vide the Order 29.06.2018 disposed of Petition No. 175/TT/2017 and determined the tariff for the Appellant's ISTS transmission lines for the tariff period 2014-19. The findings of the Central Commission in the Impugned Order are as under-

I. The Capital Cost has been determined applying the methodology devised by the Central Commission in the Order(s) dated 19.12.2017;

II. There is an erroneous finding at Para 17 of the Impugned Order to the effect that the Appellant had not submitted the Audited Capital Cost Certificates;

III. While determining interest on loan, the Central commission has ignored Regulation 26 of the Tariff Regulations 2014;

IV. The income tax has not been allowed by grossing up of Return on Equity as contemplated under Regulation 25 of the Tariff Regulation 2014.

P. Since the finding of the Central Commission in Para 7 of the Impugned Order namely that "*DTL has not submitted the audited capital cost certificates in case of the instant assets*" was an error apparent on the fact of record and Central Commission had ignored the Regulations while determining the Tariff, the Appellant on 31.08.2018 filed a Petition seeking review being 40/RP/2018 before the Central Commission. A copy of the Review Petition being 40/RP/2018 (without annexures) is attached hereto and marked as **Annexure G**.

Q. The Central Commission condoned the delay of 18 days and admitted review petition being Petition No. 40/RP/2018 vide Order dated

30.01.2019. A copy of the Order dated 30.01.2019 passed by the Central Commission is attached hereto and marked as **Annexure H**.

- R. Some of the Respondents filed replies to which the Appellant filed its rejoinders. Copies of the pleadings in Petition No. 40/RP/2018 are attached hereto and collectively marked as **Annexure I**.
- S. Thereafter, on 02.05.2019, the Central Commission heard the final arguments and reserved its Order in 40/RP/2018. Vide Order dated 29.11.2019, the Central Commission has dismissed 40/RP/2018 and confirmed the Impugned Order dated 29.06.2018. A copy of the Order dated 29.11.2019 passed by the Central Commission in Petition No. 40/RP/2018 is enclosed and marked as **Annexure J**.
- T. In the above circumstances and aggrieved by the Impugned Order, the Appellant is filing the present appeal on the following facts in issue, questions of law and grounds.

8. **(i) FACTS IN ISSUE**

- A. Whether the Central Commission has correctly computed the capital cost of the Appellant?
- B. Whether the Central Commission is not bound by the determination of Capital Cost done in its earlier Order dated 21.03.2016 in Petition No. 218/TT/2013 for 400 KV D/C Mandaula-Bawana Transmission Line at Rs. 3743 Lakh and of the 400 KV D/C Bamnauli-Ballabgharh Transmission Line at Rs. 5904 Lakh?
- C. Whether the Central Commission while determining Interest on Loan, has considered the rates of the actual loans taken by the Appellant, the weighted average rate of Interest on which loans were placed by the Appellant before the Central Commission as is required by Regulation 26 of the Tariff Regulations, 2014?



- D. Whether the Central Commission while determining tariff can ignore Regulation 25 which provides for grossing up the Return on Equity?

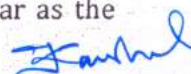
**(ii) QUESTIONS OF LAW:**

The following questions of law arise in the present appeal:

- A. Whether the Central Commission has followed the provisions of the Tariff Regulations, 2014 in determining the tariff of the two inter-State transmission lines of 400 kV D/C Mandaula-Bawana Transmission Line and 400 kV D/C Bamnauli-Ballabhgarh Transmission Line?
- B. Whether the Central Commissioned is justified in applying the Order(s) dated 19.12.2017 to the facts and circumstances of the present case?
- C. Whether the Central Commission can simply ignore its earlier Order dated 21.03.2016 passed in Petition No. 218/TT/2013 by which there is a finality to the Capital Cost of the Appellant for the concerned ISTS lines?
- D. Whether the Central Commission having framed the Tariff Regulations, 2014 can determine the tariff ignoring the provisions of the same?

**9. GROUNDS RAISED WITH LEGAL PROVISIONS**

- A. The Central Commission has erred in applying the general principles devised by it Order(s) dated 19.12.2017 wherein the State Transmission Utilities (STU) had not provided the details of their respective ISTS lines to the Appellant's for the tariff determination. The case of the Appellant cannot be equated to the other STUs who have neither submitted details of capital cost nor provided any supporting evidence to enable the Central Commission to determine tariff for their ISTS lines. The two lines in question in so far as the



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DELHI TRANSCO LIMITED  
(Govt. of NCT of Delhi Undertaking)  
33KV Grid S/Stn. Building  
I.P. Estate, New Delhi-110002



Appellant is concerned, are fairly new lines and the acquisition details of the same are as under:

S. No.	Particulars	Date of Acquisition
Asset-1	400 KV D/C Mandaula-Bawana Transmission Line	01.07.2002
Asset-2	400 KV D/C Bamnauli-Ballabhgarh Transmission Line	10.03.2004

The above lines are neither more than 25 years old nor was the Tariff Petition of the Appellant bereft of proper details enabling tariff fixation by Central Commission. In the circumstances, the Central Commission ought not to have applied the methodology devised in the Base Order dated 19.12.2017 to the Appellant.

- B.** The Central Commission has failed to appreciate that the general principles developed by Central Commission in Base Order(s) dated 19.12.2017 are for cases wherein no information was available including on the capital cost, financing cost etc. If the Appellant has made out a special case, the Central Commission, being the Court of first instance ought to have recognized this distinction and should have accordingly fixed the proper tariff for the Appellant.
- C.** The Central Commission has erroneously observed that the Appellant has not submitted the Audited Capital Cost Certificates. It is relevant to note that since both the lines were not green fields projects and their tariff had been determined by earlier Tariff Orders of the State Commission (prior 2011) as well as the Central Commission (2011-14), the Appellant had submitted the Audited Acquisition Cost of the said lines before the Central Commission and nobody had disputed the Audited Cost submitted by the Appellant.
- D.** The Central Commission has ignored that it had itself accepted and confirmed the Capital Cost/Audited Acquisition Cost in terms of Regulation 9 (3) of CERC Tariff Regulations 2014, submitted by the Appellant for the period 2011-2014 for 400 kV D/C Transmission

Lines for Mandaula-Bawana and Bamnauli-Ballabhgarh vide its Order dated 21.03.2016 in Petition No. 218/TT/2013.

- E. The Central Commission has ignored its earlier Order dated 21.03.2016 that was passed with regard to the tariff for the very same ISTS Lines. In fact, the specific finding of Central Commission was that the Acquisition Cost of the Transmission Lines as on the date of transfer is available and transmission charges would be determined based on the said cost. The impact of the Impugned Order is that till 31.03.2014, the capital cost of 400 KV D/C Mandaula-Bawana Transmission Line was Rs. 3743 Lakh and which from 01.04.2014 would be Rs. 1124.84 Lakh. Similarly, the capital cost for the 400 KV D/C Bamnauli-Ballabhgarh Transmission Line was Rs. 5904 Lakh till 31.03.2014 and from 01.04.2014 the same has come down to Rs. 1963.35 Lakh.
- F. The Central Commission's decision is not only illogical but an impossibility. The transmission charges cannot come down by one third merely because the Central Commission chooses to apply a methodology devised by it for other ISTS in its Order(s) dated 19.12.2017, having accepted the higher capital cost in the Tariff Period 2011-14 vide its Order dated 21.03.2016.
- G. The Central Commission ought to have understand that it has dealt with such cases of lines being more than 25 years old and for the states which did not have any details of their costs in its Order(s) dated 19.12.2017. The entire reasoning behind the said Order is to find a solution for cases in which the STUs do not give details and still, the Tariff of their ISTS lines needs to be determined. As opposed to the same, the Appellant has given all its details including the capital cost computed and had filled up all the tariff filing forms required under the Tariff Regulations, 2014 notified by Central Commission and supplied the additional data /information as sought by the Central Commission from time to time during the hearing of Tariff

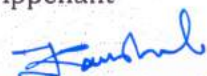


Petition. Any principles developed by the Hon'ble Courts cannot be applied de hors the facts of the case. If a principle is developed for a certain set of facts, then for application of the said principles, it is a pre requisite that the relevant facts are available before the Court.

- H. The Central Commission in the Impugned Order had held against the Appellant for 'not submitting audited capital cost certificates'. However, in the review Order, the Central Commission had equated the 'Audited Capital Costs Certificate' to 'Book Value' which is not borne out by any of the provisions of Tariff Regulations, 2014 or under Format 10 A of the tariff filing form.
- I. As per the tariff filing form, the utility seeking tariff has to give details of its capital cost and not of the book value which has been given as an additional reasoning by the Central Commission in the review Order dated 29.11.2019. Even though the Appellant is aware that it has filed the present appeal against the Impugned Order dated 29.06.2018, the Respondent is likely to rely on this and that's the reason for including this under the grounds by way of an abundance caution. It is clarified that Acquisition Cost as mentioned in the Certificate is nothing but the Capital Cost as required in the Form 10A (Statement of Depreciation) and are same as taken in Appellant's Books.
- J. The Central Commission cannot ignore its Regulations on the justification that following such Regulations would lead to complexities in calculations. It is well settled that the difficulty is following the law is not an excuse for not following the same.

#### **INTEREST ON LOAN CAPITAL:**

- K. The Central Commission has erred in reducing the weighted average rate of interest on loans despite the fact that the details of the loans taken by the Appellant from the State Government/Other Agency/Commercial Agencies have been placed by the Appellant

  
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before it. A comparison of the interest rates claimed by the Appellant and those approved by the Central Commission are as under:

PARTICULARS	2014-15	2015-16	2016-17	2017-18	2018-19
Submitted by Petitioner	9.87%	10.25%	10.19%	10.19%	10.19%
Approved by Central Commission	7.1141%	7.1680%	7.2104%	7.2104%	7.2104%

- L. The Central Commission has acted against the Regulation 26 of Tariff Regulations, 2014 prescribed by it while reducing the rate of interest on working capital. Regulation 26 of the Tariff Regulations 2014 reads as under:

***"26. Interest on loan capital:***

.....

*(5) The rate of interest shall be the weighted average rate of interest calculated on the basis of the actual loan portfolio after providing appropriate accounting adjustment for interest capitalized:*

*Provided that if there is no actual loan for a particular year but normative loan is still outstanding, the last available weighted average rate of interest shall be considered:*

*Provided further that if the generating station or the transmission system, as the case may be, does not have actual loan, then the weighted average rate of interest of the generating company or the transmission licensee as a whole shall be considered.*

*(6) The interest on loan shall be calculated on the normative average loan of the year by applying the weighted average rate of interest.*

....."

- M. The Central Commission has failed to appreciate that once it has notified the Tariff Regulations, thereafter the determination of tariff can only be as per those regulations and not disregarding it. These principles have been repeatedly laid down by the Hon'ble Supreme Court as well as this Hon'ble Tribunal including in the following cases:

**1. PTC India Limited v. Central Electricity Regulatory Commission, (2010) 4 SCC 603 has held as under -**

*54. As stated above, the 2003 Act has been enacted in furtherance of the policy envisaged under the Electricity Regulatory Commissions Act, 1998 as it mandates establishment of an independent and transparent Regulatory Commission entrusted with wide-ranging responsibilities and objectives inter alia including protection of the consumers of electricity. Accordingly, the Central Commission is set up under Section 76(1) to exercise the powers conferred on, and in discharge of the functions assigned to, it under the Act. On reading Sections 76(1) and 79(1) one finds that the Central Commission is empowered to take measures/steps in discharge of the functions enumerated in Section 79(1) like to regulate the tariff of generating companies, to regulate the inter-State transmission of electricity, to determine tariff for inter-State transmission of electricity, to issue licences, to adjudicate upon disputes, to levy fees, to specify the Grid Code, to fix the trading margin in inter-State trading of electricity, if considered necessary, etc. These measures, which the Central Commission is empowered to take, have got to be in conformity with the regulations under Section 178, wherever such regulations are applicable. Measures under Section 79(1), therefore, have got to be in conformity with the regulations under Section 178.*

*55. To regulate is an exercise which is different from making of the regulations. However, making of a regulation under Section 178 is not a precondition to the Central Commission taking any steps/measures under Section 79(1). As stated, if there is a regulation, then the measure under Section 79(1) has to be in conformity with such regulation under Section 178. This principle flows from various judgments of this Court which we have discussed hereinafter. For example, under Section 79(1)(g) the Central Commission is required to levy fees for the purpose of the 2003 Act. An order imposing regulatory fees could be passed even in the absence of a regulation under Section 178. If the levy is unreasonable, it could be the subject-matter of challenge before the appellate authority under Section 111 as the levy is imposed by an order/decision-making process. Making of a regulation under Section 178 is not a precondition to passing of an order levying a regulatory fee under Section 79(1)(g). However, if there is a regulation under Section 178 in that regard then the order levying fees under Section 79(1)(g) has to be in consonance with such regulation.*



56. Similarly, while exercising the power to frame the terms and conditions for determination of tariff under Section 178, the Commission has to be guided by the factors specified in Section 61. It is open to the Central Commission to specify terms and conditions for determination of tariff even in the absence of the regulations under Section 178. However, if a regulation is made under Section 178, then, in that event, framing of terms and conditions for determination of tariff under Section 61 has to be in consonance with the regulations under Section 178.

57. One must keep in mind the dichotomy between the power to make a regulation under Section 178 on the one hand and the various enumerated areas in Section 79(1) in which the Central Commission is mandated to take such measures as it deems fit to fulfil the objects of the 2003 Act. Applying this test to the present controversy, it becomes clear that one such area enumerated in Section 79(1) refers to fixation of trading margin. Making of a regulation in that regard is not a precondition to the Central Commission exercising its powers to fix a trading margin under Section 79(1)(j). however, if the Central Commission in an appropriate case, as is the case herein, makes a regulation fixing a cap on the trading margin under Section 178 then whatever measures the Central Commission takes under Section 79(1)(j) have to be in conformity with Section 178.

- (i) Haryana Vidyut Prasaran Nigam Limited v. Haryana Electricity Regulatory Commission - (Judgment dated 28.08.2019 in Appeal No.214 of 2017)

"4.5 Further, this Tribunal has laid down that as and when Regulations are framed, the tariff should be determined in accordance with the Regulations and not dehors the same in several judgments. The Appellant is placing reliance on the following-

(A) Haryana Vidyut Prasaran Nigam Limited v. Haryana Electricity Regulatory Commission, 2012 SCC OnLine APTEL 83 : [2012] APTEL 83 "40.

"40. Next issue requiring our consideration is related to Return on Equity



41. The Commission had allowed return on equity @ 10% to the appellant as against its claim of return on equity @ 15.5% as per CERC Regulations 2009 with the following observation in Tariff order dated 16.4.2010:

*"The entire equity of HVPNL is contributed by the State Government; any ROE allowed has cascading effect on the distribution companies who are not being allowed any return. Also, while consumer's appetite for any increases in already low, retail tariff is very high. Besides burdening the retail consumers, the ROE allowed increases the tax liability of HVPNL while the Distribution companies who bear the burden of transmission/SLDC charges are in deep financial distress as they are unable to absorb or pass on any additional financial burden. Consequently, in view of the above facts as well as the massive financial impact of FSA during the current year, the Commission restricts the return on equity to 10% during FY 2010-11."*

42. The appellant in its review petition before the Commission prayed for the return on equity @ 15.5 % as per CERC Tariff Regulations 2009. The Commission has rejected the prayer of the appellant for allowing return on equity @ 15.5% along with the income tax thereon as against the return equity @ 10% allowed by the Commission holding that "the return on equity to the transmission licensee has been restricted as the Commission was mindful to the fact that the return on equity would only add to the financial burden of the distribution licensee which are already carrying huge losses. The Commission had also brought out the fact that the Power Utilities in Haryana are State owned and the equity portion of the Capital Expenditure was funded by the State Govt. through its Annual Plan Expenditure."

43. The learned Counsel for the Appellant argued that HERC Regulations issued in Dec., 2008 called HERC (Terms & Conditions for Determination of Transmission Tariff) Regulation, 2008 provides that return on equity shall be computed @ 14% p.a. The above Regulations of the Commission were based on the CERC Regulations on Determination of Transmission tariff issued in the year 2004 which were applicable for the period 1.4.2004 to 31.3.2009. However, the Central Commission has issued revised Regulations on Terms & Conditions for Determinations of Transmission Tariff in the year 2009 which are applicable for the period 1.4.2009 to 31.3.2014, which provides return on equity @ 15.5% p.a. Accordingly, the appellant has claimed return on equity @ 15.5% p.a. in



*its ARR for the FY 2010-11, which is a legitimate claim of the appellant*

*44. The Learned Counsel for the 2nd and 3rd Respondents supported the view taken by the Commission and made following contentions;*

- i) the Appellant had been claiming ROE @ 8% in the previous ARR filings. In terms of the Regulation 17 of the HERC (Terms and conditions for determination of transmission tariff) Regulations, 2008, the return on equity shall be computed on the equity base determined in accordance with Regulation 14 @ 14% per annum or as determined by the Commission from time to time. The ROE is payable to the Equity Share Holders to cover the following :— a. Interest on the equity amount to be paid as dividend b. Premium for risk in respect of capital involved*
- ii) The Appellant is not paying any dividend to the Govt. of Haryana from the return of equity earned by it. It is further submitted that in case of the Appellant, there is no risk involved for equity shares as all the expenses are passed through items and both the Discoms are bound to pay all the expenses under the orders of the HERC. Thus there is no risk to equity portion of transmission business. Considering the present interest rate and the previous claim of the Appellant @ 8% as well as the enabling provision, the ROE allowed by the State Commission is in order. As such, the entire equity of the company is contributed by the State Government and thus, allowing a higher return on equity will only add to the financial burden on the consumers of power.*

*45. The learned Counsel for the Commission reiterated the view of the Commission taken in the impugned order and further added that the Commission has determined Return on Equity at 10% as per Regulation 17 of Tariff Regulations 2008 which provides for Return on Equity @ 14% or as determined by the Commission from time to time. Regulation 17 of Tariff Regulations 2008 read as under: “*

*17. Return on Equity. — (1) Return on equity shall be computed on the equity base determined in accordance with Regulation 14 @ 14% per annum or as determined by the Commission from time to time.*



*Provided that equity invested in foreign currency shall be allowed a return up to the prescribed limit in the same currency and the payment on this account shall be made in Indian Rupees based on the exchange rate prevailing on the due date of billing.*

*(2) The premium raised by the transmission licensee while issuing share capital and investment of internal resources created out of free reserve of the transmission licensee, if any, for the funding of the project, shall also be reckoned as paid up capital for the purpose of computing return on equity, provided such premium amount and internal resources are actually utilized for meeting the capital expenditure of the project and forms part of the approved financial package."*

*46. In this Case the Commission's decision to allow RoE @ 10% lacks transparency. In case the Commission had decided to allow RoE at less/higher rate than 14%, it should have declared before hand and sought comments on the same. In this case the Commission's decision to allow ROE @ 10% is contrary to the Regulations, and we must direct the Commission to allow Return on Equity @ 14% in accordance with Tariff regulations 2008. Once the Regulations have been framed the Commission has to act in accordance therewith." (Emphasis Supplied)*

**8.3...In the host of judgments of the Hon'ble Supreme Court as well as this Tribunal, it has been categorically held that when a Regulation is made under section 178, then in that event, framing of terms and conditions for determination of tariff has to be in consonance with the Regulations. In other words, when Regulations have been framed by the Commission for tariff determination, the tariff would have to be determined strictly in accordance with the Regulations and not dehors the same. It is evident from the impugned Order that the State Commission has determined the STOA charges for FY 2016-17 in contravention of its own MYT Regulations.**

*[Emphasis Supplied]*

- N. The Central Commission cannot mechanically ignore the loans taken by the Appellant with proof of rates and apply the rate of interest on loan of some other entity to the Appellant. There is no clarity as to how the Central Commission has ignored Tariff Regulations, 2014 while passing the Impugned Order.

- O. The Central Commission has wrongly equated the interest on loan of the Appellant to that of the PGCIL which is the Central Transmission Utility. PGCIL has access to the cheapest domestic and foreign debt including majority of its long-term foreign currency loans from organizations such as World Bank and the Asian Development Bank, which are further guaranteed by Government of India (GOI). These loans containing the guarantee from GOI are in subsidized form of loan. Thus, rate of interest of the PGCIL cannot be taken as benchmark for ascertaining the tariff for the Appellant, which does not enjoy such facilities.

#### GROSSING UP OF INCOME TAX

- P. The Central Commission has ignored Tariff Regulations, 2014 which provides for Income Tax to be grossed up by the Return on Equity (ROE) as per the Regulations 25 of the Tariff Regulations, 2014, which reads as under:

##### *"25. Tax on Return on Equity*

*(1) The base rate of return on equity as allowed by the Commission under Regulation 24 shall be grossed up with the effective tax rate of the respective financial year. For this purpose, the effective tax rate shall be considered on the basis of actual tax paid in the respect of the financial year in line with the provisions of the relevant Finance Acts by the concerned generating company or the transmission licensee, as the case may be.*

*["The actual tax on income from other business streams including deferred tax liability (i.e. income on business other than business of generation or transmission, as the case may be) shall not be considered for the calculation of effective tax rate".]*

*(2) Rate of return on equity shall be rounded off to three decimal places and shall be computed as per the formula given below:*

*Rate of pre-tax return on equity = Base rate / (1-t)*

*Where "t" is the effective tax rate in accordance with Clause (1) of this regulation and shall be calculated at the beginning of every financial year based on the estimated profit and tax to be paid*



estimated in line with the provisions of the relevant Finance Act applicable for that financial year to the company on pro-rata basis by excluding the income of non-generation or non-transmission business, as the case may be, and the corresponding tax thereon. In case of generating company or transmission licensee paying Minimum Alternate Tax (MAT), "t" shall be considered as MAT rate including surcharge and cess.

**Illustration: -**

(i) In case of the generating company or the transmission licensee paying Minimum Alternate Tax (MAT) @ 20.96% including surcharge and cess:

$$\text{Rate of return on equity} = 15.50 / (1 - 0.2096) = 19.610\%$$

(ii) In case of generating company or the transmission licensee paying normal corporate tax including surcharge and cess:

(a) Estimated Gross Income from generation or transmission business for FY 2014-15 is Rs 1000 crore.

(b) Estimated Advance Tax for the year on above is Rs 240 crore.

(c) Effective Tax Rate for the year 2014-15 = Rs 240 Crore / Rs 1000 Crore = 24%

$$(d) \text{Rate of return on equity} = 15.50 / (1 - 0.24) = 20.395\%$$

(3) The generating company or the transmission licensee, as the case may be, shall true up the grossed up rate of return on equity at the end of every financial year based on actual tax paid together with any additional tax demand including interest thereon, duly adjusted for any refund of tax including interest received from the income tax authorities pertaining to the tariff period 2014-15 to 2018-19 on actual gross income of any financial year. However, penalty, if any, arising on account of delay in deposit or short deposit of tax amount shall not be claimed by the generating company or the transmission licensee as the case may be. Any under-recovery or over-recovery of grossed up rate on return on equity after truing up, shall be recovered or refunded to beneficiaries or the long-term transmission customers/DICs as the case may be on year to year basis."

Q. The grossing up of ROE is also being sought by the Appellant in terms of the Regulations and not de hors thereof. The Appellant relies on

the judgment quoted herein above on the aspect of Interest on Loan which is squarely applicable to the present issue.

- R. The Appellant crave leave to add to the grounds mentioned above and submits that the contentions are in the alternate and without prejudice to one another.

**10. MATTERS NOT PREVIOUSLY FILED OR PENDING WITH ANY OTHER COURT.**

The Appellant has not filed any other suit, appeal or has initiated any other legal proceeding against the Impugned Order dated 29.06.2018 passed by the Central Commission.

**11. GROUNDS FOR SUCH RELIEF (S) AND THE LEGAL PROVISIONS, IF ANY, RELIED UPON**

As stated in Para 9 above.

**12. DETAILS OF INTERIM APPLICATION, IF ANY, PREFERRED ALONG WITH APPEAL.**

1. Application for seeking condonation of delay;

**13. DETAILS OF APPEAL/S, IF ANY PREFERRED BEFORE THIS APPELLATE TRIUBNAL AGAINST THE SAME IMPUGNED ORDER/DIRECTION, BY RESPONDENTS WITH NUMBERS, DATES AND INTERIM ORDER, IF ANY PASSED IN THAT APPEAL.**

NO

**14. DETAILS OF INDEX**

An index containing the details of the documents to be relied upon is enclosed.



**15. PARTICULARS OF FEE PAYABLE AND DETAILS OF BANK DRAFT IN FAVOUR OF PAY AND ACCOUNTS OFFICER, MINISTRY OF POWER, NEW DELHI.**

In respect of the few of appeal.

Name of the Bank. 010720, payable at Delhi. DD No. 010720, Date 29.01.2020, Rs. 242000/-

**16. LIST OF ENCLOSURES**

**Annexure A** Copy of the Order dated 29.06.2018 passed by the Central Commission in Petition No. 175/TT/2017.

**Annexure B** Copy of the Order dated 14.03.2012 passed by the Central Commission in Petition No. 15/SM/2012.

**Annexure C** Copy of the Order dated 21.03.2016 passed in Petition No. 218/TT/2013.

**Annexure D** Copy of the Petition No. 175/TT/2017 filed before the Central Commission

**Annexure E** Copies of the filings done by the Appellant before the Central Commission in Petition No. 175/TT/2017

**Annexure F** Copy of the Order dated 19.12.2017 passed in Petitions 88/TT/2017, 173/TT/2016 and 168/TT/2016

**Annexure G** Copy of the Review Petition being 40/RP/2018 (without annexures)

**Annexure H** Copy of the ROP dated 30.01.2019 passed in Petition No. 40/RP/2018

**Annexure I** Copies of the pleadings in Petition No. 40/RP/2018

**Annexure J** Copy of the Order dated 29.11.2019 passed by the Central Commission in Petition No. 40/RP/2018

**17. WHETHER THE ORDER APPEALED AS COMMUNICATED IN ORIGINAL IS FILED.**

Yes

**18. WHETHER THE APPELLANT IS READY TO FILE WRITTEN SUBMISSIONS/ARGUMENTS BEFORE THE FIRST HEARING AFTER SERVING THE COPY OF THE SAME ON RESPONDENTS.**

Yes

**19. WHETHER THE COPY OR MEMORANDUM OF APPEAL WITH ALL ENCLOSURES HAS BEEN FORWARDED TO ALL RESPONDENTS AND ALL INTERESTED PARTIES, IF SO, ENCLOSE POSTAL RECEIPT/COURIER RECEIPT IN ADDITION TO PAYMENT OF PRESCRIBED PROCESS FEE.**

No

**20. ANY OTHER RELEVANT OR MATERIAL PARTICULARS/DETAILS WHICH THE APPELLANT DEEMS NECESSARY TO SET OUT:**

NO

**21. RELIEFS SOUGHT.**

In view of the facts mentioned in Para 7 above, points in dispute and questions of law set out in Para 8 and the grounds of appeal stated in Para 9, the appellant prays for the following reliefs:

- (a) Allow the appeal and set aside the Impugned Order dated 29.6.2018 passed by the Central Commission in Petition No. 175/TT/2017 to the extent challenged in the present appeal;
- (b) Direct the Central Commission to modify the Tariff Order dated 29.6.2018 on the aspects of calculation of capital cost, rate of interest on loan and grossing up of return on equity;



General Manager (C & RA)  
DELHI TRANSCO LIMITED  
(Govt. of NCT of Delhi Undertaking)  
33KV Grid S/Stn. Building  
I.P. Estate, New Delhi-110002



- (c) Direct the Central Commission to recompute the tariff of Appellant's ISTS line - 400 KV D/C Mandaula-Bawana Line and 400 KV D/C Bamnauli-Ballabhgarh Line for the period 01.04.2014 till 31.03.2019.
- (d) Pass such other Order(s) and this Hon'ble Tribunal may deem just and proper.

Dated at New Delhi this 30th day of January 2020

  
COUNSEL FOR APPELLANT

  
APPELLANT

**DECLARATION BY APPELLANT**

S. K. SHARMA  
General Manager (C & RA)  
DELHI TRANSCO LIMITED  
(Govt. of NCT of Delhi Undertaking)  
33KV Grid S/Stn. Building  
I.P. Estate, New Delhi-110002

The Appellant above named hereby solemnly declare(s) that nothing material has been concealed or suppressed and further declare(s) that the enclosures and typed set of material papers relied upon and filed herewith are true copies of the original.

Verified at New Delhi on this 30th day of January 2020

  
COUNSEL FOR APPELLANT

  
APPELLANT

**VERIFICATION**

S. K. SHARMA  
General Manager (C & RA)  
DELHI TRANSCO LIMITED  
(Govt. of NCT of Delhi Undertaking)  
33KV Grid S/Stn. Building  
I.P. Estate, New Delhi-110002

I, S. K. Sharma, aged about 57 years, working as General Manager (Commercial and Regulatory Affairs) in Delhi Transco Limited, do hereby verify that the contents of Paras 1 to 7 and 10 to 20 are based on the records of the appellant maintained in the ordinary course of business and believed by me to be true and Paras 8, 9 and 21 are believed to be true on legal advice and that I have not suppressed any material facts.

Date: 30/1/2020  
Place: New Delhi

  
Appellant/Authorized Officer  
S. K. SHARMA  
General Manager (C & RA)  
DELHI TRANSCO LIMITED  
(Govt. of NCT of Delhi Undertaking)  
33KV Grid S/Stn. Building  
I.P. Estate, New Delhi-110002





**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI**

**APPELLATE JURISDICTION**

**APPEAL NO ..... OF 2020**

**IN THE MATTER OF:**

Delhi Transco Limited

.... Appellant

**VERSUS**

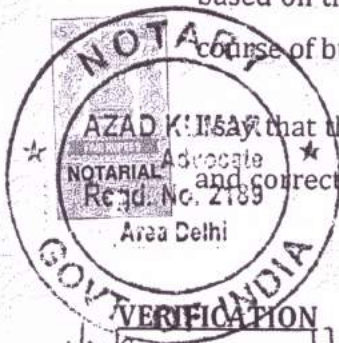
Central Electricity Regulatory Commission & Others

...Respondents

**AFFIDAVIT**

I, S. K. Sharma, aged about 57 years, working as General Manager (Commercial and Regulatory Affairs) in Delhi Transco Limited, do hereby solemnly affirm and state as under:

1. I say that I am General Manager (Commercial and Regulatory Affairs) in the Delhi Transco Limited and am competent to swear the present affidavit.
2. I say that I have read the contents of the above appeal filed by the appellant against the Order dated 29.06.2018 passed by the Central Commission and I have understood the contents of the same.
3. I say that the contents of the above appeal filed by the Appellant are based on the information available with the appellant in the normal course of business and believed by me to be true.



I say that the Annexures to the Memorandum of appeal are the true and correct copies of their original.

CABIN No. 33

L.I.O. Lane, Azad Bhawan Road  
New Delhi-110 002

*S. K. Sharma*  
S. K. SHARMA  
General Manager (C & RA)  
DELHI TRANSCO LIMITED  
(Govt. of NCT of Delhi Undertaking)  
33KV Grid S/Stn. Building  
I.P. Estate, New Delhi-110002

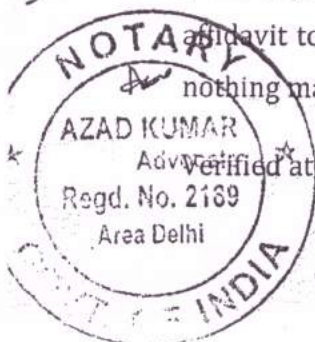
I, the deponent above named, do hereby verify the contents of the above

affidavit to be true to the best of my knowledge, no part of it is false and

nothing material has been concealed therefrom.

**ATTESTED**

Verified at Delhi on this ..... day of January 2020



*Azad Kumar*  
BY NOTARY PUBLIC  
NEW DELHI (INDIA)  
AZAD KUMAR-Adv.

30 JAN 2020 -72-

*S. K. Sharma*  
General Manager (C & RA)  
DELHI TRANSCO LIMITED  
(Govt. of NCT of Delhi Undertaking)  
33KV Grid S/Stn. Building  
I.P. Estate, New Delhi-110002

*S. K. Sharma*  
DEPONENT  
General Manager (C & RA)  
DELHI TRANSCO LIMITED  
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