



नईदिल्ली  
NEW DELHI

याचिकासंख्या./ Petition No.211/MP/2019 &  
213/MP/2019

कोरम/ Coram:

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

आदेश दिनांक/ Date of Order: 14<sup>th</sup> of July, 2023

**IN THE MATTER OF:**

Petition under Section 79 the Electricity Act, 2003 read with Article 12 of the Power Purchase Agreements executed between the Petitioners 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. 211/MP/2019:**

**RattanIndia Solar 2 Private Limited,**  
(Now known as *Vector Green Prayagraj Solar Private Limited*)  
5th Floor, Tower-B, Worldmark 1 Aerocity,  
New Delhi- 110037.

**...Petitioner**

**Versus**

**1. M/s Solar Energy Corporation of India Limited,**  
D-3, First Floor, A Wing, District Centre, Saket,

New Delhi 110017

2. **Uttar Pradesh Power Corporation Limited,**  
Shakti Bhawan, 14- Ashok Marg,  
Lucknow - 22600

...Respondents

**AND IN THE MATTER OF:**

2) **Petition No. 213/MP/2019:**

**Yarrow Infrastructure Private Limited,**  
5th Floor, Tower-B, Worldmark 1 Aerocity,  
New Delhi-I 10037

...Petitioner

**Versus**

1. **NTPC Limited,**  
7, Institutional Area,  
Core-7, Scope Complex,  
Lodhi Road, New Delhi- 110 003
2. **Bangalore Electricity Supply Company Limited,**  
KR Circle,  
Bengaluru-560001
3. **Hubli Electricity Supply Company Limited,**  
PB Road, Navanagar,  
Hubballi-580025
4. **Mangalore Electricity Supply Company Limited,**  
MESCOM Bhavana,  
Kavoor Cross Road,  
Bejai, Mangaluru-575004
5. **Gulbarga Electricity Supply Company Limited,**  
Station Road,  
Kalaburagi -585101
6. **Chamundershwari Electricity Supply Corporation Limited,**  
No. 29, Kaveri Grameena Bank Road,  
Hinkal, Vijayanagar, 2nd Stage,

**Parties Present:** Shri Sujit Gosh, Advocate, RS2PL & YIPL  
Ms. Anushree Bardhan, Advocate, SECI  
Shri Aneesh Bajaj, Advocate, SECI  
Ms. Sakie Jakharia, Advocate, NTPC

**आदेश/ ORDER**

The Petitioners, *M/s RattanIndia Solar 2 Private Limited*(now known as *M/s Vector Green Prayagraj Solar Private Limited*)in Petition No. 211/MP/2019 and *M/s Yarrow Infrastructure Private Limited* in Petition No. 213/MP/2019 are generating companies engaged in the business of setting up solar power plants and generation of electricity therefrom. *M/s Vector Green Prayagraj Solar Private Limited* (Vector Green) has developed a 50 MW solar photovoltaic power project at Allahabad, as a part of the UP Solar Park being developed by the Solar Park Implementation Agency (SPIA)in the State of Uttar Pradesh, whereas *M/s Yarrow Infrastructure Private Limited* (YIPL) has developed a 50 MW solar photo voltaic power project at Pavagada Solar Park, Tumkur District, in the State of Karnataka.

2. The Respondent No.1, Solar Energy Corporation of India Ltd,(SECI) (in Petition No. 211/MP/2019),has been identified by the Government of India as the nodal agency for implementation of the scheme for developing 2000 MW grid connected solar power capacity through VGF mode under Phase II, Batch-III of the JNNSM of the Government of India with viability gap funding support from the National Clean Energy Fund (MNRE Scheme). SECI is the Implementation Agency for setting up Grid-connected Solar PV Power Plants with which Vector Green has executed a Power Purchase Agreement for setting up 50 MW capacity in the State of Uttar Pradesh whereas National Thermal Power Corporation Limited (NTPC)(the Respondent No.1 in Petition No. 213/MP/2019)is the Implementation Agency for setting up Grid-connected Solar PV Power Plant, with which YIPL has executed a Power Purchase Agreement for setting up 50 MW capacity in the State of Karnataka.
3. The Respondent No.2, Uttar Pradesh Power Corporation Limited (UPPCL) (in Petition No. 211/MP/2019), is operating as a Bulk Supply Licensee for electricity in the State of Uttar

Pradesh, whereas, the Respondent Nos.2 to 6 (in Petition No. 213/MP/2019) are the distribution companies of the State of Karnataka (Karnataka Discoms).

**Factual matrix**

4. The Petitioners in the main Petitions have sought Change in Law compensation on account of the promulgation of GST Laws, Carrying Costs, GST on Operation and Maintenance(O&M) services and GST on expenditure incurred after Commercial Operation Date (CoD) of the Projects.
5. The Commission, after carefully perusing the submissions of the parties, disposed of the Petitions vide separate orders dated 25.01.2021 and Corrigendum dated 14.09.2021.
6. In Petition No. 211/MP/2019, the Commission, vide order dated 25.01.2021 and Corrigendum dated 14.09.2021, held as under:
  - a. *“59. Our decisions in this Order are summed up as under:  
a. The introduction of the GST Laws w.e.f. 01.07.2017 is covered under Change in Law in terms of Article 12 of the PPA. The Commission directs the Petitioner to make available to the Respondents all relevant documents exhibiting clear and one to one correlation between the project and the supply of goods till the COD as per PPA or till the COD upon extension of SCOD in terms of PPA, duly supported by relevant invoices and Auditor’s Certificate. The Respondents are directed to reconcile the claims for Change in Law on receipt of the relevant documents and pay the amount so claimed to the Petitioner. The quantum of compensation on account of introduction of GST w.e.f. 01.07.2017 should be discharged by the Respondents within 60 days from the date of issue of this Order or from the date of submission of claims by the Petitioner, whichever is later, failing which it shall attract late payment surcharge at the rates provided for in the PPA. Alternatively, the Petitioner and the Respondents may mutually agree to a mechanism for the payment of such compensation on annuity basis spread over a period not exceeding the duration of the PPA as a percentage of the tariff agreed in the PPA.*
  - b. *The billing and payment between the Petitioner and SECI are not conditional upon billing and payment between SECI and UPPCL. The PPA (between the Petitioner and SECI) and PSA (between SECI and UPPCL) being back to back in nature are interconnected implying thereby that UPPCL is liable to pay to SECI all that SECI has to pay to the Petitioner.*
  - c. *The prayer of Petitioner to compensate for adverse impact of GST on O&M expenses is not allowed.*
  - d. *The claim regarding ‘carrying cost’ is not admissible.”*
7. In Petition No. 213/MP/2019, the Commission, vide order dated 25.01.2021 and Corrigendum dated 14.09.2021, held as under:

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

- a. *The introduction of the GST Laws w.e.f. 01.07.2017 is covered under Change in Law in terms of Article 12 of the respective PPA. The Commission directs the Petitioner to make available to the Respondents all relevant documents exhibiting clear and one to one correlation between the project and the supply of goods till the COD as per PPA or till the COD upon extension of SCOD in terms of PPA, duly supported by relevant invoices and Auditor's Certificate. The Respondents 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 Petitioner. The quantum of compensation on account of introduction of GST w.e.f. 01.07.2017 should be discharged by the Respondents within 60 days from the date of issue of this Order or from the date of submission of claims by the Petitioner, whichever is later, failing which it shall attract late payment surcharge at the rates provided for in the PPA. Alternatively, the Petitioner and the Respondents may mutually agree to a mechanism for the payment of such compensation on annuity basis spread over a period not exceeding the duration of the PPA as a percentage of the tariff agreed in the PPA.*
- b. *The billing and payment between the Petitioner and NTPC are not conditional on billing and payment between NTPC and the Karnataka Discoms. The PPA (between the Petitioner and NTPC) and PSA (between NTPC and the Karnataka Discoms) being back to back in nature are interconnected implying thereby that the Karnataka Discoms are liable to pay to NTPC all that NTPC has to pay to the Petitioner.*
- c. *The Petitioner is not eligible for compensation qua imposition of Safeguard duty.*
- d. *The prayer of Petitioner to compensate on account of GST on the O&M qua claim payable to OEM during the Defects Liability Period is not allowed.*
- e. *The prayer of Petitioner to compensate on account of GST on O&M qua charges payable to SPIA is allowed.*
- f. *The claim regarding 'carrying cost' is not admissible.*

8. Aggrieved by the order dated 25.01.2021 along with the Corrigendum dated 14.09.2021 passed by the Commission, the Petitioner preferred an appeal before the Appellate Tribunal for Electricity (APTEL).

9. The APTEL, vide its order dated 29.11.2022 in A.No. 157 of 2021 (*Vector Green Prayagraj Solar Private Limited (formerly known as Rattan India Solar 2 Private Ltd) v. Central electricity regulatory commission &Ors.*)&A.No. 163 of 2021 titled as (*Yarrow Infrastructure Private Limited v. Central Electricity Regulatory Commission &Ors.*) has held as under:

*4. In the above facts, noticing prima facie discord between the impugned view and the ruling in Parampujya (supra), **we allow the request and set aside the impugned orders of the Central Commission remanding the matters arising out of the petitions on which the same were rendered for fresh hearing and decision in accordance with law, bearing in mind, amongst others, the ruling of the Tribunal in***

**Parampujya (supra).** All contentions are kept open. For removal of doubts, if any, it is added that nothing in this judgment shall be treated as an expression of opinion by this Tribunal at this stage.

### **Hearing dated 14.03.2023**

10. The petitions were called out for hearing on 14.03.2023. As per the Record of Proceedings, it was observed as under:

*“Learned counsel for the Petitioners submitted that the present Petitions have been re-listed pursuant to the order of Appellate Tribunal for Electricity (‘APTEL’) dated 29.11.2022 in Appeal Nos. 163 of 2021 and 157 of 2021 filed by the Petitioners challenging the Commission’s orders dated 25.1.2021 passed in these matters wherein the APTEL has set aside the aforesaid orders remanding the matters back to the Commission for fresh hearing and decision in accordance with law, bearing in mind, among others, the decision of the APTEL dated 15.9.20 22 in Appeal No. 256 of 2019 & batch (‘Parampujya Judgment’). Learned counsel further referred to the APTEL’s Parampujya Judgment and submitted that in the said judgment, the APTEL has already allowed the Change in Law compensation on account of GST Laws and Safeguard Duty on imports, as the case may be, for the entire period of their impact including post Commercial Operation Date (COD) of the Project(s), towards O & M expenses and carrying cost and all the issues raised in these matters are squarely covered by the Parampujya Judgment.*

*2. Learned counsel for the Petitioners further submitted that in Petition No. 211/MP/2019, the Commission while disallowing the Petitioner’s GST claim on O&M expenses in regard to Land Use-cum-Implementation and Support Agreement, in its order dated 25.1.2021, inter-alia, observed that the Petitioner had neither filed any such agreement nor placed on record any other documents with specific provisions fastening liability on the Petitioner to pay O&M charges to Solar Park Implementing Agency. Learned counsel added that although such agreement/details were placed before the APTEL in an appeal, the Petitioner may also be permitted to upload such details in the present Petition. Learned counsel further submitted that in Petition No. 213/MP/2019, the Commission vide order dated 25.1.2021, inter-alia, disallowed the Petitioner’s Safeguard Duty claim post the COD of the Petitioner’s Project and the Parampujya Judgment now permits the Change in Law compensation on account of GST Laws as well as the Safeguard Duty from the date of enforcement of such taxes for the entire period of its impact including the period post COD of the Projects.*

*3. Learned counsel for the Respondent, SECI in Petition No. 211/MP/2019 submitted that the remand of the matter in terms of the APTEL’s order dated 29.11.2022 is limited to the denial of carrying cost, imposition of GST on O & M Expenses and the additional expenditure post COD and the Petitioner cannot be permitted to raise the issue relating to Land Use Agreement, etc. at this stage. Learned counsel added that as such there is no specific direction in the APTEL order permitting the Petitioner to raise such issue(s) at this stage.*

*4. Learned counsel for the Respondent, NTPC in Petition No. 213/MP/2019 sought permission to file her Vakalatnama and also written submissions in the matter.*

*5. In response, learned counsel for the Petitioner submitted that at paragraph 4 of the order dated 29.11.2022, the APTEL has remitted the matters back to the Commission*

for 'fresh hearing' while keeping all contentions open and therefore, the contention of SECI that the Petitioner cannot be allowed to rely/place Land Use cum Implementation and Support Agreement is entirely misplaced. Learned counsel sought liberty to file written submissions in these matters.

6. After hearing the learned counsel for the parties, the Commission permitted the both the sides to file their respective written submissions within two weeks with copy to the other side. The Commission also permitted the Petitioner to upload Land Use cum Implementation and Support Agreement(s) as requested for within a week.

7. Subject to the above, the Commission reserved the matters for order.”

**Submissions of the Petitioner in Petition No. 211/MP/2019 and in Petition No. 213/MP/2019**

11. The Petitioners have submitted that:

- a) The issues raised in the instant Petitions are no longer *res-integra* in light of the *Parampujya judgment* dated 15.09.2022. Change in Law clause in the instant Petition is completely identical to the Change in Law clause adjudicated in the *Parampujya Judgment*. So, the finding that flows from the *Parampujya judgment* is applicable to the present Petition. Hence, the Petitioners' claim regarding the increase in rate of GST on O&M expenses for 25 years, reimbursement of the post COD claims on account of the imposition of GST and Safeguard Duty and Carrying Cost should be allowed.

**Additional submission of the Petitioner in Petition No. 211/MP/2019**

- b) Vide its Order dated 25.01.2021, this Commission disposed of the first round of proceedings in the captioned petition. Being aggrieved by the disallowances, the Petitioner filed an appeal bearing Appeal No. 157 of 2021 before the APTEL. APTEL, vide its Judgment dated 29.11.2023, had set aside the Order dated 25.01.2021 passed by this Commission in Petition 211/MP/2019 and remanded the matter for a fresh hearing whilst keeping all issues/contentions open. The present petition was re-listed for hearing on 14.03.2023.
- c) The scheme under PPA and RfS was very clear that the SPPD was required to enter into a *Land Use cum Implementation and Support Agreement* dated 29.12.2016 with the solar park entity. The grant of a change in law benefit cannot be made contingent upon the Petitioner submitting the Agreement, which qualifies as an extraneous condition alien to the provisions of the PPA. The aforesaid agreement to be taken on record.

**Submissions of SECI in Petition No. 211/MP/2019 and NTPC in Petition No. 213/MP/2019**

12. SECI/NTPC has submitted as under:

- a) APTEL, vide its decision dated 15.09.2022, passed in Appeal No.256 of 2019 and connected Appeals in the case of *Parampujya Solar Energy Pvt. Ltd. –v- Central Electricity Regulatory Commission (Parampujya judgment)* has directed the Commission to take up the claim cases of the Solar Power Project Developers for passing necessary orders, allowing Change in Law compensation (on account of GST laws and Safeguard Duty on Imports) from the date(s) of enforcement of the new taxes for the entire period of their impact, including the period post Commercial Operation Date, towards O&M along with carrying cost subject to necessary prudence check.
- b) The Hon’ble Supreme Court vide order dated 12.12.2022 in Civil Appeal No.8880 of 2022 filed by Telangana Discoms challenging the above judgment dated 15.09.2022 of APTEL in Parampujya judgment, has stayed the enforceability of APTEL’s decision dated 15.09.2021.
- c) Considering the above decisions of the Hon’ble Supreme Court, the APTEL, vide order dated 19.01.2023, in another case being Appeal No.432 of 2022 in the matter of *Adani Solar Energy Jodhpur Three Private Limited –v- Central Electricity Regulatory Commission* and others, has held that *the order to be passed by the Commission CERC shall not be enforced till the aforesaid Order is either varied or the appeal itself is disposed of by the Supreme Court.*
- d) In light of the above Order dated 19.01.2023, of the APTEL and Orders dated 12.12.2022, and 23.01.2023, passed by the Hon’ble Supreme Court, the Commission may maintain parity with the present case. This Commission may direct that enforcement of any order of the Commission passed on the aspects covered in *Parampujya judgment* take place after the decision of the Hon’ble Supreme Court to maintain such parity.

**Additional submission of SECI in Petition No. 211/MP/2019**

- e) In the present proceedings, the Petitioner has also claimed the impact of GST on O&M Expenses payable under ‘*Land Use cum Implementation and Support Agreement.*’ In this regard, the Commission, vide its earlier order dated 25.01.2021, in



the present Petition (Petition No.211/MP/2019), has held that “*compensation on account of GST on O&M expenses cannot be allowed to the Petitioner in absence of any specific provision of PPA or any other documents like ‘Land Use cum Implementation Support Agreement’.*”

- f) The above issue has been raised by the Petitioner as an after-thought after the passing of the Order dated 25.01.2021 and for the first time in Appeal No.157 of 2021, filed by the Petitioner before the Hon’ble Appellate Tribunal against the said order of the Commission.
- g) APTEL has remanded the present matter back to the Commission in terms of APTEL’s decision dated 15.09.2022. Hence, the Commission may be pleased to decide the issues in the present petition that have been dealt with and considered in APTEL’s Order dated 15.09.2022.
- h) Since there is no direction by the APTEL to deal with the issue of GST on O&M charges payable to the Solar Park Implementation Agency under the Land Use cum Implementation and Support Agreement, the said issue may not be considered now by this Commission in the present proceedings in light of the finding in the Commission’s order dated 25.01.2021. The Petitioner having not submitted the ‘Land Use Cum Implementation and Support Agreement’ before the Commission during the previous proceedings leading to the order dated 25.01.2021 of the Commission in Petition No.211/MP/2019, ought not be allowed to claim compensation for GST on O&M expenses payable to the Solar Park Implementation Agency (SPIA) in the present proceedings.

### **Analysis and decision**

- 13. We have heard the learned counsels for the Petitioners and Respondents and have carefully perused the records and considered the submissions of the parties.
- 14. Before deciding the issues in terms of the order of APTEL dated 29.11.2022 in *Appeal Nos. 163 of 2021 and 157 of 2021* (Remand Order), it is pertinent to decide the issue raised by the Petitioner with regard to the impact of GST on O&M Expenses payable under the *Land Use cum Implementation and Support Agreement*.
- 15. The Petitioner, *Vector Green*(in Petition No. 211/MP/2019) has submitted that this

Commission has denied compensation to the Petitioner on account of GST on O&M expenses in the absence of any specific provision of the PPA or any other documents like 'Land Use cum Implementation Support Agreement.' In this regard, pursuant to the submissions made and liberty granted by the Commission vide hearing dated 14.03.2023, the Petitioner has placed on record the 'Land Use cum Implementation Support Agreement'. It is essential to note that the scheme under PPA and RfS makes it very clear that the Solar Power Park Developer (SPPD) was required to enter into a Land Use cum Implementation and Support Agreement with the solar park entity. The grant of a change in law benefit cannot be made contingent upon the Petitioner submitting the Agreement, which qualifies as an extraneous condition alien to the provisions of the PPA. **Per Contra**, SECI has submitted that as there is no direction from APTEL on this specific issue, the issues are to be decided in terms of the *Parampujya judgment* dated 15.09.2022.

16. We observe that the Commission vide order dated 25.01.2021 in Petition No. 211/MP/2019, has held as under:

53. *From the above, we observe that SPDs (such as the Petitioner) to be selected by SECI under the MNRE scheme were to be develop power projects inside the solar park (developed by SPIA). As per the MNRE Scheme, SPIA was to enter into 'Land Use cum Implementation Support Agreement' with the SPDs for Land & associated infrastructure for development of the Project inside the Solar Park, Connectivity with the STU/ CTU System. **We observe that the Petitioner has not filed 'Land Use cum Implementation Support Agreement', nor has it placed on record any other document which has specific provision fastening liability on the Petitioner to pay O&M Charges to SPIA. Therefore, compensation on account of GST on O&M expenses cannot be allowed to the Petitioner in absence of any specific provision of PPA or any other documents like 'Land Use cum Implementation Support Agreement'.***

17. We observe that, vide order dated 29.11.2022 of the APTEL in Appeal No.157 of 2021 in the case of *Vector Green Prayagraj Solar Private Limited (formerly known as Rattan India Solar 2 Private Limited)-v- Central Electricity Regulatory Commission* and Appeal No.163 of 2021 in the case of *Yarrow Infrastructure Private Limited -v- Central Electricity Regulatory Commission*, it was held as under:-

1. *The appellants in the two captioned appeals are generating companies. Each of them is aggrieved by similar orders passed by Central Electricity Regulatory Commission ("the Central Commission") on 25.01.2021 on their respective petitions i.e. 211/MP/2019 and 213/MP/2019, the grievances agitated being on identical grounds relating to denial of appropriate compensation including carrying cost*

*consequent to the imposition of Goods & Services Tax (GST) on Operation & Maintenance Expenses and the additional expenditure post commercial operation date.*

*2. The learned counsel for the appellant submits that the view taken by the Central Commission in the impugned orders is not in accord with the ruling of this Tribunal on the abovementioned issues by judgment dated 15.09.2022 in a batch of appeals – Appeal No. 256 of 2019 & batch (led by Parampujya Solar Energy Pvt. Ltd. Versus CERC &Ors). He requested that the impugned orders be set aside and the matters remanded to the Central Commission for reconsideration in light of the dicta in Parampujya Solar Energy Pvt. Ltd. Versus CERC &Ors (supra). He submitted that the relevant provisions of the Power Purchase Agreements (PPAs) with the respondents herein are identical to those which were subjected to scrutiny in the case of Parampujya (supra).*

*3. The learned counsel for the respondents, on being asked submitted that they leave the matter of the request for remit for consideration to this Tribunal, their contention being that even if Parampujya were to be applied, the appellants cannot succeed.*

*4. In the above facts, noticing prima facie discord between the impugned view and the ruling in Parampujya (supra), **we allow the request and set aside the impugned orders of the Central Commission remanding the matters arising out of the petitions on which the same were rendered for fresh hearing and decision in accordance with law, bearing in mind, amongst others, the ruling of the Tribunal in Parampujya (supra).** All contentions are kept open. For removal of doubts, if any, it is added that nothing in this judgment shall be treated as an expression of opinion by this Tribunal at this stage.*

*5. The Central Commission is directed to hold the proceedings under remit expeditiously and render fresh decision at an early date.*

18. From the above, we note that, *Vector Green* (the Petitioner in Petition No. 211/MP/2019) had not filed ‘*Land Use cum Implementation Support Agreement*’, nor had it placed on record any other document that has a specific provision fastening liability on the Petitioner to pay O&M Charges to SPIA. Therefore, compensation on account of GST on O&M expenses was not allowed to the Petitioner in the order dated 25.01.2021. SECI has submitted that *Vector Green* has raised the above issue as an after-thought after passing of the Order dated 25.01.2021 and for the first time in Appeal No.157 of 2021 filed by the Petitioner before the APTEL against the said order of the Commission. We note that APTEL has allowed the request of the Appellants/Petitioners and remanded the matter for a fresh hearing and decision in accordance with law, and considering, inter alia, the ruling of APTEL in the *Parampujya judgment*.

19. We note that, *Vector Green*, has now placed on record the '*Land Use cum Implementation Support Agreement*' and submitted that change in law benefit may be allowed. Relevant clause in '*Land Use cum Implementation Support Agreement*' dated 29.12.2016, stipulates as under:

*3 Payment Terms*

...

*3.2 Annual O&M charges*

*Annual O&M charges of Rs. 75,00,000/- (Rupees Seventy Five lakhs Only) calculated at the rate of Rs. 1.5 lakhs (Rupees One Lakh and Fifty thousand only) per MW per annum in the first year which is escalated annually at the rate of 6% shall be payable by SPD on or before 30<sup>th</sup> April at the beginning of each financial year during the agreement period. First year annual O&M charges shall be payable by SPD on prorata basis within 30 days from the COD. Service tax and all the taxes, duties, cess and other Government levies applicable on such transaction shall be reimbursed to the SPPD by the SPD within 7 days from the date of issue of bill by SPPD.*

20. From the above, we observe that the Petitioner had to pay annual O&M charges at the rate of Rs. 75 lakhs per MW per annum, which escalated annually at the rate of 6% thereafter. We are of the view that the increase in O&M expenses is due to GST Laws and location of the Petitioner in the Solar Park. Also, APTEL vide judgment dated 15.09.2022 in A. No. 256 of 2019 & Batch titled a *Parampujya Solar Energy Private Limited & Ors. vs. CERC & Ors.*, has already held that Change in Law compensation on account of GST laws including the period post Commercial Operation Date of the project towards O&M expenses, along with carrying costs should be allowed. Therefore, we allow the prayer of Petitioner for increased charges payable to SPIA on account of GST.

21. Further, with regard to the issues in terms of the order of APTEL dated 29.11.2022 in *Appeal Nos. 163 of 2021 and 157 of 2021* (Remand Order), it is pertinent to mention here that the Commission has already passed reasoned Orders in similar matters in Petitions viz. *188/MP/2018 & Batch vide Order dated 25.11.2022; 293/MP/2018 & Batch vide Order dated 30.11.2022; 179/MP/2020 & Addendum Order 09.01.2023 & 24.01.2023; 722/MP/2020 & 723/MP/2020 vide Order dated 20.01.2023; 268/MP/2021 vide Order dated 05.04.2023; 216/MP/2022 vide Order dated 05.04.2023; 219/MP/2022 vide Order dated 21.04.2023; 174/MP/2022 vide Order dated 17.05.2023.*

22. We note that in Petition No. 211/MP/2019, the Petitioner submitted its bid on 19.02.2016,

and was declared the successful bidder on 15.03.2016. SECI issued the Letter of Intent on 09.05.2016. The contracting parties executed the PPA on 27.06.2016 (effective date being 09.06.2016). Subsequently, the GST Laws were enacted on 01.07.2017. Further, the SCoD of the project was on 09.07.2017 i.e. after 01.07.2017. The Petitioner successfully commissioned the project on 08.02.2018. From the above, we observe that Petitioner's projects were impacted by the GST Notification dated 01.07.2017. Therefore, the Petitioner is entitled to relief under the GST Laws as per the terms of Article 12 of the PPA.

23. In Petition No. 213/MP/2019, we note that, the Petitioner submitted its bid on 23.02.2016 and was declared the successful bidder on 12.04.2016. NTPC issued the Letter of Award on 17.05.2016. The contracting parties executed the PPA on 22.06.2016 (effective date being 21.06.2016). Subsequently, the GST Laws became effective from 01.07.2017. Further, SCoD of the Petitioner's project was on 20.07.2017 i.e. after 01.07.2017. The Petitioner successfully commissioned the project on 14.12.2017.

24. We note that vide Order dated 25.01.2021 in Petition No. 213/MP/2019 it was held as under:

*67. We observe that the contracting parties executed the PPA on 22.06.2016 (effective date being 21.06.2017). The SCoD of the project as per PPA was on 20.07.2017. The project was successfully commissioned on 14.12.2017. The Petitioner is claiming compensation on certain spares and replacement panels which were delivered after 30.07.2018, on which safeguard duty was imposed. We observe that as per the ratio and decisions held by the Commission in Petition No. 342/MP/2018 and Petition No. 343/MP/2018 vide its Order dated 02.05.2019, the notification/ imposition of Safeguard Duty will directly affect the projects where the scheduled date of commissioning of the project is after 30.07.2018. Since the project has been successfully commissioned on 14.12.2017 i.e. before 30.07.2018, we hold that the Petitioner is not eligible for any compensation qua imposition of Safeguard duty. The issue is decided accordingly.*

25. From the above, we observe that the Petitioner in Petition No. 213/MP/2019 had claimed compensation on certain spares and replacement panels which were delivered after 30.07.2018, on which safeguard duty was imposed. The Commission vide Order 25.01.2021 had held that since the project has been successfully commissioned on 14.12.2017 i.e. before imposition of safeguard duty notification dated 30.07.2018, the Petitioner was not eligible for any compensation qua imposition of Safeguard duty.

26. However, the 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.**”*

27. In view of the above, this Commission holds that the Petitioner shall be entitled to compensation (pre COD& post COD) towards additional expenditure on account of Change in Law event in terms of Article 12 of the PPAs. The Petitioner, in the instant petitions, 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 the Petitioner 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 the Petitioner 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.
28. The Commission further directs that the responding DISCOMS are liable to pay to the SECI/NTPC all the above reconciled claims that SECI/NTPC has to pay to the Petitioner. However, payment to the Petitioners by SECI/NTPC is not conditional upon the payment to be made by the responding DISCOMS to SECI/NTPC.
29. The 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.”*

30. Therefore, the directions issued in this Order so far as they relate to compensation for the period post Commercial Operation Date 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.
31. The Petition No. 211/MP/2019 & Petition No. 213/MP/2019 are disposed of in terms of the above.

Sd/-  
पी. के. सिंह  
सदस्य

Sd/-  
अरुण गोयल  
सदस्य

Sd/-  
आई. एस. झा  
सदस्य

Sd/-  
जिष्णु बरुआ  
अध्यक्ष