



नईदिल्ली  
NEW DELHI

याचिका संख्या./ Petition No.: 722/MP/2020  
&  
723/MP/2020

कोरम/ Coram:

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: 20<sup>th</sup> of January, 2023

**IN THE MATTER OF PETITION NO. 722/MP/2020:**

Petition under Section 79(1)(b) read with Section 79(1)(f) of the Electricity Act, 2003 for the declaration of 'Change in Law' event due to introduction and imposition of Safeguard Duty by way of Notification No. 2/2020-Customs (SG) dated 29.7.2020 issued by the Department of Revenue, Ministry of Finance, Government of India, in terms of Article 12 of the Power Purchase Agreement dated 17.9.2019 executed between the Petitioner and the Respondent No.1.

**AND IN THE MATTER OF:**

**Azure Power Forty One Private Limited**  
5th Floor, Southern Park, D-II,  
Saket Place, Saket, New Delhi-110017

**...Petitioner**

**Versus**

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

**2. Grid Corporation of Odisha**

Janpath, Bhubaneswar,  
Odisha - 751022

**3. BSES Rajdhani Power Limited**

BSES Bhawan, Nehru Place,  
New Delhi -110019

**...Respondents**

**IN THE MATTER OF PETITION NO. 723/MP/2020:**

Petition under Section 79(1)(b) read with Section 79(1)(f) of the Electricity Act, 2003 for the declaration of 'Change in Law' event due to introduction and imposition of Safeguard Duty by way of Notification No. 2/2020-Customs (SG) dated 29.7.2020 issued by the Department of Revenue, Ministry of Finance, Government of India, in terms of Article 12 of the Power Purchase Agreement dated 27.11.2019 executed between the Petitioner and the Respondent No.1.

**AND IN THE MATTER OF:**

**Azure Power Maple Private Limited**

5th Floor, Southern Park, D-II,  
Saket Place, Saket, New Delhi-110017

**...Petitioner**

**Versus**

**1. Solar Energy Corporation of India Limited**

1<sup>st</sup> Floor, A-Wing  
D-3, District Centre  
Saket, New Delhi, 110017

**2. Madhya Pradesh Power Management Company Limited**

Shakti Bhawan, Rampur,  
Jabalpur  
Madhya Pradesh – 482008

**...Respondents**

**Parties Present :** Shri Shashwat Kumar, Advocate, APFOPL and APMPL  
Shri Rahul Chouhan, Advocate, APFOPL and APMPL  
Shri A. Saxena, Advocate, Azure Power

Shri M. G. Ramachandran, Sr. Advocate, SECI  
Ms. Anushree Bardhan, Advocate, SECI  
Ms. Tanya Sareen, Advocate, SECI  
Shri Aneesh Bajaj, Advocate SECI

### **आदेश/ ORDER**

The Petitioner, M/s Azure Power FortyOne Private Limited(in Petition No. 722/MP/2020) is developing 300 MW Solar Photo Voltaic Power Project at village Noore ki Bhurj, Khakhuri, Dedasari, Kushla Ram ki Basti, Ismail ki Dhani, Tehsil Bap, District Jodhpur, Rajasthanwhereas, the Petitioner, M/s Azure Power Maple Private Limited (in Petition No. 723/MP/2020)is developing a 300 MW Solar Photo Voltaic Power Project at village Sonanda Shekhasar, Bandhari & Kesarapura, Tehsil: Bap District Jodhpur, Rajasthan. The Petitionershave executed a Power Purchase Agreement dated 17.09.2019 (in Petition No. 722/MP/2020) and dated 27.11.2019 (in Petition No. 723/MP/2020) with Solar Energy Corporation of India Limited for sale of 300 MW.

2. The Respondent No. 1, Solar Energy Corporation of India Limited (SECI), is a Central Public Sector Undertaking under the administrative control of the Ministry of New and Renewable Energy, Government of India (MNRE) and is in the business of trading of power and has obtained a Category 1 inter-state trading license from the Commission.
3. The Respondent No. 2, Grid Corporation of Odisha and the Respondent No. 3, BSES Rajdhani Power Limited (in the Petition 722/MP/2020) are the end beneficiaries to whom the power purchased by SECI will be sold under the relevant Power Sale Agreements (PSAs).
4. The Respondent No. 2, Madhya Pradesh Power Management Company Limited, MPPMCL (in the Petition 723/MP/2020) is the end beneficiary to whom the power purchased by SECI will be sold by SECI under the relevant PSA.
5. The Petitioners have made the following prayers:

#### **In Petition No. 722/MP/2020**

- a) *Admit the Petition;*

- b) *Hold and declare the imposition of Safeguard Duty on the import of solar panels/modules through the Notification No. 2/2020-CUSTOMS (SG) Dated 29.07.2020 issued by the Department of Revenue, Ministry of Finance, Government of India as a 'Change in Law' event as under the Article 12 of the PPA;*
- c) *Specify and declare that 30.07.2020, i.e. the date of coming into force of the Notification No. 2/2020-CUSTOMS (SG) Dated 29.07.2020 issued by the Department of Revenue, Ministry of Finance, Government of India, is the date from which the Change in Law is effective for the purposes of the PPA;*
- d) *Direct the Respondent to reimburse the Petitioner for the corresponding increase in the Project cost on account of Safeguard Duty (including GST paid of Safeguard Duty) as and when paid by the Petitioner no later than sixty (60) days of claim(s) submitted by the Petitioner on the basis of each consignment of solar panel/modules;*
- e) *Allow and declare the Carrying Cost is allowed on the additional cost incurred/to be incurred by the Petitioner due to imposition of Safeguard Duty;*
- f) *Allow legal and administrative costs incurred by the Petitioner in pursuing the instant Petition; and*
- g) *To pass such other and further order or orders as the Commission deems appropriate under the facts and circumstances of the present case.*

**In Petition No. 723/MP/2020**

- a) *Admit the Petition;*
- b) *Hold and declare the imposition of Safeguard Duty on the import of solar panels/modules through the Notification No. 2/2020-CUSTOMS (SG) Dated 29.07.2020 issued by the Department of Revenue, Ministry of Finance, Government of India as a 'Change in Law' event as under the Article 12 of the PPA;*
- c) *Specify and declare that 30.07.2020, i.e. the date of coming into force of the Notification No. 2/2020-CUSTOMS (SG) Dated 29.07.2020 issued by the Department of Revenue, Ministry of Finance, Government of India, is the date from which the Change in Law is effective for the purposes of the PPA;*
- d) *Direct the Respondent to reimburse the Petitioner for the corresponding increase in the Project cost on account of Safeguard Duty (including GST paid of Safeguard Duty) as and when paid by the Petitioner no later than sixty (60) days of claim(s) submitted by the Petitioner on the basis of each consignment of solar panel/modules;*

- e) Allow and declare the Carrying Cost is allowed on the additional cost incurred/to be incurred by the Petitioner due to imposition of Safeguard Duty;
- f) Allow legal and administrative costs incurred by the Petitioner in pursuing the instant Petition; and
- g) To pass such other and further order or orders as the Commission deems appropriate under the facts and circumstances of the present case.

6. The Petitioners are seeking approval of Change in Law event that has occurred due to Notification No. 2/2020-CUSTOMS (SG) Dated 29.07.2020 issued by the Department of Revenue, Ministry of Finance, Government of India (SGD Notification 2020). The SGD Notification 2020 provides for the imposition of Safeguard Duty on Solar Cells whether or not assembled in modules or panels being imported into India from 30.07.2020 to 30.07.2021 from countries except from developing countries, as listed in Notification No.19/2016-custom (N.T.) dated 05.02.2016 (except People’s Republic of China, Thailand and Vietnam).

7. A brief detail of the Petitions are as under:

<b>Details</b>	<b>722/MP/2020</b>	<b>723/MP/2020</b>
<b>Nodal agency</b>	SECI	SECI
<b>RfS issued on</b>	10.01.2019	13.03.2019
<b>Last date of Bid submission</b>	15.02.2019	04.06.2019
<b>Bid submitted on</b>	15.02.2019	30.05.2019
<b>E-reverse auction conducted on</b>	25.02.2019	12.06.2019
<b>LOA issued on</b>	05.03.2019	25.07.2019
<b>Capacity (MW)</b>	300 MW	300 MW
<b>Power</b>	Solar	Solar
<b>PPA executed on</b>	17.09.2019	27.11.2019
<b>Tariff</b>	2.58/kWh	2.54/kWh
<b>Date of effectiveness of GST Laws</b>	30.07.2020	30.07.2020
<b>Original SCOD</b>	01.03.2021	23.04.2021
<b>Extended SCOD (due to Covid-19)</b>	31.10.2021	08.12.2021
<b>Revised SCoD</b>	07.03.2022	28.06.2022
<b>Actual COD</b>	08.03.2022	53 MW - 14.02.2022 204 MW - 30.03.200 43 MW – Yet to be Commissioned

**Submissions of the Petitioners:**

8. ThePetitioners in the captioned Petitions have submitted as under:

- a) SGD Notification 2020 is a change in law event (in terms of Article 12 of the PPAs) which has occurred after the bid submission date and has resulted in the Petitioner incurring additional expenditure as against the envisaged expenditure prior to the bid submission date.
- b) The issuance of the SGD Notification 2020 is squarely covered by the definition of 'Change in Law' under Article 12 (Change in Law) read with Article 1.1 (Definitions) of the PPAs. 'Law' as defined under the PPAs, is an inclusive definition and, inter alia, includes any statute, regulation, notification and rule issued by an Indian Governmental Instrumentality which has the force of law.
- c) The SGD Notification 2020 has been issued by the Department of Revenue, Ministry of Finance which is a Ministry under the Central Government and therefore, satisfies the definition of 'Indian Governmental Instrumentality' as provided under the PPA.
- d) The power to levy safeguard duty vests with the Central Government in terms of Section 8B of the Customs Tariff Act, 1975. Section 8B of the Customs Tariff Act provides that the Central Government may impose safeguard duty by way of a notification on the import of an article into India, if it is satisfied that the said article is being imported in such increased quantities and under such circumstances so as to cause or threaten to cause serious injury to the domestic industry. Hence, the SGD Notification satisfies the conditions prescribed in the definition of 'Law' under Article 1.1 of the PPA.
- e) Article 12 (Change in Law) of the PPAs clearly provide for a mechanism to deal with the Change in Law event. The four items to be determined by the Commission under Article 12 are (a) declaration of the change in law event; (b) the date from which such change in law event has occurred; (c) provide relief to the solar power developer for the increase in costs caused due to the change in law event; and (d) approval of Carrying Cost on payments deferred to the Petitioner.
- f) In view of the back-to-back power purchase and sale arrangement between the Petitioner and the Respondents, this Commission has the jurisdiction and the power to accord approval of 'imposition of Safeguard Duty by virtue of SGD Notification 2020' as a

Change in Law event and to determine suitable mechanism to compensate the Petitioner, for the additional cost incurred for the Project as a result of the imposition of the Safeguard Duty, in order to bring it back to the same financial position as if such 'Change in Law' has not occurred.

- g) The Ministry of Power, Government of India, through its Notification No. 23/43/2013-R&R dated August 27, 2018 (MOP Directions) issued directions to the Central Electricity Regulatory Commission under Section 107 of the Electricity Act for allowing pass-through of any change in domestic duties, levies, cess and taxes imposed by the Central Government, State Governments/Union Territories or by any Government instrumentality leading to corresponding changes in the cost, after the award of bids, under 'Change in Law' unless otherwise provided in the PPAs.
- h) In terms of Article 12.1.1 of the PPAs, all events as specified therein, including any change in rates of any Taxes including any duties or coming into effect of a Law (as defined under the PPAs), which result in any additional recurring/ non-recurring expenditure by the Petitioner will fall within the ambit of 'Change in Law' so long as the events occur after the Bid Submission Date of the PPAs. The Bid Submission Date was 15.02.2019 i.e. substantially before the coming into force of the SGD Notification 2020.
- i) The essence of 'Change in Law' clause under Article 12 of the PPAs is to restore the affected party to the same economic position as if the said 'Change in Law' event had not happened. Accordingly, the additional capital cost incurred/ to be incurred by the Petitioner due to the SGD Notification 2020 imposing Safeguard Duty on solar panels / modules has disturbed the fundamental assumptions / cost estimates based upon which the parent company of the Petitioner, i.e. APIPL had submitted its bids. It is imperative that the Petitioner is restored to the same economic position as if the Safeguard Duty on solar panels / modules have not been imposed.
- j) Pursuant to issuance of SGD Notification 2018, various solar power developers have approached this Commission seeking the same to be declared as a change in law event, who were affected by imposition of safeguard duty under the said notification. This Commission has already issued various orders approving the imposition of Safeguard

Duty by virtue of SGD Notification 2018, along with appropriate directions for compensating such solar power developers.

- k) In terms of Section 79(4) of the Electricity Act, the Commission while discharging its functions under the Electricity Act has to be guided by the provisions of Tariff Policy, 2016 (Tariff Policy 2016). Para 6.2(4) of the Tariff Policy, 2016 clearly states that any change in taxes imposed by the Central Government after the award of bids has to be treated as 'Change in Law' unless otherwise provided for in the power purchase agreement.
- l) The Tariff Policy, 2016 also envisages that introduction of a new tax / duty / cess etc. post submission of the bid has to be treated as 'Change in Law' event unless otherwise provided for in the power purchase agreement. As already elaborated earlier, the PPAs executed by the Petitioner with the Respondent clearly stipulate that any change in the tax structure shall be treated as 'Change in Law' under Article 12.
- m) It is clear that the coming into force of the SGD Notification 2020 is (a) in the nature of an enactment of new law, and (b) it is coming into effect of a new 'Law' as has been provided for under Article 12.1.1 of the PPA, and that the same will result in an additional non-recurring and recurring expenditure for the Petitioner in the form of escalation of capital cost of the Project. The resultant additional non-recurring expenditure due to the coming into force of the SGD Notification 2020 has not been factored into the tariff bid by APIPL, as the parent company of the Petitioner, at the time of bid submission, and APIPL only took into consideration the extant tax regime prevailing at the time of Bid Submission Date.
- n) In terms of Article 12.1.1, the Petitioners are required to be compensated for the time value of money lost due to occurrence of Change in Law Events and brought back to the same financial position as it would have been had it not been for the occurrence of the Change in Law. It is further substantiated by the Appellate Tribunal for Electricity (APTEL) vide its Judgment dated 14.08.2018 passed in Appeal No. 111 of 2017 in *M/s. GMR Warora Energy Limited v. Central Electricity Regulatory Commission and Ors*, wherein it was held that if there is a provision in the PPA for restoration of the Seller to the same economic position as if no Change in Law event has occurred, the Seller is



eligible for carrying cost for such allowed Change in Law event(s) from the effective date of Change in Law event until the same is allowed by the appropriate authority by an order/ judgement.

**Hearing held on 30.07.2021:**

9. The case was called out for virtual hearing. Learned counsel for the Petitioners submitted that the present Petitions are filed for seeking relief on account of occurrence of Change in Law, namely, the issuance of Notification No.1/2018-Customs (SG) dated 30.7.2018 by Department of Revenue, Ministry of Finance, Government of India imposing the Safeguard Duty and for determination of suitable mechanism to compensate the Petitioners for the impact incurred/to be incurred by the Petitioner due to such Change in Law along with carrying cost in terms of Article 12 of the Power Purchase Agreements. Learned counsel further submitted that the Petitioners have already impleaded the distribution companies as Respondents. Learned senior counsel for the Respondent, SECI accepted the notice. Learned senior counsel also added that the Petitioners may also furnish copy of the 2nd amendment to the Request for Selection (RfS), wherein the position qua Change in Law event has been further clarified in favour of Solar Power Developers. After hearing the learned counsel for the Petitioners and learned senior counsel for SECI, the Commission admitted the Petitions with the directions to issue notice to the Respondents. The contracting parties were directed to file their reply and rejoinders. The Petitioners were also directed place on record the relevant Amendment(s) to RfS on affidavit.

**Submissions of SECI in both petitions:**

10. SECI has submitted as under:

***Re. Safeguard duty is covered under the scope “Law”***

- a) Prior to the Notification dated 29.07.2020 of the Ministry of Finance dealing with Safeguard Duty, the Safeguard Duty had already been in force vide Notification No. 01/2018-Customs (SG) dated 30.07.2018 issued by the Ministry of Finance under the provisions of sub-section (1) of section 8B of the Custom Tariff Act, 1975. However, as per the said Notification dated 30.07.2018, the Safeguard Duty was in force till 29.07.2020. The Notification dated 29.07.2020 was issued by the Ministry of Finance, Government of India providing for the imposition of Safeguard Duty afresh effective 30.07.2020.

- b) The safeguard duty has been imposed by the Department of Revenue, Ministry of Finance, Government of India effective 30.07.2020 vide Notification dated 29.07.2020 issued under the provisions of sub-section (1) and (4) of section 8B of the Custom Tariff Act, 1975. It was just after the expiry of effective period of Safeguard Duty imposed vide the previous safeguard duty Notification dated 30.07.2018 i.e. on 29.07.2020. The imposition has therefore been in continuity.. In this context, it is for the Commission to decide as to whether there is any Change in Law within the scope of Article 12 of the PPA read with the provisions of the PSA.
- c) Under the said Notification dated 29.07.2020, the Safeguard Duty has been imposed on the import of solar cells, (whether or not assembled in modules or panels) from certain specific countries, namely, People's Republic of China, Thailand, Vietnam and from developed countries. The safeguard duty has not been imposed on the import of solar cells from other developing countries as provided in Notification No.19/2016- Customs (N.T.) dated 05.02.2016 issued by the Ministry of Finance.
- d) With regard to goods which were imported or should have been imported prior to 30.07.2020, the safeguard duty was applicable under the Notification dated 30.07.2018 which was existing at the time of Bid Deadline date i.e.15.02.2019 and the Petitioner was required to factor the impact of the same in the tariff quoted by it in the bidding process. The Petitioner will not be entitled to any relief in respect of such goods.

***Re. Requirement to furnish relevant documents and thereby establish one to one correlation***

- e) The Petitioners have not furnished the supporting documents to substantiate the change in law claims. The Petitioner has also not placed on record the relevant supply agreement (if any) entered into by the Petitioner for the supply of Solar PV modules.
- f) It is incumbent on the Petitioner to place on record in a transparent manner the entire details relating to the payment of safeguard duty in regard to the solar Modules, cells and further establish the one to one correlation between the project, the importation of solar Modules, cells etc. and the invoices and other relevant documents for proof of the payment of safeguard duty.

***Re. Cut-off date for payment of compensation on account of safeguard duty***

- g) The SCoD has been revised to 01.08.2021 in terms of Office Memorandum dated 13.08.2020 of the MNRE, dealing with extension of time on account of Covid-19.
- h) In terms of Article 9 of the PPA, the commercial supply of power from the power project under the PPA is from the date of Commercial Operation Date of the power plant. In such cases, the cut-off date to be considered for liability of payment on account of impact of Safeguard Duty on procuring of Solar Modules and cells, is the date of commercial operation of the power plant. Any such panels etc. installed after the commercial operation are not to be considered for the impact of Safeguard Duty. It is therefore submitted that the Commission may please to clarify the Cut-off Date for considering the safeguard duty impact as the actual Commercial Operation Date i.e. date stipulated for commencement of power supply under the PPA with the Petitioner.

***Re. Methodology for payment of compensation (if any) on account of safeguard duty***

- i) Before upholding the imposition of Safeguard Duty vide Notification dated 29.07.2020 as Change in Law, the Commission may take into consideration the following aspects for determining the methodology for making payment:
- (i) In cases other than those where the Buying Entities/Distribution Licensees specifically agree to make one time lump-sum payment and further duly make such payment in discharge of their obligations, the annuity payment will be appropriate. This is particularly, as there are large-number of developers and the one-time payment will be burdensome.
  - (ii) If for any reason the SPDs abandon the project and discontinue the supply of power there is no methodology for adjustments of the lump sum payments already made.
  - (iii) The payment on annuity basis is consistent with the fact that the Safeguard Duty claims are an addition to the capital cost of the power project and not an operating and maintenance expense of a recurring nature to be incurred on year on year basis.
  - (iv) The payment on Annuity basis is also consistent with the letter dated 12.03.2020 of the MNRE.

- j) On 20.08.2021, the Commission has passed order in Petition No.536/MP/2020 approving the annuity methodology proposed by SECI for making payments in respect GST and/or Safeguard Duty compensation.
- k) Accordingly, SECI proposes the following parameters for making payment on annuity basis:
- (i) The Safeguard Duty claims upto the cut-off date (date of commercial operation/commencement of power supply) as may be decided by the Commission in its order will be considered by SECI;
  - (ii) The discounting factor has been considered as 9% which is the rate of interest for the loan component of the capital cost as provided in the Commission's RE Tariff order dated 31.03.2021 providing for determination of levelled generic tariff for the Financial Year 2021-22 (Para 2.F. of the Order) read with Regulation 14 (2) (b) of Renewable Tariff Regulations, 2020;
  - (iii) The period for payment of the compensation on account of imposition of Safeguard Duty on annuity basis has been taken to be as 15 years from the date of Commercial Operation Date. The same is consistent with Regulation 14 (1) of the RE Tariff Regulations 2020 providing that "*For the determination of generic tariff and project specific tariff, loan tenure of 15 years shall be considered*";
  - (iv) In cases, where the projects of the Power Developers have already achieved COD, the amount of monthly annuity payment for the number of months elapsed since the COD till the date of payment will be paid on lump-sum basis; and
  - (v) The remaining amount of the Safeguard Duty compensation (Total Safeguard Duty claims payable-Safeguard Duty claims paid on upfront basis) is paid to the SPD with the monthly discounting rate

***Re. Directions to distribution companies to make payment to SECI towards the reconciled safeguard duty claims***

- l) If the Commission decides the imposition of Safeguard Duty vide Notification dated 29.07.2020 as Change in Law, the Commission may be pleased issue directions to GRIDCO and BRPL, the procurers of the power under the PSAs, to make payment,

towards the evaluated claims of the Safeguard Duty payable by SECI to Petitioner, on a back to back basis under the PSAs in a time bound manner.

***Re. Carrying cost***

- m) In the event, the Commission holds the imposition of Safeguard Duty vide Notification dated 29.07.2020 as Change in Law, the Petitioner would have to submit the requisite documents in respect of Change in Law claims within the specified time for reconciliation and evaluation by SECI and the concerned Distribution Companies/ Buying Utilities. Any delay by the Petitioner in the above submission would be solely to the account of the Petitioner.
- n) Without prejudice to the above contention on the admissibility of Carrying Cost, it is submitted that there cannot be any claim for Carrying Cost for the period before the date of incurring the expenditure and the aspect of applicability of Carrying Cost has to be determined and approved the Commission, after hearing the Respondents including the Buying Entities/Distribution Companies.

**Submissions of the Petitioners vide Rejoinders:**

11. The Petitioners have submitted as under:

***Re. Safeguard duty is covered under the scope of "Law"***

- a. As the coming into force of the SGD Notification 2020 is a Change in Law event which has occurred after the Bid Submission Date which is also the last date of bid submission (i.e., 15.02.2019) and has resulted in the Petitioner incurring additional expenditure as against the envisaged expenditure prior to the Bid Submission Date, the Petitioner is entitled to be compensated for the impact incurred/to be incurred by the Petitioner due to such Change in Law event, along with the Carrying Cost.
- b. Maharashtra Electricity Regulatory Commission (MERC) has already dealt with the present issue in the Order dated 05.03.2021 in Case No. 218 of 2020 (*M/s. Tata Power Renewable Energy Limited Vs. Tata Power Company Ltd.*) and has declared SGD Notification as a Change in Law event.

***Re. Requirement to furnish relevant documents and thereby establish one to one correlation***

- c. All relevant documents which are required by SECI to establish one to one co-relation with the claims of the Petitioner were submitted in the Rejoinder. The brief summary of the documents is as under:
- (i) Annexure A: Copy of the Module Supply Agreements with JA Solar International Limited and Canadian Solar International Limited and their respective amendments.
  - (ii) Annexure B (Colly.): Copy of the Bill of Entries and their duty challan.
  - (iii) Annexure C (Colly.): Copy of the Module Supplier Invoices as mentioned in the respective Bill of Entry.
  - (iv) Annexure D (Colly.): Copies of the Lorry receipts against the Bill of Entry.
  - (v) Annexure E: Copy of the Statutory Auditors' Certificate certifying the Claim of Safeguard Duty.
  - (vi) Annexure F: Copy of the Form ADT-1 filed with ROC along with the Challan.
  - (vii) Annexure G: Excel sheet with computation of the total impact of SGD in INR.

***Re. Cut-off date for payment of compensation on account of safeguard duty***

- d. The issue of cut-off date is irrelevant for the present Project since effectively, SGD Notification 2020 expired on 30.07.2021 and the SCoD of the Project is subsequent to the expiry of SGD Notification. Hence, for the purposes of the present Petition, the cut-off date for payment of compensation towards the imposition of SGD Notification 2020 cannot be any other date except the date of expiry of the notification itself, i.e., 30.07.2021. Further since the SCOD of the Project is subsequent to the expiry of SGD Notification 2020, the dates of actual payment of safeguard duty ought to be considered for the ascertaining compensation payable to the Petitioner.

***Re. Methodology for payment of compensation (if any) on account of safeguard duty***

- e. In Order dated 20.08.2021 in Petition No. 536/MP/2020, the Commission has categorically stated that the said petition was not a tariff determination exercise under Section 62 of the Electricity Act and therefore any reliance on the 2017 RE Tariff Regulations or any Order issued in pursuance of the said regulations can at best have a reference value when it comes to resolving the issue of discount rate for annuity payments.

- f. Thereafter, the Commission went on to hold in paragraph 65 of the Order dated 20.08.2021 that majority of parties have accepted the rate of 10.41% as the appropriate normative rate of interest for any debt that they might have taken. On basis of this observation the Commission held 10.41% as the discount rate of annuity payments towards the expenditure incurred on GST or Safeguard Duty by the Respondent SPDs on account of 'Change in Law'. A similar reasoning was adopted by the Hon'ble Commission in approving 13 years as the tenure of the annuity period.

***Re. Carrying cost***

- g. As per the Judgment of the Appellate Tribunal for Electricity dated 14.08.2018 in Appeal No. 111 of 2017, it has been categorically observed that when terms of the PPA allow for restoration of the Seller to the same economic position as if no Change in Law event has occurred, the Seller is eligible for carrying cost for such allowed Change in Law event(s) from the effective date of Change in Law event until the same is allowed by the appropriate authority by an order/ judgement. This Commission has already clarified the concept of carrying cost in catena of judgments.

**Hearing held on 24.01.2022:**

12. The case was called out for virtual hearing on 24.01.2022. During the course of hearing, the learned counsel for Petitioners submitted that Change in Law events have occurred due to coming into force of the Notification No. 2/2020- Customs (SG) dated 29.07.2020 issued by Department of Revenue, Ministry of Finance, Government of India and accordingly prayed for direction to the Respondents to compensate the Petitioners for the expenditure incurred/ to be incurred by the Petitioner due to such Change in Law along with carrying cost in terms of Article 12 of the Power Purchase Agreements. If the Commission, in line with the recent Orders passed in the matters relating to Change in Law, decides to direct the Petitioners to comply with the provisions of the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021, the filing fees paid by the Petitioners may be adjusted against the Petitions to be filed in future in terms of the Change in Law Rules. Accordingly, the Commission reserved the order.

13. **Subsequent proceedings:**



- a) After having heard the matter on 21.01.2022, Petition No. 722/MP/2020 & Petition No. 723/MP/2020 were disposed of on 18.02.2022, holding as under:

*“7. The Commission further observes that as per the above quoted provisions, on occurrence of an event of Change in Law, the affected party, in the present case the Petitioners, and other parties, in the present case the Respondents/procurers, are to settle the Change in Law claims among themselves and approach the Commission only in terms of Rule 3(8) of the Change in Law Rules.*

*8. In view of the above, the Commission holds that the Petitioners may approach the Respondents/ procurers for settlement of Change in Law claims amongst themselves in terms of the Change in Law Rules and thereafter approach the Commission in terms of Rule 3(8) of the said Rules.*

*9. The filing fees deposited by the Petitioners in respect of the present Petitions shall be adjusted against the Petitions to be filed by the Petitioner in terms of Rule 3(8) of the Change in Law Rules.*

*10. Accordingly, Petition No. 722/MP/2020 and Petition No 723/MP/2020 are disposed of in terms of the above discussions and findings.”*

- b) The Commission disposed of several Petitions seeking similar reliefs under Change in Law events, taking the view that the concerned entities must have recourse to the Change in Law Rules, 2021. Several of these decisions were appealed against, before the Appellate Tribunal in O.P No. 1 of 2022 and Appeal Nos. 116, 74, 75 & 76 of 2022.

- c) **Order of Appellate Tribunal dated 05.04.2022:** The Appellate Tribunal passed its judgment, setting aside the Orders of this Commission challenged in O.P No. 1 of 2022 and Appeal Nos. 116, 74, 75 & 76 of 2022, which originally sought compensation on account of Change in Law events, and were disposed by this Commission. Appellate Tribunal passed the following decision in the aforementioned appeals:

*“72. For the foregoing reasons, we find the impugned orders of the Central Commission applying the CIL Rules to matters pending before it for adjudication under Section 79(1)(f) of Electricity Act on the date of coming into force of said rules wholly erroneous, improper and bad in law. The said orders are thus set aside. In the result, the proceedings in claim cases (in which impugned orders were passed – and that includes the orders dated 04.02.2022 in the Original Petitions) remain inchoate. The Central Commission is duty-bound to consider each of them on the merits of the claims and adjudicate in accordance with law on the dispute(s) in proper exercise of its jurisdiction under Section 79 of the Electricity Act. It is directed to proceed to do so expeditiously.*



73. *We would be failing in our duty if we do not also note here (as also indicated earlier in this judgment) that prior to the decisions which were challenged by the captioned petitions/appeals, as indeed subsequently, the Central Commission has been taking the impugned approach on pending claims which has and would have resulted in a large number of such claims being unduly scuttled, non-suited the parties similarly placed as the petitioners/appellants herein. If the factual back-ground is same as in the cases at hand, such decisions would also constitute want of performance of statutory function by the Central Commission meriting an appropriate direction by this tribunal. This would be constrained to seek remedy against such order, if it thereby feels aggrieved. The remedies available in law include approaching the Central Commission for review or this tribunal ordinarily by an appeal.*

74. *Such that the affected parties do not suffer on account of faulty approach of adjudicatory authority, and this tribunal is not flooded by appeals raising identical issues against such other decisions as above, rendered in similar fact-situation by the Central Commission, it would be appropriate that it be asked to properly and fully perform its statutory function by exercise of its review jurisdiction, suo-motu, in all similarly-placed claims for compensation founded on change in law events where similar decisions have been taken by the Central Commission after coming into force of CIL Rules on 22.10.2021 and, if such decisions are found running afoul of the view taken by this tribunal by this judgment, to vacate the same and restore the concerned Claim cases to its file and complete the process of adjudication thereupon in accordance with law. Needful action in above nature shall be initiated by the Central Commission within four weeks of this judgment. Of course, review can be undertaken even at the instance of the parties in question should they approach the Commission on their own. We may add that these directions are without prejudice to the remedy, if any, already pursued or intended to be pursued by the concerned parties vis-à-vis other such cases.”*

d) **Hearing on 09.05.2022:** After considering the submissions made by the Parties, the Commission intimated that it will take appropriate action after bunching the Petitions or independently.

e) **Order on 14.06.2022 in 8/SM/2022:** Pursuant to the decision of the Appellate Tribunal, the present Petition, along with several others were re-listed before this Commission where it passed the following Order:

*“3. After hearing the suggestions put forth by the learned senior counsels and the learned counsels for the parties, the Commission is of the view that as per the directions of the APTEL in judgment dated 5.4.2022 in OP No. 1 of 2022 and Ors., in particular at paragraph 74, suo-motu order(s) are required to be issued to restore the petitions which were disposed by the Commission by applying the Change in Law*

*Rules but which were not challenged before the APTEL. However, for the Petitions where the orders of the Commission have been set aside by the APTEL in terms of para 72 of the judgment, the petitions shall be restored on the records of the Commission for further necessary action.*

*4. Accordingly, as per the direction of the APTEL, in exercise of our suo-motu power of review, we hereby restore the Petitions mentioned in paragraph 1 above, on the record of the Commission at same stages, as were existing prior to the disposal of petitions.”*

**Hearing on 29.09.2022:**

- f) The present Petitions were re-listed for hearing before this Commission where it made the following observations:

*The learned counsel for the Petitioners submitted that the present Petitions have been filed seeking approval of Change in Law event occurred due to coming into force of the Notification No. 2/2020-Customs (SG) dated 29.7.2020 issued by Department of Revenue, Ministry of Finance, Government of India and for determination of suitable mechanism to compensate the Petitioners for the expenditure incurred/to be incurred by the Petitioner due to such Change in Law along with carrying cost in terms of Article 12 of the Power Purchase Agreements.*

*2. Learned senior counsel for the Respondent, SECI submitted that the imposition of Safeguard Duty has already been held as Change in Law event and the only issue that remains for consideration is the methodology for payment of compensation on account of Safeguard Duty. The learned senior counsel submitted that the Commission while approving the annuity methodology as proposed by SECI for making payments in respect of GST and/or Safeguard Duty vide order dated 20.8.2021 in Petition No. 536/MP/2020 has approved the discounting factor at 10.41% based on the interest rate specified in the Renewable Tariff Regulations, 2017 read with Renewable Tariff order dated 11.1.2019. However, subsequently, there has been fall in the interest rate and in the Renewable Tariff Regulations, 2020 read with Renewable Tariff order dated 31.3.2021, the Commission has considered the interest rate of 9% and the term of loan repayment as 15 years instead of 13 years as considered earlier.*

*3. In rebuttal, the learned counsel for the Petitioners submitted that the methodology for payment of compensation approved by the Commission vide order dated 20.8.2021 in Petition No. 536/MP/2020 only applies to the cases covered therein. The learned counsel submitted that on this aspect, the Petitioners in their rejoinder have made the detailed submissions which may be considered by the Commission. The learned counsel also pointed out that the amount of total compensation involved in these matters is nominal and SECI may be directed to make the payment in one lump-sum.*

*4. After hearing the learned counsel for the parties, the Commission reserved the order in the matters.*

**Written Submissions by the Petitioners:**

14. The Petitioners filed their Written Submissions on 03.11.2022 wherein they reiterated the submissions already made in the plaint, as such the same are not being reproduced herewith for the sake of brevity. Additionally, the Petitioners have submitted as under:

- a) As per the ROP dated 29.09.2022 issued in the present matter by this Commission, it is evident that SECI has accepted the fact that the SGD Notification 2020 is a Change in Law event.

***Re. Carrying cost***

- b) Appellate Tribunal for Electricity has clarified the concept of Carrying cost through Judgment dated 15.09.2022 passed in Appeal No. 256 of 2019 in *Parampujya Solar Energy Pvt. Ltd. &Anr. Vs. Central Electricity Regulatory Commission &Ors.*, hence, the Petitioner is legally entitled to recover the carrying cost over and above the compensation payable towards the occurrence of Change in Law event.

***Re. Claimed Amount***

- c) The Petitioner has already brought on record the supporting documents to establish one to one co-relation with the compensation claimed in this petition. (Annexures A to G in the Rejoinder dated 27.10.2021). Compensation claimed towards the modules imported during the control period of the SGD Notification 2020, i.e., from 30.07.2020 till 30.07.2021 is

SGD Claim (including GST) in 722/MP/2020	INR 229,824,984
SGD Claim (including GST) in 723/MP/2020	INR 32,739,432

***Re. Methodology for payment of compensation***

- d) SECI has wrongly assumed that the discounting factor of 10.41% as held by the Commission in Order dated 20.08.2021 in Petition No. 536/MP/2020 is strictly based on the RE Tariff Regulations, 2017 read with the RE Tariff Order dated 11.01.2019, since the Commission has categorically stated that the said petition was not a tariff determination exercise under Section 62 of the Electricity Act and therefore any reliance on the 2017 RE Tariff Regulations or any Order issued in pursuance of the said regulations can at best have a reference value when it comes to resolving the issue of discount rate for annuity payments;

- e) Further, in the Order dated 20.08.2021, this Commission has noted that majority of parties have accepted the rate of 10.41% as the appropriate normative rate of interest for any debt that they might have taken. On basis of this observation the Commission held 10.41% as the discount rate of annuity payments. The Commission also noted the general acceptance of parties in that Petition that the annuity period/tenure could be of 13 years, and as such, approved the same.
- f) In the present petition, the Petitioner does not agree with the discounting factor and tenure for repayment proposed by SECI. Accordingly, the discounting factor should be 9% and tenure should be 15 years, which is the rate of interest for the loan component of the capital cost as provided in the Commission's RE Tariff order dated 31.03.2021 read with the RE Tariff Regulations, 2020.

***Re. Methodology proposed by the Petitioner***

- g) The Petitioners have proposed following modes of payment for compensating the Petitioners so that they are brought back to the same financial position as if change in law has not occurred:
- i. No lender finances entire capital cost and some part is required to be infused as equity by the developer. Generally, lender finances 70% of the project cost while 30% is to be infused by developers;
  - ii. The period for payment of the compensation on account of SGD Notification 2020 has been taken to be as 13 years from the date of COD/cut-off date;
  - iii. The debt-equity ratio is 70:30 and the post-tax Return on Equity (hereinafter referred to as "RoE") allowed is 14% (pre-tax RoE will be 18.71%, if grossed up with the current effective tax rate @ 25.17%);
  - iv. Resultantly the RoE for the Petitioner should be 18.71 % (pre-tax) return on 30% value of project cost i.e. 18.71 % (pre-tax).
  - v. The effective annuity rate should be weighted average between cost of debt and cost of equity ( $10.41\% \times 70\% + 30\% \times 18.71\% = 12.90\%$  needs to be considered).

**Written Submissions by SECI in Petition No. 722/MP/2020 AND 723/MP/2020:**

15. SECI has filed its written submissions on 09.11.2022. SECI has reiterated the submissions already made in the reply, as such the same are not being reproduced herewith for the sake of brevity. Additionally, SECI has submitted as under:

***Re. Safeguard duty***

- a) The Rajasthan Electricity Regulatory Commission (RERC) vide Order dated 30.12.2021 in Petition Nos. 1914/2021, 1922/2021 and 1941/2021, while dealing with a similar PPA executed between SECI and a Renewable Power Developer, has held that Imposition of Safeguard Duty vide Notification dated 29.07.2020 is not a change in Law in terms of Article 12 of PPAs (Change in Law provision).

***Re. Requirement to furnish relevant documents and thereby establish one to one correlation***

- b) If the imposition of Safeguard Duty vide Notification dated 29.07.2020 is considered as Change in Law, Petitioner is required to establish the one to one correlation between the project, the importation of equipments against which change in law has been claimed, the invoices and other relevant documents for proof of the payment of change in law respectively.

***Re. Cut-off date for payment of compensation on account of safeguard duty***

- c) The Commission in its decision dated 20.08.2021 passed in Petition No.536/MP/2020 in the matter of *Solar Energy Corporation of India Limited -v- M/s. Azure Power Venus Private Limited & Others* has dealt with the Commercial Operation Date as the cut-off Date for payment on account of Safeguard Duty.
- d) In Petition no. 722/MP/2020, the SCoD of the Petitioner's project was 01.03.2021. The revised SCoD was on 07.03.2022. The Actual Commercial Operation Date of the project was on 08.03.2022.
- e) In Petition no. 723/MP/2020, the SCoD of the Petitioner's project was 23.04.2021. The revised SCoD was on 28.06.2022. The Actual Commercial Operation Date of the project was on 14.02.2022 (53 MW) and 30.03.2022 (204 MW). The remaining capacity of 43 MW is yet to be commissioned by the Petitioner.

***Re. Annuity methodology admissible for payment of compensation (if any) on account of Change in Law***

- f) With regard to contention of Petitioner for discounting factor of 12.90% by considering the normative debt equity ratio (70:30) and the weighted average of the post-tax rates for debt and equity component ( $10.41\% \times 70\% + 30\% \times 18.71\% = 12.90\%$ ), the Commission in decision dated 20.08.2021 in Petition No.536/MP/2020 has not accepted the contention of Solar Power Developers for discounting factor/annuity rate of 12.90%.
- g) The decision dated 20.08.2021 of the Commission approving the discounting factor at 10.41% was based on the interest rate specified in the Renewable Tariff Regulations, 2017 read with RE Tariff Order dated 19.03.2019 notified by the Commission at the relevant time when the said annuity methodology was considered by the MNRE and implemented by SECI.
- h) Subsequently, there has been a fall in the interest rate of loan and the Hon'ble Commission has notified the Central Electricity Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2020 and RE Tariff Order dated 31.03.2021. In the said regulations read with RE tariff Order, the Commission has considered the interest rate of 9% and the term of the Loan repayment as 15 years instead of 13 years earlier considered.
- i) The Rajasthan Electricity Regulatory Commission vide Order dated 30.12.2021 in Petition Nos.1914/2021, 1922/2021 and 1941/2021, while dealing with a similar PPA executed between SECI and a Renewable Power Developer has approved annuity rate of 9% and annuity period as 15 years.
- j) Following parameters for making payment on annuity basis may be considered by the Commission, if the Notification dated 29.07.2020 is construed as Change in Law in terms of Article 12 of PPA:
- i. The Safeguard Duty claims up to the cut-off date (date of commercial operation/commencement of power supply) as may be decided by the Commission in its order will be evaluated by SECI;
  - ii. The annuity rate to be considered as 9% which is the rate of interest for the loan component of the capital cost as provided in the Commission's RE Tariff order dated 31.03.2021 providing for determination of levelized generic tariff for the

Financial Year 2021-22 read with Regulation 14 (2) (b) of Renewable Tariff Regulations, 2020;

- iii. The period for payment of the compensation on account of Safeguard Duty on annuity basis to be considered as 15 years from the date of Commercial Operation Date. The same is consistent with Regulation 14 (1) of the RE Tariff Regulations 2020 providing that “For the determination of generic tariff and project specific tariff, loan tenure of 15 years shall be considered”;
  - iv. In cases, where the project of the Power Developer has already achieved COD, the amount of monthly annuity payment for the number of months elapsed since the COD till the date of payment will be paid on lump-sum basis; and
  - v. The remaining amount of the Safeguard Duty compensation (Total Safeguard Duty claims payable minus Safeguard Duty claims paid on upfront basis) will be payable to the SPD with the annuity rate.
  - vi. As per Article 12 of the PPA, the Change in Law events claimed by the Petitioner, the date from which it will be effective and the aspect of applicability of Carrying Cost has to be determined and approved by the Commission.
  - vii. In any event the Carrying Cost is to be restricted to the cost of financing of a prudent and efficient utility i.e. the interest rate at which such utility can borrow money from the lenders and financial institutions after due and sincere efforts to minimize the interest cost.
- k) It is settled principle of law that in the matters of restitution, the courts should adopt pragmatic view and grant relief in a manner as may be reasonable, fair and practicable. It has been held that the Court should not be oblivious of any unmerited hardship to be suffered by the party against whom action by way of restitution is taken. [Reference: *Citibank N.A. –v- Hiten P. Dalal Ors. (2016) 1 SCC 411 and Kerala State Electricity Board Through its Special Officer (Revenue) and Another –v- M.R.F Limited and Others, (1996) 1 SCC 597*].
- l) The Petitioner should be required to establish to the satisfaction of the Commission that it has made prudent and bona-fide effort to minimize the interest cost.
- m) There cannot be any claim for Carrying Cost for the period before the date of incurring the expenditure and the aspect of applicability of Carrying Cost has to be determined and approved the Commission. The reliance placed by the Petitioner on the decision dated 14.08.2020 of the Appellate Tribunal in Appeal No.111 of 2017 &



Connected Appeal in *M/s. GMR Warora Energy Limited –v- Central Electricity Regulatory Commission & Others and Connected matters* to claim Carrying Cost for allowed Change in law events from the effective date of Change in Law is misconceived. In the above case, from the effective date of Change in Law, the generator is subjected to incur additional expenditure on account of impact of change in law.

***Re. Directions to Distribution Companies to make payment to SECI towards the reconciled Safeguard Duty claims***

- n) If the Commission decides the imposition of Safeguard Duty vide Notification dated 29.07.2020 as Change in Law, the Commission may be pleased issue directions to GRIDCO and BRPL, the procurers of the power under the PSAs, to make payment, towards the evaluated claims of the Safeguard Duty payable by SECI to Petitioner, on a back to back basis under the PSAs in a time bound manner.

**Analysis and Decision:**

16. We have heard the learned counsels for the Petitioner and the Respondents and have carefully perused the records. As the issues that arise in the captioned Petitions are based on similar set of facts, they have been clubbed together for convenience of discussion.
17. We note that the Petitioners in the captioned Petitions have sought for declaration of Change in Law event due to the introduction/imposition of safeguard duty vide Notification dated 29.07.2020 issued by the MNRE, and determination of suitable mechanism for compensating the Petitioners for the impact due to change in law event along with the Carrying Cost.
18. On the basis of the submissions of the Petitioners and the Respondents in the instant Petition, following issues arises for our consideration:

***Issue No. 1:*** *Whether the imposition of Safeguard Duty on the import of solar panels/modules through the Notification No. 2/2020-CUSTOMS (SG) Dated 29.07.2020 issued by the Department of Revenue, Ministry of Finance, Government of India can be declared as a 'Change in Law' event as under the Article 12 of the PPA?*



**Issue No. 2:** *Whether discount rate @ 9% in calculation of Annuity methodology should be considered for payment of compensation (if any) on account of Change in Law? And Whether the Respondent can be directed to reimburse the Petitioner for the corresponding increase in the Project cost on account of Safeguard Duty (including GST paid of Safeguard Duty) as and when paid by the Petitioner no later than sixty (60) days of claim(s) submitted by the Petitioner on the basis of each consignment of solar panel/modules?*

**Issue No. 3:** *Whether the Carrying Cost should be allowed on the additional cost incurred/to be incurred by the Petitioner due to imposition of Safeguard Duty?*

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

**Issue No. 1:** *Whether the imposition of Safeguard Duty on the import of solar panels/modules through the Notification No. 2/2020-CUSTOMS (SG) Dated 29.07.2020 issued by the Department of Revenue, Ministry of Finance, Government of India can be declared as a 'Change in Law' event as under the Article 12 of the PPA?*

20. The Petitioners have prayed for declaration of imposition of Safeguard Duty on the import of solar panels/modules through the Notification No. 2/2020-CUSTOMS (SG) Dated 29.07.2020 issued by the Department of Revenue, Ministry of Finance, Government of India to be declared as a 'Change in Law' event as under the Article 12 of the PPA.

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

**ARTICLE 12: CHANGE IN LAW**

**12.1 Definitions**

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

*In this Article 12, the term Change in Law shall refer to the occurrence of any of the following events pertaining to this project only after the last date of the bid submission, including (i) the enactment of any new law; or (ii) an amendment, modification or repeal of an existing law; or (iii) the requirement to obtain a new consent, permit or license; or (iv) any modification to the prevailing conditions prescribed for obtaining an consent, permit or license, not owing to any default of the Solar Power Generator; or (v) any change in the rates of any Taxes including any duties and cess or introduction of any new tax made applicable for setting up the solar power project and supply of power from the Solar Power project by the SPD which have a direct effect on the Project.*

*However, Change in Law shall not include (i) any change in taxes on corporate income or (ii) any change in any withholding tax on income or dividends distributed*

*to the shareholders of the SPD, 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 Solar Power Generator then, in order to ensure that the Solar 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 Solar Power Generator/ Procurer 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.*

.....

#### *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*

22. The Safeguard Duty Notification No. 1/2018 (SG) on 30.07.2018 (SGD Notification 2018), the Central Government imposed safeguard duty as per the following rates on the import of “Solar Cells whether or not assembled in modules or panels”:

- a) 25% ad valorem, minus anti-dumping duty, if any, when imported during the period from 30th July 2018 to 29th July 2019;
- b) 20% ad valorem, minus anti-dumping duty, if any, when imported during the period from 30th July 2019 to 29th January 2020;
- c) 15% ad valorem, minus anti-dumping duty, if any, when imported during the period from 30th January 2020 to 29th July 2020.

23. The Safeguard Duty Notification No. 2/2020-CUSTOMS (SG) dated 29.07.2020(SGD Notification 2020), is as under:

*“G.S.R.... (E). -Whereas, the designated authority, vide notification No. 22/1/2020-DGTR, dated the 3rd March 2020, published in the Gazette of India, Extraordinary, Part I, Section 1, dated the 4th March, 2020, had initiated a review, in the matter of continuation of safeguard duty on imports of "Solar Cells whether or not assembled in modules or panels" (hereinafter referred to as the subject goods) falling under tariff items 8541 40 11 or 8541 40 12 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), (hereinafter referred to as the Customs Tariff Act), imposed vide notification of the Government of India in the Ministry of Finance (Department of*

Revenue) No. 01/2018- Customs (SG) dated the 30th July, 2018, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 717 (E), dated the 30th July, 2018;

*And whereas, in the matter of review of safeguard duty on imports of the subject goods, the designated authority in its final findings, published vide notification No. 22/1/2020 - DGTR, dated the 18th July, 2020, in the Gazette of India, Extraordinary, Part I, Section 1, dated the 18<sup>th</sup> July, 2020 has recommended continued imposition of the safeguard duty on imports of the subject goods, in order to remove injury to the domestic industry.*

*Now, therefore, in exercise of the powers conferred by sub-sections (1) and (4) of section 8B of the Customs Tariff Act read with rules 12, 14, 17 and 18 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997, after considering the said findings of the designated authority and subject to the provisions of paragraph 2, hereby imposes on subject goods falling under tariff items 8541 40 11 or 8541 40 12 of the First Schedule to the Customs Tariff Act, when imported into India, a safeguard duty at the following rate, namely:-*

- (a) fourteen point nine per cent. ad valorem minus anti-dumping duty payable, if any, when imported during the period from 30th July, 2020 to 29th January, 2021 (both days inclusive); and*
- (b) fourteen point five per cent. ad valorem minus anti-dumping duty payable, if any, when imported during the period from 30th January, 2021 to 29th July, 2021 (both days inclusive).*

*2. Nothing contained in this notification shall apply to imports of subject goods from countries notified as developing countries vide notification No. 19/2016-Customs (N.T.), dated the 5th February, 2016, except People's Republic of China, Thailand and Vietnam.”*

24. From the above we note that any application of new tax or an amendment, modification or repeal of an existing law is covered as ‘Change in Law’. The SGD Notification 2018 stipulated that “*a safeguard duty at twenty-five per cent to fifteen per cent ad valorem minus anti-dumping duty payable*” has been levied on Solar Cells whether or not assembled in modules or panels” when imported into India “*during the period from 30th July, 2018 to 29th July, 2020 (both days inclusive)*”. The notification provides for a diminishing ‘Safeguard Duty’ slab in the range of 25% to 15% applicable ad valorem on the imports from 30.07.2018 till 29.07.2020. The impact of ‘Safeguard Duty’ notification is on/any portion of import whose point of taxation is on or after implementation of the Notification dated 30.07.2018 and the same will be subjected to purview of ‘Safeguard Duty’. However, the

Commission is of the view that SGD Notification 2018 was valid only upto 29.07.2020. Hence, no safeguard duty was applicable after 29.07.2020 as per SGD Notification 2018. Further, from the perusal of SGD Notification 2018, it is observed that it is nowhere mentioned that the safeguard duty so imposed through the impugned notification is subject to extension / revision after two years viz. 29.07.2020.

25. We observe that, SGD Notification 2020 stipulated that fourteen point nine per cent (14.9%) ad valorem minus anti-dumping duty payable has been imposed afresh, on subject goods (falling under tariff items 8541 40 11 or 8541 40 12 of the First Schedule to the Customs Tariff Act) when imported during the period from 30.07.2020 to 29.01.2021 (both days inclusive); and fourteen point five per cent (14.5%) ad valorem minus anti-dumping duty payable, if any, when imported during the period from 30.01.2021 to 29.07.2021 (both days inclusive). The notification provides for a diminishing 'Safeguard Duty' slab in the range of 14.9% to 14.5% applicable ad valorem on the imports from 30.07.2020 till 29.07.2021. The impact of 'Safeguard Duty' notification is on/any portion of import whose point of taxation is on or after implementation of the Notification dated 29.07.2020 and the same will be subjected to purview of 'Safeguard Duty'. The Commission is of the view that afresh 'Safeguard Duty' became effective from 30.07.2020 and hence the notification/imposition of 'Safeguard Duty' will directly affect the projects where "Solar Cells whether or not assembled in modules or panels" were imported on or after 30.07.2020.

26. As per the plain reading of the terms of the PPA, an event will qualify as a Change in Law event only if the said Act/Regulations/Notifications etc is passed by the Indian Government Instrumentality. The Ministry of Finance being Ministry under the Government of India is the Indian Government Instrumentality' under the PPAs. Further, A bare perusal of Article 12.1 clause (v) shows that an event will come under the ambit of Change in Law if the introduction of new tax after the submission of the bid leads to any direct impact on the project cost.

27. In the present instance, the SGD Notification 2020 has imposed a fresh the Safeguard Duty till 29.07.2021 and has thereby increased the rate of the Safeguard Duty from 'zero' to 14.9% & 14.5% for the period- 30.07.2020 to 29.01.2021 and 30.01.2021 to 29.07.2021, respectively..Further, during the hearing held on 29.09.2022, SECI had also admitted that the

imposition of Safeguard Duty has already been held as Change in Law event and the only issue that remains for consideration is the methodology for payment of compensation on account of Safeguard Duty.

28. We also observe that RfS dated 10.01.2019 was amended as under:

<i>RfS dated 10.01.2019</i>	<i>Amendment -01 dated 05.02.2019</i>	<i>Amendment -02 dated 06.02.2019</i>
<p><i>Section II, Cl.6</i></p> <p>.....</p> <p><i>It is clarified that any change in the rates of any Taxes after the last day of submission of the bid, including any duties and cess or introduction of any new tax made applicable for setting up the solar power project and supply of power from the Solar Power project by the SPD which have a direct effect on the Project shall only be considered as change in law.</i></p> <p>.....</p>	<p><i>Section II, Cl.6</i></p> <p>.....</p> <p><i>It is clarified that any change in the rates of any Taxes after the last day of submission of the bid, including any duties and cess or introduction of any new tax made applicable for setting up the solar power project and supply of power from the Solar Power project by the SPD which have a direct effect on the Project, shall only be considered as change in law. <b><u>It is further clarified that any extension of taxes, cess or levies at the same rate on the expiry of the current period shall not be considered as Change in Law.</u></b> However, Change in Law shall not include (i) any change in taxes on corporate income; or (ii) any change in any withholding tax on income or dividends.</i></p> <p>....</p>	<p><i>Section II, Cl.6</i></p> <p>.....</p> <p><i>It is clarified that any change in the rates of any Taxes after the last day of submission of the bid, including any duties and cess or introduction of any new tax made applicable for setting up the solar power project and supply of power from the Solar Power project by the SPD which have a direct effect on the Project, shall only be considered as change in law. However, Change in Law shall not include (i) any change in taxes on corporate income; or (ii) any change in any withholding tax on income or dividends</i></p> <p>.....</p>

29. From the above, it is also observed that Clause 6 of Section II of the RfS dated 10.01.2019 was amended vide Amendment-01 dated 05.02.2019 and it was included in Section II Clause 6 that “any extension of taxes, cess or levies at the same rate on the expiry of the current period shall not be considered as Change in Law.” However, subsequently, Clause 6 of Section II of the RfS, *inter-alia*, was again amended vide Amendment-02 dated 06.02.2019 and the impugned clause was again amended and the extension clause was dropped. Even on this ground, it is evident that the SGD Notification dated 29.07.2020 qualifies as a Change in Law event.

30. We observe that in the instant case, the Petitioners have submitted their bids on 15.12.2019 (Petition No. 722/MP/2020) and 30.05.2019 (Petition No. 723/MP/2020) the same were accepted and crystallised after e-reverse auction held on 25.02.2019 (Petition No. 722/MP/2020) and 12.06.2019 (Petition No. 723/MP/2020). PPAs were executed on 17.09.2019 (Petition No. 722/MP/2020) and 27.11.2019 (Petition No. 723/MP/2020). As per the PPAs, SCoD of the Solar Projects were 01.03.2021 (Petition No. 722/MP/2020) and 23.04.2021 (Petition No. 723/MP/2020). The Safeguard Duty Notification was promulgated on 29.07.2020 i.e. after the acceptance of the bid submitted by the Petitioner. We find and hold that the imposition of Safeguard Duty on the import of solar panels/modules through the Notification No. 2/2020-CUSTOMS (SG) Dated 29.07.2020 issued by the Department of Revenue, Ministry of Finance, Government of India is a 'Change in Law' event under the Article 12 of the PPA, since the Petitioners have submitted their bids before the imposition of safeguard duty vide SGD Notification 2020 and therefore, the Petitioners are entitled to relief under Article 12 of the PPAs.

***Issue No. 2: Whether discount rate @ 9% in calculation of Annuity methodology should be considered for payment of compensation (if any) on account of Change in Law? And Whether the Respondent can be directed to reimburse the Petitioner for the corresponding increase in the Project cost on account of Safeguard Duty (including GST paid of Safeguard Duty) as and when paid by the Petitioner no later than sixty (60) days of claim(s) submitted by the Petitioner on the basis of each consignment of solar panel/modules?***

31. SECI has submitted that the Commission while approving the annuity methodology as proposed by SECI for making payments in respect of GST and/or Safeguard Duty vide order dated 20.8.2021 in Petition No. 536/MP/2020 has approved the discounting factor at 10.41% based on the interest rate specified in the Renewable Tariff Regulations, 2017 read with Renewable Tariff order dated 11.01.2019. However, subsequently, there has been fall in the interest rate and in the Renewable Tariff Regulations, 2020 read with Renewable Tariff order dated 31.3.2021, the Commission has considered the interest rate of 9% and the term of loan repayment as 15 years instead of 13 years as considered earlier. *Per Contra*, the Petitioners have submitted that the methodology for payment of compensation approved by the Commission vide order dated 20.8.2021 in Petition No. 536/MP/2020 only applies to the cases covered therein. The Petitioners have submitted that SECI has wrongly assumed that the



discounting factor of 10.41% as held by the Commission in Order dated 20.08.2021 in Petition No. 536/MP/2020 is strictly based on the RE Tariff Regulations, 2017 read with the RE Tariff Order dated 11.01.2019, since the Commission has categorically stated that the said petition was not a tariff determination exercise under Section 62 of the Electricity Act and therefore any reliance on the 2017 RE Tariff Regulations or any Order issued in pursuance of the said regulations can at best have a reference value when it comes to resolving the issue of discount rate for annuity payments. Further, the Petitioner has submitted that majority of parties have accepted the rate of 10.41% as the appropriate normative rate of interest for any debt that they might have taken. On basis of this observation the Commission held 10.41% as the discount rate of annuity payments. The Commission also noted the general acceptance of parties in that Petition that the annuity period/tenure could be of 13 years, and as such, approved the same.

32. Further, SECI has placed its reliance on the Rajasthan Electricity Regulatory Commission (RERC) vide Order dated 30.12.2021 in Petition Nos. 1914/2021, 1922/2021 and 1941/2021, while dealing with a similar PPA executed between SECI and a Renewable Power Developer, has held as under:

*52. It is further noted that the Central 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. In the said regulations read with RE tariff Order, the Central Commission has considered only the interest rate of 9% and the term of the Loan repayment as 15 years.*

*53. 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 of 9% can be taken as the uniform rate of compensation for the entire expenditure incurred on account of Change in Law events. Further, 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.*

*54. Commission after considering all the submissions and facts, deems it appropriate to allow the discount rate of 9% and annuity period of 15 years.*

33. We note that this Commission in the earlier order dated 20.08.2021 in the Petition No. 536/MP/2020 has already, *inter-alia*, decided on the methodology of compensation due to Change in Law events as under:

65. We find that in Petition No. 536/MP/2020, SECI and the Respondents (SPDs as well as the Discoms) are on the same page in so far as the rate of interest on loan is considered. This is evident from the computation of the weighted average cost of capital advanced by the contending parties. Majority of the parties have used 10.41% (as mentioned in the CERC RE Tariff Order dated 19.03.2019) as the reference rate of interest for building their arguments for the rate of annuity payment. In other words, the parties have accepted this rate as the appropriate normative rate of interest for any debt that they might have taken. 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.*

34. We note that the issue of the determination of the appropriate methodology for payment of compensation on account of Change in Law event has already been decided by us in earlier orders, which have attained finality. we have taken a view that in 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.
35. We note that 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. In the said regulations read with RE tariff Order, the Central Commission has considered only the interest rate of 9% and the term of the Loan repayment as 15 years. It is noted that SGD Notification 2020 dated 29.07.2020 was promulgated after the submission of bids by the parties and before the original SCoD of the Solar Projects which were March-April 2021. It is further noted that the Petitioners achieved the actual commercial operation on 08.03.2022 (Petition No. 722/MP/2020) and on 14.02.2022 (53 MW) and 30.03.2022 (204 MW) (Petition No. 723/MP/2020) i.e. much after imposition of SGD Notification 2020 and

notification of the CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2020 and RE Tariff Order dated 31.03.2021. 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 allow the discount rate of 9% and annuity period of 15 years.

36. Further, the Commission holds that 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.

37. The issues stand decided accordingly.

***Issue No. 3: Whether the Carrying Cost should be allowed on the additional cost incurred/to be incurred by the Petitioner due to imposition of Safeguard Duty?***

38. The Petitioners have submitted that they are entitled for Carrying Costs on account of Change in Law event in terms of Article 12 of the PPA. *Per Contra*, SECI has submitted that the claim of Carrying Cost is based on the principle of restitution and it is to be restricted to the cost of financing of a prudent utility.

39. We observe that APTEL vide judgement dated 15.09.2022 in A.No. 256 of 2019 & Batch (*Parampujya Judgement*), has held as under:

*83. In the present cases, the claim for compensation of SPPDs is primarily founded not on principles of equity but on the contractual clause stating that the affected party is entitled to approach the Commission which shall “provide relief” in relation to the impact of the change in law event if it has resulted in “any additional recurring /non-recurring expenditure”. The purpose of the change in law clause in the PPAs is to relieve the SPPDs of the additional burden. Since the impact of the new tax (GST or Safeguard Duty on Imports, as the case may be) would come from the date of enforcement of the new laws, the relief intended to be afforded under the contracts*

cannot be complete unless the said burden is allowed to be given a pass through from the date of imposition of the levy. Unlike the PPA in UHBVNL (*supra*) wherein the phraseology of change-in-law provision was exhaustive, the words “provide relief” in present PPAs are open ended, not qualified in any manner so as to be given a restrictive meaning in order to treat the date of adjudication of the claim by the regulatory authority as the effective date or to justify denial of carrying cost burden for the period anterior thereto. In our reading, the expression “provide relief” is of widest amplitude and cannot be read to limit its scope the way the contesting respondents seek to propagate or the way the Central Commission has determined.

.....  
87. As pointed out by learned counsel for Mahoba, under the PPA there is an obligation on the part of SPPDs to ensure “continuance of supply of power throughout the term of Agreement”. It is inherent in this that SPD, in order to continue to supply, must reconfigure or repower the plant, if so required, by installing additional modules after the COD since the contractual clause does not create any distinction as to expenditure pre or post COD, for purposes of change-in-law compensation. The plea for relief concerning post COD cannot be rejected, the expenditure incurred being not meant to be gratuitous, the intent instead being to discharge contractual responsibilities. We may quote the following passage from judgment of Hon’ble Supreme Court in *State of West Bengal v. BK Mondal*, AIR 1962 SC 779, in the context of Section 70 of the Indian Contract Act, 1872:

.....  
94. For the foregoing reasons, we cannot approve of the view taken by the Central Commission on the subject of carrying cost. We hold that the appellant SPPDs are entitled to grant of relief in the nature of carrying cost over and above the compensation already allowed by the Central Commission.”

...  
95. The appellant SPPDs had also claimed compensation (on account of change in law events) for the consequent additional expenditure incurred or invoices raised after the Commercial Operation Date (COD) of the SPPs. The Central Commission, by the impugned decisions, has held that liability towards additional expenditure is to be borne by the respondent beneficiaries only till the date of corresponding COD of the project.

...  
97. It bears repetition to note that change-in-law clauses in the PPAs (Article 12) assure relief to be provided in relation to “any additional recurring/non-recurring expenditure” arising out change-in-law. There is no restriction in the contracts as to application of this clause for period prior to the COD. The activities of generation of electricity and its supply, post COD, are bound to include non-recurring expenditure, O&M expenses being one such area. In fact, the use of the word “any” in relation to the consequent “recurring or non-recurring expenditure” signifies the wide ambit of the contractual clause, no exclusion of such nature as understood by the Commission deserving to be read there into. The extraneous qualification that such expenditure must relate to period prior to COD cannot be approved of.

...  
...  
...  
107. The above decision applies on all fours. We adopt the view taken in case of *Costal Gujarat Power Limited (supra)* and disapprove the decision of the Central

*Commission on the subject as quoted above and hold that the appellant SPPDs are entitled to compensation for additional expenditure (recurring /non-recurring) towards O&M activities as well, notwithstanding the fact that they were outsourced.*

40. From plain reading of above judgment of the APTEL the following principles may be derived:-
- a) Article 12 assures relief to be provided in relation to “any additional recurring/non-recurring expenditure” arising out of change-in-law event. There is no restriction in the contracts as to application of this clause for period prior or post to the COD.
  - b) The Petitioners are entitled to grant of relief in the nature of carrying cost over and above the compensation already allowed by the Central Commission.
41. In view of the above, the Petitioners are entitled to grant of relief in the nature of carrying cost on the compensation on account of incremental impact due to ‘Change in Law’. As has been held by the Commission in earlier Orders, the Petitioners, in the instant petitions shall 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 Petitioners for arranging funds (supported by Auditor’s Certificate) or the rate of interest on working capital as per applicable CERC Tariff Regulations or the late payment surcharge rate as per the PPA, whichever is the lowest. Once a supplementary bill is raised by the Petitioners 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.
42. Accordingly, we hereby direct that the contracting parties to carry out reconciliation on account of incremental impact due to imposition of the SGD Notification 2020 alongwith carrying cost by exhibiting clear and one to one correlation with the projects and the invoices raised supported with auditor certificate. We further direct 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.
43. It is observed that the Hon’ble Supreme Court vide Order dated 12.12.2022 in Civil Appeal No. 8880 of 2022 in the case of *Telangana Northern Power Distribution Company Ltd. &*

*Anr. v. Parampujya Solar Energy Pvt. Ltd. & Ors.* has held, inter alia in the context of carrying cost, as under:

*“2. 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.”*

44. Thus, the directions with regard Carrying Cost at para 41 of this Order shall not be enforced and will be subject to further orders of the Hon’ble Supreme Court in Civil Appeal No. 8880 of 2022 in *Telangana Northern Power Distribution Company Ltd. & Anr. V. Parampujya Solar Energy Pvt. Ltd. & Ors.*

45. The Petition no. 722/MP/2020 and Petition No. 723/MP/2020 stands disposed of.

Sd/-  
पी. के. सिंह  
(सदस्य)

Sd/-  
अरुण गोयल  
(सदस्य)

Sd/-  
आई. एस. झा  
(सदस्य)