

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005.
Tel. 022 22163964/65/69

Email: mercindia@merc.gov.in

Website: www.merc.gov.in

Case No. 141 of 2020

In the matter of
Case of M/s. Kharghar Vikhroli Transmission Private Limited for Grant of
Transmission Licence

CORAM

Shri I. M. Bohari, Member
Shri Mukesh Khullar, Member

M/s. Kharghar Vikhroli Transmission Private Limited (KVTPL),Petitioner
v/s

- 1) Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL)
- 2) Tata Power Company – Distribution (TPC-D)
- 3) Adani Electricity Mumbai Limited-Distribution (AEML-D)
- 4) Brihanmumbai Electric Supply and Transport (BEST)
- 5) Mindspace Business Park Private Limited (MBPPL)
- 6) Gigaplex Estate Private Limited (GEPL)
- 7) Nidar Utilities Panvel Limited Liability Partnership (NUPLLP)
- 8) Central Railway
- 9) Maharashtra State Electricity Transmission Co. Ltd. (MSETCL)
- 10) State Transmission Utility (STU)Respondents

Appearance:

For the Petitioner	: Shri Bhavesh Kundalia (Rep.)
	: Shri Shailesh Poria (Adv.)
For MSEDCL	: Shri Paresh Bhagwat (Rep.)
For TPC-D	: Shri Prashant Kumar (Rep.)
For TPC-T	: Shri Amey Mapsekar (Rep.)
For AEML-D	: Shri Abaji Naralkar (Rep.)
For BEST	: Shri N N Chougale (Rep.)
For GEPL/MBPPL	: Shri Nitin Chunarkar, (Rep.)
For MSETCL	:Shri Jagannath Chude (Rep.)

For STU : Shri Prasad G Narnaware (Rep.)
For Prayas Energy Group : Ms Anne Josey (Rep.)

ORDER

Dated: 23 January, 2021

1 Introduction

- 1.1 Kharghar Vikhroli Transmission Private Limited (**KVTPL**), a Special Purpose Vehicle (**SPV**) incorporated by Maharashtra State Electricity Transmission Company (**MSETCL**) for execution, operation and maintenance of Vikhroli Project and subsequently to act as Transmission Service Provider (**TSP**) after being acquired by the successful bidder under Tariff Based Competitive Bidding (**TBCB**) process, has filed a Case dated 7 July, 2020 under Sections 14, 15 and 86 (d) of the Electricity Act, 2003 (**EA**) and the MERC (Transmission Licence Conditions) Regulations, 2004 with its amendments for grant of Transmission Licence (**MERC Licence Regulations**) for 400 kV Vikhroli Gas Insulated Substation (**GIS**) and 400kV Kharghar-Vikhroli along with Loop-In-Loop-Out (**LIL**O) of 400kV Talegaon-Kalwa Transmission Lines (**Vikhroli Project**) to be developed on Build, Own, Operate and Maintain (**BOOM**) basis.
- 1.2 The proposed Transmission network as per the Transmission Service Agreement (**TSA**) comprises of following elements as provided in the Table below:

Table 1: Details of proposed Transmission Scheme

Sr. No.	Particulars
1	400 kV Kharghar-Vikhroli Double Circuit(DC) & Multi Circuit(M/C) line with bays at Kharghar & Vikhroli (with conductor capacity of 2,000 MW per circuit) along with 400 kV Bus extension at 400 kV Kharghar end.
2	LILO on 400 kV Talegaon-Kalwa line at 400 kV Vikhroli GIS S/S with bays
3	LILO of existing 220 kV Trombay -Salsette I & II and 220 kV Trombay- Salsette III & IV at 400/220 kV Vikhroli S/S
4	Installation of 1 x 125 MVAR 400 kV Bus Reactor
5	400/220 kV GIS Substation with 3 x 500 MVA, 400/220 kV ICTs
	i) Construction of 400 kV GIS & 220 kV GIS Buildings at Vikhroli S/s
	ii) 220 kV spare Bays - 02 No's (suitable for 220/110 kV ICT's)
	iii) Bus System: Double Bus (1 Main + 1 Main) for 400 kV Bus & 220 kV Bus
6	Diversion of existing 110 kV Dharavi-Salsette via Vikhroli lines considering future 220 kV upgradation

1.3 KVTPL has made the following prayer:

- i. Issue the Transmission License to the Petitioner for establishing, operating and maintaining the Transmission System as provided for in the Transmission Service Agreement;----”*

2 KVTPL in its Petition has stated as follows:

- 2.1 The Commission had approved Vikhroli Project among various other schemes for strengthening of Mumbai Transmission system scheme to enhance Available Transfer Capacity (ATC) of Mumbai and the same was to be developed by Tata Power Company Limited -Transmission (TPC-T). The objective of the scheme was to strengthen Mumbai Transmission Network and thereby import additional power into Mumbai from external sources in order to meet growing electricity demand of Mumbai. The Commission had approved revision in scope of Vikhroli Project from time-to-time as proposed by TPC-T and on the recommendation of State Transmission Utility (STU) expecting that the project will help to meet the demand of Mumbai by augmenting the ATC for Mumbai. However, there was inordinate delay in execution resulting in substantial increase in the cost of the scheme.
- 2.2 The Commission in Mid Term Review (MTR) Order dated 12 September, 2018 in Case No. 204 of 2017, observed that even after substantial delay and increase in cost of the project, there was no tangible progress in execution of the scheme. Project monitoring had not been rigorous and the timelines for seeking clearances were not adhered to by effective liaising and follow up. Hence, considering the increasing electricity demand of Mumbai, limited embedded generation and Transmission bottleneck to import outside power, the Commission has categorically ruled as under:

“7.12.9 Considering above, the Commission noted that STU has observed that there is an inordinate delay in completion of this scheme and suggested to take up this scheme under Tariff Based Competitive Bidding (TBCB) route. The Commission is concerned about the approach adopted by TPC-T for execution of the scheme. This scheme is being treated as deemed closed by the Commission and the Commission directs STU to take a review of such critical schemes and propose a way forward. STU is directed to submit its report to the Commission on review of TPC-T’s proposed 400 kV Vikhroli Receiving Station within a month.”

- 2.3 Accordingly, the Government of Maharashtra (GoM) appointed the Maharashtra State Electricity Transmission Company Limited (MSETCL) to be the Bid Process Coordinator (BPC) for the purpose of selection of Bidder as Transmission Service Provider (TSP) to establish Vikhroli Project through Tariff Based Competitive Bidding (TBCB) process on Build, own, operate and manage (BOOM) basis.
- 2.4 A company under the Companies Act, 2013 by the name “KVTPL” (i.e., the Petitioner), was incorporated by MSETCL on 13 May, 2019, as its 100% wholly owned subsidiary to initiate activities for execution of the project and to act as the TSP after being acquired by the successful bidder.
- 2.5 MSETCL invited all prospective Bidders for issuing Request for Qualification (RFQ) to qualify/shortlist the Bidders for participation in the next stage of bidding, i.e., Request for Proposal (RFP). The bidding process was carried out on the basis of international competitive bidding in accordance with the “TBCB Guidelines for Transmission Service” and “Guidelines for Encouraging Competition in Development of Transmission Projects” issued by Government of India (GoI), Ministry of Power (MoP) under Section 63 of the EA as amended from time to time.
- 2.6 A TSA was executed between KVTPL and all the Long Term Transmission Customers

- (**LTTCs**) except Central Railway for procurement of Transmission services on 14 August, 2019. The Central Railway is yet to sign the TSA.
- 2.7 Pursuant to the process of TBCB conducted by the BPC, Adani Transmission Limited (**ATL**) has been declared as the successful bidder. The initial financial offers were opened in the presence of Bid Evaluation Committee (**BEC**) on 29 August, 2019. The lowest initial financial offer received is levelized tariff of Rs. 2199.89 Millions. The E-Reverse Auction (**E-RA**) process was conducted on 30 August, 2019 and ATL emerged as the L1 bidder with levelized tariff quote of Rs. 2199.89 Millions.
- 2.8 The Letter of Intent (**LoI**) was issued by BPC in favour of ATL on 12 December, 2019 vide Letter No. MSETCL/CO/BDC/TBCB/9392-A. In accordance with clause 2.21.1 of the RFP, ATL submitted a Bank Guarantee/s for an aggregate amount of Rs. 23.61 Crores to LTTCs on 14 October, 2019. ATL subsequently acquired **SPV**, i.e., KVTPL on 25 June 2020, after execution of the Share Purchase Agreement (**SPA**) and completing all procedural requirements as specified in the bid documents.
- 2.9 The Scheduled Commercial Operation Date (**SCOD**) for the project as per RFP document is 12 March, 2022 considering the effective date, i.e., the date of acquisition of SPV as September, 2019. However, the acquisition of SPV was delayed on account of certain issues with the original owner of the land (required for the sub-station) which is beyond the control of KVTPL. Accordingly, it has prayed that non-adherence to the above timelines ought to be treated as beyond the control of KVTPL.
- 2.10 KVTPL has submitted the bid for the aforesaid project was inclusive of the acquisition cost of Rs 135 Crore towards the pre-developmental expenses incurred by TPC-T for the Project. However, any charges in lieu of pre-developmental expenses over and above Rs 135 Crore would qualify as change in acquisition price and will fall under Change in Law (**CIL**) as per Article 12 of the TSA. In the event of an increase in the acquisition price, KVTPL reserved its rights to file a separate Petition in relation to reliefs specified in TSA under CIL.
- 2.11 KVTPL submitted that the transmission charges would be shared and recovered as per the Regulation 61 and Regulation 62 of MERC (Multi Year Tariff) Regulations, 2015 and as amended from time to time which provide for “Determination of Intra-State Transmission Tariff (**InSTS**)” and “Sharing of Total Transmission System Cost (**TTSC**) by long-term Transmission System Users”.
- 2.12 KVTPL along with its Petition has submitted the copies of following bid documents:
- i. Copy of the RFQ dated 24 April, 2019;
 - ii. Copy of the RFP dated 22 June, 2019;
 - iii. Copy of TSA executed by KVTPL and the LTTCs;
 - iv. Copy of the certificate of the BEC vide which ATL had been declared as the successful bidder;
 - v. Copy of the LoI No. MSETCL/CO/BDC/TBCB/9392-A dated 12 December, 2019 issued in favour of M/s ATL;
 - vi. Copy of the Bank Guarantee as per clause 2.21.1 of the RFP;
 - vii. Copy of the SPA;

- viii. Copy of Board Resolution of the Petitioner;
 - ix. Copy of Audited Financial Statements of FY 2019-20;
 - x. Copy of Certificate of Incorporation;
 - xi. Copy of Memorandum of Association;
 - xii. Copy of Articles of Association;
- 3 Regulatory Proceedings:** The Regulatory framework governing the process of grant of a Transmission Licence is as set out below.

3.1 Sections 14 and 15 of the EA provide as follows:

“Section 14. (Grant of licence):

The Appropriate Commission may, on an Petition made to it under section 15, grant a licence to any person –

- (a) to transmit electricity as a transmission licensee; or*
- (b) to distribute electricity as a distribution licensee; or*
- (b) to undertake trading in electricity as an electricity trader, in any area as may be specified in the licence:...”*

Section 15. (Procedure for grant of licence):

.....

- (2) Any person who has made any Petition for grant of licence shall, within seven days after making such Petition, publish a notice of his Petition with such particulars and in such manner as may be specified and a licence shall not be granted–*
 - (i) until the objections, if any, received by the Appropriate Commission in response to publication of the Petition have been considered by it:*

Provided that no objection shall be so considered unless it is received before the expiration of thirty days from the date of the publication of the notice as aforesaid;
 - (ii) until, in the case of an Petition for a licence for an area including the whole or any part of any cantonment, aerodrome, fortress, arsenal, dockyard or camp or of any building or place in the occupation of the Government for defence purposes, the Appropriate Commission has ascertained that there is no objection to the grant of the licence on the part of the Central Government.*
- (3) A person intending to act as a transmission licensee shall, immediately on making the Petition, forward a copy of such Petition to the Central Transmission Utility or the State Transmission Utility, as the case maybe.*
- (4) The Central Transmission Utility or the State Transmission Utility, as the case may be, shall, within thirty days after the receipt of the copy of the Petition referred to in sub-section (3), send its recommendations, if any, to the Appropriate Commission:*

Provided that such recommendations shall not be binding on the Commission.

- (5) *Before granting a licence under section 14, the Appropriate Commission shall*
- (a) *Publish a notice in two such daily newspapers, as that Commission may consider necessary, stating the name and address of the person to whom it proposes to issue the licence;*
 - (b) *Consider all suggestions or objections and the recommendations, if any, of the Central Transmission Utility or State Transmission Utility, as the case may be.”*

3.2 Regulation 6 of the MERC (Transmission Licence Conditions) Regulations, 2004 provides that:

“6.1 A Petitioner shall publish a notice of his Petition for grant of licence in not less than two (2) daily English language newspapers and two (2) daily Marathi language newspapers in the proposed area of transmission.

...Provided that the Commission may, within a period of four (4) days from the receipt of Petition, require such additional particulars to be included in the notice, as it may deem appropriate having regard to the specific circumstances of the case.”

3.3 KVTPL had submitted the Petition on 7 July, 2020 for grant of Transmission Licence under Sections 14, 15 and 86 (d) of the EA. The Commission scrutinised the Petition and sought the clarification and supporting documents on the following data gaps from KVTPL vide an email dated 20 July ,2020.

- a. Justification for delay in filing the Petition as per clause 2.6 of the RFP.
- b. Status of land acquisition & Statutory approvals.
- c. Plan for achieving COD as per TSA and effort made by KVTPL till date for timely execution of the Transmission scheme.
- d. Whether there is any deviation from the Standard Bid Documents (SBD) notified by MoP in the bidding process.
- e. Basis for scope of work proposed under the scheme and the loading pattern considered for design of the scope of work.
- f. List of different statutory approvals required for execution of the project along with the status of approvals.
- g. Methodology for sharing of short term charges with the TSUs.
- h. Any plan to utilise the network to optimise the cost for other business as provided in the Section 41 of the EA along with the methodology to share the income among the TSUs.
- i. Recommendation of the Empowered Committee.
- j. NOC of the defence under Section 15 (2) (ii) of EA.
- k. Map showing location of Transmission Lines and Substations.
- l. Documentary evidence showing that the copy of Petition has been served to STU and LTTCs.

3.4 KVTPL submitted its replies on the data gaps sought by the Commission vide Letter No. KVTPL/MERC/23072020 dated 23 July, 2020. After due verification of the Petition and

submissions made, the Commission found the Petition was complete including the requisite information, formats and documents. Accordingly, the Commission admitted the Petition on 28 July, 2020.

- 3.5 In accordance with Section 15 (3) of the EA, KVTPL was asked to confirm if it has served a copy of Petition to STU. In its reply KVTPL has confirmed that it has submitted the copy of Petition to STU and sought its recommendation. STU in accordance with Section 15 (4) of the EA, vide its Letter No. MSETCL/CO/STU-R&C/MERC/2710 dated 7 August, 2020, has provided its recommendation for the grant of Transmission Licence to KVTPL for the Transmission scheme as specified in the TSA.
- 3.6 Further, the Commission directed KVTPL to issue a Public Notice in accordance with Section 15 (2) of the EA read with Regulation 6.1 MERC Transmission Licence Regulations inviting suggestions and objections and to submit proof of compliance along with a copy of the published Notice. Accordingly, KVTPL published a Notice of its Transmission Licence Petition on 31 July, 2020 in two daily English newspapers, viz. 'Financial Express' & 'The Free Press Journal' and two daily Marathi newspapers, viz. 'Lokmanthan' & 'Navshakti'.
- 3.7 Pursuant to the Public Notice issued by KVTPL, comments and objections were received from MSEDCL & BEST Undertaking which are summarised as below:

I. MSEDCL in its submissions dated 11 August, 2020 stated as follow:

- a. The Commission may grant Transmission Licence to KVTPL for establishing, operating and maintaining the Transmission System after due prudence check.
- b. The Petition filed by KVTPL is for grant of Transmission Licence for Vikhroli Project only. In case KVTPL files a separate Petition before the Commission regarding CIL, MSEDCL reserves its right to file a reply/ submission for such a Petition.
- c. KVTPL should approach the Commission through a separate Petition if it intends to seek any time extension in the aforesaid Project. Also, if any such Petition is filed before the Commission, MSEDCL reserves its right to file a reply/ submission separately.

II. BEST's vide its submission dated 19 August, 2020 stated that it has no specific comments on the Petition filed by KVTPL.

III. KVTPL in its rejoinder dated 4 September, 2020 has stated as follows:

- a. It has filed the present Petition with the limited purpose of grant of Transmission Licence. Further, KVTPL has not sought any relief in relation to CIL or Force Majeure by way of the present Petition.
 - b. KVTPL shall undertake to fulfill all and any other obligations under TSA and shall approach LTTCs and/or the Commission as and when required.
 - c. No objections have been raised by any stakeholders on the grant of Transmission Licence. Hence, the Commission may allow the present Petition.
- 3.8 Further, in accordance with Section 15 (5) (a) of the EA, the Commission is required to issue a Public Notice stating the Commission's proposal of grant of Transmission Licence to KVTPL and inviting comments or objections from Public/ Stakeholders against the same.

- 3.9 Accordingly, the Commission issued a Public Notice on 21 November, 2020 in two daily English (Times of India & Mumbai Mirror) and two daily Marathi (Loksatta & Navbharat Times) newspapers as per Section 15 of the EA stating the details of the Transmission Licence Application as submitted by KVTPL. The Public Notice also specified that the Commission proposed to grant a Transmission Licence to KVTPL under Alternative 2 of MERC Transmission Licence Regulations. The last date of submission of suggestions/objections was 20 December, 2020. It was also stated that the Public Hearing would be held on 30 December, 2020 through video conference.
- 3.10 Pursuant to the Public Notice issued by the Commission, the comments and objections were received from the following Respondents and Stakeholders. The summary of the same along with the replies from KVTPL is provided as under :

I. TPC-D in its submissions dated 17 December, 2020 has stated as follows:

- i. Delay in filing of the Petition for grant of Licence:
- a) As per RFP document, TSP has to apply for grant of Licence within 10 days of issuance of LoI. However, from the Public Notice issued by the Commission, it can be seen that KVTPL has filed the Petition for grant of Licence on 7 July, 2020, even though LoI was issued to ATL on 12 December, 2019. Therefore, an unexplained delay of 7 months has taken place for filing of the Petition before the Commission. The clause 2.8 and 2.9 of the RFP document provides stipulation if TSP fails to obtain the Licence as under:
- 2.8 If TSP fails to obtain the Transmission License from the Appropriate Commission, it will constitute sufficient grounds for annulment of award of the project.*
- 2.9 The annulment of award, as provided in clause 2.7 and 2.8 of this RFP, will be done by the Empowered Committee after giving the Selected Bidder/TSP an opportunity to be heard.*
- b) As per the above clause, it is utmost important to ascertain the reason for delay in filing of Petition for the grant of Transmission Licence. In case delay is on account of KVTPL, then the process for annulment of award of the project may be initiated instead of present proceedings for grant of Transmission Licence. The Commission should undertake the prudence check with respect to such delay.
- ii. Non-availability of clearances, permits and other project related approvals:
- a) KVTPL still does not possess the required clearances, permits and other project related documents to commence the construction of the project even after 12 months of issue of LoI. It is to be noted that the clause 2.14 of the RFP specifies that the Selected Bidder shall obtain all necessary consents, clearance and permits as required. Also, the Bidders shall familiarize itself with the procedures and time frame required to obtain such consents, clearance and permits.
- b) KVTPL vide its letter dated 20 July, 2020 has communicated to the beneficiaries regarding delay in execution of the project on various grounds including delay in getting clearance from various authorities. However, TPC-D as a LTTC is not in agreement with KVTPL's reasoning which indicates that the delays are on account

of Force Majeure events, as none of the events elaborated by KVTPL qualifies as Force Majeure event.

- c) Further, the timelines required for various necessary approval for executing the project was part of the due diligence for the prospective bidder based on their experience. In line with the clause 3.3.4 of TSA stipulating the liability of KVTPL in Force Majeure events, it is requested that the Commission should undertake appropriate prudence check in order to ensure project completion as per the TSA. Further, in case of increase in Tariff due to delay in execution or escalation of any other cost in completing the project, the same should be borne by KVTPL.

iii. Increase in cost of the project:

- a) KVTPL has claimed that any change in acquisition price over and above Rs. 135 Crore qualifies for CIL as per the TSA and in such case KVTPL reserves its right to file separate Petition seeking relief for the same. However, as the present Petition has been filed for grant of Transmission License, hence, KVTPL should restrict its prayer to grant of Licence only. KVTPL should file separate Petition with respect to CIL and in such case TPC-D has a right to submit its reply.

iv. Time-extension on account of delays in acquiring SPV:

- a) KVTPL in its Petition has mentioned that there was a delay in acquisition of SPV on account of certain issues with the original owner of Land (required for sub-station) which are beyond the control of KVTPL. Accordingly, non-adherence to the timelines of completion of the project ought to be treated as beyond the control of KVTPL. In this regard, clause 2.14.2.4 and 2.14.2.5 of RFP clearly stipulates that the prospective bidder has to complete due-diligence before submitting the bid. Further, any asset procurements including the information on status of land required by the bidders to complete the project were also provided by BPC. Hence, any future claim on account of additional cost towards land cannot be granted under the law after the award of project, as it violates the basic conditions of bid process. The Commission is requested to examine the clearances to be obtained from various authorities, additional cost of land to be incurred and capability of KVTPL to meet the required timeline of project.

II. KVTPL vide letter dated 29 December, 2020 in reply to TPC-D's submission has stated as follows:

i. Delay in filing of the Petition:

- a) The contentions made by TPC-D in regard to delay in filing of the Petition is denied. There were several issues inter alia in relation to the transferring title of land parcels at Vikhroli, execution of modified lease deed for the Kharghar land, clarity on the status of other approvals and clearances to be provided by the TPC-T and other relevant matters pertaining to the acquisition of SPV, i.e., KVTPL which remained pending. KVTPL has regularly addressed letters to TPC-T as well as MSETCL on the said issues. Further, the aforementioned issues have also been recorded in the minutes of meeting held on 15 February, 2020 between the Successful Bidder, BPC, TPC-T and Godrej and Boyce Manufacturing Company Limited (**Godrej**).

- b) It is to be noted that the above issues remained unresolved even until the bid validity period (as defined under clause 2.4 read with 2.17 of the RFP document, i.e., till 17 February, 2020) on account of TPC-T's failure to obtain the necessary NOC. In the circumstances, TSP was constrained to seek extension of the bid validity period which was duly extended by the BPC till 10 July, 2020 for the purpose of meeting the compliance as per clause 2.4 in the RFP document. KVTPL has submitted its Petition for grant of transmission license on 7 July 2020, therefore, timeline prescribed by RFP has been honoured.
- ii. Non-availability of clearances, permits and other project related approvals:
- a) KVTPL denies that there was a delay on its part in obtaining any clearance, permits or other documents. Existing clearance, permits and other documents were to be handed over to successful bidder by BPC/ TPC-T as per RFP conditions. However, even after several communications and after the transfer of pre-development expenses by MSETCL to TPC-T, it has provided only a part of the documents on 23 October 2020. Thus, after receipt of such necessary documents, KVTPL was able to apply with the various statutory bodies for obtaining the requisite clearances.
- b) Further, there is a significant delay in handing over of land for the sub-station by TPC-T. Since the project was earlier awarded to TPC-T, transfer of various approvals and land parcels were secured by TPC-T and the same was also envisaged in RFP. However, even after several communications and meetings, TPC-T has handed over only part of the Vikhroli land (8015.12 Sqm out of total 9606.15 Sqm) and issued NOC for Kharghar land. Transfer of balance 1591.03 Sqm land for Vikhroli substation and land pertaining to ROW corridor between Dharavi to Vashi are yet to be sorted out as on date of this submission.
- c) KVTPL endeavours to complete the project in terms of the TSA timelines for which all efforts are made to secure required approvals. LTTCs have also been apprised about the developments in the Project. KVTPL has issued Force Majeure and Change in law notices in terms of the TSA. Further, KVTPL shall approach the Commission by way of a separate application to claim available relief/s under the TSA.
- iii. Increase in cost of the project:
- a) KVTPL has filed the present Petition only for grant of Transmission license, wherein it has not sought any relief/s for CIL or Force Majeure. However, a separate Petition will be filed by KVTPL for relief/s pertaining to increase in project cost.
- iv. Time-extension on account of delays in acquiring SPV:
- a) KVTPL has carried out prudent due diligence whilst submitting their bid for the project. However, acquisition of the SPV got delayed due to various reasons which are beyond control of KVTPL.
- b) Further, it is brought to the notice of the Commission that the Hon'ble Bombay High Court by its Judgement dated 17 September, 2018 in PIL No. 87 of 2006 read with the Judgement dated 2 November 2018 in Notice of Motion No. 278 of 2018 in PIL No. 87 of 2006, has inter alia directed State of Maharashtra to protect and preserve

mangroves. The Court has also directed that destruction of the same cannot be permitted for private, commercial or any other use unless the Hon'ble High Court finds it necessary in public interest. Accordingly, the CRZ clearance issued to KVTPL contains a specific condition No.4 (v) whereby KVTPL must obtain leave of the Hon'ble Bombay High Court in terms of the Judgment and Order dated 17 September, 2018 passed by this Court in PIL No. 87 of 2006, before executing the proposed project in mangrove area and its buffer zone, if any.

- c) Similar conditions were also imposed in the forest clearances granted to KVTPL. Accordingly, KVTPL filed Writ Petition No. 96276 of 2020 before the Hon'ble Bombay High Court inter alia praying for a direction to concerned authorities to permit execution of the project in mangrove areas. The said Petition has been argued and judgment has been reserved by the Court.
- d) In addition to the above, KVTPL submitted that it was required to re-apply for the following permissions:

Table 2: Details of permissions re-applied by KVTPL.

Sr. No.	Approval	Approving Authority	KVTPL request reference
1	Approval Under Section 68 of EA	Principal Secretary (PS) (Energy), Industry, Energy & Labour Dept. Mumbai.	Application has been submitted to PS (Energy) vide letter no. KVTPL /TL/180920-1 dated 18 September, 2020.
2	Approval Under Section 164 of EA	PS (Energy), Industry, Energy & Labour Dept. Mumbai	Application has been submitted to PS (Energy) vide letter no. KVTPL /TL/180920-2 dated 18 September, 2020.
3	Transfer of route approval in Vashi Creek (Loc. 47 to 52) from TPC to KVTPL	CEO, Maharashtra Maritime Board, Mumbai	Application has been submitted to CEO, MMB vide letter No. KVTPL /TL/180920-3 dated 18 September, 2020.
4	Transfer of Aviation NOC from TPC to KVTPL	GM (ATM- NOC), AAI, Mumbai	Application submitted to GM (ATM- NOC), vide letter no. KVTPL /TL/180920 dated 18 September, 2020 and deemed transferred in the name of KVTPL on 7 December, 2020.
5	Salt Pan Clearance	Salt Commissioner, Mumbai	Application Submitted to Salt Commissioner vide letter no. KVTPL/Project/2021/04122020 dated 4 December, 2020.

- e) Further, it is KVTPL's endeavour to honour the project timeline as prescribed in the TSA. However, KVTPL is entitled to all relief/s that are available under the TSA and under Law including but not limited to the reliefs for CIL and Force Majeure. For claiming such relief/s, separate proceedings shall be initiated before the

Commission.

III. TPC-T in its submission dated 17 December, 2020 has stated as follows:

- i. Additional scope of LILO on 400 KV Talegaon-Padghe:
 - a) The Sr. No. 11 of Public Notice issued by the Commission indicates an additional scope of 400 KV LILO on Talegaon-Padghe line. However, the same is not mentioned in the Transmission Scheme given in item No. 5 of Public Notice.
- ii. Non-payment of the entire amount of Rs 135 Crore to TPC-T towards the project pre-development expenses:
 - a) As per clause 2.4 of RFP, the successful bidder was required to acquire KVTPL within 10 days of issue of LoI by paying the acquisition price. The acquisition price was inclusive of Rs 135.44 Crore to be paid to TPC-T, which was incurred as pre-development expenses. However, till now only a partial payment of Rs 118.27 Crore has been released by STU/BPC. Hence, the Commission should give necessary directions to BPC/STU for payment of the balance amount to TPC-T before deciding the issue of grant of Licence to KVTPL.
- iii. Submission regarding delay in project completion and increase in the project cost:
 - a) The Commission vide its Order in Case No 204 of 2017, deemed Vikhroli Project as closed without appreciating the progress made by TPC-T in acquiring clearances/ permits/ approval, etc., for development of the project. The Commission also dismissed the review Petition in Case No. 3 of 2019, in spite of being aware of the fact that considerable time was being required in acquiring clearances/ permits/ approval, etc., from various authorities.
 - b) In view of above, considering the ruling of the Commission, the submission made by KVTPL qua increase in the project cost and additional timelines ought to be rejected in toto, else it would defeat the intent of the decision of the Commissions to take up this project under TBCB.
 - c) KVTPL has the benefit of already available clearances/ permits/ approval from TPC-T. Hence, seeking increase in project cost and additional timelines by KVTPL is against the ruling of the Commission and would further amount to breach of TBCB guidelines.
 - d) Further, the same clearances which were delaying the project for TPC-T, are pending for KVTPL as well. However, TPC-T was willing to execute the project without any additional cost. Hence, the above facts and circumstances may be considered by the Commission before passing any Order.

IV. KVTPL's reply dated 29 December, 2020 upon TPC-T's submission states as follows:

- i. Additional scope of LILO on 400 KV Talegaon-Padghe:
 - a) The scope of Transmission project listed out at Para 5 of the Public Notice is same as the scope of project defined in Schedule 2 of the TSA except for certain rearranging/ regrouping. KVTPL denies that it is entrusted with additional scope of work.

- b) The contention of TPC-T is misplaced as TSA is unchanged. TPC-T is intending to delay the execution of a project of national importance that will adversely impact larger Public interest.
 - c) Further, the Petition for grant of Transmission Licence has been filed for the scope as defined in Schedule 2 of TSA only and STU has also given its recommendation for grant of Transmission Licence for the same defined Scope as well.
 - ii. Non-payment of the entire amount of Rs 135 Crore to TPC-T by towards the project pre-development expenses:
 - a) STU has paid the amount of Rs 118.27 Crore after carrying out the due diligence of the expenses incurred by TPC-T as per the directions of the Commission. Further, the Commission has already directed TPC-T to approach the Commission for any additional expenses made by TPC-T and may claim the same in its ARR. The said matter has no relation to the grant of Transmission Licence to KVTPL and any grievances that TPC-T has in the said matter should be agitated with the concerned, i.e., BPC/ STU.
 - iii. Submission regarding delay in project completion and increase in project cost:
 - a) The present Petition has been filed with the limited purpose of grant of Transmission Licence. A separate Petition will be filed for reliefs pertaining to increase in project cost and additional timelines, etc., and the same will be argued at and accounted for at the relevant stage.
 - b) As regard to the issue of deemed closure of License of TPC-T, the same has already been adjudicated by the Commission and Hon'ble Appellate Tribunal for Electricity (**APTEL**). Further, the Commission after taking into account the inordinate delay of 8 years on the part of TPC-T and finding that there would be substantial increase in capital cost, decided to allocate the project through TBCB route.
 - c) TPC-T's contention to draw parallel in the decision of the Commission in Case No. 3 of 2019 with that of the present scenario is completely misconceived and highly uncalled for. TPC-T has miserably defaulted earlier in execution of the project and subsequently failed to secure bid when the project was offered through TBCB route. Hence, it is making a frivolous attempt to cause hindrances and delay in grant of Transmission Licence.
 - d) KVTPL is taking all steps to complete the project after being successful in the bid and is entitled to claim all remedies available to it under contract and under law including remedies under the clauses of Force Majeure and CIL. Further, KVTPL undertakes to fulfil all and any other obligations under TSA and it shall approach LTTCs and/or the Commission as and when required.
- V. Shri Sharad Kumar Shah in its submission dated 22 November, 2020 has stated as follows:**
- a) Supports strengthening generation and transmission system of Mumbai. However, it was enquired why Public Notice was issued after 12 October, 2020. Further, the 400 kV scheme was approved in 2011, however as per the scope given in the Public Notice (point no. 11), the scope of 400 kV LILO has been added in the present case.

KVTPL should provide the details and full form of this 400 kV LILO.

- b) The power requirements in Mumbai have increased many folds over last 9 years. To fulfil the increased demand in power, more generation capacity is required. The islanding system on 12 October, 2020 was very much effective, but power generated from two plants (Thermal and Gas) of Tata Power at Trombay was not sufficient to meet demand of Mumbai, which lowered the frequency of generation and resulted in tripping of both plants. This led to a situation of no power to Mumbai.
- c) It is suggested that 3*500 MVA transformer as per the scope of work is not adequate to meet the demand of Mumbai. The scope of work specifies the construction of 400 kV transmission line for Mumbai despite fact that the UMPP 800 kV and 1200 kV transmission line exist now in India. BSES Dahanu 500 MW is No. 1 thermal plant in India at present even after 4 decades of operation. When the said plant was available at Rs.18,500 Crore (discount of Rs.6,500 Crore), why Maharashtra Government did not acquire the same and make additional generation capacity available to meet Mumbai's power demand.
- d) Objections & suggestions received from STU, MSEDCL & BEST Undertaking should be made Public.
- e) Status of approval of the aforesaid project by Energy Minister (GoM) should be provided. Further, KVTPL should provide full form of D/C & M/C and details of voltage drop in HTLS conductor along with detailed single line diagrams.
- f) Vide email dated 21 December, 2020, Shri Sharad Kumar Shah added that presently no Transmission scheme of 765 kV or 1200 kV voltage grade is planned for Mumbai to cater to the high demand of power. GoM should look into the matter for taking necessary steps.

VI. KVTPL in its reply to Shri Sharad Kumar Shah dated 27 November, 2020 has stated as follows:

- a) KVTPL has published Public Notice on 31 July, 2020 with Corrigendum on 2 August, 2020 regarding typo error in the Email ID. The aforesaid project was awarded through competitive bidding to strengthen Mumbai's Transmission system following the guidelines issued by the GoM as per the provisions of the EA.
- b) The scope of work has been envisaged based on the study conducted by STU and recommended by the Khaparde Committee post 2010 grid failure to cater to the demand of the Mumbai Metropolitan Region (**MMR**). All relevant documents pertaining to the present proceeding were available on the following web address: (<https://www.adanitransmission.com/regulatory>).
- c) As regards full form sought for transmission element, the same were provided as under:
 - LILO – Line in Line Out is part of the entire scheme as per RFP issued.
 - D/C and M/C – Double Circuit and Multi Circuit
- d) As regard voltage drop details, the same is a technical term which depends on various technical parameters.

- e) As regards approval from Energy Minister of GoM, the Industry, Energy & Labour Department, GoM, had passed the resolution dated 2 May, 2019 for the appointment of BPC for the said project. Accordingly, the project was awarded through competitive bidding duly following the guidelines issued by the government in accordance with the provisions of the EA.
- 3.11 The Commission notes that STU in accordance with Section 15 (4) of the EA, vide its Letter dated 7 August, 2020 has provided its recommendation for the grant of Transmission Licence to KVTPL for the Transmission scheme as specified in the TSA. The Commission also notes that STU has not filed any comments and objection in reply to the Public Notice of the Commission.
- 3.12 The Commission also noted the various comments and objections received from Respondents and the Stakeholders/Public. The Commission subsequently conducted the E-Public Hearing on 30 December, 2020 as per its Public Notice dated 21 November, 2020.
- 3.13 **At the E- Public hearing through video conferencing held on 30 December, 2020:**
- i. Advocate of KVTPL reiterated its brief submission as made out in the Petition. He further stated that KVTPL has submitted its rejoinder on the comments and objections received and has no further submissions to make.
 - ii. Representatives of TPC-T and TPC-D reiterated their submissions and requested the Commission to provide a copy of KVTPL's rejoinder on their comments. The Commission considering the said request directed KVTPL to share a copy of rejoinder with TPC-T and TPC-D.
 - iii. The representative of Prayas Energy made the following comments/suggestions:
 - a) KVTPL should submit project execution schedule to the Commission demonstrating its plan to meet the timeline as prescribed in the TSA.
 - b) KVTPL should also submit a monthly and quarterly progress report to the Commission indicating its adherence to the prescribed timeline during the execution of the Transmission Scheme.
 - iv. KVTPL in its reply to the comments and objections made by Prayas Energy specified that it is taking all necessary measures to meet the timeline prescribed in the TSA and the corresponding submissions regarding the same has been made to the Commission.
 - v. List of the attendees of the Public Hearing is appended as Annexure "A" to this Order.

Commission's Analysis and Rulings:

- 3.14 The Commission has noted the various comments and objections received in written as well as verbally during the E-Public Hearing from the Respondents and Public along with the replies provided by KVTPL. The Commission's rulings on the major issues raised during the proceedings of this Case is provided as under:

I. Issue 1: Whether there was a delay in filing of the Petition for Grant of Licence by KVTPL:

- a) The Commission notes that the LoI was issued on 12 December, 2019 and the initial bid validity was up to 17 February, 2020. However, ATL could not complete the required activities as per clause 2.4 of RFP document within the stipulated time of 10

days due to various issues pertaining to handover of SPV.

- b) The Commission also notes that the proviso to clause 2.4 of the RFP provides that.
- "if for any reason attributable to the BPC, the various activities mentioned are not completed by the Selected Bidder within the period of ten (10) days, such period of 10 days shall be extended, on a day to day basis till the end of the Bid validity period"*.
- c) ATL accordingly vide its letter dated 15 February, 2020 requested BPC for extension of the bid validity up to 31 March, 2020, which was accepted by BPC vide its letter dated 17 February, 2020. ATL on 30 March, 2020 again sought extension of the bid validity up to 31 May, 2020, on account of national lockdown imposed by Govt. of India (GoI) till 14 April, 2020 vide Order dated 24 March, 2020 due to outbreak of COVID-19. BPC vide its letter dated 30 March, 2020 accepted the request of ATL and accordingly, extended bid validity period. Subsequently, ATL vide its letter to BPC dated 29 May, 2020 submitted that the GoI has extended the national lockdown till 31 May 2020. Hence, due to continuation of national lockdown on account of COVID-19, it is required to extend the bid validity. BPC vide its letter dated 30 May, 2020 accepted the request of ATL and extended the bid validity period up to 10 July, 2020 for the purpose of meeting the compliance as per clause 2.4 of RFP document.
- d) Subsequently, ATL furnished a contract performance guarantee to LTCCs of the Vikhroli Project for an aggregate amount of Rs. 23.61 Crore (determined as per the norms defined in SBDs) and has acquired hundred percent share-holding of KVTPL on 25 June, 2020 after execution of the SPA.
- e) KVTPL then filed a Petition on 7 July, 2020 for grant of Transmission Licence. **Therefore, the date of filing of Petition for grant of Licence is within the revised time limit approved by BPC to comply with requirements of RFP.**

II. Issue 2: Whether there is a delay in obtaining required permissions/ clearances by KVTPL:

- a) The Commission vide its MTR Order dated 12 September, 2018 had decided the deemed closure of the "400 kV Receiving station at Vikhroli" scheme on account of the inordinate delay caused in its implementation by TPC-T. Subsequently, based on the recommendation of STU, the Commission decided to take up this project through TBCB route.
- b) Further, the Commission vide its letter dated 20 June, 2019 directed TPC-T to provide its NOC to transfer the land acquired for the project and clearance/ permissions obtained from the various authorities in the name of SPV (i.e., KVTPL) along with a copy of survey report and other related documents immediately for issuing it to bidders as a part of RFP document.
- c) The Commission notes that subsequently, on 28 June, 2019 a meeting was conducted by MSETCL regarding the transfer of documents, clearances/ permissions by TPC to SPV. Thereafter, TPC issued a letter dated 5 July, 2019 to MSETCL in response to the issues discussed in the aforesaid meeting. In the said letter TPC stated that it has appealed against the MTR Order, which is pending before the APTEL. Therefore, the

process of transfer of approvals/ clearances/ land shall take place only after the disposal of the same.

- d) It is further noted that several meetings and communications were held between TPC, ATL, Godrej, CIDCO and MSETCL to resolve the issues pertaining to handover of SPV along with necessary NOC/ approvals/ clearances/ permits, etc. Though most of the issues have been resolved, the Commission notes that certain statutory clearance and transfer/possession of complete land title from TPC to ATL/KVTPL is still pending.
- e) The Commission vide its letter dated 14 September, 2020 and 3 October, 2020 again directed TPC to ensure that the possession of land is given forthwith along with handing over all the requisite documents/ permissions, etc., to KVTPL. TPC was also directed to extend its support and further cooperation to KVTPL/ STU/ BPC for early commencement and timely completion of the project. The Commission further notes that KVTPL has made separate Petition on 22 December, 2020 before the Commission seeking issuance of directions to TPC for complying with the Orders and directions issued with respect to transfer of land and required documents/ NOC/ approvals, etc.
- f) In view of the above facts, it is observed that despite repetitive directions of the Commission, the transfer of complete title and possession of the land especially Parcel B is still in process. The Commission hereby once again directs TPC to comply with all the directions issued vide the Orders dated 12 September, 2018 and 29 January, 2019 passed in Case No. 204 of 2017 and Case No. 3 of 2019 respectively, read with directions issued vide letters dated 20 June, 2019, 14 September, 2020 and 3 October, 2020, to ensure transfer of complete title and possession of the land Parcel B at Vikhroli within one month from the issuance of this Order. The Commission also directs KVTPL to expedite the process of acquiring pending clearance/ permits/ NOCs and ensure timelines for execution of project as per TSA are met. KVTPL should approach the concerned authorities as per the provisions of the EA, 2003, Maharashtra Electricity Works of Licensees Rules, 2012, GoM's Resolutions, etc. for obtaining the required clearances instead of wasting time in the unnecessary litigations. Further, KVTPL has accepted all the terms and condition of the RFP and signed the TSA. Hence, KVTPL cannot evade its responsibility to execute the project within stipulated time and accepted cost.
- g) As regards delay in execution of the said project or non-adherence to the timelines in completion of project, the Commission clarifies that in such circumstances relevant provisions (remedial or otherwise) of the TSA shall prevail.

III. Issue 3: Submission of progress report of Transmission project to the Commission:

- a) The Commission notes the submissions made by Prayas Energy Group regarding the necessity to continuously monitor the progress of the project considering the criticality of the project for ensuring power security of Mumbai. The Commission also notes the concerns raised by other stakeholders that the process of acquiring necessary clearances/ permits/ approvals due to various reasons as cited earlier is still

underway and construction of the Transmission scheme is yet to be initiated. This necessitates the monitoring of project's progress to ensure that the timeline of SCOD as defined in TSA shall be met by KVTPL.

- b) In view of the above, the Commission notes that as per Article 5 of the TSA, there is provision for the lead LTTC (MSEDCL) to designate up to three officials for monitoring the progress of the project. Therefore, the Commission directs lead LTCC to designate the team of officials for monitoring the progress of the scheme as per Article 5 of the TSA. Also, in this regard, STU, lead LTTC and KVTPL are directed to devise a necessary project progress and construction standards monitoring mechanism as per provisions of the TSA. Also, KVTPL shall submit a monthly progress report of the project to STU and lead LTTC.
- c) In case of slippage in execution of the project within the timeline specified in the TSA or any non-conformance to the Grid Standards/ Technical Standards/ IS Specifications, KVTPL is directed to promptly bring the same to the notice of the lead LTTC and STU and also take appropriate remedial measures under intimation to the Commission.
- d) Further, the Commission also directs KVTPL to submit a copy of monthly progress report to the LTTCs with a copy to STU, the Commission and CEA demonstrating the adherence to timeline of SCOD as prescribed in the TSA.

IV. Issue 4: Whether the Commission should issue instructions to BPC/ STU for payment of remaining acquisition price to TPC-T:

- a) It is worthwhile to note that the Commission vide its letter 20 June, 2019 has specified that the successful bidder shall have to pay the pre-development expenses of Rs. 135.44 Crore to SPV, i.e., KVTPL which in turn would be reimbursed to TPC after due verification by STU. Therefore, the directive with respect to the payment of acquisition price has already been issued by the Commission. However, the Commission in the above letter has also specified that in case of any deviation on pre-development expenses as specified in the bid documents, TPC-T may claim the same in its upcoming Tariff Petition.
- b) It is to be noted that the pre-development expenses as included in acquisition price was to be reimbursed to TPC-T after due verification and validation by STU. Post verification of STU, the Commission vide its letter dated 14 September, 2020 has approved the amount of Rs. 118.27 Crore towards pre-development expenses based on STU's recommendation against TPC-T's claim of Rs.135.44 Crore. Subsequently, the Commission vide letter dated 3 October, 2020 has directed MSETCL to transfer validated amount of Rs. 118.27 Crore to TPC-T. Accordingly, MSETCL in compliance of the above directive, has effected payment of Rs.114.50 Crore (i.e., validated amount of Rs.118.27 Crore less TDS Rs. 3.77 Crore) in favour of TPC-T on 14 October, 2020.
- c) Further, as per the recommendation in the above-mentioned STU validation report, the Commission has kept on hold the decision on pre-development expense amounting to Rs. 9.30 Crore as claimed by TPC-T towards IDC, due to lack of documents justifying the claim of TPC-T. The Commission had directed TPC-T to

submit the requisite documents and justification complete in all respects to STU within a month. The Commission had also disallowed Rs.7.87 Crore as recommended by STU, which was incurred/ estimated by TPC-T post closure of the scheme towards the activities such as survey related expenses, engineering consultancy, site development expenses, pre-development expenses, and estimated claim of Return on Investment (ROI) for the period January 2019 to May 2019.

- d) Therefore, the Commission observes that the portion of pre-development expenses which has been validated and found prudent has been paid to TPC-T. Only the balance amount of Rs. 9.30 Crore against IDC is yet to be validated due to pendency of documentary evidence submission by TPC-T and Rs. 7.87 Crore against other activities, which were disallowed, have not been paid to TPC-T. Therefore, the question of issuing separate instructions/ directions to STU on this matter does not arise. Once the satisfactory documentary evidence against IDC claims is submitted by TPC-T, STU shall in a time bound manner after verifying the prudence of the expenses make such payments to TPC-T under intimation to the Commission.

V. Issue 5: Separate Petition for reliefs under change in acquisition price:

The Commission notes KVTPL's reply that it shall peruse any claim under Change in Law or any other relief as per TSA through a separate Petition. The Commission finds that the present proceeding is limited to grant of Transmission Licence and no such claim seeking relief under Change in Law or any other reason has been made by KVTPL. If any such Petition is filed by KVTPL in future, the Commission shall provide due opportunity to the concerned Respondents to submit their objections and/or suggestions as per the provisions of TSA.

VI. Issue 6: Additional scope of LILO on 400 KV 'Talegaon-Padghe' Line:

- a) As regards the issue raised by TPC-T towards additional scope of work, i.e., 'LILO on 400 kV Talegaon-Padghe line' being allocated to KVTPL, the Commission hereby clarifies that the scope of work for the aforesaid Transmission project shall strictly be as per the TSA.
- b) However, it is to be noted that in the Public Notice issued by the Commission vide dated 21 November, 2020, the 'LILO on 400 kV Talegaon-Kalwa line' had been inadvertently quoted as 'LILO on 400 kV Talegaon-Padghe line'. Further, the Petition including RFP, RFQ and TSA placed on the website of the Commission and KVTPL on which the objections were sought vide the Public Notice had the accurate details of Transmission project against which Transmission Licence has been sought.
- c) The Commission further clarifies that no additional scope has been entrusted to KVTPL and the scope of the Transmission scheme shall be as defined in the Schedule 2 of TSA only.

3.15 Further, in accordance with Section 15(2) of the EA, if an Application for a Licence is received for an area including the whole or any part of any cantonment, aerodrome, fortress, arsenal, dockyard or camp or any building or place in the occupation of the Central Government for defence purposes, no objection to the grant of the Licence on the part of the Central Government needs to be ascertained. Accordingly, the Commission vide its letter No. MERC/Case No. 141 of 2020 dated 2 November, 2020, requested the Ministry of

Defence, Ministry of Shipping and Ministry of Civil Aviation to submit objections, if any, with reference to KVTPL's Licence Application. The Commission in the aforesaid letter has also specified that the 400 kV Vikhroli project is a brownfield project initially awarded to TPC-T, which is now allotted to KVTPL as per TBCB process. Along with the letter the Commission has also provided the revised detailed scope of work with route map of the proposed transmission lines. It was requested to submit objections if any, within two weeks from the date of issue of the letter or else the Commission will proceed as per the provisions with regards to the Licence application as the project being extremely crucial for supply of electricity to Mumbai.

- 3.16 The Ministry of Ports, Shipping and Waterways, GoI, vide its Letter No. PD.24015/126/2020-PD-VII (e343731) dated 7 December, 2020 responded to the above mentioned letter issued by the Commission mentioning that the Ministry operates Jawaharlal Nehru Port Trust and Mumbai Port Trust in the State of Maharashtra. Thus, the Commission should specify the proposed area to be covered under the aforesaid Transmission project to enable the Ministry to consider the request for issuance of NOC.
- 3.17 The Commission accordingly sought the necessary details from KVTPL. KVTPL vide its email dated 24 December, 2020, has provided the TOPO sheet route map of KVTPL project detailing location of transmission lines (400 KV Kharghar-Vikhroli & 400 KV LILO of Talegaon-Kalwa) and 400 kV Substation. KVTPL has also provided approximate aerial distance marked from Jawaharlal Nehru Port Trust and Mumbai Port Trust as provided in the Table below:

Table 3: KVTPL approximate areal distance from JNPT & Mumbai Port Trust

Sr. No	Name of Substation/ Line	Jawaharlal Nehru Port Trust	Mumbai Port Trust	Remarks
1	400KV Vikhroli GIS Substation	17.5 KM	25KM	Distance form Substation location.
2	400KV Kharghar AIS Substation	15.5 KM	18KM	
3	400KV Kharghar-Vikhroli Transmission Line	11.75 KM	16KM	Distance from nearest Transmission line Tower location of line.
4	400KV LILO on Talegaon-Kalwa at Vikhroli Transmission Line	17 KM	18KM	

- 3.18 The Commission has taken cognizance of the details provided by KVTPL regarding the proposed area of development of the aforesaid Transmission scheme.
- 3.19 Further, KVTPL is directed to provide the said details to Ministry of Ports, Shipping and Waterways (GoI) for seeking the required NOC in accordance with Section 15(2) of the EA for establishing the aforesaid Transmission project. KVTPL should also submit a copy of all the correspondences done with Ministry of Ports, Shipping and Waterways (GoI) in this regard to STU and lead LTTC ..
- 3.20 The Airport Authority of India (AAI) vide its Letter No. AAI/ATM/DoAS/105/Navimumbai/2018 dated 9 December, 2020 has provided the following observations

against the Letter No. MERC/Case 141 of 2020 dated 2 November, 2020 issued by the Commission to Ministry of Civil Aviation:

- a. AAI has already provided 69 towers NOC to KVTPL.
- b. TPC had approached Appellate Committee of Ministry of Civil Aviation for higher height of 9 proposed towers. These towers were in the jurisdiction of the proposed Navi Mumbai Airport. The Appellant was granted elevation of 53m AMSL to 77.88m AMSL vide NOC Letter dated 22 November, 2018. The Appellant requested shielding criteria analysis for heights of 79.1 m Approximate Permissible Top Elevation (AMSL) to 137.6 m AMSL vide its Letter dated 27 November, 2018. Accordingly, the Appellate Committee in its meeting held on 26 February, 2019 using shielding criteria as per General Statutory Rules(GSR)-751 (E) provided higher height as given in Table below:

Table 4: Height provided by shielding criteria as per GSR-751 (E)

Pole ID	Requested Top Elevation (in m AMSL)	Permitted Top Elevation (in m AMSL)
4N	79.1	79.1
6N	131.1	131.31
7N	137.6	134
9N	116.68	115.3
11N	84.87	80.6
23N1	91.01	72
23N2	92.32	74.5
24N	107.07	92.3

- c. AAI further added that since six towers did not get the requested top elevations, the Appellant approached Appellate Committee for aeronautical study of Navi Mumbai airport. However, due to non-finalization of flight procedures at Navi Mumbai Airport, the aeronautical study could not be conducted. Further, flight procedures could not be designed as Navi Mumbai International Airport Limited (NMIAL) is yet to provide the Obstacle Removal Plan (ORP) for Navi Mumbai airport.
 - d. AAI further stated that to resolve the aforesaid issue, a meeting was conducted by Joint Secretary, Ministry of Civil Aviation on 17 September, 2020, wherein it was decided to expedite the finalization of ORP in coordination with local bodies. AAI vide its Letter dated 29 October, 2020, has provided a list of obstacles which are to be lowered or removed by NMIAL.
 - e. AAI accordingly requested the Commission to coordinate with NMIAL and CIDCO for finalization of ORP and provide the same to AAI for finalization of flight procedures and for carrying out aeronautical study process at Navi Mumbai Airport.
- 3.21 The Commission has noted the status of permissions to be provided by AAI. In view of the same, KVTPL is directed to liaise with NMIAL and CIDCO in order to expedite the aeronautical study to be conducted by AAI. KVTPL should obtain all the necessary NOCs/Permissions from AAI. KVTPL should submit a copy of all the correspondences carried out with NMIAL and CIDCO in the present matter to STU and lead LTTC.

3.22 Subsequently, the E-Public Hearing was held on 30 December, 2020. The objections or suggestions received during the E-Public Hearing are already summarized in the paras above. Accordingly, the Commission concluded the E-Public Hearing process.

4 Evaluation and Analysis of Application for Licence

4.1 The 400 kV GIS Receiving Station at Vikhroli amounting to Rs. 846.19 Crore, initially allocated to TPC-T was approved by the Commission on 2 June, 2011 to strengthen Mumbai's Transmission capacity. Subsequently, the Commission vide letter dated 3 October, 2011 approved the DPR for construction of single circuit, 400 kV Kharghar-Vikhroli Transmission Line amounting to Rs. 115.22 Crore with expected completion in FY 2015.

4.2 The scheme of 400 kV Kharghar-Vikhroli Transmission Line was revised by TPC-T for inclusion of GIS bays and was accordingly approved by the Commission on 5 February, 2014 amounting to Rs. 386.57 Crore. The Commission, once again, vide its letter dated 20 October, 2015 approved revised scheme for construction of 400 kV Multi Circuit Kharghar-Vikhroli Transmission Line amounting to Rs. 455.39 Crore.

4.3 The DPR of TPC-T for LILO on 400 kV Talegaon-Kalwa Line at proposed 400 kV Vikhroli Receiving Station to act as second source to 400kV Vikhroli was approved by the Commission on 10 November, 2017 amounting to Rs. 311.97 Crore with expected completion in FY 2021-22.

4.4 During MTR Petition of third control period, i.e., in Case No. 204 of 2017, the Commission observed that even after substantial delay, there is absolutely no progress on the scheme and TPC-T has been repeatedly citing the reasons of pending statutory permissions. TPC-T had already sought time extension for completion of the scheme twice and the Commission had also given approval in September, 2013 with target completion date as March, 2017 and in March, 2015 with target completion date as March, 2019. Despite this, it was observed that TPC-T in its aforesaid Petition has again submitted revised completion date as March, 2022 for the Transmission scheme.

4.5 The Commission in Order in Case No. 176 of 2017 (BEST's Petition regarding power procurement under competitive bidding) also observed that, STU while providing its comments highlighted the scheme of 400 kV Receiving station at Vikhroli as an essential scheme which requires implementation for strengthening of Mumbai Corridor. STU had made its observation that this scheme is getting inordinately delayed and suggested to take up this scheme under TBCB route. Accordingly, the Commission vide its Order dated 12 September, 2018 in Case No. 204 of 2017 declared this scheme as deemed closed and directed STU to take a review of such critical schemes and propose a way forward.

4.6 Aggrieved by the above decision, TPC-T, along with certain other issues related to the MTR Order in Case No. 204 of 2017, had filed Appeal No. 88 of 2019 before the APTEL on 31 October, 2018. The said Appeal was amended to include the issue of deemed closure of the Vikhroli scheme. The Hon'ble APTEL issued its Judgement in Appeal No. 88 of 2019 dated 23 September, 2019, wherein it rejected TPC's prayer and upheld the directions of the Commission to execute Vikhroli Scheme under TBCB.

4.7 TPC-T on 2 January, 2019 also filed Petition before the Commission in Case No. 3 of 2019 seeking review of the Commission's Order in Case No. 204 of 2017 in relation to deemed

closure of 400 kV Vikhroli Transmission Scheme. The Commission vide its Order dated 29 January, 2019 in Case No. 3 of 2019 dismissed the Review Petition filed by TPC-T and directed STU to submit its recommendations regarding execution of the 400 kV Vikhroli Transmission Project.

- 4.8 Subsequently, STU vide its letter dated 12 February, 2019 recommended to the Principal Secretary, GoM, to execute 400 kV Vikhroli Transmission scheme under TBCB. The GoM vide GR dated 2 May, 2019 appointed MSETCL as BPC for the purpose of selection of Bidder as TSP to establish 400 kV Vikhroli project through TBCB. Accordingly, BPC incorporated KVTPL under the Companies Act, 2013 to perform the duties of TSP.
- 4.9 Pursuant to the process of competitive bidding process, ATL was declared as the successful bidder. ATL acquired KVTPL on 25 June, 2020 after execution of the SPA.
- 4.10 As per the clause 3.1.3 (a) of the TSA, the successful bidder is required to obtain the Transmission Licence from the Commission. Accordingly, KVTPL has filed the present Petition under Section 14, 15 and 86 (l)(d) of the EA for grant of Transmission Licence to develop and operate the aforesaid Transmission Project.
- 4.11 The Commission has evaluated the Petition filed by KVTPL in accordance with the provisions of the EA and the MERC Transmission Licence Regulations as under:
- 4.12 The Commission verified KVTPL’s submissions pertaining to compliance with Schedule 1 of the Transmission Licence Regulations as below:

Table 5: Compliance evaluation of KVTPL’s submission

Sr No	Particulars	Status
1	General Information – Name, Primary Contact details	Submitted
2	Information about the Petitioner – Registered office, date of incorporation etc.	Submitted
3	Enclosures – Incorporation documents	Submitted
4	Technical Information	Submitted
5	Description of the actual and proposed location of the system of electric lines	Submitted
6	Detailed map of the proposed area of transmission	Submitted
7	List of defence areas	Not Applicable
8	List of street(s) which are repairable	Not Applicable
9	Financial Information	Submitted
10	Copy of receipt of processing fees	Submitted

- i. The Commission has considered STU’s recommendations dated 7 August, 2020 in accordance with the Section 15(4) of the EA, for grant of Transmission Licence to KVTPL for the transmission scheme as specified in Schedule 2 of TSA.
- ii. The Commission further notes that the Schedule I of MERC Transmission Licence Regulations also specifies that the licensee has to provide details of whole or any area or place within the proposed area of transmission, which are in the occupation of the Government for defence purposes. In this regard, KVTPL in its application has stated that **no cantonment, fortress, arsenal, dockyard or camp or any building or place**

in the occupation of the Government for defence fall within the proposed area of Transmission.

- iii. As Regards the ascertainment of no objections from the Central Government authorities, the Commission notes that Section 15 (2) of EA states as under:

“Section 15 (2)

.....

(ii) until, in the case of an application for a licence for an area including the whole or any part of any cantonment, aerodrome, fortress, arsenal, dockyard or camp or of any building or place in the occupation of the Government for defence purposes, the Appropriate Commission has ascertained that there is no objection to the grant of the licence on the part of the Central Government. “

- iv. As stated earlier that 400 kV Vikhroli project was initially awarded to TPC-T, accordingly, the Commission in the past vide its letter No. MERC/Case No. 112 of 2014/00701 dated 11 July, 2014 had approached the respective Central Government authorities (i.e., Ministry of Defence, Ministry of Shipping and Ministry of Civil Aviation) requesting for their NOCs , before granting Transmission Licence to TPC-T for the aforesaid project. However, no objections were received from respective Central Government authorities at that time. Subsequently, the said project was deemed closed due to reasons already mentioned at paras above.
- v. Further, the brownfield 400kV Vikhroli project with certain modifications in the scope of work has now been allotted to KVTPL through TBCB process set out by Govt. of India under Section 63 of the EA. The Commission further notes that the 400kV Vikhroli Project being brownfield project has already received certain NOCs from Airport Authority of India. Therefore, the Commission opines that a reconfirmation of the earlier NOC for the unchanged part and a fresh NOC for additional/revised scope of work is required to be ascertained from the respective Central Government authorities along with change in name of the Transmission Licensee, i.e., from TPC-T to KVTPL. Accordingly, in compliance with Section 15 (2) of the EA, the Commission vide its letter dated 2 November, 2020 has requested the Central Government Authorities to submit objections if any, within two weeks or else the Commission will proceed as per the provisions with regards to the Licence application.
- vi. The Ministry of Ports, Shipping and Waterways and Ministry of Civil Aviation have responded to the Commission’s request vide their letter dated 7 December, 2020 and 9 December, 2020 respectively. Whereas no response received from Ministry of Defence.
- vii. Further, in its response, Ministry of Ports, Shipping and Waterways have sought details of the proposed area to be covered under the 400kV Vikhroli Transmission project and accordingly, KVTPL has been directed to provide the necessary details to Ministry of Ports, Shipping and Waterways such as topo sheet , distance of KVTPL’s assets from JNPT and MbPT. Further, Ministry of Civil Aviation has provided its NOC for 69 towers and requested to coordinate with NMIAL and CIDCO for finalization of ORP and aeronautical study process at Navi Mumbai Airport for 6 towers. Accordingly, KVTPL has been directed to liaise with NMIAL and CIDCO in order to expedite the aeronautical study and to obtain all the necessary required Permissions/Approvals from AAI as

required under provisions of the EA. However, it was observed that the Central Government authorities have not raised any specific objections to the grant of Transmission Licence.

- viii. Considering the material on record and as no specific objections have been raised by the Central Government Authorities, the Commission prima-facie is of the view that KVTPL satisfies the requirements for grant of Transmission Licence under Section 15 of the EA read with MERC Transmission Licence Regulations, 2004 and its amendment. However, the Commission directs KVTPL to secure required Approvals/Permissions/clearances from the Central Government Authorities and comply with any directives issued by them.
- ix. As regards the requirement for approval under Section 68 of the EA, the relevant provision reads as follows:
- “68. (Provisions relating to Overhead lines):*
- (1) An overhead line shall, with prior approval of the Appropriate Government, be installed or kept installed above ground in accordance with the provisions of sub-section (2).*
- (2) The provisions contained in sub-section (1) shall not apply--*
- (a) in relation to an electric line which has a nominal voltage not exceeding 11 kilovolts and is used or intended to be used for supplying to a single consumer;*
- (b) in relation to so much of an electric line as is or will be within premises in the occupation or control of the person responsible for its installation; or*
- (c) in such other cases, as may be prescribed”*
- x. Section 164 of the EA provides for approval for the appropriate Government for placing electric lines or plant under the provisions of the Indian Telegraph Act, 1885. The extract of relevant provision is as follows.
- ‘164. (Exercise of powers of Telegraph Authority in certain cases):*
- The Appropriate Government may, by order in writing, for the placing of electric lines or electrical plant for the transmission of electricity or for the purpose of telephonic or telegraphic communications necessary for the proper co-ordination of works, confer upon any public officer, licensee or any other person engaged in the business of supplying electricity under this Act, subject to such conditions and restrictions, if any, as the Appropriate Government may think fit to impose and to the provisions of the Indian Telegraph Act, 1885, any of the powers which the telegraph authority possesses under that Act with respect to the placing of telegraph lines and posts for the purposes of a telegraph established or maintained, by the Government or to be so established or maintained.”*
- xi. KVTPL vide its Letter No. KVTPL /TL/180920-1 dated 18 September, 2020 and Letter No. KVTPL /TL/180920-2 dated 18 September, 2020 to the PS (energy), Industries, Energy & Labour Department (GoM), has applied for the approval under the section 68 and section 164 of EA, respectively.

- xii. The Commission notes that KVTPL has applied for necessary permissions under Section 68 and Section 164 of the EA to PS (Energy), GoM though these permissions were obtained by TPC-T in the year 2012. The old scope was for 400 kV Vikhroli SS and 400 kV Kharghar- Vikhroli line only. However, 400 kV Talegaon-Kalwa LILO line has been added in the scope and the Transmission scheme has undergone multiple revisions in the intervening period as explained above. Further, the number of circuits, type of towers and conductor configuration has also been modified as per Transmission system requirement. All such revisions have been incorporated in the final scheme awarded to ATL through TBCB. Also, the old permissions was granted in the name of TPC-T.
- xiii. Considering the necessity of these permissions for execution of the scheme, the Commission directs KVTPL to liaise with concerned authorities to secure the permissions in a timely manner under Section 68 and Section 164 of the EA for the aforesaid transmission scheme. It is also to be noted that with the Transmission Licence being granted by the Commission through the current proceedings, it shall be responsibility KVTPL to obtain the above said permissions in such a manner that the obligations of schedule date of commissioning prescribed in TSA is met.
- xiv. Further, as per Schedule 2 of the MERC Transmission Licence Regulations, there are two alternatives under which the Transmission Licence can be granted. The Commission has evaluated the Petition of KVTPL against the same and notes that the purpose of the Kharghar Vikhroli Transmission project is to establish specific Transmission system for “400 kV Vikhroli receiving station and associated incoming Transmission lines for strengthening of Mumbai Transmission System” through TBCB process on BOOM basis. Hence, the case of KVTPL is eligible for **Alternative 2** of the MERC (Transmission Licence Conditions) Regulations, 2004 and its amendment.
- xv. Further, the Commission has taken cognizance of the concerns raised by the Respondents towards ability of TSP to execute the said project within the timelines as specified in the TSA. Therefore, the Commission has evaluated technical, financial and managerial capability of TSP as per criteria specified in the SBDs and relevant information as submitted by KVTPL in its Petition. As per RFQ document, for execution of Vikhroli Transmission Project, bidders must have net-worth not less than Rs. 250 Crore in any of last three financial years, as on submission of the bid. As against this, it was observed that ATL possessed adequate net-worth, which is more than 5 times the threshold criteria of Rs. 250 Crore as specified in RFQ. In terms of technical capability, it was observed that ATL through its subsidiaries has the required experience in project execution & operations of Transmission systems not only in the State of Maharashtra but in other parts of the Country as well. As regard to managerial capability, it was observed that the senior management of KVTPL is having average experience of above 20 years in Regulatory, Technical & Financial domains of Transmission business. Also, ATL has reportedly executed many other similar projects under TBCB successfully. In view of the above, the Commission opines that KVTPL possesses requisite technical and financial capability for execution of the said project.

5. Grant of Transmission Licence

5.1 In exercise of the powers vested with the Commission under Section 14 of the EA, the Commission hereby grants a Transmission Licence to KVTPL for a period of 25 years from

the date of this Order under Alternative 2 and in accordance with the MERC (Transmission Licence Conditions) Regulations, 2004 and its subsequent amendments.

5.2 The Grant of Transmission Licence to KVTPL is subject to the fulfilment of the following conditions throughout the period of Licence and it shall, unless revoked earlier, remain in force for a period of 25 years;

- i. Since the expiry date as per the TSA is 35 years from the scheduled COD of the project, the Transmission Licensee may file a Petition, two years before the expiry of initial licence period, for grant of licence for another term in accordance with Regulation 4 of the MERC Transmission Licence Regulations, 2004 as amended from time to time, which may be considered by the Commission in accordance with law;**
- ii. The Transmission Licensee shall comply with the provisions of the Transmission Licence Regulations or any subsequent enactment thereof and the terms and condition of the TSA during the period of subsistence of the licence;**
- iii. The Transmission Licensee shall abide by the system specifications as provided and agreed in the bidding document and also incorporated in the Transmission Service Agreement. No deviation, whatsoever, shall be permitted at any stage;**
- iv. The Transmission Licensee shall strictly abide by all the terms and conditions as specified in Transmission Service Agreement executed between the Licensee and Long Term Transmission Customers;**
- v. The Transmission Licensee shall not enter into any contract for or otherwise engage in the business of trading in electricity during the period of subsistence of the transmission licence;**
- vi. The Transmission Licensee shall remain bound by the provisions of the EA, 2003, the Rules and Regulations framed thereunder, in particular the Transmission Licence Regulations, the Grid Code, the Standards specified by the Central Electricity Authority, Orders and directions of the Commission issued from time to time;**
- vii. The Transmission Licensee shall maintain separate audited accounts of its transmission business, including the business of the undertaking utilising assets of the project, in such form and containing such particulars as may be specified by the Commission and till such time these are specified by the Commission, the accounts shall be maintained in accordance with the Companies Act, 2013, as amended from time to time;**
- viii. The Transmission licensee shall have the liability to pay the license fee in accordance with the Schedule of Fees and Charges of the MERC (Fees and Charges) Regulations, 2017. Delay in payment or non-payment of licence fee or a part thereof for a period exceeding sixty days shall be construed as breach of the terms and conditions of the licence;**
- ix. The Transmission Licensee shall ensure commissioning of the project within timeline specified in the Schedule 3 of the TSA (30 Months / 12 March, 2022) and as per the Technical Standards and Grid Standards of CEA prescribed in Article**

5.1.1 and Article 5.4 of the TSA;

- x. **The Transmission Licensee shall obtain all consents, clearances and permits relating but not limited to road/ rail/ river/ canal/ power line/ crossings, power and telecom coordination committee, defence, civil aviation, right of way/ way-leaves and environmental & forest clearance from relevant authorities required for developing, financing, constructing, maintaining/ renewing all such consents, clearances and permits in order to carry out its obligations under the Transmission Service Agreement, and shall furnish to the Commission promptly with the copy/ies of consents, clearances and permits, which it obtains;**
- xi. **The Transmission Licensee shall have the responsibility to acquire the necessary land for Substation and Lines etc. required for the project.**
- xii. **Failure of KVTPL to comply with the provisions of TSA/EA and Rules and Regulations, etc., this Licence would be liable to be cancelled with due process.**

6. Hence the following Order:

ORDER

1. **Case No. 141 of 2020 is allowed.**
2. **The Transmission Licence is granted to Kharghar Vikhroli Transmission Pvt. Ltd. for the Transmission scheme as mentioned in Table - 1 of this Order.**
3. **The Transmission Licence shall come into effect from the date of issuance of this Order.**
4. **The Transmission Licence No. 1 of 2021 dated 23 January, 2021 granted to KVTPL is appended with this Order.**
5. **The Secretariat of the Commission is directed to forward a copy of the Transmission Licence to the Government of Maharashtra, all Electricity Transmission Licensees and Distribution Licensees in the State of Maharashtra, the Central Electricity Authority, the concerned Local Authorities/ Local Self-Governments (Zilla Parishad, Municipal bodies) of the District and cities/ towns through which the Transmission Line passes and uploaded on the Commission's website.**
6. **Transmission Licensee shall provide to the Long Term Transmission Customers, on a monthly basis, progress reports with regard to the Project and its execution to enable the Long Term Transmission Customers to monitor and co-ordinate the development of the Project, matching with the Interconnection Facilities. A copy of such monthly progress report shall also be sent to STU, CEA and the Commission.**

Sd/-
(Mukesh Khullar)
Member

Sd/-
(I.M. Bohari)
Member



Annexure “A”

Attendance at e-Public Hearing conducted on 30 December, 2020.

Sl No	Name	Institution
1	Shri. Bhavesh Kundalia	KVTPL
2	Shri Shailesh Poria (Adv.)	KVTPL
3	Shri Amey Mapsekar	TPC-T
4	Shri Prashant Kumar	TPC-D
5	Shri. Abaji Naralkar	AEML-D
6	Shri N N Chougale	BEST Undertaking
7	Shri Nitin Chunarkar	GEPL/MBPPL
8	Shri Jagannath Chude	MSETCL
9	Shri. Prasad G Narnaware	STU
10	Ms. Ann Josey	Prayas Energy Group