



नई दिल्ली  
NEW DELHI

याचिका संख्या. /Petition No.: 206/MP/2018 alongwith I.A. 4 of 2019  
209/MP/2018 alongwith I.A. 7 of 2019  
226/MP/2018  
212/MP/2018 alongwith I.A. 8 of 2019  
207/MP/2018 alongwith I.A. 1 of 2019  
210/MP/2018 alongwith I.A. 3 of 2019

कोरम/Coram:

श्री पी. के. पुजारी, अध्यक्ष/Shri P. K. Pujari, Chairperson  
डॉ. एम. के. अय्यर, सदस्य/ Dr. M.K. Iyer, Member

आदेश दिनांक /Date of Order: 12<sup>th</sup> of April, 2019

**IN THE MATTER OF:**

Petition under Section 79 the Electricity Act, 2003 read with Article 12 of the Power Purchase Agreements executed between Petitioners Ltd. and the Respondents, for seeking approval of Change in Law events due to enactment of the GST Laws.

**AND IN THE MATTER OF:**

**1) Petition No. 206/MP/2018 alongwith I.A. 4 of 2019**

Parampujya Solar Energy Pvt. Ltd. (PSEPL)  
5B, Sambhav House, Judges,  
Bungalow Road, Bodakdev,  
Ahmedabad - 380015, Gujarat

...Petitioner

VERSUS

National Thermal Power Corporation Ltd. (NTPC).  
Core-7, SCOPE Complex,  
1, Institutional Area,  
Lodi Road. New Delhi-110003

The Ministry of New and Renewable Energy (MNRE)  
Block-14, CGO Complex,  
Lodhi Road, New Delhi-110 003

Mangalore Electricity Supply Company Ltd. (MESCOM)  
MESCOM Bhavan,  
Kavoor Cross Road, Bejai,  
Mangaluru, Karnataka 575004

Bangalore Electricity Supply Company Ltd. (BESCOM)  
6, 2nd Floor, 2nd B Cross Rd,  
Koramangala 1A Block,  
Koramangala, Bengaluru,  
Karnataka 560034

Chamundeshwari Electricity Supply Corp. Ltd. (CESC)  
Sri Harsha Rd, Lashkar Mohalla,  
Mandi Mohalla, Mysuru,  
Karnataka 570001

Gulbarga Electricity Supply Company Ltd. (GESCOM)  
Station Road, Kalaburagi,  
Karnataka 585102

Hubli Electricity Supply Company Ltd. (HESCOM)  
PB Road, Durgad Bail,  
Navanagar, Hubballi,  
Karnataka 580025

**...Respondents**

**AND IN THE MATTER OF:**

**2) Petition No. 209/MP/2018 alongwith I.A. 7 of 2019**

Parampujya Solar Energy Pvt. Ltd. (PSEPL)  
5B, Sambhav House, Judges, Bungalow Road, Bodakdev,  
Ahmedabad - 380015, Gujarat

**...Petitioner**

**VERSUS**

National Thermal Power Corporation Ltd. (NTPC),  
Core-7, SCOPE Complex, 7,

Institutional Area, Lodi Road,  
New Delhi - 110003

The Ministry of New and Renewable Energy (MNRE)  
Block-14, CGO Complex,  
Lodhi Road, New Delhi-110 003

Telangana Northern Power Distribution Company Ltd  
Hyderabad - Warangal - Bhopalpatnam Hwy,  
Near Wadepally Lake, NGOs Colony,  
Wadepally, Hanamkonda, Telangana 506001

Telangana Southern Power Distribution Company Ltd  
Engine Bowli, Jangammet, Falaknuma,  
Hyderabad, Telangana 500053

**...Respondents**

**AND IN THE MATTER OF:  
3) Petition No. 226/MP/2018**

Parampujya Solar Energy Pvt. Ltd. (PSEPL)  
5B, Sambhav House, Judges,  
Bungalow Road, Bodakdev,  
Ahmedabad - 380015, Gujarat

**...Petitioner**

VERSUS

National Thermal Power Corporation Ltd. (NTPC).  
Core-7, SCOPE Complex,  
1, Institutional Area,  
Lodi Road. New Delhi-110003

The Ministry of New and Renewable Energy (MNRE)  
Block-14, CGO Complex,  
Lodhi Road, New Delhi-110 003

Mangalore Electricity Supply Company Ltd. (MESCOM)  
MESCOM Bhavan,  
Kavoor Cross Road, Bejai,  
Mangaluru, Karnataka 575004

Bangalore Electricity Supply Company Ltd. (BESCOM)  
6, 2nd Floor, 2nd B Cross Rd,  
Koramangala 1A Block,

Koramangala, Bengaluru,  
Karnataka 560034

Chamundeshwari Electricity Supply Corp. Ltd. (CESC)  
Sri Harsha Rd, Lashkar Mohalla,  
Mandi Mohalla, Mysuru,  
Karnataka 570001

Gulbarga Electricity Supply Company Ltd. (GESCOM)  
Station Road, Kalaburagi,  
Karnataka 585102

Hubli Electricity Supply Company Ltd. (HESCOM)  
PB Road, Durgad Bail,  
Navanagar, Hubballi,  
Karnataka 580025

**...Respondents**

**AND IN THE MATTER OF:**

**4) Petition No. 212/MP/2018 alongwith I.A. 8 of 2019**

Parampujya Solar Energy Pvt. Ltd. (PSEPL)  
5B, Sambhav House, Judges,  
Bungalow Road, Bodakdev,  
Ahmedabad - 380015, Gujarat

**...Petitioner**

**VERSUS**

Solar Energy Corporation of India Ltd. (SECI)  
1st Floor, A-Wing, 0-3,  
District Centre, Saket,  
New Delhi- 110017

The Ministry of New and Renewable Energy (MNRE)  
Block-14, CGO Complex,  
Lodhi Road,  
New Delhi-110 003

Maharashtra State Electricity Distribution Company Ltd.  
Hudco, Ekanth Nagar, N 11,  
Cidco, Aurangabad,  
Maharashtra 431003

**...Respondents**

**AND IN THE MATTER OF:**

**5) Petition No. 207/MP/2018 alongwith I.A. 1 of 2019**

Wardha Solar (Maharashtra) Private Ltd. (WSMPL)  
Adani House, Nr Mithakhali Six Roads  
Navrangpura, Ahmedabad 380 009  
Gujarat, India

**... Petitioner**

**VERSUS**

Solar Energy Corporation of India Ltd. (SECI)  
1<sup>st</sup> Floor, A-Wing, 0-3,  
District Centre, Saket,  
New Delhi-110017

The Ministry of New and Renewable Energy (MNRE)  
Block-14, CGO Complex,  
Lodhi Road,  
New Delhi-110003

Bangalore Electricity Supply Company Ltd. (BESCOM)  
6, 2nd Floor, 2nd B Cross Rd,  
Koramangala 1A Block,  
Koramangala, Bengaluru,  
Karnataka 560034

Chamundeshwari Electricity Supply Corp. Ltd. (CESC)  
Sri Harsha Rd, Lashkar Mohalla,  
Mandi Mohalla, Mysuru,  
Karnataka 570001

Hubli Electricity Supply Company Ltd. (HESCOM)  
PB Road, Durgad Bail,  
Navanagar, Hubballi,  
Karnataka 580025

**... Respondents**

**AND IN THE MATTER OF:**

**6) Petition No. 210/MP/2018 alongwith I.A. 3 of 2019**

Wardha Solar (Maharashtra) Private Ltd. (WSMPL)  
Adani House, Nr Mithakhali Six Roads Navrangpura,  
Ahmedabad  
Gujarat 380 009

...Petitioner

VERSUS

Solar Energy Corporation of India Ltd. (SECI)  
1<sup>st</sup> Floor, A-Wing, 0-3,  
District Centre, Saket,  
New Delhi- 110017

The Ministry of New and Renewable Energy (MNRE)  
Block-14, CGO Complex,  
Lodhi Road,  
New Delhi-110 003

Bangalore Electricity Supply Company Ltd. (BESCOM)  
6, 2nd Floor, 2nd B Cross Rd,  
Koramangala 1A Block,  
Koramangala, Bengaluru,  
Karnataka 560034

Chamundeshwari Electricity Supply Corp. Ltd. (CESC)  
Sri Harsha Rd, Lashkar Mohalla,  
Mandi Mohalla, Mysuru,  
Karnataka 570001

Hubli Electricity Supply Company Ltd. (HESCOM)  
PB Road, Durgad Bail.  
Navanagar, Hubballi,  
Karnataka 580025

...Respondents

**Parties Present:** Ms. Poonam Verma, Advocate, PSEPL & WSMPL  
Ms. Tarul Sharma, Advocate, PSEPL & WSMPL  
Shri Rakesh Shah, PSEPL  
Shri M.G. Ramachandran, Advocate, NTPC, SECI & NVVNL  
Ms. Poorva Saigal, Advocate, NTPC, SECI & NVVNL  
Ms. Anushree Bardhan, NTPC, SECI & NVVNL

### आदेश/ ORDER

1. The Petitioner, M/s Parampujya Solar Energy Pvt. Limited (PSEPL) is a generating company and is primarily engaged in the business of setting up of solar power plants and generation of electricity. The Petitioner is a wholly owned subsidiary of M/s Adani Green Energy Limited.

The Petitioner has filed Petition No. 206/MP/2018; Petition No. 209/MP/2018; Petition No. 226/MP/2018 & Petition No. 212/MP/2018.

2. The Petitioner, M/s Wardha Solar (Maharashtra) Private Limited (WSPL) is a generating company and is primarily engaged in the business of setting up of solar power plants and generation of electricity. The Petitioner is a wholly owned subsidiary of M/s Parampujya Solar Energy Private Limited. The Petitioner has filed Petition No. 207/MP/2018 and Petition No. 210/MP/2018. PSEPL and WSPL are jointly referred to as “the Petitioners” hereafter.
3. The Respondent, M/s NTPC Ltd. is a Central Public Sector Undertaking and is engaged in the business of generation of electricity and allied activities. Under the State Specific Bundling Scheme of the National Solar Mission, NTPC is responsible for implementation of scheme of Ministry of New and Renewable Energy for setting up Solar Power Plants, with whom PSEPL has executed a Power Purchase Agreement.
4. The Respondent, M/s Solar Energy Corporation of India Limited, is a Central Public Sector Undertaking and has been designated by the Government of India as the nodal agency for implementation of Ministry of New and Renewable Energy (hereinafter referred to as ‘MNRE’) Scheme for developing grid connected solar power capacity including Phase-II, Batch-III, Tranche-V of the Jawaharlal Nehru National Solar Mission (hereinafter referred to as ‘JNNSM’) of Government of India (hereinafter referred to as ‘GOI’).
5. The Petitioners have made the following prayers in Petition No. 206/MP/2018 alongwith I.A. 4 of 2019; Petition No. 209/MP/2018 alongwith I.A. 7 of 2019; Petition No. 226/MP/2018; Petition No. 212/MP/2018 alongwith I.A. 8 of 2019; Petition No. 207/MP/2018 alongwith I.A. 1 of 2019 and Petition No. 210/MP/2018 alongwith I.A. 3 of 2019:

*(a) Admit the Petition;*

*(b) Hold and declare that the imposition of the Integrated Goods and Services Tax, 2017, Central Goods and Services Tax, 2017 and Karnataka/Telangana/Maharashtra Goods and Services Tax, 2017 is an event under Change in Law under Article 12 of the PPA;*

*(c) Restore Petitioners to the same economic condition prior to occurrence of the*

*Changes in Law by way of adjustment in tariff in terms of Article 12 of the PPA by increasing the tariff as prayed for in the present Petition.*

- (d) Pending proceedings, direct Respondents to pay to Petitioners the amount claimed under Change in Law which shall be subject to adjustment based on the final order passed by the Commission;*
- (e) To pass such other and further order or orders as the Commission deems appropriate under the facts and circumstances of the present case.*

**Related I.A.'s**

- (a) Grant carrying cost to the Applicants.*
- (b) Restore the Applicants to the same economic position as it were prior to the occurrence of the Change in Law event.*
- (c) Direct the Respondents to pay to the Applicants the amount claimed under Change in Law in terms of Article 12 of the PPA along with carrying cost from the date the change in law event has come into effect.*
- (d) Pass such further orders or directions as the Commission may deem just and proper in the circumstances of the case.*

**Brief facts of the case:**

6. The Petitioner PSEPL in Petition No. 206/MP/2018, Petition No. 209/MP/2018 and Petition No. 226/MP/2018 was selected as the successful bidder under the National Solar Mission Phase-II Batch-II Tranche-I State Specific Bidding Scheme conducted by NTPC Ltd. The Petitioner entered into Power Purchase Agreements with NTPC for development of Solar Photo Voltaic Power Plants in the State of Karnataka and Telangana. The Solar Power Plants were to be developed on long term basis. As per the PPAs as well as the Bidding Scheme, the solar power purchased by NTPC under the PPAs is to be bundled with thermal power produced at NTPC stations and then sold to the Distribution Companies.
7. The Petitioners in Petition No. 212/MP/2018, Petition No. 207/MP/2018 and Petition No. 210/MP/2018 were selected as the successful bidder for development of solar power projects under the National Solar Mission Phase-II Batch-III Tranche-I and V (respectively) "State



Specific Viability Gap Funding (VGF) Scheme” conducted by Solar Energy Corporation of India Ltd. Pursuant thereto in terms of the bidding scheme, the Petitioners entered into PPAs with SECI for development of Solar Photo Voltaic Power Plants under DCR category - Non Solar Park and Supply of Solar Power in the State of Maharashtra and Karnataka on long term basis at a tariff of Rs. 4.43/kWh.

8. The Respondent (NTPC) issued Request for Selection (hereinafter referred to as “RfS”) of Solar Power Developers (hereinafter referred to as “SPDs”) for setting up grid-connected solar projects of Projects of 100 MW capacity (50 MW X 2 Projects) & 500 MW capacity in the State of Karnataka and 350 MW capacity (10 MW x 35 Projects) in the State of Telangana through e-bidding process. Pursuant to the RfS, the Petitioner PSEPL was selected for setting up of a solar power generation facility in the State of Karnataka and Telangana. The Petitioner has entered into separate Power Purchase Agreements (hereinafter referred to as “PPAs”) with NTPC for setting up of solar power projects in the State of Karnataka and Telangana and for the consequent sale of solar power to NTPC.
9. The Respondent (SECI) issued RfS of SPDs for setting up grid-connected Solar PV Projects for an aggregate capacity of 50 MW capacity respectively through an e-bidding process based on guidelines issued by MNRE in the State of Maharashtra and Karnataka. Pursuant to the RfS, WSPL was selected by SECI as SPD for the setting up of a solar power generation facility and has entered into a PPA with SECI for setting up of solar power project in the State of Maharashtra and Karnataka.
10. On 12.04.2017, Government of India (hereinafter referred to as “GOI”) introduced the Goods and Services Tax, replacing multiple taxes levied by the Central and State Governments.
11. On 01.07.2017, the Central Goods and Services Tax Act, 2017; The Integrated Goods and Services Tax Act, 2017 for levy and collection of tax on inter-State supply of goods or services or both by the Central Government were enacted. The State (Karnataka/Telangana/Maharashtra) Goods and Services Tax Act, 2017 was enacted for levy and collection of tax on intra-State supply of goods or services or both by the respective States.

12. Hence the Petitions.

### **Submissions of the Petitioners**

13. The Petitioners have submitted that with a view to promote solar energy, MNRE issued Guidelines for implementation of the Scheme for selection of 3000 MW Grid Connected Solar PV Power Projects under Phase-II, Batch-II, Tranche-I for “State Specific Bundling Scheme” (hereinafter referred to as “Bundling Guidelines”) on 10.03.2015. The Scheme was to be implemented by NTPC through NVVN. MNRE also issued Guidelines for implementation of the Scheme for selection of 50 MW and 2000 MW Grid Connected Solar PV Power Projects under Phase-II, Batch-III with viability gap funding support from National Clean Energy Fund (hereinafter referred to as “VGF Guidelines”) on 04.08.2015. The Scheme was to be implemented by SECI.
14. The Respondents invited proposals for a RfS for setting up Grid connected Solar-PV Power Projects in various States of India. The Petitioners participated in the bids after following the process of Reverse Auction conducted by the Respondents and were selected as the successful bidders. The Respondents issued the Letter of Intent (hereinafter referred to as “LoI”). Pursuant thereto, the Petitioners entered into a Power Purchase Agreement (hereinafter referred to as “PPA”) for setting up of solar power plant at different rates of fixed tariff for 25 years.
15. The Petitioners have submitted that subsequent to the ‘Effective Date’ as per the PPAs, the following change in law events took place:-
- (a) On 08.09.2016, the Constitution (One Hundred and First Amendment) Act 2016 was notified in the Gazette of India, empowering both, the Central and State Governments, to levy GST on the supply of goods and services.
  - (b) On 12.04.2017, the Central Goods and Services Tax Act, 2017 (“CGST Act”) was enacted for levy and collection of tax *w.e.f.* 01.07.2017, on intra-State supply of goods or services, or both, by the Central Government.
  - (c) On 12.04.2017, the Integrated Goods and Services Tax Act, 2017 (“IGST Act”), was

enacted for the levy and collection of tax *w.e.f.* 01.07.2017 on inter-State supply of goods or services or both by the Central Government.

- d) On 14.06.2017, the State Goods and Services Tax Act, 2017 (“**SGST Act**”), was enacted for levy and collection of tax *w.e.f.* 01.07.2017 on intra-State supply of goods or services, or both, by various States of India.

16. The Petitioners have submitted that the Petitioners sent notice to the Respondents regarding the ‘Change in Law’ event that took place after applicability of GST *w.e.f.* 01.07.2017. In this regard, no response was received from the Respondents. In fact, till date no response has been received and the Petitioners are therefore filing the present Petition seeking approval for ‘change in law’ in terms of Article 12 of the PPA.
17. The Petitioners have submitted that prior to the Effective Date under the PPA, the erstwhile indirect tax regime provided for a complex tax environment due to multiplicity of taxes and elaborate compliance obligations. However, pursuant to the Effective Date, the new indirect taxation system in the country namely GST has been introduced, representing a paradigm shift in the mode and levy of indirect taxes. The earlier indirect tax regime was characterized by multiple laws, different mechanisms, definitions etc. With introduction of GST, several indirect taxes including Excise Duty, Service Tax, VAT, Central Sales Tax etc. have been replaced by a consolidated and singular taxation scheme namely GST. In accordance to the above referred GST laws, with effect from 01.07.2017, on Intra-State supplies of goods or services - CGST & SGST are required to be levied by the Central and State Government respectively and on Inter -State supplies of goods or services - IGST was to be levied by the Central Government, at the rate prescribed from time to time. They have not contemplated such additional taxes/GST at the time of the bid submission. Introduction of GST regime made a huge impact on the actual cost of the project *vis-a-vis* budgeted cost, which was beyond the control of the Petitioners and therefore relief on account of ‘change in law’ is being prayed for.
18. The Petitioners have submitted that in view of the GST Laws *w.e.f.* 01.07.2017, a tax slab of 5% to 28% has been introduced with respect to goods & services required for execution, construction and operation of Solar Power Plants. The said goods and services were

previously either exempted or fell under lower tax slabs. The GST Laws' Acts have led to the levy of taxes impacting the Project cost of the Petitioners as under:-

**A. Escalation in cost of construction on account of GST:**

19. The new slabs have led to an increase in the overall project cost. The change of tax regime has escalated the capital cost of Petitioners project, hence making the tariff quoted at the time of bid for allocation of project unviable. The total escalation in cost of the Petitioners is detailed hereunder:-

Component	Incremental impact on cost of Project in Petition No. 206/MP/18 (Rs.)	Incremental impact on cost of Project in Petition No. 209/MP/18 (Rs.)	Incremental impact on cost of Project in Petition No. 226/MP/18 (Rs.)	Incremental impact on cost of Project in Petition No. 212/MP/18 (Rs.)	Incremental impact on cost of Project in Petition No. 207/MP/18 (Rs.)	Incremental impact on cost of Project in Petition No. 210/MP/18 (Rs.)
Cost of Construction	11,10,37,769	2,45,48,956	1,82,99,192	8,18,81,887	12,17,32,652	2,11,65,375

**B. Impact of GST on Operation & Maintenance (O&M) Expenses:-**

20. The Petitioners have submitted that before the Effective Date, Service Tax at the rate of 15% was being levied on O&M Expenses. In view of the GST Laws the rate of 18% is being levied on operation and maintenance expenses. This will lead to an incremental impact on the cost of the Project as under:

Component	Incremental impact in Petition No. 206/MP/18 (Rs.)	Incremental impact in Petition No. 209/MP/18 (Rs.)	Incremental impact in Petition No. 226/MP/18 (Rs.)	Incremental impact in Petition No. 212/MP/18 (Rs.)	Incremental impact in Petition No. 207/MP/18 (Rs.)	Incremental impact in Petition No. 210/MP/18 (Rs.)
O & M	2,01,40,483	2,01,40,483	2,01,40,483	80,56,193	1,56,00,000	1,56,11,040

21. The Petitioners have submitted that for determination of the impact of GST in Operation & Maintenance Expenses which the Petitioners are going to incur in next 25 years of PPA tenure, O&M has been worked on the basis of relevant normative parameters as specified by the Commission in the Central Electricity Regulatory Commission (Terms and Conditions for

Tariff determination from Renewable Energy Sources) Regulations, 2012 as amended on 31.03.2016. The Regulations prescribe O&M expenses for the year of 2017-18 at Rs. 7.41 Lacs/MW, which includes Service Tax of 15%, with an annual escalation of 5.72%. The Petitioners have considered the same parameter with an additional 3% GST impact, i.e. 18% GST on the normative O&M expenses and is being claimed as the differential amount as per the change in law provision of the PPA.

### **C. Change in Law Submissions:**

22. The Petitioners have submitted that the PPAs entered into between the parties provide for a specific provision *qua* the concept of “Change in Law”. The fundamental philosophy behind the said provision is to ensure that additional recurring/non-recurring expenditure by the Seller due to “Change in Law” event through monthly Tariff Payment to the extent it restores the affected party to the same economic position as if such change in law had not occurred. The concept of change in law has been introduced in the PPAs to ensure that the parameters/contours based on which the Petitioners have bid for supplying power do not change in times to come and that no detriment to either Petitioners or Respondents is caused due to such change in law events. The definition of Law as provided under the PPAs is an inclusive and illustrative definition, and contemplates all laws, including the Electricity Laws applicable in India in various forms. The definition of law is quoted as under:-

*“Law shall mean in relation to this Agreement, all laws including Electricity Laws in force in India and any statute, ordinance, regulation, notification or code, rule, or any interpretation of any of them by an Indian Government Instrumentality and having force of law and shall further include without limitation all applicable rules, regulations, orders, notifications by an Indian Governmental Instrumentality pursuant to or under any of them and shall include without limitation all rules, regulations, decisions and orders or the Appropriate Commission;”*

23. The relevant clause of the PPA i.e. Article 12 is quoted as under:

#### **ARTICLE 12: CHANGE IN LAW**

##### **12.1 Definitions**

*In this Article 12, the following terms shall have the following meanings:*

- 12.1.1 *“Change in Law” means the occurrence of any of the following events after the Effective Date resulting into any additional recurring/ non-recurring expenditure by the SPD or any income to the SPD:*

- *the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law;*
- *a change in the interpretation or application of any Law by any Indian Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of Law;*
- *the imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier;*
- *a change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits; except due to any default of the SPD;*
- *any change in tax or introduction of any tax made applicable for supply of power by the SPD as per the terms of this Agreement.*

*but shall not include (i) any change in any withholding tax on income or dividends distributed to the shareholders of the SPD, or (ii) any change on account of regulatory measures by the Appropriate Commission.*

**12.2 Relief for Change in Law**

12.2.1 *The aggrieved Party shall be required to approach Central Commission for seeking approval of Change in Law.*

12.2.2 *The decision of the Central Commission to acknowledge a Change in Law and the date from which it will become effective, provide relief for the same, shall be final and governing on both the parties.*

24. The Petitioners have submitted that in terms of the aforesaid Article 12.2 of the PPAs, they are entitled to claim the same being an event of change in law. In doing so, this Commission has the power to:

- a) Acknowledge the event of change in law.
- b) Award the applicable relief to the affected party, including the date from when such relief will come into effect.

25. The Petitioners have submitted that as per Article 12 of the PPAs, the following conditions have to be met with while claiming a change in law:-

- (a) The underlying principle of change in law provision is to determine the consequence of change in law and to restore a party affected to the same economic position by providing a relief under change in law, as if such change in law had not occurred.
- (b) The coming into effect of:

The enactment or coming into force of any law.

Change in interpretation of any law.

Change in any consents, Clearances or Permits available for the Project.

Inclusion of new or Change in the terms and conditions prescribed for obtaining the Consents, Clearances, Permits.

Change in tax or introduction of any tax made applicable.

- (c) Provided that such change in law results in any additional recurring/non-recurring expenditure by the Developer or any income to the Developer.

26. The Petitioners have submitted that the Hon'ble Appellate Tribunal for Electricity in its order dated 19.04.2017 in *Sasan Power Limited v. Central Electricity Regulatory Commission* in Appeal No. 161 of 2015 held that:-

*“44. It is true that according to the provisions of the RFP, the quoted tariff shall be inclusive one including statutory taxes, duties and levies. But the PPA gives express right to an affected party to claim Change in Law if the event qualifies thus in terms of Article 13. The RFP cannot override this right if an event qualifies as a Change in Law. The Competitive Bidding Guidelines (Article 4.7 thereof has already been reproduced hereinabove) and the PPA have to be read together. If an event qualifies as a Change in Law event then the compensation must follow because otherwise Article 13 of the PPA will become redundant.”*

27. The Petitioners have submitted that in view of above, the Changes in Law claimed in the present Petitions meet the criteria laid down under Article 12 of the PPAs for which the Petitioners ought to be compensated. In accordance with the PPAs, the Petitioners are required to be granted relief that would be equivalent to the financial impact of the Changes in Law on the costs and revenues so as to restore the Petitioners to the same economic condition prior to occurrence of the Changes in Law.

28. The Petitioners have submitted that Clause 6.2(4) of the Tariff Policy dated 28.01.2016 (issued by Central Government from time to time under Section 3 of the Electricity Act, 2003) also recognizes the concept of Change of Law and provides as under:-

*“6.2(4) After the award of bids, if there is any change in domestic duties, levies, cess and taxes imposed by Central Government, State Governments/Union Territories or by any Government instrumentality leading to corresponding changes in the cost, the same may be treated as “Change in Law” and may unless provided otherwise in the PPA, be allowed as pass through subject to approval of Appropriate Commission.”*

29. The Petitioners have submitted that the Commission has the jurisdiction to adjudicate the present matter. Pursuant to the Judgment of the Hon'ble Supreme Court in *Energy Watchdog Vs. CERC & Ors.* 2017 (4) SCALE 580, the Commission on 14.03.2018 *vide* its suo-moto order in Petition No. 13/SM/2017, initiated hearings with the participation of the generating companies and the distribution companies of the Procurer States, in order to facilitate the settlement of the dues arising on account of the introduction of GST Laws being events of Changes in Law under the respective PPAs.
30. The Petitioners have submitted that the Commission may recognize and declare the introduction of GST Laws by the Government of India as change in law under Article 12 of the PPAs for the purpose of claim for adjustment/ recovery in tariff on account of the aforesaid change in law event.

**Submissions of Respondents in the pleadings and during the hearings**

31. The Respondents have submitted as follows:

***A. Scope and Applicability of Article 12 of the PPA***

32. The Respondents have submitted that the scope of Article 12.1.1 of the PPA has been interpreted and decided by the Commission *vide* Order dated 19.09.2018 (Petition No. 50/MP/2018 and 52/MP/2018) and Order dated 09.10.2018 (Petition No. 188/MP/2017 and Ors.) and by the Hon'ble Tribunal in the decision dated 13.04.2018 in the case of *Adani Power Limited –v- Central Electricity Regulatory Commission and Others*, in Appeal No. 210 of 2017 and Judgment dated 14.08.2018 in Appeal No. 119 of 2016 and Batch in *M/s Adani Power Rajasthan Private Limited –v- Rajasthan Electricity Regulatory Commission and Ors.* (and as followed in Appeal No. 111 of 2017 in *M/s. GMR Warora Energy Limited - v- Central Electricity Regulatory Commission and Ors.*). The views taken in these cases have been somewhat in variance.



33. The Respondents have submitted that there are differences in the facts of the present case in comparison to the decision of the Hon'ble Tribunal in the case of Adani and GMR Warora. The provision of the present PPA is different from the PPA in the case of Adani Rajasthan (and GMR Warora) wherein there was a specific clause, namely Article 10.3.1 dealing with the relief applicable during the Construction Period, which inter-alia reads as under:

***“10.2 Application and Principles for computing impact of Change in Law***

*10.2.1 While determining the consequences of Change in Law under this Article 10, the Parties shall have due regard to the principle that the purpose of compensating the Party affected by such Change in Law, is to restore through monthly Tariff Payment, to the extent contemplated in this Article 10, the affected Party to the same economic position as if such Change in Law has not occurred.*

***10.3 Relief for Change in Law***

***10.3.1 During Construction Period***

*As a result of any Change in Law, the impact of increase/decrease of Capital Cost of the Power Station in the Tariff shall be governed by the formula given below:*

*For every cumulative increase/ decrease of each Rupees Sixteen crore Five Lakh (Rs. 6.50 crore) in the Capital Cost during the Construction Period, the increase/ decrease in Non Escalable Capacity Charges shall be an amount equal to zero point two six seven (0.267%) of the Non Escalable Capacity Charges. In case of Dispute, Article 14 shall apply.*

*It is sufficient that the above mentioned compensation shall be payable to either Party, only with effect from the date on which the total increase/ decrease exceeds amount of Rupees Sixteen crore Fifty Lakh (Rs. 16.50 crore).”*

34. The Respondents have submitted that in the present PPA, there is no such clause dealing with specific relief under the construction period and therefore, the entire basis of the Hon'ble Tribunal's judgment, namely that the change in law provision would be rendered redundant in respect of the 'Construction Period' if the fifth bullet is interpreted to be confined to the 'sale of power', is not applicable to the facts of the present case. Accordingly, the relief (if any) for taxes is admissible to the SPD if it squarely falls within the purview of Article 12.1.1 – fifth bullet only and not otherwise. The SPD cannot claim the change in law effect for statutory taxes under any of the first four bullets under Article 12.1.1 of the PPA. The intention behind the fifth bullet in Article 12.1.1 of the PPA is clear. While considering the

taxes as change in law, the scope is restricted to the taxes which are imposed for 'supply of power'. If the incidence of tax is on events or transactions other than the supply of power, the conditions in the said provision are not satisfied and the relief is not admissible.

35. The Respondents have submitted that the harmonious construction of the provisions would require some meaning to be given and a purpose to be attached to the fifth bullet of Article 12.1.1. The intention behind incorporating a specific clause on taxes is to carve out a separate clause to restrict the nature of taxes which would be considered as change in law, unlike other four bullets dealing with matters other than taxes. The basic aspect is that if the taxes are said to be dealt under clauses other than the fifth bullet, the incorporation of the fifth bullet is rendered redundant as all taxes can be covered under the First or Second bullet. It is settled principle of interpretation that no provision can be ignored as redundant or superfluous. Reference: *JSW Infrastructure Ltd. v. Kakinada Seaports Ltd.*, (2017) 4 SCC 170 and *Life Insurance Corporation of India v. Dharam Vir Anand*, (1998) 7 SCC 348.
36. The Respondents have submitted that the idea of carving out a separate bullet for dealing with taxes and thereafter restricting its ambit by specific stipulation therein, unequivocally establishes that any and every tax needs to be considered under the fifth bullet and not otherwise. The claims which are to be considered on account of statutory taxes etc. should squarely fall within the scope of fifth bullet. The fifth bullet is the entire repository of dealing with taxes. When there is a specific clause relating to taxes, the general clauses dealing with laws in general have to be interpreted as necessarily excluding taxes. Reference: *South India Corporation (P) Ltd-v- Secretary, Board of Revenue Trivandrum and Another*, (1964) 4 SCR 280. Thus, the principles that emerge can be summarized as under:
- a) When a specific clause deals with taxes i.e. Clause 12.1.1 – fifth bullet, the general clauses dealing with laws in general do not cover taxes, namely the Clause 12.1.1 – First Bullet.
  - b) Clauses in the Agreement cannot be interpreted in a manner to render a clause otiose, redundant or surplusage.
  - c) The purpose of a specific clause on tax is to make it restrictive.
  - d) When there is a specific clause relating to taxes, the general clauses dealing with laws in general have to be interpreted as necessarily excluding taxes. This is

because there is a special entry on taxes whereas the laws other than taxes are dealt with in a general clause.

***B. Scope of Article 12.1.1 of the PPA – Fifth Bullet***

37. The Respondents have submitted that the scope of Article 12.1.1 – fifth Bullet is clear and specific. It relates to the supply of power. Thus, every change in tax or introduction of tax was not intended to be covered by the ‘Change in Law’ provisions of the PPA. It cannot, therefore, be that the ‘supply of power’ be extended to other aspects such as taxes on input goods and services. The PPA entered into between the parties provides in the definition clause i.e. Article 1.1 that any term used in the PPA but not defined would have the meaning as applicable under the Electricity Act, 2003. The term ‘Supply’ is defined in Section 2 (70) of the Electricity Act, 2003 as:

*“supply in relation to electricity means, the sale of electricity to a licensee or consumer”*

38. In terms of the above, incidence of tax recognised under Article 12.1.1 – fifth Bullet is only on the transaction of sale of electricity and not on any other transaction preceding it. The said interpretation has been upheld by the Commission in its Order dated 19.09.2018 in the matter of *Prayatana Developers Private Limited v NTPC Limited and Ors.* and it has been held that the scope of the fifth Bullet is restricted to those taxes which directly impact ‘supply of power’ only (Reference: *Para 311 of the Order dated 09.10.2018*) in *.Acme Bhiwadi Solar Power Private Limited –v- Solar Energy Corporation of India and Ors.* and Batch.
39. The Respondents have submitted that the above interpretation stands fortified by the fact that the ‘Change in Law’ provision of the present PPA stands on a different footing in comparison to the provisions of ‘Change in Law’, as incorporated in other Standard Bidding Document issued by Government of India as well as in other PPAs. Different versions of the PPAs cover different scopes. With regard to each PPA, the intention of parties should be gathered from the express language used in the contract. Therefore, if the words used in the PPA are clear and unambiguous, it would be difficult to gather their intention different from the language used in the agreement. The deviation was consciously made and a separate provision in the

form of last bullet was incorporated restricting the taxes to those which are made applicable on supplying power. Even the Hon'ble Appellate Tribunal of Electricity, in its decision dated 13.4.2018 in the case of *Adani Power Limited v Central Electricity Regulatory Commission and Ors.*, in Appeal No. 210 of 2017 relating to the provisions of Article 13.1.1 of the PPA dealing with change in tax had confined the scope of the change in law in respect of tax to the bullet/provision dealing with tax.

### ***C. Impact of GST on Operation and Maintenance (O&M) Expenses***

40. The Respondents have submitted that vide Order dated 19.09.2018 in Petition No. 50/MP/2018 and Petition No. 52/MP/2018 in the case of *Prayatana Developers Private Limited v NTPC Limited and Ors* and vide Order dated 09.10.2018 in Petition No. 188/MP/2017 and Batch in the case of *Acme Bhiwadi Solar Power Private Limited –v- Solar Energy Corporation of India and Ors.* and Batch, the Commission has already held that claim of the Petitioners on account of additional tax burden on operation and maintenance expenses (if any), is not maintainable.

### ***D. Carrying Cost***

41. The Respondents have submitted that vide Order dated 09.10.2018 passed by the Commission in Petition No. 188/MP/2017 and Batch in the case of *Acme Bhiwadi Solar Power Private Limited–v- Solar Energy Corporation of India and Ors.* and Batch, the Commission has held that the claim regarding separate “Carrying Cost” in the instant petitions is not attracted.
42. The Respondents have submitted that Judgment of the Hon'ble Appellate Tribunal dated 13.04.2018 in Appeal No. 210 of 2017 in *Adani Power Limited –v- Central Electricity Regulatory Commission and Ors*, wherein it was held that since the Gujarat Bid-01 PPA has no provision for restoration to the same economic position, therefore, the carrying cost will not be applicable:

***E. The Scope and Applicability of Article 12 of the respective PPAs***

43. The Respondents have submitted that the issue of interpretation of Article 12 has been decided in favour of the Petitioner vide Order dated 19.09.2018 in Petition No. 50/MP/2018 and Petition No. 52/MP/2018 in the case of *Prayatana Developers Private Limited v NTPC Limited and Ors.*; Order dated 09.10.2018 in Petition No. 188/MP/2017 and Batch in the case of *Acme Bhiwadi Solar Power Private Limited –v- Solar Energy Corporation of India and Ors.* and Batch and Judgment dated 14.08.2018 in Appeal No. 119 of 2016 and Batch in *M/s Adani Power Rajasthan Private Limited v Rajasthan Electricity Regulatory Commission and Ors* (and as followed in Appeal No. 111 of 2017 in *M/s. GMR Warora Energy Limited v. Central Electricity Regulatory Commission and Ors*). The instant petitions can be disposed of with the same conclusion as reached in the decisions referred to herein above. However, in regard to the scope and interpretation of Article 12.1.1 of the PPAs dealing with the Change in Law, Respondents wish to reserve its rights to take appropriate appellate remedies.

***F. Absence of necessary particulars- Adverse Inference***

***i. Non-furnishing of details of taxes subsumed/withdrawn by reason of GST***

44. The Respondents have submitted that the Petitioners have not placed before the Commission in a transparent manner the taxes, duties and levies which stand withdrawn and no longer payable by reason of the introduction of the GST. Admittedly, there are number of taxes, duties, cess and levies which have been subsumed through introduction of GST which came into force on 01.07.2017. In Order dated 09.10.2018 in Petition No. 188/MP/2017 and Batch, in the case of *Acme Bhiwadi Solar Power Private Limited –v- Solar Energy Corporation of India and Ors.* and in the Order dated 19.09.2018 in the matter of *Prayatana Developers Private Limited v NTPC Limited and Ors.* the Commission has taken note of the implications of various taxes which were in existence prior to 01.07.2017 and were subsumed/reduced/remitted. These have to be taken into account to determine the net effect of GST Laws. Further, the Petitioners are proceeding on the assumption that the entire quantum of taxes under the GST are payable. This is contrary to the very scheme of the introduction of the GST where the intention of the Government of India is rationalizing the tax structure in a manner that various existing taxes will get subsumed in the GST. Accordingly, true and

faithful disclosure of existing taxes which have been subsumed by the GST needs to be furnished by the Petitioners. It is incumbent on the Petitioners to place before the Commission in a transparent manner to submit details as regards the increase or decrease in the taxes on net basis. For instance, if pre-GST, the Petitioners were subjected to 4% Excise Rate and post-GST, the same became a cumulative 5%, then the Petitioners would be entitled to claim only the difference i.e. 1% as a change in law and not the entire 5%.

**ii. Non-furnishing of all the relevant details**

45. The Respondents have submitted that before the amount is computed, the Petitioners should be directed to give the particulars/documents in respect of each claim under GST Laws. The particulars/ documents are required to be given in respect of each item of goods/equipment/services. The Auditor Certificate in respect of the above is also to be provided in terms of the directions of this Commission in its Order dated 09.10.2018 in the case of *Acme Bhiwadi Solar Power Private Limited –v- Solar Energy Corporation of India and Ors.* Batch, in Petition No. 188/MP/2017 and Batch.

**G. Mitigating Steps: Whether undertaken by the Petitioners**

46. The Respondents have submitted that in terms of Article 4.1.1 (b) of the PPA, the Solar Power Developers are responsible at its own cost and risk for designing, constructing, erecting, commissioning, completing and testing the Power Project in accordance with the Prudent Utility Practices. Therefore, it is the duty of the Solar Power Developers to prudently incur expenditure and mitigate the effect. In the order dated 19.09.2018, the Commission has taken note of the substantial difference in the GST, namely, 5% if the components are bought as a part of the Solar Generation System and 18% if the components are individually and directly purchased. The view has been reiterated by the Commission in its order dated 09.10.2018 passed in the case of *Acme Bhiwadi Solar Power Private Limited –v- Solar Energy Corporation of India and Ors.* Batch, in Petition No. 188/MP/2017 and Batch.
47. The Respondents have submitted that any higher cost paid, without mitigating the cost, should not be allowed to be passed on to the consumers at large.

#### ***H. Time Bound Payment within 60 days of the Order***

48. The Respondents have submitted that regarding the amount payable to the Petitioners (if any) on account of GST Law, the Commission has stipulated a timeline of 60 days from the date of the passing of the Order dated 19.09.2018 in Petition No. 50/MP/2018 and 52/MP/2018, after which a Late Payment Surcharge shall be payable. There are certain issues which are being faced by NTPC in regard to the implementation of the above directions of this Commission. There are many instances where the Solar Power Developers had not furnished any letter or any detail whatsoever for more than a month from the date of the order of this Commission. Accordingly, besides the issue of judgement on inadequacy of the particulars and documents given, the period of 60 days should be computed only from the first day when the Solar Power Developer furnishes the information with an undertaking that the SPDs have duly furnished all the information and documents as per the Orders of this Commission. Accordingly, the timeline of 60 days should begin to run only from the day the Petitioners provide the entire documentation in the required format to the Respondents.

#### **Submissions of the Petitioner through Rejoinder:**

49. The Petitioners have reiterated the submissions already made in the main Petition as such the same are not being reproduced here for the sake of brevity. Additionally, the Petitioners have submitted as under:

##### ***A. Re. Scope of Article 12.1.1 of the PPA – First and Fifth Bullet***

50. The Petitioner have submitted that Article 12.1.1 specifies multiple events being ***the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law***; that would together or independently qualify as Change in Law. The provision has, therefore, to be read and given effect holistically. Tax on supply of power would in itself be applicable only if a particular tax applicable for supply of power has been introduced or taken away by the legislature. In the present case, the entire Indirect tax laws of the country have undergone a major overhaul and almost all of the

Central and State level taxes which existed on the Effective Date have been replaced/ abolished/ subsumed by the GST Laws. The Petitioners have placed their reliance on the Order dated 19.09.2018 passed by the Commission in Petition No. 50/MP/2018 case titled *Prayatana Developers Pvt. Ltd. vs. NTPC Ltd. & Ors.*

51. The Petitioners have submitted that the Respondents have incorrectly relied upon the maxim '*expressum facit cessare tacitum*' to state that when express inclusions are specified, anything not mentioned expressly is excluded. The said reliance by the Respondents is misplaced and ought to be rejected in view of Judgment dated 09.08.1972 given by Hon'ble Supreme Court in the case of *Assistant Collector of Central Excise, Calcutta Division vs. National Tobacco Company of India Limited* (1972) 2 SCC 560. It is a cardinal rule of interpretation that all provisions of the Contract must be harmoniously interpreted, and the interpretation so given cannot and ought not to lead to absurdity. Therefore, applying the maxim '*expressum facit cessare tacitum*' will defeat the purpose of Article 12.1.1 as the Petitioners despite being an affected party, which have incurred additional expenditure with regard to increase in taxes will be deprived of the legitimate compensation and will not be restored to the same economic position.
52. The Petitioners have submitted that the Hon'ble Appellate Tribunal has allowed change in tax laws as Change in Law events under similar PPA provisions by holding *inter-alia* that the phrase "for supply of power" shall include *inputs required for such generation and supply of power to the Discoms.*

***B. Re. Impact on account of Operations and Maintenance Expenses***

53. The Petitioners have submitted that Outsourcing of O&M is a prudent industrial practice to ensure international standard of the best practices in plant inspection procedures, quality assessment plans and checklists for maintenance. The O&M services include periodic and preventive maintenance checks with IV curve analysis and thermographic imaging. Physical O&M tasks, such as module cleaning, housekeeping and security are carried out through third parties under the supervision of the generator. Outsourcing of O&M is thus a practical requirement, if not contractual. Outsourcing of O&M of solar projects is not prohibited under



the PPAs and is considered a part of the expenditure incurred by the generator. The Petitioner is, therefore, entitled to compensation because of increase in costs of O&M on account of GST Laws.

### ***C. Re. Carrying Cost***

54. The Petitioners have submitted that carrying cost is the compensation for time value of money. Any compensation for Change in Law is incomplete if it does not come with carrying cost that is inherent to the very provision. It is submitted that the mandate of Change in Law provisions across all PPAs (standard documents drafted by the government) is restitution i.e. relief be granted in a manner so as to place an affected party to the same economic position as if a Change in Law had not occurred. Restitution is therefore inherent to compensation. The Hon'ble Supreme Court has in the case of *R.C. Cooper vs. Union of India*: AIR 1970 SC 564 noted that as per the dictionary meaning, "compensation" means anything given to make things equal in value: anything given as an equivalent, to make amends for loss or damage". The aforesaid principle has also been recognized by the Hon'ble Supreme Court in the case of *N.B. Jeejeebhoy vs. Assistant Collector, Thana Prant, Thana*: AIR 1965 SC 1096. Compensation is a comprehensive term and is aimed at restoring a party to the same position as if no injury was caused to it, as held by the Hon'ble Supreme Court in the case of *Yadava Kumar vs. The Divisional Manager, National Insurance Co. Ltd. and Anr.*, (2010) 10 SCC 341. The principle of recovery of carrying cost/ interest and time value of money has been recognized in various cases viz. Judgment of the Hon'ble Tribunal dated 13.04.2018 in Appeal No. 210 of 2017, *Adani Power Limited vs. Gujarat Electricity Regulatory Commission & Ors.*; Judgement of the Hon'ble Tribunal in *North Delhi Power Ltd vs. DERC* 2010 ELR (APTEL) 0891; Judgment of the Hon'ble Tribunal in *Tata Power Company Ltd vs. Maharashtra Electricity Regulatory Commission* 2011 ELR (APTEL) 336.

### ***D. Re. Necessary particulars***

55. The Petitioners have submitted that they have submitted details of each component and the tax applicable along with the Petition. They have duly annexed the sample invoices as may be required to demonstrate its claim for compensation.

***E. Re. Efforts towards mitigation of Change in Law Event***

56. The Petitioners have submitted that as per Article 12.1 of the PPA, PDPL is entitled to Change in Law claim for events occurring after the Effective Date and the immaterial conditions such as intent or motive cannot be artificially built into the PPA. They have been prudent in considering the impact of GST implication. As a prudent utility, their obligations include ensuring that prudent business decisions are taken based on commercial principles. Following this, the assets were purchased individually and hence their purchase cannot be termed as imprudent.

**Analysis and decision:**

57. We have heard the learned counsels for the Petitioners and the Respondents and have carefully perused the records. Since Petition No. 206/MP/2018 alongwith I.A. 4 of 2019; Petition No. 209/MP/2018 alongwith I.A. 7 of 2019; Petition No. 226/MP/2018; Petition No. 212/MP/2018 alongwith I.A. 8 of 2019; Petition No. 207/MP/2018 alongwith I.A. 1 of 2019 and Petition No. 210/MP/2018 alongwith I.A. 3 of 2019 are likely worded and contain the similar issues to be adjudicated, the same are clubbed together.

58. The Central Goods and Services Tax Act, 2017, The Integrated Goods and Services Tax Act, 2017 on 12.04.2017, The State(s) Goods and Services Tax Act, 2017 are hereinafter collectively referred as ‘GST Laws’.

59. The brief facts of the case are tabulated as under:

	206/MP/2018	209/MP/2018	226/MP/2018	212/MP/2018	207/MP/2018	210/MP/2018
Scheme	3000 MW Grid Connected Solar PV Power Projects under Phase-II, Batch-II, Trench-I for State Specific Bundling Scheme			50 MW Grid (Maharashtra) & 1000 MW Grid (Karnataka) Connected Solar PV Power Projects under Phase-II, Batch-III with VGF support from National Clean Energy Fund.		
Capacity	50MW	50 (5 X 10) MW	100 (50 X 2) MW	20MW	50MW	50MW
Location	Karnataka	Telangana	Karnataka	Maharashtra	Karnataka	Karnataka
RfS	Dated 16.06.2016	NTPC/2015-16/NSM/TI/N SP-TEL/11	NTPC/2015-16/NSM/TI/K AR109	SECI/JNNS M/P-2/B-3/RfS/MH/022016 dated	SECI/JNNSM/P-2/B-/RfS/KA/ 022016 dated 15.02.2016	

		Dated 09.10.2015	dated 17.05.2016	24.02.2016		
LOI	NTPCINSM/K AR- 08(R)/Parampuj ya/ 50MW  dated 04.11.2016	NTPCINSM/ TIINSP- OPEN/TEL- II/50MW/ 0022 dated 20.06.2016	NTPCINSMIK AR- 09IParampujya / 100MW  dated 17.05.2016	SECI/JNSSM /LOI/P2B3T1 -AGEL-A- 2MH- 1V/8206 dated 16.06.2016	SECI/JNNSM/ LOI/KA/PSEP L/P6/8465  dated 02.07.2016	SECI/JNNSM/ LOI/KA/PSEP L/P1/8460  dated 02.07.2016
PPA	26.12.2016	23.08.2016	27.07.2016	19.07.2016	22.09.2016	22.09.2016
Date of PPA	19.07.2016	23.08.2016	27.02.2016	19.07.2016	22.09.2016	-
Effective date	16.07.2016	19.07.2016	21.06.2016	16.07.2016	02.08.2016	02.08.2016
SCoD	16.08.2017	18.08.2017	20.07.2017	16.08.2017	02.09.2017	02.09.2017

60. The Petitioners have submitted that the Respondents invited proposals for setting up Grid connected Solar-PV Power Projects in various States of India through ‘State Specific Bundling Scheme’ and ‘viability gap funding scheme’. The Petitioners participated in the bids after following the process of ‘Reverse Auction’ and were selected as the successful bidders. Pursuant thereto, the Petitioners entered into a PPA for setting up of solar power plant at different rates of fixed tariff for 25 years. Subsequent to the ‘Effective Date’ as per the PPAs, the ‘GST Laws’ were enacted. Introduction of ‘GST Laws’ made a huge impact on the actual cost of the project *vis-a-vis* budgeted cost, which was beyond their control and therefore, notice regarding the ‘Change in Law’ was sent to the Respondents. The Petitioners have submitted that the PPAs entered into between the parties provide for a specific provision *qua* the concept of “Change in Law”. The fundamental philosophy behind the said provision is to restore the affected party to the same economic position as if such change in law had not occurred. The concept of change in law has been introduced in the PPAs to ensure that the parameters/ contours based on which the Petitioners have bid for supplying power do not change in times to come and that no detriment to either Petitioners or Respondents is caused due to such change in law events. The Petitioners have submitted that in terms of the Article 12 of the PPAs, they are entitled to claim the same being an event of ‘change in law’.
61. Per Contra, the Respondents have submitted that the scope of Article 12 of the PPA has been interpreted and decided by the Commission vide order dated 19.09.2018 and Order dated 09.10.2018 and by the Hon’ble Tribunal in the decision dated 13.04.2018 in the case of

*Adani Power Limited –v- Central Electricity Regulatory Commission and Others*, in Appeal No. 210 of 2017 and Judgment dated 14.08.2018 in Appeal No. 119 of 2016 and Batch in *M/s Adani Power Rajasthan Private Limited –v- Rajasthan Electricity Regulatory Commission and Ors* (and as followed in Appeal No. 111 of 2017 in *M/s. GMR Warora Energy Limited -v- Central Electricity Regulatory Commission and Ors.*). The views taken in these cases have been somewhat in variance. There are differences in the facts of the present case in comparison to the decision of the Hon’ble Tribunal in the case of Adani and GMR Warora. The provision of the present PPA is different from the PPA in the case of Adani Rajasthan (and GMR Warora). The Commission has already held that claim of the Petitioners on account of additional tax burden on O&M expenses (if any), is not maintainable. Further, vide Order dated 09.10.2018 passed by the Commission in Petition No. 188/MP/2017 and Batch in the case of Acme Bhiwadi Solar Power Private Limited–v- Solar Energy Corporation of India and Ors. & Batch, the Commission has held that the claim regarding separate “Carrying Cost” in the instant petitions is not attracted. Further, vide judgment of the Hon’ble Appellate Tribunal dated 13.04.2018 in Appeal No. 210 of 2017 in *Adani Power Limited –v- Central Electricity Regulatory Commission and Ors.*, wherein it was held that since the Gujarat Bid-01 PPA has no provision for restoration to the same economic position, therefore, the carrying cost will not be applicable. The relevant portion of the judgment is as under:

*“ISSUE NO.3: DENIAL OF CARRYING COST*

.....  
*x. Further, the provisions of Article 13.2 i.e. restoring the Appellant to the same economic position as if Change in Law has not occurred is in consonance with the principle of ‘restitution’ i.e. restoration of some specific thing to its rightful status. Hence, in view of the provisions of the PPA, the principle of restitution and judgment of the Hon’ble Supreme Court in case of Indian Council for Enviro-Legal Action vs. Union of India & Ors., we are of the considered opinion that the Appellant is eligible for Carrying Cost arising out of approval of the Change in Law events from the effective date of Change in Law till the approval of the said event by appropriate authority. It is also observed that the Gujarat Bid-01 PPA have no provision for restoration to the same economic position as if Change in Law has not occurred. Accordingly, this decision of allowing Carrying Cost will not be applicable to the Gujarat Bid-01 PPA.”*

62. The Respondents have submitted that the Petitioners have not placed before the Commission in a transparent manner the taxes, duties and levies which stand withdrawn and no longer

payable by reason of the introduction of the GST. In terms of Article 4.1.1 (b) of the PPA, the Solar Power Developers are responsible at their own cost and risk for designing, constructing, erecting, commissioning, completing and testing the Power Project in accordance with the Prudent Utility Practices. Therefore, it is the duty of the SPDs to prudently incur expenditure and mitigate the effect. In the order dated 19.09.2018, the Commission has taken note of the substantial difference in the GST, namely, 5% if the components are bought as a part of the Solar Generation System and 18% if the components are individually and directly purchased. The view has been reiterated by the Commission in its order dated 09.10.2018 passed in the case of *Acme Bhiwadi Solar Power Private Limited –v- Solar Energy Corporation of India and Ors.* Batch, in Petition No. 188/MP/2017 and Batch. The Respondents have submitted that any higher cost paid, without mitigating the cost, should not be allowed to be passed on to the consumers at large. Further, regarding the amount payable to the Petitioners (if any) on account of ‘GST Laws’ the timeline of 60 days should begin to run only from the day the Petitioners provide the entire documentation in the required format to the Respondents.

63. From the submissions of the parties, the following issues arise before this Commission:
64. ***Issue No.1: Whether the promulgation of the IGST Act, 2017, the CGST Act, 2017 and the Karnataka/Telangana/Maharashtra State(s) GST Act, 2017 with effect from 01.07.2017 are covered under the scope of ‘Change in Law’ under Article 12 of the Power Purchase Agreements?***
65. ***Issue No. 2: Whether there will be incremental impact in the cost of construction and O&M expenses on account of promulgation of the GST Laws? And, Whether there is a need to evolve a suitable mechanism to compensate the Petitioners for the increase in recurring and non-recurring expenditure incurred by the Petitioners on account of Change in Law?***
66. ***Issue No. 3: Whether the claim of ‘Carrying Cost’ for delay in reimbursement by the Respondents is sustainable?***
67. No other issue was pressed or claimed.

68. We now discuss the issues one by one:
69. ***Issue No. 1: Whether the promulgation of the IGST Act, 2017, the CGST Act, 2017 and the Karnataka/Telangana/Maharashtra State(s) GST Act, 2017 with effect from 01.07.2017 are covered under the scope of 'Change in Law' under Article 12 of the Power Purchase Agreements?***
70. The Petitioners have submitted that Article 12 of the PPAs provides for a list of five (5) events which would be considered as 'Change in Law'. They include *inter alia* the enactment, promulgation, adoption in India of any Law, as well as, any change in tax or introduction of any tax made applicable for supply of power.
71. The Petitioners have submitted that the event of enactment of 'GST Law' has occurred after the Effective Date and has resulted in additional recurring and non-recurring expenditure for the Petitioners. In terms of Article 12.2.1 of the PPA, an aggrieved party who has incurred additional recurring/ non-recurring expenditure is required to approach the Central Commission for seeking approval of such change in law event and thereby, claim relief for the same upon approval by the Central Commission. They have approached this Commission for seeking relief on account of introduction of GST as a change in law event, as per the first and fifth bullet of Article 12.1.1 of the PPAs, in as much as (i) it is in the nature of an enactment, coming into effect after the Effective Date and (ii) also qualifies as an introduction of a tax on the supply of power leading to additional recurring/ non-recurring expenditure for the Petitioners. Hence, it is claimed by the Petitioners that they are eligible for the benefit of GST as a change in law event in terms of the first and fifth bullet of Article 12.1.1 of the PPA.
72. Per Contra, the Respondents have submitted that as per Orders of Commission in Petition No. 50/MP/2018 & Another and in Petition No. 188/MP/2017 & Batch the 'GST Laws' implication cannot be claimed in the following circumstances:
- (a) where the Scheduled Date of Commissioning is prior to 01.07.2017; or
  - (b) where the Actual Date of Commissioning is prior to 01.07.2017; or
  - (c) where the point of taxation of Goods/Services is before 01.07.2017; or

(d) when there is no clear/one-to-one co-relation between the projects, supply of goods or services and the invoices raised by the supplier of goods and services.

73. The Respondents have submitted that combined effect of the above conditions are that the GST implications will be applicable only if the point of taxation occurs on or after 01.07.2017 and not when the point of taxation has occurred prior to 01.07.2017, in which case the taxes shall be payable only under the pre-GST laws . Therefore, there is no change in law.

74. The Respondents have submitted that the intention behind the fifth bullet in Article 12.1.1 is to carve out a separate clause to restrict the nature of taxes which would be considered as change in law, unlike other four bullets dealing with matters other than taxes. If the taxes are said to be dealt under clauses other than the fifth bullet, the incorporation of the fifth bullet is rendered redundant as all taxes can be covered under the First or Second bullet. It is settled principle of interpretation that no provision can be ignored as redundant or superfluous. The Respondents have placed their reliance on judgment in case titled *JSW Infrastructure Ltd. v. Kakinada Seaports Ltd.*, (2017) 4 SCC 170 and *Life Insurance Corporation of India v. Dharam Vir Anand*, (1998) 7 SCC 348.

75. The Respondents have submitted that the relief (if any) for taxes is admissible to the SPD if it squarely falls within the purview of Article 12.1.1 – fifth Bullet only and not otherwise. The SPD cannot claim the change in law effect for statutory taxes under any of the first four bullets under Article 12.1.1 of the PPA.

76. The Commission observes that Article 12 of the Power Purchase Agreements stipulates as under:-

*“12. ARTICLE 12: CHANGE IN LAW*

*12.1 Definitions*

*In this Article 12, the following terms shall have the following meanings:*

*12.1.1 “Change in Law” means the occurrence of any of the following events after the Effective Date resulting into any additional recurring/ non-recurring expenditure by the SPD or any income to the SPD:*

- *the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law;*
- *a change in the interpretation or application of any Law by any Indian Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of Law;*
- *the imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier;*
- *a change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits; except due to any default of the SPD;*
- *any change in tax or introduction of any tax made applicable for supply of power by the SPD as per the terms of this Agreement.*

*but shall not include (i) any change in any withholding tax on income or dividends distributed to the shareholders of the SPD, or (ii) any change on account of regulatory measures by the Appropriate Commission.*

## *12.2 Relief for Change in Law*

*12.2.1 The aggrieved Party shall be required to approach the Central Commission for seeking approval of Change in Law.*

*12.2.2 The decision of the Central Commission to acknowledge a Change in Law and the date from which it will become effective, provide relief for the same, shall be final and governing on both the parties.”*

77. The brief facts of the petitions with respect to RfS dates, effective date of PPAs etc. are as under:

Petition No.	Date of RFS	Signing date of PPAs	Effective date of PPAs	Scheduled Date of Commissioning
206/MP/2018	16.06.2016	19.07.2016	16.07.2016	16.08.2017
209/MP/2018	09.10.2015	23.08.2016	19.07.2016	18.08.2017
226/MP/2018	17.05.2016	27.07.2016	21.06.2016	20.07.2017
212/MP/2018	24.02.2016	19.07.2016	16.07.2016	16.08.2017
207/MP/2018	15.02.2016	22.09.2016	02.08.2016	02.09.2017
210/MP/2018	15.02.2016		02.08.2016	02.09.2017

78. The Commission observes that the ‘Effective date of PPAs’ is before the date of coming into effect of the ‘GST Laws’ i.e. 01.07.2017. Further, the SCoD of all the Projects related to the Petitions are after the promulgation of the ‘GST Laws’. The event of enactment of ‘GST



Law’ has occurred after the execution of ‘PPAs’ and it has been contended by the Petitioners that the enactment of the ‘GST Laws’ has resulted in additional recurring and non-recurring expenditure for the Petitioners and they have approached the Commission for seeking relief on account of introduction of GST as a change in law event, as per the first and fifth bullet of Article 12.1.1 of the PPA.

79. The Commission observes that as per Article 12, ‘Change in Law’ means the enactment/ coming into effect/ adoption/ promulgation/ amendment/ modification or repeal of any Law in India; Change in the interpretation of any Law in India; Imposition of a requirement for obtaining any consents or Change in tax or introduction of any tax made applicable for supply of power by the SPD as per the terms of this Agreement, resulting into any additional recurring/ non-recurring expenditure or any income to the SPD. The Commission is of the view that harmonious construction of the bullet points under Article 12 makes it clear that bullet point one is wider in scope and refers to the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal of any Law in India, including rules and regulations framed pursuant to such Law whereas bullet point fifth in seriatim refers specifically to any change in tax or introduction of any tax made applicable for ‘supply of power’ by the SPD as per the terms of Agreement. It implies that bullet point fifth in seriatim would be applicable as ‘Change in Law’ to the cases where the change in tax or introduction of any tax directly impacts ‘supply of power’ only. Thus, the ambit of the fifth bullet point is limited in that if any change in Tax is made or any tax is introduced having its impact specifically on the ‘supply of power’, in that case the remedy of ‘Change in Law’ is available to the Petitioners under bullet point number five only. Clearly, the ‘GST laws’ enacted are not in the nature of a mere change in the tax having limited applicability on supply of power. Rather, it is in the nature of an enactment having wide ranging implication on the entire indirect taxation regime in India. Various laws were subsumed and repealed. The Commission observes that the Appellate Tribunal for Electricity by the Judgment dated 14.08.2018 in Appeal No. 111 of 2017 in *M/s. GMR Warora Energy Limited v. Central Electricity Regulatory Commission and Ors.* has decided on interpretation of ‘Change in Law’ provision similar to the present PPAs. It was held as under:

*“This Tribunal has decided that any tax or application of new tax on supply of power also*

*covers the taxes on inputs required for such generation and supply of power to the Distribution Licensees.”*

80. It has further been decided by APTEL in Appeal No. 111 of 2017 in *M/s. GMR Warora Energy Limited v. Central Electricity Regulatory Commission and Ors.* that:-

*“vi. Now, we will consider the issues raised by the MSEDCL. Let us first consider the issues related to Construction Period. These issues are change in rates of Customs Duty/ Excise Duty/ Service Tax/ Other Taxes (WCT, VAT, CST). Let us first examine the findings of the Central Commission on these issues. The relevant extracts from the Impugned Order are reproduced below:*

*"44. We have considered the submissions of the Petitioner, MSEDCL and Prayas. The increase in Service Tax was affected through Finance Act, 2012. Since the enhanced rate of Service Tax is through an Act of Parliament after the cut-off date and has resulted in additional expenditure by the Petitioner, the same is covered as change in law under Article 10.1.1 of the MSEDCL PPA. Accordingly, the Petitioner is entitled to be compensated by MSEDCL for the impact of difference in the rate of service tax on the project cost.*

*.*

*i. From the above it is crystal clear that the Central Commission has considered the tax on supply of power as tax on inputs for supply of power and allowed the same under Change in Law. Further, the State Commission has considered that change in duties/ tax imposed by IGI under Act of the Parliament resulting in change in cost of the project is to be considered under Change in Law. We agree to this conclusion arrived at by the Central Commission as we have also concluded the same while allowing the Busy Season Surcharge and Development Surcharge imposed by MoR, IGI under the Act of the Parliament for transportation of coal which has resulted in change in cost to GWEL as such change in cost could not be factored in by GWEL at the time of bid submission.”*

81. From the above, it is clear that the Hon'ble Appellate Tribunal for Electricity has already held that any tax levied through an Act of Parliament after the cut-off date which results in additional expenditure by the Petitioner, the same is covered as 'Change in Law'. In the same judgment it is also held that any tax or application of new tax on 'supply of power' covers the taxes on inputs required for such generation and supply of power to the Distribution Licensees. In the instant case, the 'GST Laws' have been enacted by the Act of Parliament and the State Legislative Assemblies. The change in duties/ tax imposed consequent upon these Acts has resulted in the change in cost of the inputs required for generation and hence the same is to be considered as 'Change in Law'. Hence, the Commission holds that the

enactment of ‘GST laws’ is squarely covered as ‘Change in Law’ under the first, and fifth bullet in seriatim of Article 12.1.1 of the PPA. This view is in consonance with the view taken by the Commission in Order dated 09.10.2018 in Petition No. 188/MP/2018 & Ors. titled *Acme Bhiwadi Solar Power Private Limited –v- Solar Energy Corporation of India and Ors.*

82. ***Issue No. 2: Whether there will be incremental impact in the cost of construction and O&M expenses on account of promulgation of the GST Laws? and, Whether there is a need to evolve a suitable mechanism to compensate the Petitioners for the increase in recurring and non-recurring expenditure incurred by the Petitioners on account of Change in Law?***

83. The Petitioners have submitted that prior to the Effective Date under the PPA, the erstwhile indirect tax regime provided for a complex tax environment due to multiplicity of taxes and elaborate compliance obligations. However, after to the Effective Date, the new indirect taxation system viz. ‘GST Laws’ has been introduced, representing a paradigm shift in the mode and levy of indirect taxes. With introduction of ‘GST Laws’ a tax slab of 5% to 28% has been introduced with respect to goods & services required for execution, construction and operation of Solar Power Plants. The said goods and services were previously either exempted or fell under lower tax slabs. The new slabs have also led to an increase in the overall project cost of the Petitioners hence making the tariff quoted at the time of bid for allocation of project unviable. The Petitioners have claimed the increase in total Cost and O&M expenses due to increase in tax incidence as given below:

Petition No.	Increase in TAX due to GST Laws	Incremental impact on Cost due to increase in TAX indices	Increase in TAX due to GST Laws	Incremental impact on O&M due to increase in TAX indices	Total Escalation
206/MP/2018	5% to 28%	11,10,37,769	15% , 18%	2,01,40,483	13,11,78,252
209/MP/2018		2,45,48,956		2,01,40,483	4,46,89,439
226/MP/2018		1,82,99,192		2,01,40,483	3,84,39,675
212/MP/2018		8,18,81,887		80,56,193	8,99,38,080
207/MP/2018		12,17,32,652		1,56,00,000	13,73,32,652
210/MP/2018		2,11,65,375		1,56,11,040	3,67,76,415

84. Per Contra, the Respondents have submitted that in terms of Article 4.1.1 (b) of the PPAs, the

Petitioners are responsible at their own cost and risk for designing, constructing, erecting, commissioning, completing and testing the Power Project in accordance with the Prudent Utility Practices. Therefore, it is the duty of the Petitioners to prudently incur expenditure and mitigate the effect.

85. The Commission observes that 'GST Laws' became effective from 01.07.2017. 'GST Laws' provide for a tax slab (previously exempted) of 5% to 28% with respect to Goods & Services required for execution, construction and operation of Solar Projects w.e.f. 01.07.2017. The 'Goods and Services' in the context of the present petitions can be broadly categorized under the following two heads:

- a) EPC Stage i.e. Construction Stage which is covered under 'Goods' and
- b) O & M Stage i.e. Post Construction Stage which is covered under 'Services'.

86. The impact of 'GST laws' on the Engineering, Procurement and Construction (hereinafter referred to as 'EPC') Stage can be also construed broadly to be 'Construction Stage' which is covered under Goods under 'GST Laws'. It is pertinent to note that under 'GST Laws' it has been provided that *"If point of taxation of Goods/Services before the GST implementation then it will be taxed under earlier law. GST will not be applicable. Any portion of any supply whose point of taxation is after GST implementation will be taxed under GST. The time of goods/supply of services shall be the earlier of the:- (a) The date of issuing invoice (or the last day by which invoice should have been issued) OR (b) The date of receipt of payment- whichever is earlier."* A plain reading of the above implies that according to 'GST Laws', in cases where the invoice is raised or consideration for the goods/ supply of services have been received before 01.07.2017 and the tax has already been paid under the earlier law, the GST will not be applicable in such cases. It is immaterial whether the consideration for supply has been paid fully or partly. The Petitioners have claimed that on account of levy of 'GST Laws', the construction cost of project has escalated to the tune of few Crores. The Commission is of the view that there has to be a clear and one to one correlation between the projects, the supply of goods or services and the invoices raised by the supplier of goods and services. Accordingly, the Commission directs the parties to reconcile the accounts as per discussion above.

87. The Commission observes that in the instant petitions, the tariff has been discovered under transparent e-bidding process in accordance with the NSM guidelines issued by the Central Government. In the Competitive Bidding Scenario, the SPDs bid levelled tariff without disclosing the details of the calculations of the project cost including capital expenditure. The component wise details of the capital employed are not required to be declared by the bidders. The design of the bid levelled tariff is solely a decision of the SPDs.
88. The Commission observes that prior to the introduction of Goods & Service Tax Act (GST), the components were taxed at the time of production (Excise) and at the time of Sale (VAT). For sale of components between two States, CST was applicable. Moreover, for projects executed within certain Municipal Corporation limits, additional Octroi was applicable to the components. As per Goods And Service Tax (GST), *Concept & Status*, published by Central Board Of Indirect Taxes And Customs, Department Of Revenue, Ministry Of Finance, Government Of India, as on 1st August, 2018, the list of the taxes subsumed in the GST, 2017 is as under:

*“10.21 Subsuming of taxes, duties etc.: Among the taxes and duties levied and collected by the Union, Central Excise duty, Duties of Excise (Medicinal and Toilet Preparations), Additional Duties of Excise (Goods of Special Importance), Additional Duties of Excise (Textiles and Textile Products), Additional Duties of Customs (commonly known as CVD), Special Additional Duty of Customs (SAD), Service Tax and cesses and surcharges insofar as they related to supply of goods or services were subsumed. As far as taxes levied and collected by States are concerned, State VAT, Central Sales Tax, Purchase Tax, Luxury Tax, Entry Tax, Entertainment Tax (except those levied by the local bodies), Taxes on advertisements, Taxes on lotteries, betting and gambling, cesses and surcharges insofar as they related to supply of goods or services were subsumed.”*

89. The Commission observes that with the enactment of Central Goods and Services Tax Act, 2017, the following Acts were repealed by the Parliament:
- i) *the Central Excise Act, 1944 (except as respects goods included in entry 84 of the Union List of the Seventh Schedule to the Constitution),*
  - ii) *the Medicinal and Toilet Preparations (Excise Duties) Act, 1955,*
  - iii) *the Additional Duties of Excise (Goods of Special Importance) Act, 1957,*

- iv) *the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978, and*
- v) *the Central Excise Tariff Act, 1985*

90. The Central Excise Tariff Act, 1985 (5 of 1986) and Exemption Notifications (other than general) the ‘General Exemption No. 64’ stipulates as under:

*“GENERAL EXEMPTION NO. 64*

*Exemption on all items of machinery, including prime movers, instruments, apparatus and appliances, control gear and transmission equipment and auxiliary equipment and components, required for initial setting up of a solar power generation project or facility. [Notifn. no. 15/2010-CE., dt. 27.2.2010 as amended by 26/12, 15/14]*

*In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944(1 of 1944), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts all items of machinery, including prime movers, instruments, apparatus and appliances, control gear and transmission equipment and auxiliary equipment (including those required for testing and quality control) and components, required for initial setting up of a solar power generation or solar energy production project or facility, from the whole of the duty of excise leviable thereon which is specified in the First schedule to the Central Excise Tariff Act, 1985 (5 of 1986), subject to the following conditions, namely:-*

*(1) that an officer not below the rank of a Deputy Secretary to the Government of India, in the Ministry of New and Renewable Energy recommends the grant of this exemption, indicating the quantity, description and specification of the goods and certifies that they are required for initial setting up of a solar power generation or solar energy production project or facility, as the case may be; and*

*(2) the Chief Executive Officer of the project furnishes an undertaking to the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, having jurisdiction over the factory of the manufacturer, to the effect that-*

*(i) the said goods will be used only in the said project and not for any other use; and*

*(ii) in the event of non-compliance of sub-clause (i), the Project Developer of such project shall pay the duty which would have been leviable at the time of clearance of goods, but for this exemption.”*

91. Similarly, the Commission observes that with the enactment of the Goods and Services Tax, 2017, by of Karnataka, Telangana and Maharashtra Acts related to State VAT, Central Sales Tax, Purchase Tax, Luxury Tax, Entry Tax, Entertainment Tax (except those levied by the

local bodies), Taxes on advertisements, Taxes on lotteries, betting and gambling, cesses and surcharges insofar as they related to supply of goods or services were subsumed.

92. The Commission observes that GST rates are ranging from 5% to 18%. In case of PV Modules, the applicable GST is 5%, as against 0% VAT applicable in various States pre-GST roll out. Excise duty on components required for initial setting up of a solar power generation or solar energy production project or facility was at 'Zero' rate and also enjoyed concessional Basic Customs Duty and Additional Customs Duty on imports. The imposition of VAT on solar power generating equipment has been diverse with some States offering complete exemption while on the other hand, few States have levied a concessional rate of tax at 4% (four per cent) and 5% ( five per cent) respectively, on the equipment and components used for setting up of solar power generating equipment. The GST rate on solar power generating systems and raw material used (including modules), has been notified at 5% (five per cent) of value of such goods. However, other goods such as inverter, cement and cables have been kept under the 18% (eighteen per cent) bracket. Further, the GST on various services such as works contract service, technology etc. which are typically used in setting up of a solar power plant has been kept at 18% (eighteen per cent). It is pertinent to mention here that Services, Commercial, Contractual, Erection and Commissioning, all attracted Service Tax @15%, Swachh Bharat Cess of 0.5% and Krishi Kalyan Cess of 0.5% before GST regime.
93. The Commission observes that as per Notification No. 1/2017-Central Tax (Rate) as contained at Sr. No. 234 Chapter heading 84, 85 or 94 of the "*renewable energy devices & parts for the manufacture ..... (C) Solar Power Generation System*" the concessional rate of 5% would also be available i.e. say inverters, cables, connectors etc. are under 28 per cent duty but whenever these products are used in the solar generation system, these will attract an effective levy of 5 per cent instead of 28 per cent. Further, in case of direct purchase of the mounting structures, power conditioning units etc. are under 18 per cent duty but in case these components are sold as part of Solar Power Generating system then the same will attract an effective levy of 5 per cent instead of 18 per cent.
94. With the above facts in mind, the Commission now proceeds to determine the impact of GST on the projects under consideration in the present petitions. As regards the component wise

details of the project and respective percentage share of each such component in the overall capital cost, the Commission observes that in the absence of any related references in the projects selected through bidding, reliance could be placed on the Commission's Order dated 23.03.2016 passed in Petition No. 17/SM/2015 for the purpose of determining 'weightage of the Components of Capital cost' and the percentage impact of the taxation due to enactment of 'GST Laws' on the various components may be calculated accordingly. It is pertinent to mention here that in respect of PV Modules VAT (pre-GST regime) of 0-5% was charged on intra-State procurement. Further, in case of input by SPV or high sea sale by EPC, the effective rate also was 0%, whereas, post enactment of 'GST Laws, 5% will be applicable on intra state procurement as well as import by EPC or SPV. The calculations for the escalation as based on Petition no. 17/SM/2015 are tabulated as below:-

Particulars	Weightage of Component of Capital Cost As taken in Petition No. 17/SM/2015	GST		Comments
		As claimed by the Petitioners	As per 'GST Laws' post 01.07.17	
PV Modules	61.96 %	5 %	5 %	
Land Cost	4.72 %	0 %	0 %	
Civil and General Works (Balance of Plant-Civil; EPC-Civil; Roads & Drainage Fencing Work)	6.60 %	9%	9 %	The GST rate at 18%; However, in few Petitions the Petitioners have claimed 9%.
Mounting Structures (Mounting Structure & Nut-Bolts; Clamp & Fasteners; Mounting Structure Foundation)	6.60 %	18 %	5 %	The GST rate at 18% (SGST-9% + CGST-9%) in case of direct purchase. In case the structures are sold as part of Solar power generating system then 5% GST is applicable.
Power Conditioning Unit (Inverter Transformer; DC Battery & Battery Charger)	6.60 %	28 %	5 %	The GST rate at 18% (SGST-9% + CGST-9%) in case of direct purchase. In case the structures are sold as part of Solar power generating system then 5% GST is applicable.
Evacuation Cost up to Interconnection Point (AC/DC Cables; Switchgears; PLC,	8.30 %	18 %	5 %	Post GST sold as part of Solar power generating system hence 5% GST rate.



SCADA; Connectors; Transmission line; AC/DC- Electrical Materials; Combiner Box;; Misc. Electricals)				
Preliminary and Pre- Operative Expenses including IDC and Contingency  (Transmission & Logistic Services; Erection of MMS and Module; Electrical Erection; Pre- Op & other indirect; Safety; Security and IT services; EPC-Services)	5.21 %	18 %	5 %	The GST rate at 18%; However, in few Petitions the Petitioners have claimed 5%.
	Weighted Avg. of Tax/GST	9.16 %	5.55 %	

95. The Petitioners are directed to make available to the Respondents (NTPC & SECI) all relevant documents exhibiting clear and one to one correlation between the projects and the supply of goods or services, duly supported by relevant invoices and Auditor's Certificate. The Respondents (NTPC & SECI) are further directed to reconcile the claims for Change in Law on receipt of the relevant documents and pay the amount so claimed to the SPDs as per the methodology discussed in Para 86 and 94 above. It has been brought to our notice that in some cases, the Respondent Procurers are questioning the rationale of the commercial decisions taken by the SPDs in cases where the rates of GST are on the higher side. Since, the decision for project implementation including the mode of procurement of goods and services were taken by SPDs prior to the implementation of GST, it would not be appropriate to question such commercial decisions on the basis of the differential rates of GST on certain goods and services, and payments should be made based on the invoices raised and supported by Auditor's Certificate. The Commission is of the view that since the quantum of compensation on account of introduction of GST w.e.f. 01.07.2017 is not large, it should be discharged by the Respondent-Procurers as one-time payment in a time bound manner. Accordingly, it is directed that the GST bills shall be paid within 60 days from the date of issue of this Order or from the date of submission of claims by the Petitioners, whichever is later, failing which it shall attract late payment surcharge in terms of the PPA. Alternatively, the Petitioners and the Respondents (NTPC & SECI) may mutually agree to mechanism for the payment of such compensation on annuity basis spread over such period not exceeding

the duration of the PPAs as a percentage of the tariff agreed in the PPAs. This will obviate the hardship of the Respondents (NTPC & SECI) for one-time payment.

96. The next issue is that of the impact of 'GST laws' on the 'Operations and Maintenance' stage. The Commission is of the view that 'O & M' stage can be construed broadly to be 'Post-Construction Stage' which is covered under Services under 'GST Laws'. The following activities constitute O&M and there is no other significant activity covered by O&M for a solar plant: Site Security; Consumables and breakdown spares; Annual Maintenance Contract; and Module cleaning - labour and water supply.
97. The Petitioners have submitted that for determination of the impact of GST in Operation & Maintenance Expenses which they are going to incur in next 25 years of PPA tenure, has been worked on the basis of relevant normative parameters as specified by the Commission in the Central Electricity Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2012 dated 06.02.2012 as amended on 31.03.2016. The Regulations prescribe O&M expenses for the year of 2017-18 at Rs. 7.41 Lacs/MW, which includes Service Tax of 15%, with an annual escalation of 5.72%. In the present petitions, the Petitioners have considered the same parameter with an additional 3% GST impact, i.e. 18% GST on the normative O&M expenses. Accordingly, net present value of Pre-GST O&M Expenses and post GST impact has been claimed as the differential amount as per the change in law provision of the PPA.
98. The Commission observes that as per the GST Act, 2017, the supply of services include:

*"5. Supply of services*

*The following shall be treated as supply of services, namely:-*

*(a) renting of immovable property;*

*(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.*

*Explanation.-*

*For the purposes of this clause-*

*(1) the expression “competent authority” means the Government or any authority authorized to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:-*

*(i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972 (Central Act No. 20 of 1972); or*

*(ii) a chartered engineer registered with the Institution of Engineers (India); or*

*(iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority;*

*(2) the expression “construction” includes additions, alterations, replacements or remodeling of any existing civil structure;*

*(c) temporary transfer or permitting the use or enjoyment of any intellectual property right;*

*(d) development, design, programming, customization, adaptation, up gradation, enhancement, implementation of information technology software;*

*(e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; and*

*(f) transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.”*

99. The Commission is of the view that the recurring expenses referred to in Article 12 of the PPAs includes activities like salary, tax expenses, estimated maintenance costs, and monthly income from leases etc. It is apparent that GST will apply in case of outsourcing of the ‘Operation and Maintenance’ services to a third party (if any). The Commission is of the view that outsourcing of the ‘Operation and Maintenance’ services is not the requirement of the PPAs/ bidding documents. The concept of the outsourcing is neither included expressly in the PPAs nor it is included implicitly in the Article 12 of the PPAs. It is pertinent to mention here that the Petitioner in their petitions have categorically submitted that: *“Further, Article 12 also makes it abundantly clear that a statutory change in tax structure made applicable for setting up of Solar Power Projects resulting in an additional non-recurring and recurring expenditure for the Petitioner in the form of escalation of capital cost and operational cost of the Project also qualifies as ‘Change of law’. The aforesaid additional non-recurring and recurring expenditure has not been factored into the tariff bid by the SPDs at the time of submission, taken into consideration the extant tax regime prevailing at the time.”* The Commission is of the view that in the Competitive Bidding Scenario, the SPDs bid levelled tariff without disclosing the details of the calculations of the project cost. It has already been held by the Commission in the earlier Orders and also appreciated above that it is a pure commercial decision of the Petitioners taken for its own advantage and any increase in cost

including on account of taxes etc. in the event the Petitioners choose to employ the services of other agencies, cannot increase the liability for the Respondents. Therefore, the Commission holds that claim of the Petitioners on account of additional tax burden on operation and maintenance expenses (if any), is not maintainable. This view is in consonance with the view taken by the Commission Order dated 09.10.2018 in Petition No. 188/MP/2017 & Ors. case titled *Acme Bhiwadi Solar Power Private Limited –v- Solar Energy Corporation of India and Ors.*

100. ***Issue No. 3: Whether the claim of ‘Carrying Cost’ for delay in reimbursement by the Respondents is sustainable?***

101. The Petitioners have submitted that the mandate of Change in Law provisions across all PPAs (standard documents drafted by the government) is restitution i.e. relief be granted in a manner so as to place an affected party in the same economic position as if a Change in Law had not occurred. Restitution is, therefore, inherent to compensation. In this regard, it is submitted that where the stated purpose is restoration to the same economic position, the Commission ought to consider the aggregate economic impact including carrying cost which is in the nature of compensation for time value of funds deployed on account of Change in Law events. The Hon’ble Appellate Tribunal for Electricity in its judgment dated 12.09.2014 in Appeal No. 288 of 2013 titled *Wardha Power Company Ltd. v. Reliance Infrastructure Ltd. & Ors.*, has recognized the principle that in order to ‘restore the affected party to the same economic position’, compensation for Change in Law claims has to be such, as to reimburse the affected party for the expense actually incurred. Thus, the same will include expenditure attributable towards carrying cost. The relevant portion of the judgment is given below:-

*“27. For example, if the price of coal calculated on the same base as used in the bid is more than the prevalent price of coal, then using the base price of coal for computing the compensation for Change in Law will result in over compensation to the Seller. Similarly, if the coal price calculated on the same base as used in bid is less than the actual price of coal, it will result in under compensation to the Seller. In both these cases, the affected party will not be restored to the same economic position as if such Change in Law has*

*not occurred, as intended in the PPA.”*

102. The Petitioners have submitted that principle of recovery of carrying cost/interest and time value of money has been recognized in numerous cases including Judgment of the Hon’ble Tribunal dated 13.04.2018 in Appeal No. 210 of 2017, *Adani Power Limited vs. Gujarat Electricity Regulatory Commission & Ors.*; Judgment of the Hon’ble Tribunal dated 15.02.2011 in Appeal No. 173 of 2009, *Tata Power Company Ltd vs. Maharashtra Electricity Regulatory Commission*; Judgment of the Hon’ble Tribunal dated 20.12.2012 in Appeal No. 150 and batch matters, *SLS Power Ltd v. Andhra Pradesh Electricity Regulatory Commission*; Judgment of the Hon’ble Supreme Court in *South Eastern Coalfield Ltd vs. State of Madhya Pradesh* (2003) 8 SCC 648. In addition to the aforesaid, the Hon’ble Supreme Court in the case of *Energy Watchdog vs. Central Electricity Regulatory Commission and Ors.* (2017) 14 SCC 80, has held that where a situation arises which is not covered by the Guidelines or the Guidelines do not deal with a given situation, the Commission’s general regulatory powers under Section 79(1)(b) can be used. The Petitioners have submitted that this is a fit case for exercise of such power to devise a suitable mechanism to ensure that the Petitioners are restored to the same economic position and time-value of money is restored by allowing carrying cost for the period between when the Petitioners pays the Change in Law amount and when the Respondents compensates them.
103. Per Contra, the Respondents have submitted that there is no provision in the PPA regarding carrying cost or interest for the period till the decision of the Commission acknowledging the ‘change in law’ and deciding on the amount to be paid for such change in law namely ‘provide for relief for the same’, as specified in Article 12.2.2 of the PPAs. The ‘Change in Law’ claim of the Petitioners is yet to be adjudicated and the amount if any, due to the Petitioner has to be determined/computed first. Only after the amount is determined, are the Petitioners required to raise a Supplementary invoice for the amount so computed as per Article 10.7 of the PPA. It is only in case of default on the part of the Respondents in not making the payment by the due date as per supplementary invoices does the issue of Late Payment Surcharge arises i.e. for the period after the due date. The reference in Article 12.2.2 of the Commission deciding on the date from which the ‘change in law’ will be effective,

refers to the principal amount to be computed from the date on which change in law comes into force and not to the payment of interest and carrying cost.

104. The Respondents have submitted that the provision of Article 10.3.3 of the PPAs dealing with late Payment Surcharge and definition of the 'Due Date' in Article 1 read with Article 10.3.1 of the PPA are relevant. The due date is fifth (5<sup>th</sup>) day of the immediately succeeding month in which Monthly Bill or a Supplementary bill is received and duly accepted by Respondents. In case the Monthly Bill or any other bill, including a Supplementary Bill is issued after the (fifteenth) 15th day of the next month, the Due Date for payment would be fifth (5<sup>th</sup>) day of the next month to the succeeding Month. The supplementary bill needs to be raised by the Petitioners for the adjustment of the 'Change in Law' after the Change in Law claim is approved by the Commission. There cannot be any claim for late payment surcharge for the period prior to the due date. The Respondents have relied upon the decision of the Hon'ble Appellate Tribunal in *SLS Power Limited -v- Andhra Pradesh Electricity Regulatory Commission and Others (Appeal No. 150 of 2011)* and Batch that recognizes that the interest will be due from the date the payment is due. In the present case, the payment is due only after issuance of the Supplementary Bill after the decision of the Commission.
105. The Respondents have submitted that the PPA does not have a provision dealing with restitution principles of restoration to same economic position. Therefore, the Petitioner is not entitled to claim relief which is not provided for in the PPA.
106. The Respondents have submitted that in the Judgment of the Hon'ble Appellate Tribunal dated 13.04.2018 in Appeal No. 210 of 2017 in *Adani Power Limited -v- Central Electricity Regulatory Commission and Ors*, it was held that since the Gujarat Bid-01 PPA has no provision for restoration to the same economic position, therefore, the carrying cost will not be applicable.
107. The Respondents have submitted that the issue regarding Carrying Cost has been decided by the Judgment of the Hon'ble Tribunal dated 14.08.2018 in *Appeal No. 111 of 2017 in M/s. GMR Warora Energy Limited -v- Central Electricity Regulatory Commission and Ors*. The Hon'ble Tribunal vide the above judgment has decided that if there is a provision in the PPAs

for restoration of the Seller to the same economic position as if no Change in Law event has occurred, the Seller is eligible for carrying cost for such allowed Change in Law event(s) from the effective date of Change in Law event until the same is allowed by the appropriate authority by an order/ judgment. In the present case also, there is no provision in the PPAs for carrying cost or restitution and therefore the same, will not be applicable in the case of the Petitioner. In its Order dated 09.10.2018 in *Petition No. 188/MP/2018 and Batch in Acme Bhiwadi Solar Power Private Limited –v- Solar Energy Corporation of India and Ors. Batch*, the Commission has also reiterated the aforementioned findings of the Hon'ble Tribunal.

108. The Respondents have submitted that in the absence of the express provision in the PPA, it is not open for the Petitioner to claim relief under principles of equity. Reference in this regard may be made to the judgment –*Alopi Parshad and Sons Ltd. v. Union of India, (1960) 2 SCR 793 : AIR 1960 SC 588*.
109. The Respondents have further submitted that there cannot be any consideration for individual tariff elements such as interest on working capital or return on equity or any other in a competitive bid process under Section 63 of the Electricity Act, 2003 and there cannot be any computation of the same. There is no concept of interest on working capital or individual tariff elements in competitively bid process and bidders are required to give the bid based on all-inclusive tariff. Further, there cannot be any issue of return on equity on incremental working capital and margin. Reference in this regard may be made to the issue decided by the Hon'ble Tribunal in its Order dated 19.04.2017 in *Appeal No. 161 of 2015- Sasan Power Limited –v- Central Electricity Regulatory Commission* and Order dated 14.08.2018 in *Appeal No. 111 of 2017 in the case of GMR Warora v Central Electricity Regulatory Commission and Ors*.
110. The Respondents have submitted that in view of the above, the Petitioners are not entitled to interest on incremental working capital at normative interest rate or otherwise to put the Petitioner to the same economic position as if the change in law has not occurred.
111. The Respondents have submitted that for the amount payable to the Petitioner (if any) on account of GST Law, the Commission has stipulated a timeline of 60 days from the date of the passing of the Order, after which a Late Payment Surcharge shall be payable.

Respondents have submitted that the timeline of 60 days should begin to run from the day the Petitioner provides the entire documentation in the required format to the Respondents. It is further submitted that the final decision by the Commission may be given after the Petitioner has submitted complete information and not before. Thus, any delay in the determination of the impact of change in law is on account of the petitioner. The adverse consequences for not furnishing the full documentation/information at the first instance ought to be borne by the defaulting party i.e. the Petitioner itself.

112. The Commission observes that in the judgment of the Hon'ble Appellate Tribunal for Electricity dated 13.04.2018 in Appeal No. 210 of 2017 in *Adani Power Limited v. Central Electricity Regulatory Commission and Ors.*, it was held that since Gujarat Bid-01 PPA has no provision for restoration to the same economic position, the decision of allowing carrying cost will not be applicable. The relevant extract of the Judgment dated 13.04.2018 reads as under:

*“ISSUE NO.3: DENIAL OF CARRYING COST*

*x. Further, the provisions of Article 13.2 i.e. restoring the Appellant to the same economic position as if Change in Law has not occurred is in consonance with the principle of 'restitution' i.e. restoration of some specific thing to its rightful status. Hence, in view of the provisions of the PPA, the principle of restitution and judgement of the Hon'ble Supreme Court in case of Indian Council for Enviro-Legal Action vs. Union of India &Ors., we are of the considered opinion that the Appellant is eligible for Carrying Cost arising out of approval of the Change in Law events from the effective date of Change in Law till the approval of the said event by appropriate authority. It is also observed that the Gujarat Bid-01 PPA have no provision for restoration to the same economic position as if Change in Law has not occurred. Accordingly, this decision of allowing Carrying Cost will not be applicable to the Gujarat Bid-01 PPA.”*

113. Relevant extracts of the Judgment of the Hon'ble Tribunal dated 14.08.2018 in Appeal No. 111 of 2017 in *M/s. GMR Warora Energy Limited v. Central Electricity Regulatory Commission and Ors.* on the aspect of carrying cost reads as under:

*“ix. In the present case we observe that from the effective date of Change in Law the Appellant is subjected to incur additional expenses in the form of arranging for working capital to cater the requirement of impact of Change in Law event in addition to the expenses made due to Change in Law. As per the provisions of the*



*PPA the Appellant is required to make application before the Central Commission for approval of the Change in Law and its consequences. There is always time lag between the happening of Change in Law event till its approval by the Central Commission and this time lag may be substantial. As pointed out by the Central Commission that the Appellant is only eligible for surcharge if the payment is not made in time by the Respondents Nos. 2 to 4 after raising of the supplementary bill arising out of approved Change in Law event and in PPA there is no compensation mechanism for payment of interest or carrying cost for the period from when Change in Law becomes operational till the date of its approval by the Central Commission. We also observe that this Tribunal in SLS case after considering time value of the money has held that in case of redetermination of tariff the interest by a way of compensation is payable for the period for which tariff is re-determined till the date of such re-determination of the tariff. In the present case after perusal of the PPAs we find that the impact of Change in Law event is to be passed on to the Respondents Nos. 2 to 4 by way of tariff adjustment payment as per Article 13.4 of the PPA. The relevant extract is reproduced below:*

*13.4 Tariff Adjustment Payment on account of Change in Law 13.4.1 Subject to Article 13.2 the adjustment in Monthly Tariff Payment shall be effective from:*

*the date of adoption, promulgation, amendment, re-enactment or repeal of the Law or Change in Law; or*

*the date of order/ judgment of the Competent Court or tribunal or Indian Government instrumentality, if the Change in Law is on account of a change in interpretation of Law. (c) the date of impact resulting from the occurrence of Article 13.1.1.*

*From the above it can be seen that the impact of Change in Law is to be done in the form of adjustment to the tariff. To our mind such adjustment in the tariff is nothing less than re-determination of the existing tariff.*

*x. Further, the provisions of Article 13.2 i.e. restoring the Appellant to the same economic position as if Change in Law has not occurred is in consonance with the principle of 'restitution' i.e. restoration of some specific thing to its rightful status. Hence, in view of the provisions of the PPA, the principle of restitution and judgment of the Hon'ble Supreme Court in case of Indian Council for Enviro Legal Action vs. Union of India &Ors., we are of the considered opinion that the Appellant is eligible for Carrying Cost arising out of approval of the Change in Law events from the effective date of Change in Law till the approval of the said event by appropriate authority.*

*This Tribunal vide above judgement has decided that if there is a provision in the PPA for restoration of the Seller to the same economic position as if no Change in Law event has occurred, the Seller is eligible for carrying cost for such allowed Change in Law event (s) from the effective date of Change in Law event until the same is allowed by the appropriate authority by an order/ judgment."*

From the above judgment the Commission observes that if there is a provision in the PPA for restoration of the Petitioners to the same economic position as if no Change in Law event has occurred, the Petitioners are eligible for 'Carrying Cost' for such allowed 'Change in Law' event(s) from the effective date of Change in Law event until the same is allowed by the Commission. The Commission observes that the PPAs do not have a provision dealing with restitution principles of restoration to same economic position. Therefore, the Commission is of the view that the claim regarding separate carrying cost is not admissible.

**Summary of decisions:**

114. Our decisions in this Order are summed up as under:

- a. *Issue No. 1:* The introduction of 'GST laws' w.e.f. 01.07.2017 is covered under 'Change in Law' in terms of Article 12 of the respective PPAs.
- b. *Issue No. 2:* As regards the claims during construction period, the Petitioners have to exhibit clear and one to one correlation between the projects and the supply of goods and services duly supported by the Invoices raised by the supplier of goods and services and auditors certificate. The amount determined by Petitioner shall be on 'back to back' basis shall be paid by DISCOMS to the Petitioners under respective 'Power Sale Agreements'. The Claim based on discussions in paragraph 86 and 94 above of this Order shall be paid within sixty days of the date of this Order or from the date of submission of claims by the Petitioners whichever is later failing which it will attract late payment surcharge as provided under PPAs/PSAs. Alternatively, the Petitioners and the Respondents may mutually agree to mechanism for the payment of such compensation on annuity basis spread over the period not exceeding the duration of the PPAs as a percentage of the tariff agreed in the PPAs. The claim of the Petitioners on account of additional tax burden on "O&M" expenses (if any), is not maintainable.
- c. *Issue No. 3:* The claim regarding separate 'Carrying Cost' and 'interest on working capital' in the instant petitions is not allowed.

115. Accordingly, the Petition No. 206/MP/2018 alongwith I.A. 4 of 2019; Petition No. 209/MP/2018 alongwith I.A. 7 of 2019; Petition No. 226/MP/2018; Petition No. 212/MP/2018 alongwith I.A. 8 of 2019; Petition No. 207/MP/2018 alongwith I.A. 1 of 2019 and Petition No. 210/MP/2018 alongwith I.A. 3 of 2019 are disposed of.

Sd/-

डॉ एम के अय्यर  
सदस्य

Sd/-

श्री पी के पुजारी  
अध्यक्ष