



नई दिल्ली  
NEW DELHI

याचिका संख्या./ Petition No. 209/MP/2022

कोरम/ Coram:

श्री जिष्णु बरुआ, अध्यक्ष/Shri Jishnu Barua, Chairperson  
श्री आई. एस. झा, सदस्य/ Shri I. S. Jha, Member  
श्री अरुण गोयल, सदस्य/ Shri Arun Goyal, Member  
श्री पी. के. सिंह, सदस्य / Shri P. K. Singh, Member

आदेश दिनांक/ Date of Order: 26<sup>th</sup> of December, 2023

**IN THE MATTER OF:**

A petition under Section 79 of the Electricity Act 2003 read with Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 before the Central Electricity Regulatory Commission for seeking an appropriate adjustment/ compensation to offset financial/ commercial impact of change in law events on account of increase in the rate of goods and services tax from 5% to 12 % by way of Notification No. 8/2021- Central Tax (Rate) dated 30.09.2021, in terms of Article 12 of the Power Purchase Agreement dated 25.10.2019 between M/s Ostro Energy Private Limited and Solar Energy Corporation of India Limited

**AND IN THE MATTER OF:**

**M/s Ostro Energy Private Limited,**  
138, Ansal Chambers II,  
Bhikaji Cama Place, Delhi – 110066

.....Petitioner

**Versus**

1. **M/s Solar Energy Corporation of India Limited,**  
1<sup>st</sup> Floor, A Wing, D-3, District Centre,  
Saket, New Delhi – 110017, Delhi

2. **Uttar Pradesh Power Corporation Ltd**

Bhawan 14 Ashok Marg,  
Lucknow, Uttar Pradesh

....Respondents

**Parties Present:** Ms. Mannat Waraich, Advocate, RSWPL  
Shri Mridul Gupta, Advocate, RSWPL

### आदेश/ ORDER

The Petitioner, i.e., M/s Ostro Energy Private Limited (OEPL), is a generating company within the ambit of Section 2(28) of the Electricity Act, 2003 and is engaged in the business of development, building, owning, operating, and maintaining utility scale grid connected solar power projects, for generation of wind power. The Petitioner is seeking an appropriate adjustment/ compensation to offset the financial/ commercial impact of change in law events on account of an increase in the rate of goods and services tax from 5% to 12 % by way of Notification No. 8/2021- Central Tax (Rate) dated 30.09.2021, in terms of Article 12 of the Power Purchase Agreement dated 25.10.2019.

2. Respondent No. 1, Solar Energy Corporation of India Limited (SECI), has been set up under the administrative control of the Ministry of New and Renewable Energy (MNRE). SECI has been designated as the nodal agency for the implementation of MNRE schemes for developing grid connected solar power capacity.
3. Respondent No.2, Uttar Pradesh Power Corporation Ltd. (UPPCL) is a company incorporated under the Companies Act, 1956 and is engaged in the business of distribution and supply of electricity in the State of Uttar Pradesh.
4. The Petitioner has made the following prayers:
  - a) *Declare increase in rate of goods and services tax from 5% to 12% on renewable energy parts, which has been made effective by way of introduction of Notification No. 8/2021- Central Tax (Rate) dated 30.09.2021 as change in law in terms of the PPA read with Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021;*
  - b) *Direct Respondent to compensate the Petitioner, as one-time lump sum payment or by way of tariff increment, towards increase in rate of goods and services tax from 5% to 12%, which has been made effective by way of Notification No. 8/2021- Central Tax (Rate) dated 30.09.2021;*

- c) Grant interest/carrying cost at as mentioned in para 30 from the date of incurring of the cost by the Petitioner till the date of order by this Commission;
- d) If the event this Hon'ble Commission is not inclined to grant the relief prayed at (c) then in the alternate it is prayed, that this Hon'ble Commission grants interest/carrying cost from the date of the cost by the Petitioner till the date of order by this Commission restoring the Petitioner to the same economic position as before the occurrence of the Change in Law events;
- e) Allow legal and administrative costs incurred by the Petitioner in pursuing the instant petition; and
- f) Pass any such other and further reliefs as this Hon'ble Commission deems just and proper in the nature and circumstances of the present case.

**Factual Matrix:**

5. The brief facts of the case are as under:

Location	Village Vandhay, Tehsil- Bhuj, Kutch District Gujarat
Scheme	Setting up of 1200 MW ISTS connected Wind Power Projects (Tranche-VII)
Nodal agency	SECI
Tariff	Rs.2.81/kWh
Capacity (MW)	50 MW
Power	Wind
Date of Notification No.1/2017-Central Tax (Rate) (2017 GST Notification)	28.06.2017
RfS issued on	22.02.2019
Bid submitted on	15.04.2019 (acknowledgment receipt)
E-Reverse auction held on	14.05.2019
LOA issued on	19.06.2019
Effective date of the PPA	18.10.2019
PPA executed on	25.10.2019
SCOD of the project	18.04.2021
Date of Notification of 8/2021- Central Tax (Rate) (2021 GST Notification)	30.09.2021
Ministry of Power (MoP) issued Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 (CIL Rules)	22.10.2021

6. The present petition was filed on 12.07.2022. The Petition was listed for hearing on 13.12.2022, wherein the Commission, after hearing the submissions of the Petitioner, admitted the Petition and directed the parties the parties to file their respective submissions. Hearing was further conducted on 14.03.2023. The Commission directed the Petitioner to properly map the Respondents, and the Respondents were directed to file their respective replies. The subsequent hearing took place on 08.06.2023. The Commission heard the

submissions of the Petitioner and took note of the fact that Respondents were not present during the hearings despite notice being sent to them. Accordingly, the Commission reserved the matters for orders.

7. The Petitioner, vide Additional Information dated 26.10.2022, apprised the Commission that as they had inadvertently attached incorrect annexure(s), they are placing on record the correct annexures. Vide the said letter they submitted as under:

***“Incorrect Annexure as attached in the Petition - at page no. 109 of the filed version of the Petition, currently, the document annexed is “Notification No. 01/2018-Customs (SG) dated 30.07.2018”.***

***Correct Annexure to be attached in the Petition - at page no. 109, the document which needs to be annexed is “Notification No. 08/2021-Central Tax (Rate) dated 30.09.2021 along with Notification No. 08/2021-Integrated Tax (Rate) dated 30.09.2021”.***

8. We have heard the learned counsels for the Petitioner and have carefully perused the records and considered the submissions of the parties.
9. On the basis of the submissions of the contracting parties, the following issues arise for adjudication:

***Issue No.I:*** *Whether the introduction of Notification No.8/2021- GST issued by Ministry of Finance, Government of India amounts to Change in Law events under Article 12 of the Power Purchase Agreement dated 18.01.2019? AND Whether the Petitioner is entitled for compensation towards additional expenditure on account of a Change in Law event in terms of Article 12 of the PPA?*

***Issue No.II:*** *What should be the discount rate for the calculation of Annuity for payment of compensation (if any) on account of Change in Law?*

***Issue No.III :*** *Whether the Petitioner is entitled to carrying cost towards compensation for Change in Law?*

10. Now, we proceed to discuss the above issues

**Re: Issue No. I**

***Whether the introduction of Notification No.8/2021- GST issued by the Ministry of Finance, Government of India amounts to Change in Law events under Article 12 of the Power Purchase Agreement dated 18.01.2019? AND Whether the Petitioner is entitled for compensation towards additional expenditure on account of a Change in Law event in terms of Article 12 of the PPA?***

11. The Petitioner has submitted that *Notification No. 01/2018- Customs (SG) dated 30.07.2018 (2021 GST Notification)* was issued after the bid submission date i.e. 12.04.2019. GST rates were increased from 5% to 12% due to the *2021 GST Notification* and had a direct impact on the project as it resulted in the Petitioner incurring additional expenditure. As such, the said notification qualifies as a change in law under Article 12 of the PPA dated 25.10.2019, and the Petitioner should be compensated accordingly.

12. During the course of the hearing dated 08.06.2023, the Commission noticed that *“None was present on behalf of the Respondents despite notice. After hearing the learned counsel for the Petitioner, the Commission deemed it appropriate to permit the Respondents, as a last opportunity, to file their respective written submissions, if any, within two weeks with a copy to the Petitioner who may file its written submissions, within two weeks thereafter.”* It is pertinent to mention here that the Respondents have not submitted any written submissions despite giving them time for filing the same.

13. We observe that Article 12 of the PPA 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 date, which is the last date of bid submission, resulting into any additional recurring/nonrecurring expenditure by the WPD or any income to the WPD:*

- 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, Licenses or Permits which was not required earlier;*
- a change in the terms and conditions prescribed for obtaining any Consents, Licenses or Permits or the inclusion of any new terms or conditions for obtaining such Consents, Licenses and Permits; except due to any default of the WPD;*
- any statutory change in tax structure or introduction of any new tax made applicable for setting up of Wind Power Project and supply of power from the Project by the WPD and has direct effect on the Project, shall be treated 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 WPD, or (ii) Custom duty on imported equipment, or (iii) any change on account of regulatory measures by the Appropriate*

Commission.

**In the event a Change in Law results in any adverse financial loss/ gain to the WPD, then, in order to ensure that the WPD is placed in the same financial position as it would have been had it not been for the occurrence of the Change in Law, the WPD/ Buyer shall be entitled to compensation by the other party, as the case may be, subject to the condition that the quantum and mechanism of compensation payment shall be determined and shall be effective from such date as may be decided by the Appropriate Commission.**

*In the event of any decrease in the recurring/nonrecurring expenditure by the WPD or any income to the WPD on account of any of the events as indicated above, WPD shall file an application to the appropriate commission no later than sixty (60) days from the occurrence of such event, for seeking approval of Change in Law. In the event of the WPD failing to comply with the above requirement, in case of any gain to the WPD, SECI shall withhold the monthly tariff payments on immediate basis, until compliance of the above requirement by the WPD.*

*12.2 Relief for Change in Law*

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

*12.2.2 The decision of the Appropriate 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.”*

14. The relevant extract of 2021 GST Notification, is as under :

*(b) in Schedule II – 12%, -*

...

*(iv) after S. No. 201 and the entries relating thereto, the following S. No. and entries shall be inserted, namely: -*

201 A	84, 85 or 94	Following renewable energy devices & parts for their manufacture: - (a) Bio-gas plant (b) Solar power-based devices (c) Solar power generating system (d) Wind mills, Wind Operated Electricity Generator (WOEG) (e) Waste to energy plants / devices (f) Solar lantern / solar lamp (g) Ocean waves/tidal waves energy devices/plants (h) Photo voltaic cells, whether or not assembled in modules or made up into panels.
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15. We observe that Clause (v) of Article 12 of the PPAs, in seriatim specifically stipulates that *any statutory change in tax structure or introduction of any new tax made applicable for setting up of Wind Power Project and supply of power from the Project by the WPD and has direct effect on the Project, shall be treated as per the terms of this Agreement.* The introduction of the 2021 GST Notification has been issued by the Ministry of Finance, Government of India. As such, the impugned notification has been enacted by the Act of Parliament. The change in rate of Goods and Services Tax from 5% to 12% w.e.f. 01.10.2021

has resulted in the change in the cost of the inputs required for generation, and the same is considered a 'Change in Law'. Hence, we hold that the Notification No. 8/2021- Integrated Tax (Rate) dated 30.09.2021 (*2021 GST Notification*) is a Change in Law event as per Article 12 of the PPA dated 25.10.2019. It is pertinent to mention here that vide its Office Memorandum (O.M.) dated 21.02.2022, the Ministry of Power (MoP) framed Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 (*CIL Rules, 2021*) i.e. after the notification of the impugned notification. Hence, the *CIL Rules 2021* cannot be applied retrospectively, and hence, the petition has to be dealt with according to Article 12 of PPA dated 25.10.2019.

16. In the instant petition, the bid was submitted by the Petitioner on 15.04.2019. PPA was executed between the Petitioner and the SECI on 25.10.2019 and the SCoD of the project was 18.04.2021. The GST rates were amended vide Notification No. 8/2021- Central Tax (Rate) dated 30.09.2021 (*2021 GST Notification*) with effect from 01.10.2021 i.e. after 18.04.2021 (SCoD). It is pertinent to mention here that during the course of the hearing dated 13.12.2022, the Petitioner submitted that the entire project capacity of 50 MW has achieved commercial operation. However, the exact details are not on records. We are of the view that since the exact date of CoD is not on record, it cannot be ascertained whether the Petitioner's project was affected by the *2021 GST Notification* during the construction period (EPC/pre-COD stage) of the project or Post-COD stage of the project. The Petitioner shall be entitled to compensation on account of the 2021 GST Notification once it establishes during reconciliation with SECI and the distribution company, one-to-one correlation with the projects and the invoices raised supported with an auditor certificate

17. We observe that APTEL, vide judgment dated 15.09.2022 in A.No. 256 of 2019 & Batch titled as *Parampujya Solar Energy Private Limited &Ors. vs. CERC & Ors.* held as under:

...  
*109. The other captioned appeals – Appeal no. 256 of 2019 (Parampujya Solar Energy Pvt. Ltd &Anr. v. CERC &Ors.), Appeal no. 299 of 2019 (Parampujya Solar Energy Pvt. Ltd. v. CERC &Ors.), Appeal no. 427 of 2019 (Mahoba Solar (UP) Private Limited v. CERC &Ors.), Appeal no. 23 of 2022 (Prayatna Developers Pvt. Ltd. v. CERC &Ors.) Appeal no. 131 of 2022 (Wardha Solar (Maharashtra) Private Ltd. &Anr. v. CERC &Ors.) and Appeal no. 275 of 2022 (Parampujya Solar Energy Pvt. Ltd. &Anr. v. CERC &Ors.) - deserve to be allowed. **We order accordingly directing the Central Electricity Regulatory Commission to take up the claim cases of the Solar Power Project Developers herein for further proceedings and for passing necessary orders consequent to the findings recorded by us in the preceding parts of***

**this judgment, allowing Change in Law (CIL) compensation (on account of GST laws and Safeguard Duty on Imports, as the case may be) from the date(s) of enforcement of the new taxes for the entire period of its impact, including the period post Commercial Operation Date of the projects in question, as indeed towards Operation & Maintenance (O&M) expenses, along with carrying cost subject, however, to necessary prudence check.**”

18. From the above, we observe that APTEL has held that the claim cases of the Solar Power Project Developers have to be taken up for passing necessary orders allowing Change in Law compensation (on account of GST laws and Safeguard Duty on Imports, as the case may be) from the date(s) of enforcement of the new taxes for the entire period of its impact, including the period post COD of the project in question, as indeed towards Operation & Maintenance (O&M) expenses, along with carrying cost subject to necessary prudence check.
19. In view of the above, we hold that the Petitioner is entitled to compensation on account of Change in Law as per the terms of Article 12 of the PPA dated 25.10.2019 due to impugned notification viz. *2021 GST Notification* once it is proved on record that the Petitioner’s project has been impacted due to the change in the rate of Goods and Services Tax from 5% to 12% w.e.f. 01.10.2021 due to *the 2021 GST Notification*. Accordingly, the Commission hereby directs the contracting parties to carry out the reconciliation of additional expenditure by exhibiting clear and one-to-one correlation with the projects and the invoices raised supported with an auditor certificate.
20. The issue is decided accordingly.

**Re. Issue No. II:**

*What should be the discount rate for the calculation of Annuity for payment of compensation (if any) on account of a Change in Law?*

21. The Petitioner has submitted that it has funded the additional goods and services tax upfront from its equity, as the same was not envisaged at the time of bidding and was not a part of the project cost. Therefore, Petitioner is also entitled to reimbursement of carrying cost from the date of actual payment of additional goods and services tax till the date of the order from this Commission so that the Petitioner is put into the same economic position as if a change in law had not occurred. Article 12.1 of the PPA, envisages that the Petitioner should be put in the same economic position as if a change in law has not occurred, and the Petitioner shall be



entitled to compensation by the Respondent. The Petitioner has submitted that the Respondents should be directed to compensate the Petitioner, as a one-time lump sum payment or by way of tariff increment. The interest rate should be equal to the return on equity as allowed by this Commission in its Regulation for Terms and Conditions for Tariff Determination from Renewable Energy Sources, 2020, which is 14% per annum. Alternatively, the Petitioner be allowed an interest rate of carrying cost equal to the rate of interest allowed under the Late Payment surcharge clause of PPA.

22. This Commission in the earlier order dated 20.08.2021 in the Petition No. 536/MP/2020 has decided on the methodology of compensation due to Change in Law in the following manner:-

*65. ....Given the fact that it is not possible in case of competitive bidding projects to ascertain either the capital structuring (extent of debt and equity) of the projects, or the actual rate of interest of the debt component or the expected rate of return on equity, we consider it appropriate to use the normative rate of 10.41% as reference for the purpose of annuity payment. As the actual deployment of capital by way of debt or equity and their cost in terms of rate of interest or return, respectively, is unknown, the rate 10.41% can be taken as the uniform rate of compensation for the entire expenditure incurred on account of GST Laws or Safeguard Duty. The Commission is of the view that the compensation for change in law cannot be a source for earning profit, and therefore, there cannot be any higher rate of return than the prevailing normative cost of debt. Accordingly, we hold that 10.41% shall be the discount rate of annuity payments towards the expenditure incurred on GST or Safeguard Duty (as the case may be) by the Respondent SPDs on account of 'Change in Law'.*

*Commencement of 'Monthly Annuity Payments' and "Late Payment Surcharge"*

*66. Further, SPDs have submitted that the 'Monthly Annuity Payment' of GST claims ought to start from COD taking into consideration the provisions of applicable 'Late Payment Surcharge' in the PPAs in case of delayed payments*

*67. We observe that in the Petitions filed by the SPDs where claims under Change in Law were adjudicated, the Commission has directed SPDs to make available to SECI/ Discoms all relevant documents exhibiting clear and one to one correlation between the projects and the supply of goods or services, duly supported by the relevant invoices and Auditor's Certificate. SECI/ Discoms were further directed to reconcile the claims for Change in Law on receipt of the relevant documents and pay the amount so claimed to SPDs. It was also held that SECI is liable to pay to SPDs which is not conditional upon the payment to be made by the Discoms to SECI. However, SECI is eligible to claim the same from the Discoms on 'back to back' basis. The claim was directed to be paid within sixty days of the date of respective orders or from the date of submission of claims by SPDs whichever was later failing which it will attract late payment surcharge as provided under PPAs/PSAs. Alternatively, SPDs and the SECI/ Discoms may mutually agree to a*

*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.*

*68. In view of the above, the liability of SECI/ Discoms for 'Monthly Annuity Payment' starts from 60th (sixtieth) day from the date of orders in respective petitions or from the date of submission of claims by the Respondent (SPDs), whichever is later. In case of delay in the Monthly Annuity Payment beyond the 60th (sixtieth) day from the date of orders in respective petitions or from the date of submission of claims by the Respondent (SPDs), whichever is later, late payment surcharge shall be payable for the delayed period corresponding to each such delayed Monthly Annuity Payment(s), as per respective PPAs/PSAs.*

*Tenure of 'Annuity Period'*

*69. SPDs have submitted that the annuity period should be 13 years. It is observed that SECI has revised the proposal of annuity payments by considering the annuity period of 13 years instead of 25 years as proposed earlier. Further, SECI has stated that the payment shall be provisional and subject to final decision of this Commission in respective petitions. The period of 13 years is consistent with Regulation 14 of the RE Tariff Regulations, 2017 which stipulates as under:*

*"14. Loan and Finance Charges*

*Loan Tenure*

*For the purpose of determination of tariff, loan tenure of 13 years shall be considered."*

*70. We observe that as there seems to a general acceptance amongst SECI and the Respondent SPDs that the Annuity Period could be of 13 years, as such the same is approved by the Commission."*

23. It is apparent that this Commission has taken the view that in the case of competitive bidding projects, it is not possible to ascertain either the capital structuring (extent of debt and equity) of the projects or the actual rate of interest of the debt component or the expected rate of return on equity. As the actual deployment of capital by way of debt or equity and their cost in terms of rate of interest or return, respectively, is unknown, the rate can be taken as the uniform rate of compensation for the entire expenditure incurred on account of Change in Law. *The compensation for change in law cannot be a source for earning profit, and therefore, there cannot be any higher rate of return than the prevailing normative cost of debt.*

24. *The Central Electricity Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2020 (RE Tariff Regulations,*

2020) which was applicable for the period 01.07.2020 to 31.03.2013 now stands extended to 30.09.2023 vide Notification No. RA-14026(11)/4/2020-CERC dated: 27.03.2023.

25. The Commission has notified the *CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2020* and *RE Tariff Order dated 31.03.2021* and *RE Tariff Order dated 07.11.2022*. In the said regulations read with the RE tariff Order, we have considered the interest rate of 9% for FY-21-22 and 9.12% for FY-22-23 and the term of the Loan repayment as 15 years. It is noted that the impugned Notifications were promulgated after the submission of the bid by the Petitioner, viz. 12.04.2019.
26. During the course of the hearing dated 13.12.2022, the Petitioner submitted on record that the entire project capacity of 50 MW has achieved commercial operation. However, the exact details are not on records. Therefore, applying the principle decided by this Commission in the Order dated 20.08.2021 in Petition No. 536/MP/2020, that the *compensation for change in law cannot be a source for earning profit, and therefore, there cannot be any higher rate of return than the prevailing normative cost of debt*, we hold that the discount rate and annuity period as applicable (as per the relevant RE Tariff order) on the date of COD shall be the appropriate methodology towards change in law compensation.
27. Further, the Commission holds that the liability of SECI/ Discoms for '*Monthly Annuity Payment*' starts from the 60th (sixtieth) day from the date of orders in respective petitions or from the date of submission of claims by the Petitioner, whichever is later. In case of delay in the Monthly Annuity Payment beyond the 60th (sixtieth) day from the date of orders in respective petitions or from the date of submission of claims by the Petitioner, whichever is later, a late payment surcharge shall be payable for the delayed period corresponding to each such delayed Monthly Annuity Payment(s), as per respective PPAs/PSAs.

**Re. Issue No. III:**

***Whether the Petitioner is entitled to carrying cost towards compensation for Change in Law?***

28. The Petitioner has submitted that it is entitled to claim carrying costs as the PPA specifically contains a restitutive provision. On the basis of Article 12.1 of the PPA, the Petitioner should

be granted an interest on working capital at the normative interest rate in order to put the Petitioner in the same economic position as if a change in law has not occurred.

29. We observe that Article 12 of the PPAs deals with Change in Law, inter-alia, as under:

### *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 date, which is the last date of bid submission, resulting into any additional recurring/nonrecurring expenditure by the WPD or any income to the WPD:*

- 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, Licenses or Permits which was not required earlier;*
- a change in the terms and conditions prescribed for obtaining any Consents, Licenses or Permits or the inclusion of any new terms or conditions for obtaining such Consents, Licenses and Permits; except due to any default of the WPD;*
- any statutory change in tax structure or introduction of any new tax made applicable for setting up of Wind Power Project and supply of power from the Project by the WPD and has direct effect on the Project, shall be treated 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 WPD, or (ii) Custom duty on imported equipment, or (iii) any change on account of regulatory measures by the Appropriate Commission.*

***In the event a Change in Law results in any adverse financial loss/ gain to the WPD, then, in order to ensure that the WPD is placed in the same financial position as it would have been had it not been for the occurrence of the Change in Law, the WPD/ Buyer shall be entitled to compensation by the other party, as the case may be, subject to the condition that the quantum and mechanism of compensation payment shall be determined and shall be effective from such date as may be decided by the Appropriate Commission.***

*In the event of any decrease in the recurring/nonrecurring expenditure by the WPD or any income to the WPD on account of any of the events as indicated above, WPD shall file an application to the appropriate commission no later than sixty (60) days from the occurrence of such event, for seeking approval of Change in Law. In the event of the WPD failing to comply with the above requirement, in case of any gain to the WPD, SECI shall withhold the monthly tariff payments on immediate basis, until compliance of the above requirement by the WPD.*

### *12.2 Relief for Change in Law*

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

12.2.2 *The decision of the Appropriate 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.*”

30. We observe that the Hon’ble Supreme Court vide judgement dated 25.02.2019 in the matter of Uttar Haryana Bijli Vitran Nigam Ltd. & Anr.v. Adani power Ltd. & Ors (*Uttar Haryana judgement*) has held as under:

**Article 13.2 is an in-built restitutionary principle which compensates the party affected by such change in law and which must restore, through monthly tariff payments, the affected party to the same economic position as if such change in law has not occurred.** This would mean that by this clause a fiction is created, and the party has to be put in the same economic position as if such change in law has not occurred, i.e., the party must be given the benefit of restitution as understood in civil law...

...

13. A reading of Article 13 as a whole, therefore, leads to the position that subject to restitutionary principles contained in Article 13.2, the adjustment in monthly tariff payment, in the facts of the present case, has to be from the date of the withdrawal of exemption which was done by administrative orders dated 06.04.2015 and 16.02.2016. The present case, therefore, falls within Article 13.4.1(i). This being the case, it is clear that the adjustment in monthly tariff payment has to be effected from the date on which the exemptions given were withdrawn. This being the case, monthly invoices to be raised by the seller after such change in tariff are to appropriately reflect the changed tariff. On the facts of the present case, it is clear that the respondents were entitled to adjustment in their monthly tariff payment from the date on which the exemption notifications became effective. **This being the case, the restitutionary principle contained in Article 13.2 would kick in for the simple reason that it is only after the order dated 04.05.2017 that the CERC held that the respondents were entitled to claim added costs on account of change in law w.e.f. 01.04.2015. This being the case, it would be fallacious to say that the respondents would be claiming this restitutionary amount on some general principle of equity outside the PPA. Since it is clear that this amount of carrying cost is only relatable to Article 13 of the PPA, we find no reason to interfere with the judgment of the Appellate Tribunal.**

31. From the above, we observe that Article 12.1 of the PPA dated 25.10.2019 specifically stipulates that in the event a Change in Law results in any adverse financial loss/ gain to the Wind Power Generator, then, in order to ensure that the Wind Power Generator is placed in the same financial position as it would have been had it not been for the occurrence of the Change in Law, the Wind Power Generator/ Procurer shall be entitled to compensation. We further observe that the Hon’ble Supreme Court vide *Uttar Haryana judgement* dated 25.02.2019 has held that in case there is an in-built restitutionary principle in the PPA, then

the affected party has to be put in the same economic position as if such change in law has not occurred, i.e., the party must be given the benefit of restitution as understood in civil law.

32. In the instant petition, we observe that the bid was submitted by the Petitioner on 15.04.2019, and the same was accepted and crystallised after the e-reverse auction held on 14.05.2019. PPA was executed between the Petitioner and the SECI on 25.10.2019 and the SCoD of the project was 18.04.2021. The GST rates were amended vide *2021 GST Notification* with effect from 01.10.2021, i.e. after the acceptance of the bid submitted by the Petitioner. In the preceding paragraphs, we have already held that during the course of the hearing dated 13.12.2022, the Petitioner submitted that the entire project capacity of 50 MW had achieved commercial operation, but the exact details are not on records. Therefore, it cannot be ascertained whether the Petitioner's project was affected by the *2021 GST Notification* at the time of implementation (EPC/pre-COD stage) of the project or Post-COD stage of the project. We observe that the Petitioner is entitled to compensation on account of a Change in Law as per the terms of Article 12 of the PPA dated 25.10.2019 due to impugned notification viz. *the 2021 GST Notification* once it is established during reconciliation with SECI and the distribution company based on records that the Petitioner's project has been impacted due to the change in rate due *the 2021 GST Notification*.
33. Further, OEPL, in the instant petition, shall be eligible for carrying costs starting from the date when the actual payments were made to the authorities until the date of issuance of this Order, at the actual rate of interest paid by OEPL for arranging funds (supported by Auditor's Certificate) or the rate of interest on working capital as per the applicable RE Tariff Regulations prevailing at that time or the late payment surcharge rate as per the PPA, whichever is the lowest. Once a supplementary bill is raised by OEPL in terms of this order, the provision of Late Payment Surcharge in the PPA would kick in if the payment is not made by the Respondents within the due date.
34. Accordingly, the Commission hereby directs the contracting parties to carry out the reconciliation of additional expenditure along with carrying cost by exhibiting clear and one-to-one correlation with the projects and the invoices raised supported with an auditor certificate. The Commission further directs that the responding Discoms are liable to pay SECI all the above-reconciled claims that SECI has to pay to the Petitioners. However,

payment to the Petitioners by SECI is not conditional upon the payment to be made by the responding Discoms to SECI.

35. Further, APTEL, vide judgment dated 15.09.2022 in A.No. 256 of 2019 & Batch titled as *Parampujya Solar Energy Private Limited & Ors. vs. CERC & Ors.* held as under:

...

*109. The other captioned appeals – Appeal no. 256 of 2019 (Parampujya Solar Energy Pvt. Ltd & Anr. v. CERC & Ors.), Appeal no. 299 of 2019 (Parampujya Solar Energy Pvt. Ltd. v. CERC & Ors.), Appeal no. 427 of 2019 (Mahoba Solar (UP) Private Limited v. CERC & Ors.), Appeal no. 23 of 2022 (Prayatna Developers Pvt. Ltd. v. CERC & Ors.) Appeal no. 131 of 2022 (Wardha Solar (Maharashtra) Private Ltd. & Anr. v. CERC & Ors.) and Appeal no. 275 of 2022 (Parampujya Solar Energy Pvt. Ltd. & Anr. v. CERC & Ors.) - deserve to be allowed. **We order accordingly directing the Central Electricity Regulatory Commission to take up the claim cases of the Solar Power Project Developers herein for further proceedings and for passing necessary orders consequent to the findings recorded by us in the preceding parts of this judgment, allowing Change in Law (CIL) compensation (on account of GST laws and Safeguard Duty on Imports, as the case may be) from the date(s) of enforcement of the new taxes for the entire period of its impact, including the period post Commercial Operation Date of the projects in question, as indeed towards Operation & Maintenance (O&M) expenses, along with carrying cost subject, however, to necessary prudence check.***

36. Hon'ble Supreme Court in its Order dated 12.12.2022, in Civil Appeal no. 8880/2022 in the case of "*Telangana Northern Power Distribution Co. Limited & Anr. Vs. Parampujya Solar Energy Pvt. Limited & Ors.*" (and in similar Orders dated 03.01.2023 and 23.01.2023) has held as under:

*"Pending further orders, the Central Electricity Regulatory Commission (CERC) shall comply with the directions issued in paragraph 109 of the impugned order dated 15 September 2022 of the Appellate Tribunal for Electricity. However, the final order of the CERC shall not be enforced pending further orders."*

37. Therefore, the directions issued in this Order so far as they relate to additional compensation for the period pre-COD claims (if any) only shall be enforced and the directions issued in this Order so far as they relate to additional compensation for the period post Commercial Operation Date of the project in question as also towards post-COD (carrying cost) shall not be enforced and shall be subject to further orders of the Hon'ble Supreme Court in Civil Appeal No. 8880/2022 in *Telangana Northern Power Distribution Company Limited & Anr. V. Parampujya Solar Energy Pvt. Limited & Ors.*, and connected matters.

38. The issues are decided accordingly.

39. The summary of our findings is as follows:

- a) *The 2021 GST Notification* is a Change in Law event as per Article 12 of the PPA dated 25.10.2019.
- b) The Petitioner is entitled to compensation on account of a Change in Law as per the terms of Article 12 of the PPA dated 25.10.2019 due to the impugned notification, viz. *the 2021 GST Notification*, once it establishes during reconciliation with SECI and the distribution company, one to one correlation with the projects and the invoices raised supported with an auditor certificate that the Petitioner's project has been impacted due to the change in the rate of Goods and Services Tax from 5% to 12% w.e.f. 01.10.2021 due to *the 2021 GST Notification*. Accordingly, the Commission hereby directs the contracting parties to carry out the reconciliation of additional expenditure along with carrying cost by exhibiting clear and one-to-one correlation with the projects and the invoices raised supported with an auditor certificate.
- c) The discount rate and annuity period as applicable (as per relevant RE Tariff order) on the date of COD shall be the appropriate methodology towards change in law compensation. The liability of SECI/ Discoms for '*Monthly Annuity Payment*' shall start from the 60th (sixtieth) day from the date of this order or from the date of submission of claims by the Petitioner, whichever is later. Late payment surcharge shall be payable for the delayed period corresponding to each such delayed Monthly Annuity Payment(s), as per respective PPAs/PSAs.
- d) The Petitioner shall also be eligible for carrying cost starting from the date when the actual payments were made to the Authorities till the date of issuance of this Order, at the actual rate of interest paid by the Petitioner for arranging funds (supported by Auditor's Certificate) or the rate of interest on working capital as per applicable RE Tariff Regulations prevailing at that time or the late payment surcharge rate as per the PPA, whichever is the lowest. Once a supplementary bill is raised by the Petitioner in terms of this order, the provision of a Late Payment Surcharge in the PPA would kick in if the payment is not made by the Respondents within the due date.
- e) The directions issued in this Order in so far as they relate to additional compensation for the period pre-COD claims only shall be enforced, and the directions issued in this Order in so far as they relate to additional compensation for the period post-



Commercial Operation Date of the project in question as also towards post-COD (carrying cost) shall not be enforced and shall be subject to further orders of the Hon'ble Supreme Court in Civil Appeal No. 8880/2022 in *Telangana Northern Power Distribution Company Limited & Anr. V. Parampujya Solar Energy Pvt. Limited & Ors*, and connected matters.

40. The Petition No. 209/MP/2022 is disposed of in terms of the above.

Sd/-  
पी. के. सिंह  
सदस्य

Sd/-  
अरुण गोयल  
सदस्य

Sd/-  
आई. एस. झा  
सदस्य

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जिष्णु बरुआ  
अध्यक्ष