



नई दिल्ली
NEW DELHI

याचिका संख्या./ Petition No. 72/MP/2020 along with
I.A. No. 67 of 2021 &
I.A. No. 67 of 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: 30th of June, 2023

IN THE MATTER OF:

Petition under Section 79 (1) (b) read with Section 79 (1) (f) of the Electricity Act, 2003 for (i) approval of 'Change in Law'; and (ii) consequential relief(s) to compensate for the increase in capital cost and associated costs due to (a) introduction of the Central Goods and Services Tax Act, 2017, the Integrated Goods and Services Tax Act, 2017 and the State Goods and Services Tax Acts enacted by respective states and (b) imposition and introduction of Safe Guard Duty on the import of solar cells (whether or not assembled in modules or panels) by way of Notification No.01/2018- Customs SG dated 30.07.2018 issued by the Department of Revenue, Ministry of Finance, in terms of Article 12 read with Article 16.3.1 of the Power Purchase Agreements dated 06.10.2017 between SB Energy Three Private Limited and Solar Energy Corporation of India Limited.

AND IN THE MATTER OF:

SB Energy Three Private Limited,
(Now known as Adani Solar Energy Jodhpur Four Private Limited)
1st Floor, Worldmark – 2, Asset Area – 8,
Hospitality District, Aerocity, NH – 8,

Versus

1. **M/s Solar Energy Corporation of India Limited,**
1st Floor, D-3, A Wing,
Prius Platinum Building District Centre,
Saket, New Delhi- 110017
2. **Rajasthan Urja Vikas Nigam Limited,**
Vidyut Bhavan, Janpath,
Jyoti Nagar,
Jaipur - 302005

....Respondents

Parties Present :

Shri Sanjay Sen, Sr. Advocate, SBETPL
Ms. Molshree Bhatnagar, Advocate, SBETPL
Ms. Parichita Chowdhury, Advocate, SBETPL
Ms. Mandakini Ghosh, Advocate, SBETPL
Ms. Tanya Sareen, Advocate, SECI
Ms. Anushree Bardhan, Advocate, SECI
Shri Aneesh Bajaj, Advocate, SECI
Ms. Swapna Seshadri, Advocate, RUVNL
Shri Ukarsh Singh, Advocate, RUVNL
Shri Amal Nair, Advocate, RUVNL

आदेश/ ORDER

The Petitioner, M/s SB Energy Three Private Limited (now known as Adani Solar Energy Jodhpur Four Private Limited) is a Special Purpose Vehicle (SPV) formed by *SBG Cleantech Three Limited* for setting up the solar power projects.

2. Respondent No. 1, Solar Energy Corporation of India Limited (SECI), under the administrative control of the Ministry of New and Renewable Energy (MNRE), set up on 20.09.2011 to facilitate the implementation of the Jawaharlal Nehru National Solar Mission (NSM) for the development, promotion, and commercialization of solar energy technologies in the country and to achieve targets set out in the NSM. SECI is off taking the entire 100 MW generated by the Petitioner's solar power projects for sale to Buying Utilities on a back to back basis.

3. The Respondent No. 2, Rajasthan Urja Vikas Nigam Limited (RUVNL) is the buying utility, purchasing power from the Respondent No. 1.
4. Before deciding on the issues at hand, it is pertinent to mention here that the Petitioner vide I.A. No. 67 of 2022, has submitted that the name of the Petitioner's Company has changed from *M/s SB Energy Three Private Limited* to *M/s Adani Solar Energy Jodhpur Four Private Limited* and hence, it may be allowed a change of name accordingly.
5. The Petitioner has also filed the Certificate of Incorporation dated 28.03.2022, which stipulates as under:

Certificate of Incorporation pursuant to change of name
[Pursuant to rule 29 of the Companies (Incorporation) Rules, 2014]

Corporate Identification Number (CIN): U74999DL2017PTC320151

*I hereby certify that **the name of the company has been changed from SB ENERGY THREE PRIVATE LIMITED to ADANI SOLAR ENERGY JODHPUR FOUR PRIVATE LIMITED with effect from the date of this certificate** and that the company is limited by shares.*

Company was originally incorporated with the name SB ENERGY THREE PRIVATE LIMITED.

Given under my hand at New Delhi this Twenty eighth day of March two thousand twenty-two.....”

6. After going through the Certificate of Incorporation issued by the Registrar of Company (ROC) Delhi, we note the change of name of the Petitioner's Company from *M/s SB Energy Three Private Limited* to *M/s Adani Solar Energy Jodhpur Four Private Limited* and accordingly take it into our records.
7. The Petitioner has made the following prayers:
 - a) *Declare and hold that the introduction of the GST Laws qualifies as 'Change in Law' in terms of Article 12 of the PPAs executed between the Petitioner and the SECI and that the Petitioner is entitled to relief thereunder;*
 - b) *Declare and hold that the imposition of Safeguard Duty is a 'Change in Law' event in terms of Article 12 of the PPAs executed between the Petitioner and the SECI and that the Petitioner is entitled to relief thereunder;*
 - c) *Direct the Respondent No. 1 – SECI to reconstitute the Petitioner by paying the additional non-recurring/ recurring capital cost incurred by it, to the tune of INR 20,61,08,488 on*

account of introduction of GST Law and INR 84,05,38,347 due to imposition of Safeguard Duty in terms of Article 12 of the PPAs by way of upfront lumpsum payment;

In the alternate,

Direct the Respondent No. 1 – SECI to reconstitute the Petitioner by paying the additional non-recurring/ recurring capital cost incurred by it, to the tune of INR 20,61,08,488 on account of introduction of GST Law and INR 84,05,38,347 due to imposition of Safeguard Duty in terms of Article 12 of the PPAs by way of adjustment in quoted tariff;

- d) Direct SECI to reconstitute the Petitioner for the Operation & Maintenance costs as claimed by the Petitioner on account of the 'Change in Law' events hereinabove in para 4.2 and 5.4;*
- e) Direct SECI to pay to the Petitioner, the associated carrying cost for the payments made in terms of Prayers (c) and (d) hereinabove from the date the Petitioner incurred the additional cost on account of introduction of GST Law and SGD Notification till the approval of Change in Law by this Hon'ble Commission (the date on which the order of the Hon'ble Commission is published/pronounced); and from the date of the Order of the Hon'ble Commission approving Change in Law till the actual payments are received in entirety by the Petitioner;*
- f) Allow legal and administrative costs incurred by the Petitioner in pursuing the instant petition; and*
- g) Pass such other further order(s) as the Hon'ble Commission may deem just and proper.*

In I.A. No. 67 of 2021:

- a) Allow the present Application;*
- b) Direct the Respondent No. 1 – Solar Energy Corporation of India Limited to immediately release the payments towards the safeguard duty claims as reconciled and agreed with the Petitioner – M/s SB Energy Three Private Limited herein in terms of the interim arrangement agreed and recorded in letters dated 19.04.2021 and 14.07.2021; and/or*
- c) Direct the Respondent No. 1 – Solar Energy Corporation of India Limited to expedite the reconciliation process for the Goods & Service Tax claims submitted by the Petitioner – M/s SB Energy Three Private Limited herein and communicate its acknowledgement within 15 days;*

- d) *Direct the Respondent No. 1 – Solar Energy Corporation of India Limited to compensate the additional cost borne by the Petitioner to the tune of ₹ 1,72,18,833/- as a consequence of imposition of safeguard duty by the Central Government and the communication dated 13.08.2018 issued by the Ministry of Finance along with carrying cost;*
- e) *Pass such other and further order(s) and direction(s) that this Hon'ble Commission may deem fit in the interest of equity and circumstances of the present case*

In I.A. No. 67 of 2022:

- a) *Allow the present Application;*
- b) *Allow the Change in Law claims made by the Applicant in accompanying Petition on account of imposition of Safeguard Duty and Goods & Service Tax as prayed therein;*
- c) *Hold and declare that the Applicant herein is entitled to be restituted to the same economic position as that prior to occurrence of Change in Law Event including entitlement for compensation for additional expenditure which have or to be occurred during post COD period along with the (recurring /non-recurring) expenses towards O&M activities to be claimed on actual basis as and when it occurs.*
- d) *Declare that Petitioner is entitled for the claim of carrying cost on compounding basis at LPS rate of PPA under for the claims under change in law*
- e) *Direct the Respondent No. 1 – Solar Energy Corporation of India Limited to*
- i. *Revise the reconciliation including the disallowed amount beyond cutoff date post COD.*
 - ii. *Revise the annuity calculation to a present date by when it is going to start the payment including the carrying cost on compounding basis at LPS rate*
 - iii. *immediately release the upfront lumpsum and to start the annuity payments;*
- f) *Allow change in name of the Applicant herein from “M/s SB Energy Three Private Limited” to “M/s Adani Solar Energy Jodhpur Four Private Limited”;*
- g) *Pass such other and further order(s) and direction(s) that this Hon'ble Commission may deem fit in the interest of equity and circumstances of the present case*

Factual Matrix:

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

Location of the project	Bhadla Phase IV Solar Park, Rajasthan
NSM Scheme was launched on	11.01.2010
Request for Selection (RFS) was issued on	08.11.2016
Bid submitted on	19.04.2017
E-Reverse conducted on	09.05.2017
Power Sale Agreement (PSA) executed between SECI and RUVNL on	12.05.2017
GST Laws came into force on	01.07.2017
Ministry of Power issued Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects (TBCB Guidelines).	03.08.2017
Letter of Intent (LOI) was issued on	16.08.2017
Power Purchase Agreements (PPAs) executed on	06.10.2017
Tariff	Rs. 2.63/kWh
Supply, erection and commissioning contracts (EPC) contracts for Plot 2 and Plot 3 were executed by the Petitioner on	12.03.2018
O&M contract with Ecoppia Scientific LLP was executed on	17.05.2018
Safe Guard Duty (SGD) Notification was introduced on	30.07.2018
SCOD of the Projects as per the PPAs.	16.09.2018
Actual commissioning date of the Projects.	04.10.2018
COD of the projects	03.11.2018
O&M contract with Sterling and Wilson Private Limited was executed on	16.01.2019
IA No. 67 of 2021 was filed by the Petitioner on	23.07.2021
IA No. 67 of 2022 was filed by the Petitioner on	05.11.2022

Submission of the Petitioner:

9. The Petitioner has submitted as under:

a) The taxes that were applicable to the Petitioner pre-GST Law and taken into consideration at the time of bid submission have either been replaced by or subsumed into GST Law. The burden of pre-GST Law taxes has not only been carried forward but has also increased and is being borne by the Petitioner which has led to a significant increase in the tax incidence and therefore, the capital cost of the Projects, as set out below:

Project 1:

Particulars	Amount (INR)
Total Cost post-GST Law (inclusive of all taxes)	2,77,10,76,272
Total Cost pre-GST Law (inclusive of all taxes)	2,66,80,22,028
Increase in Tax incidence	10,30,54,244

Project 2:

Particulars	Amount (INR)
Total Cost post-GST Law (inclusive of all taxes):	2,77,10,76,272
Total Cost pre-GST Law (inclusive of all taxes):	2,66,80,22,028
Increase in Tax incidence	10,30,54,244

- b) The increase in taxes applicable to various O&M activities on account of introduction of GST Law has increased the O&M Cost of the Petitioner and will have to be borne by the Petitioner. Since this increase is on account of ‘Change in Law’, the Petitioner is entitled to relief for such increase. The table below demonstrates the incremental impact of GST Law on O&M cost:

Particulars of O&M	Pre-GST cost	Applicable taxes	Post-GST cost	Applicable taxes
Inverter extended Warranty	30,01,50,000	15%	307,980,000	18%
Operation and maintenance for on NPV basis for 25 years	83,37,50,000	15%	855,500,000	18%
Replacement of key equipment over 25 years	46,54,50,000	7%	513,300,000	18%
Other Miscellaneous charge like Liaisoning, fees, internet charges, travel and admin	16,24,00,000	12%	171,100,000	18%
TOTAL	1,76,17,50,000		1,847,880,000	

- c) Since the NSM Scheme or the RFS or the PPAs do not prohibit outsourcing of O&M and Good Utility Practices warrant appointment of experienced agencies/ contractors for execution of the Projects/ O&M, the Petitioner outsourced all of the afore-stated activities to the O&M Contractor. The decision to appoint experienced O&M contractors to undertake O&M work was driven by Good Utility Practices and not by any commercial advantage that might accrue to the Petitioner on account of outsourcing of O&M.
- d) It was incumbent upon SECI to incorporate a separate Effective Date or change in tax structure from what was otherwise provided in the PPAs. The Petitioner at the time of submitting the bid i.e. on 19.04.2017, could not have factored in the impact of GST Laws on the cost of equipment and accordingly, could not have quoted a tariff which could

cater to such a change in tax structure of the country. The same could only have been done as and when the Government rolled out the rate of taxation on each category of goods and services.

- e) Further, the imposition of Safeguard Duty at the rate of 25% on solar modules imported during the period from 30.07.2018 to 29.07.2019 (both days inclusive) in terms of the SGD Notification has adversely affected the capital cost of the Projects resulting in an escalation in the capital cost of the Project, as set out below:

Project 1:

Particulars	Amount (INR)
Total Cost of modules post- Safeguard Duty	1,98,84,83,461
Total Cost of modules pre-Safeguard Duty	1,56,82,14,287
Increase in Tax incidence (including IGST) on account of Safeguard Duty *	42,02,69,173

Project 2:

Particulars	Amount (INR)
Total Cost of modules post- Safeguard Duty	1,98,84,83,461
Total Cost of modules pre-Safeguard Duty	1,56,82,14,287
Increase in Tax incidence (including IGST) on account of Safeguard Duty *	42,02,69,173

- f) With the increase in the tax liability on account of the imposition of the Safeguard Duty, the working capital requirement, and consequently, the interest on working capital have also increased as compared to requirement and rate prevalent at the time of submission of the bid for the Project.
- g) Thus, the Petitioner is entitled to interest on incremental working capital at normative interest rate to put Petitioner to the same economic position as if change in law has not occurred.

Hearing on 04.06.2020

10. During the hearing held on 04.06.2020, the Petitioner and SECI requested the Commission to adjourn the matter *sine die* considering the fact that Petitioner and SECI were already undertaking reconciliation for the 'Change in Law' claims. After hearing the contracting parties, the Commission admitted the Petitions. The Commission observed that the Petitioner along with SECI were already in discussion for reconciliation of the Petitioner's claims arising out of Change in Law events, namely, introduction of GST Laws and imposition of Safeguard

Duty as per the MNRE's letters dated 12.3.2020 and 23.3.2020. Accordingly, the matter was adjourned *sine die*. The Petitioner was advised to get the Petition revived based on the outcome of the discussions or settlement reached, if any, amongst the parties.

Submissions vide I.A. No. 67 of 2021

11. Subsequently, the Petitioner filed I.A. No. 67 of 2021, and submitted that the captioned petition may be revived. The Petitioner informed that the reconciliation with respect to the impact on account of the imposition of SGD has been calculated and acknowledged by SECI. However, the reconciliation process in relation to imposition of GST is yet to be concluded. Accordingly, the Petitioner requested that SECI may be directed to immediately release the payments towards the safeguard duty claims as reconciled and agreed and to expedite the reconciliation process for the GST claims submitted by the Petitioner.

Hearing on 11.01.2022

12. Vide Record of Proceedings dated 11.01.2022, the Commission adjourned the matter and directed Petitioner and SECI to reconcile the claims with RUVNL and approach the Commission or appropriate direction under Rule 3(8) of the Change in Law Rules and/or Section 79(1)(f) of the Electricity Act, 2003.

Subsequent events

13. SECI, vide its letter dated 01.02.2022, informed the Petitioner that it has reconciled 'Change in Law' claims relating to the imposition of GST in terms of the CERC order dated 20.08.2021 in Petition No. 536/MP/2020. Further, vide email dated 06.10.2022, SECI intimated to the Petitioner that reconciliation between SECI and RUVNL has been concluded.

Submissions vide I.A. No. 67 of 2022

14. The Petitioner has submitted as under:
 - a) It is entitled to be restituted to the same economic position as that prior to the occurrence of the Change in Law Event, including entitlement for compensation for additional expenditure which have or to be incurred during post COD period along with the (recurring /non-recurring) expenses towards O&M activities to be claimed on an actual basis as and when they occur.

- b) It is entitled to the claim of carrying costs on a compounding basis at the LPS rate of PPA under the claims under the change in law.
- c) The reconciliation should be allowed/revised beyond the cut-off date post COD.

Submissions of SECI

15. SECI has submitted as under:

- a) RUVNL, vide its communication dated 30.09.2022 has communicated the amount calculated by it for material and services up to the date of commissioning as against the amount reconciled by SECI up to the cut-off date as per the decision dated 20.08.2021 of the Commission, in respect of GST claims, as under:

Project ID	Amount as per SECI upto COD (in crores)	Amount as per RUVNL upto commissioning (in crores)	Difference (in crores)
P2B4T9-SBGCTL-B-5RJ-1D	7,75,64,041	6,67,71,104	1,07,92,937
P2B4T9-SBGCTL-B-5RJ-2D	6,73,09,334	6,18,28,287	54,81,047
	14,48,73,375	12,85,99,391	1,62,73,984

- b) The difference in SECI's evaluation and RUVNL's evaluation of Petitioner's GST claims is working out to Rs 1,62,73,984. The difference in evaluation of the Change in Law claims of Petitioner is primarily on account of the commissioning date taken as the cut-off date by RUVNL as against the cut-off date decided by the Commission for GST/Safeguard Duty claims in the decision dated 20.08.2021 passed in Petition No.536/MP/2020.
- c) The Commission to direct RUVNL to evaluate GST/Safeguard Duty claims up to the cut-off date as per decision dated 20.08.2021 passed in Petition No. 536/MP/2020.
- d) There is no provision in the PPAs for the servicing of any additional capital costs for capital investments done by the Petitioner at any time after the COD of the power projects. Any up-gradation, improvement, repair or change that is undertaken by the Petitioner at any time after the COD and during the Operation period are entirely to the account of the Petitioner and are to be undertaken at the cost and expense of the Petitioner with no liability on SECI or the Buying Entities. If there cannot be any reimbursement of costs for the equipment, machinery, consumables, etc. after the

setting up of the power project, there is no question of any claim on account of any tax increase or decrease on such goods.

- e) The O&M activities have been outsourced by the Petitioner to contractors of the Petitioner for the Petitioner's commercial convenience and not as per any requirement under the PPAs.
- f) Unlike the Coastal Gujarat case, PPAs in the present case don't recognize O&M contracts. There is no prescription under the PPAs or the bidding documents regarding the appointment of contractors or sub-contractors including O&M Contractors for fulfilling obligations of the Petitioner under the PPAs.
- g) In the absence of any recognition under the PPA that the Petitioner shall undertake the implementation of the work under the PPA through the contractor, the impact of the commercial arrangement between the Petitioner and the O&M contractor cannot be a subject matter of a Change in Law claim against SECI or on a back to back basis against the Buying Entities.
- h) PPAs in the present case do not have any provision dealing with restitutionary principles of restoration to the same economic position. Therefore, the Petitioner is not entitled to claim relief of carrying costs.
- i) The Petitioner has wrongly claimed that even if the PPA is silent on the aspect of carrying cost, the document must be read under the principle of business efficacy.
- j) The principle of Quantum Meruit has no application where there is a specific agreement in operation. Instead, Quantum Meruit is applicable when the contract is held to be invalid or otherwise.
- k) Following parameters for making payments on an annuity basis may be considered by this Commission:
 - i. The change in law claims up to the cut-off date (as per decision dated 20.08.2021 of Commission in Petition No.536/MP/2020) will be evaluated by SECI;
 - ii. The discounting factor may be considered as 10.41% as per decision dated 20.08.2021 of Commission in Petition No.536/MP/2020;
 - iii. The period for payment of the compensation of Change in Law claims on annuity basis may be taken to be as 13 years from the date of Commercial Operation Date as per decision dated 20.08.2021 of Commission in Petition No.536/MP/2020;

- iv. In cases, where the projects of the Power Developers have already achieved COD, the amount calculated for the number of months elapsed since the COD till the date of payment (as the case maybe) may be paid on lump-sum basis; and
 - v. The remaining amount of the change in law compensation (Total change in law claims payable minus change in law claims paid on an upfront basis) may be payable to the solar power generator at the monthly annuity rate.
- 1) The Commission may issue directions to RUVNL to make payment towards the reconciled and evaluated claims of the GST and Safeguard Duty payable by SECI to Petitioner on back to back basis under the PSA in a time bound manner.

Hearing dated 21.03.2023:

16. During the hearing dated 21.03.2023, the Petitioner submitted that SECI has already reconciled of the Petitioner's claims arising out of Change in Law events, namely, introduction of GST Laws and imposition of Safeguard Duty and referred to the letters of SECI dated 19.4.2021 in this regard. The issues involved in the present case are squarely covered by the earlier orders of the Commission and insofar as the carrying cost claim of the Petitioner, although the PPAs in question do not have restitution clause as such, the Petitioner is entitled to carrying cost in terms of judgment of *Appellate Tribunal for Electricity dated 15.9.2022 in Appeal No. 256 of 2019 and batch, titled as Parampujya Solar Energy Pvt. Ltd. v. CERC and Ors. ('Parampujya Judgment')*. SECI submitted that vide its letters dated 19.4.2021 & 1.2.2022, it has already informed that SECI had reconciled the Petitioner's claims in respect of Safeguard Duty and GST till the Commercial Operation Date of the Project(s), which were then forwarded to RUVNL. However, RUVNL had communicated the revised reconciliation of the aforesaid claims only till commissioning date as against the cut-off date considered by SECI as per the Commission's order dated 20.8.2021 in Petition No. 536/MP/2020. Further, in terms of the order of the Hon'ble Supreme Court dated 12.12.2022 in Civil Appeal No. 8880 of 2022, the order of Commission implementing the directions of the APTEL in paragraph 109 of the Parampujya Judgment is not to be enforced till further order(s) by the Hon'ble Supreme Court. SECI also submitted that RUVNL may be directed to make payment towards the reconciled and evaluated claims of GST and Safeguard Duty payable by SECI to the Petitioner, on back-to-back basis under the PSA in a time bound manner, as being directed in other similar cases. RUVNL submitted that the reconciliation issue(s) between SECI and RUVNL are not part of

the subject matter of the present petition. Based on the request of the contracting parties, the Commission permitted the parties to file their respective written submissions, if any, within two weeks with copy to the other side. Subject to the above, the Commission reserved the matter for order.

Submissions of the Petitioner:

17. The Petitioner has reiterated its submissions made in the pleading, and as such, they are not being reproduced herewith for the sake of brevity. Additionally, the Petitioner has submitted that:
- a) it is entitled to carrying costs for the following two periods:
 - (i) **Period 1** - from when the Petitioner incurred the additional cost on account of the introduction of GST Law and SGD Notification till the approval of Change in Law by this Commission (the date on which the order of the Commission is published/pronounced); and
 - (ii) **Period 2** - from the date of the Order of the Commission approving Change in Law till the actual payments are received in entirety by the Petitioner.
 - b) Deductions made by RUVNL are non-est and hold no merit. It is a settled law that the cut-off date to be considered in the case of SGD is the date of commercial operation (COD) and not the technical commissioning. RUVNL, by law, is restricted from seeking any deductions of amounts from commissioning till COD.
 - c) Carrying Cost ought to be allowed at the rate of interest prescribed for the late payment surcharge.

Submissions of the SECI:

18. SECI has reiterated its submissions made in the pleading, and as such, they are not being reproduced herewith for the sake of brevity. Additionally, the Petitioner has submitted that the Commission may consider the decisions of the Hon'ble Supreme Court (in Civil Appeal No. 8880 of 2022 and Civil Appeal bearing Diary No. 135 of 2023) and the APTEL order dated 19.01.2023 in order to maintain parity.

Submissions on behalf of RUVNL:

19. RUVNL has submitted as under:

- a) any reconciliation exercise undergone by the parties, is without prejudice to the contention of RUVNL, that the coming into force of any law before the effective date (as set out in the PPA) cannot be considered as a change in law event. It is relevant to note that the said issue is under challenge before the Tribunal in Appeal No. 215 of 2023, which is pending adjudication as on date of filing of the present written submission.
- b) Allegations of SECI/the Petitioner towards incorrect reconciliation done by RUVNL are misconceived. The issue of the timeline for computation of claim compensation has been stayed by the Hon'ble Supreme Court (in Civil Appeal No. 8880 of 2022).
- c) RUVNL only had complete documents till the date of commissioning while reconciling the claims. The documents post commissioning are incomplete. Therefore, in any way, RUVNL could not have verified the claims as made by the Petitioner post the date of commissioning.
- d) Carrying Cost in the present case ought not to be allowed to the Petitioner in the absence of a restitution clause in the PPA, and by any stretch of the imagination it can certainly not be pegged at the rate of interest prescribed for LPS.
- e) Carrying Costs can never be equated with LPS and therefore cannot be allowed interchangeably.
- f) The reconciliation between SECI and RUVNL is not part of the subject matter of the present petition and, as such, cannot be adjudicated upon in the present petition. Similarly, it is stated that any reconciliation between the Petitioner and SECI is not binding on RUVNL.

Analysis and Decision:

20. We have heard the learned counsels for the Petitioner and the Respondents and have carefully perused the records.

21. From the submissions of the contracting parties, following issues emerge for adjudication before the Commission:

Issue No.1: Whether the enactment of the GST Laws and imposition of Safeguard Notification 2018 are Change in Law events under Article 12 of the PPA and whether the Petitioner is entitled to relief thereunder?

Issue No.2: Whether the Petitioner is entitled to compensation in terms of non-recurring/recurring expenditure on account of the enactment of GST Laws and SGD Notification 2108 along with the carrying cost?

22. Now we discuss and analyse the issues one by one.

Re: Issue No.1

23. The Petitioner has submitted that the enactment of the GST laws and imposition of Safeguard Duty constitute Change in law in terms of Article 12 of the PPA. *Per Contra*, RUVNL has submitted that coming into force of any law before the effective date of the PPA cannot be considered as a change in law event. Further, reconciliation issue between SECI and RUVNL are not part of the subject matter of the present petition. SECI vide letter dated 04.09.2017 has acknowledged the applicability of GST Laws and has submitted that the impact of change in law on Petitioners project are covered under Article 12 of the PPA.

24. We observe that Article 12 of the PPA states 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 statutory change in tax structure or introduction of any new tax made applicable for setting up of Solar Power Project and supply of power from the Project by the SPD, shall be treated as per the terms of this Agreement. **For the***

purpose of considering the effect of this change in Tax structure due to change in law after the date of submission of Bid, the date such law comes into existence shall be considered as effective date for the same;

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.”

25. 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 in any additional recurring/ non-recurring expenditure or any income to the SPD. In view of the above, we are of the view that the introduction of the Central Goods and Services Tax Act, 2017, the Integrated Goods and Services Tax Act, 2017 and the State Goods and Services Tax Acts enacted by respective states (GST Law) and (b) imposition and introduction of Safe Guard Duty on the import of solar cells (whether or not assembled in modules or panels) by way of Notification No.01/2018- Customs SG dated 30.07.2018 issued by the Department of Revenue, Ministry of Finance (SGD Notification 2018) are the events covered as Change in Law under Article 12 of the PPAs.
26. We observe that in the instant case, a bid was submitted by the Petitioner on 19.04.2017, PPAs were executed on 06.10.2017, SCoD as per the PPAs was 16.09.2018 and the projects were actually commissioned on 04.10.2018, whereas the GST laws were applicable from 01.07.2017 and the SGD Notification 2018 was imposed on 30.07.2018 which were introduced after the bid submission date, i.e. 19.04.2017, and before SCoD as per the PPAs i.e. 16.09.2018. Therefore, the Petitioner is entitled to relief under the said laws. It is pertinent to mention here that RUVNL has submitted that the effective date of the PPAs is 16.09.2017, and any law coming into force after the effective date of the PPA cannot be considered as Change in Law event. In this regard, we observe that the last bullet of Article 12.1.1 of the PPAs stipulates that

so long as the enactment of law event occurs after the bid submission date, the effective date in such a scenario will be the date on which such law came into existence. Moreover, we are of the view that the Petitioner could not have factored at the time of the submission of bids that any change in tax structure would be introduced subsequently, by the legislature. Accordingly, we hold that the GST laws and the SGD Notification, 2018 are Change in Law events in terms of the PPAs, and the Petitioner is entitled to relief under the said laws.

Issue No.2: Whether the Petitioner is entitled to compensation in terms of additional (non-recurring/recurring) expenditure on account of enactment of GST Laws and SGD Notification 2108 along with the carrying cost?

27. The Petitioner has submitted that it is entitled to compensation in terms of additional (non-recurring/ recurring expenditure) on account of the enactment of GST Laws and SGD Notification, 2018.
28. Extract of the Record of Proceedings dated 21.03.2023 are as under:

*“...Learned counsel for the Respondent No.1, SECI submitted that SECI has already filed its reply dated 4.1.2023 in the matter. **Learned counsel further submitted that SECI vide its letters dated 19.4.2021 & 1.2.2022 had reconciled the Petitioner’s claims in respect of Safeguard Duty and GST till the Commercial Operation Date of the Project(s), which were then forwarded to the Respondent No.2, RUVNL. However, RUVNL had communicated the revised reconciliation of the aforesaid claims only till commissioning date as against the cut-off date considered by SECI as per the Commission’s order dated 20.8.2021 in Petition No. 536/MP/2020.** Learned counsel further submitted that in terms of the order of the Hon’ble Supreme Court dated 12.12.2022 in Civil Appeal No. 8880 of 2022, the order of Commission implementing the directions of the APTEL in paragraph 109 of the Parampujya Judgment is not to be enforced till further order(s) by the Hon’ble Supreme Court. **Learned counsel also submitted that in the present case also, the end procurer - RUVNL may be directed to make payment towards the reconciled and evaluated claims of GST and Safeguard Duty payable by SECI to the Petitioner, on back-to-back basis under the PSA in a time bound manner, as being directed in other similar cases....**”*

29. From the above we observe that SECI vide its letters dated 19.04.2021 & 01.02.2022 had reconciled the Petitioner’s claims in respect of Safeguard Notification, 2018 and GST Laws till the Commercial Operation Date of the Project(s). Whereas, RUVNL had reconciled the claims in respect of Safeguard Notification, 2018 and GST Laws only till date of commissioning.

30. The APTEL, vide judgement dated 15.09.2022 in A.No. 256 of 2019 & Batch titled as *Parampujya Solar Energy Pvt. Ltd. & 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.”*

31. 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 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 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.

32. Accordingly, the Commission hereby directs the contracting parties to carry out a 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 auditor certificate. The Commission further directs that RUVNL is liable to pay to SECI all the above reconciled claims that SECI has to pay to the Petitioner. However, payment to the Petitioner by SECI is not conditional upon the payment to be made by RUVNL to SECI.

33. 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.”

34. 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.

35. The Petition No. 72/MP/2020 along with I.A. No. 67 of 2021 and I.A. No. 67 of 2022 is 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