

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 102/MP/2023

Coram:

**Shri Jishnu Barua, Chairperson
Shri Ramesh Babu V., Member
Shri Harish Dudani, Member**

Date of Order: 18th November, 2024

IN THE MATTER OF:

Petition under Section 79(1)(f) of the Electricity Act, 2003 read with Rule 3 of the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 and Article 13 of the Power Purchase Agreement dated 7.8.2008 (as subsequently amended from time to time) with Haryana Discoms and Power Purchase Agreement dated 20.01.2009 (as subsequently amended from time to time) with Tata Power Trading Company Limited seeking declaration of change in law event and consequent relief on account of increase in compensation for acquisition of land for Jhajjar Power Limited's 1,320 MW Power Project located in Haryana.

And

In the matter of:

Jhajjar Power Limited,
Village Khanpur, Tehsil Matenhail,
District Jhajjar– 124142, Haryana

..... Petitioner

Versus

1. **Uttar Haryana Bijli Vitran Nigam Limited (UHBVNL),**
Vidyut Sadan, Plot No. C-16, Sector 6,
Panchkula– 134112, Haryana
2. **Dakshin Haryana Bijli Vitran Nigam Limited (DHBVNL),**
Vidyut Nagar, Vidyut Sadan,
Hissar– 125005, Haryana
3. **Tata Power Trading Company Limited (TPTCL),**
'A' Block, 34, Sant Tukaram Road, Carnac Bunder,
Mumbai– 400006, Maharashtra
4. **Tata Power Delhi Distribution Limited (TPDDL),**
NDPL House, Hudson Lines,
Kingsway Camp, Delhi – 110009

...Respondents

Parties present: Shri Vishrov Mukerjee, Advocate, JPL



Ms. Sriya P. Advocate, JPL
Shri Jogendra Behera, JPL
Shri Abhishek Yadav, Advocate, HPPC
Shri Aditya Singh, Advocate, HPPC
Shri Basava Prabhu Patil, Sr. Advocate, TPDDL
Shri Nitish Gupta, Advocate, TPDDL
Shri Nimesh Jha, Advocate, TPDDL
Shri Rishabh Sehgal, Advocate, TPDDL
Shri Geet Ahuja, Advocate, TPDDL

ORDER

The Petitioner, Jhajjar Power Limited ('JPL'), has filed the instant Petition under Section 79(1)(f) of the Electricity Act, 2003 (in short 'the Act'), seeking a declaration that the increase in compensation to be paid to the landowners for the acquisition of land for the JPL's 1320 MW Coal-fired Project located in Jhajjar, Haryana ('the Project') in terms of the Final Order dated 20.10.2022 in SLP (C) Nos. 18536-18541 of 2022 and batch titled *Jaspal Singh & Ors. v. State of Haryana & Ors.* ('Final Order') and consequential orders passed by the Hon'ble Supreme Court, qualify as Change in Law under the Power Purchase Agreements ('PPAs') executed with the Respondents, Uttar Haryana Bijli Vitran Nigam Limited ('Respondent No. 1/UHBVNL') & Dakshin Haryana Bijli Vitran Nigam Limited ('Respondent No. 2/DHBVNL') on 7.8.2008 and with Tata Power Trading Company Ltd. ('Respondent No. 3/ TPTCL') on 20.1.2009 and the Electricity (Timely Recovery of Costs due to Change in Law) Rules 2021 ('CIL Rules').

2. The Petitioner has made the following prayers:

(a) *Declare the change in Declared Price of Land for the Project on account of Final Order dated 20.10.2022 and the consequential orders passed by the Hon'ble Supreme Court qualifies as a Change in Law event in terms of Article 13 of the Haryana PPA dated 07.08.2008 and TPTCL PPA dated 20.01.2009 read with the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021;*

(b) *Allow Petitioner to recover additional expenditure incurred on account of payment of additional compensation to the landowners on account of the Change in Law event from the Respondents by way of Supplementary*



Invoices in terms of Articles 11.8.1(iii) read with Articles 13.4.2 of the PPAs, as and when the Petitioner makes payments as per orders with computation of the exact compensation to be paid to the landowners are passed by the DRO/LAC such that the Petitioner is restored to the same economic condition as if such change in law did not take place:

(c) Award carrying cost on the additional expenditure incurred by Petitioner and/or;

(d) Pass such order(s) as this Commission may deem fit and proper in facts and circumstances of the present case.”

Factual matrix:

3. Brief facts necessary to appreciate the issues that arose in the present case, as noted in the Petition, are as under.

4. The Petitioner/JPL, a wholly owned subsidiary of Apraava Energy Private Limited (*formerly known as CLP India Private Limited/ CLP India*), is a generating company that owns and operates a coal-based thermal generating station of 1320 MW capacity comprising two units of 660 MW each at Village Khanpur, Tehsil Matenhail, District Jhajjar, Haryana ('the Project'). The Project supplies power to the State of Haryana and the National Capital Territory of Delhi.

5. The Respondent Nos. 1 and 2, namely UHBVNL and DHBVNL, respectively, are the distribution licensees in the State of Haryana (hereinafter, collectively referred to as 'the Haryana Discoms'). Respondent No. 3/ TPTCL is a trading licensee having a back-to-back arrangement for the sale of power from the Petitioner/JPL to Respondent No. 4/ Tata Power Delhi Distribution Limited ('TPDDL').

6. Haryana Power Generation Corporation Limited ('HPGCL'), on behalf of the Haryana Discoms, initiated a Tariff Based Competitive Bid ('TBCB') Process for procurement of power on a long-term basis from the Project as per the terms and conditions of the Request for Proposal ('RFP') issued by HPGCL on 10.7.2007. The last date of submission of the bid was 10.3.2008. CLP India submitted its bid on

10.03.2008 and was subsequently declared as a successful bidder. On 23.7.2008, HPGCL issued a Letter of Intent ('LOI').

7. Thereafter, two Power Purchase Agreements ('PPAs') were executed by the Petitioner; one with Haryana Discoms dated 7.8.2008 for supply of 90% of the total Project capacity of 1320 MW from the Project ('Haryana PPA') and the other one dated 20.1.2009 with TPTCL for the supply of remaining 10% of the total Project capacity ('TPTCL PPA'). On the basis of the said PPA, TPTCL further entered into a back-to-back arrangement for the sale of power to Tata Power Delhi Distribution Company Limited ('TPDDL') by entering into the Power Sale Agreement ('Tata PSA') dated 20.1.2009.

8. During the period from 22.9.2008 to 5.12.2011, several awards were passed by the Collector/District Revenue Officer-cum-Land Acquisition Collector ('DRO/LAC') under the Land Acquisition Act, 1894 ('Land Acquisition Act'), granting compensation at the rate of Rs 16 lakh per acre for acquisition of land and Right of Way for the Project along with other compulsory acquisition charges *i.e.*, (i) 30% solatium on land compensation, and (ii) additional amount of 12% per annum as per Section 23(1A) of Land Acquisition Act.

9. Resultantly, JPL paid a total of Rs. 299.61 crores to the DRO/LAC as compensation for the acquisition of Land and Right of Way. Further, JPL also made a payment of Rs. 30.60 crores in accordance with the Government of Haryana notification dated 7.12.2007 for the Rehabilitation and Resettlement of landowners/land acquisition oustees whose land has been acquired on or after 5.3.2005. JPL thus paid a total sum of Rs. 330.22 crores as the total land cost for the Project, which was higher than the amount initially estimated in the RFP, *i.e.*, 320 crores, for acquiring the land for setting up of the Project.

10. Subsequently, some landowners approached the Hon'ble High Court of Punjab & Haryana and thereafter approached the Hon'ble Supreme Court seeking enhancement in the land compensation price against the award passed by the DRO/LAC. The Hon'ble Supreme Court *vide* the Final Order dated 20.10.2022 in SLP (C) Nos. 18536-18541 of 2022 and batch titled *Jaspal Singh & Ors. v. State of Haryana & Ors.* and similar consequential orders (collectively referred to as 'SC Orders') increased the rate of compensation from Rs. 16 lakh per acre to Rs. 22 lakh per acre along with all statutory benefits including interest as available under the Land Acquisition Act. Pursuant to the SC Order, the DRO/LAC raised an additional amount of Rs. 145.40 crores on JPL, which was paid by JPL on 29.3.2023.

11. In this regard, JPL has sought appropriate compensation to offset the financial/commercial impact of Change in Law events in the context of the PPA(s) executed by JPL with Haryana Discoms as well as with TPTCL on account of the SC Orders and the CIL Rules. The brief contentions of the Petitioner are as follows:

(a) HPGCL was responsible for arranging the land and providing intimation regarding the 'Declared Price of Land' and estimated costs of the resettlement and rehabilitation package at least 30 days prior to the Bid Deadline.

(b) Clause 2.4(ii) of the RFP mentioned that tentatively, the land cost was likely to be around Rs. 300 crores, which was later revised to Rs. 320 crores by way of a clarification.

(c) SC order dated 20.10.2022 falls under the definition of 'Law' as defined in the Haryana PPA, TPTCL PPA, and CIL Rules. Further, in terms of Article 141 of the Constitution of India, the law declared by the Hon'ble Supreme Court is binding on all Courts of India. Since the increase in Declared Price of Land for the Project on account of the Hon'ble Supreme Court Orders has occurred after the cut-off date of 3.3.2008 in the case of the Haryana PPA and 20.1.2009 in the case of the TPTCL

PPA, it qualifies as an event of Change in Law under Article 13.1.1(d) of the respective PPAs during the Operation Period.

(d) Based on the 'principle of economic restitution' provided under Article 13.2 of the respective PPAs as well as Rule 3(1) of the CIL Rules, compensation to be given to JPL for additional expenditure which has already incurred or is likely to incur in future due to increase in the Declared Price of Land. Further, since the expenditure is incurred during the 'Operation Period' provided under Article 13.2(b) of the respective PPAs, JPL is entitled to be compensated for the entire additional expenditure.

(e) The Commission, *vide* its Orders' in Petition Nos. 157/GT/2020 and 489/GT/2020, have allowed Aravalli Power Company Pvt. Ltd. to recover enhanced compensation from the Aravalli procurers, which also included Haryana Discoms and TPDDL, on account of the order of the Hon'ble Supreme Court dated 5.9.2017. Further, both the Aravalli Project and JPL are located in the same area. The quantum of compensation in JPL's case could be determined in terms of the Haryana PPA TPTCL PPA, and the CIL Rules.

(f) An additional liability of approximately Rs 206.25 crores towards the additional compensation, along with statutory benefits, including interest payable to the landowners, will have to be borne by JPL. However, the exact liability will be ascertained only after the compensation payable to the landowners is computed by the DRO/LAC in terms of SC Orders.

(g) JPL has also proposed that as and when such orders with computation of the enhanced compensation to be paid to the landowners are passed by DRO/LAC, JPL will:

- i. Release the amounts to DRO/LAC for disbursement amongst the landowners.
- ii. Immediately raise the Supplementary Invoices on Haryana Discoms and TPTCL in terms of Article 11.8.1(iii) read with Article 13.4.2 of the PPAs claiming such amounts, along with documents evidencing the demand raised by DRO/LAC and proof of payments made by JPL.
- iii. Carry out annual reconciliation with Procurers of the amounts paid by JPL to DRO/LAC and the amounts claimed/paid by Procurers.

(h) JPL is also entitled to carrying cost in the event of a delay on the part of the Procurers to make payment towards the amount claimed by JPL by way of the Supplementary invoices.

Proceedings before the Commission

Hearing dated 16.5.2023:

12. The Commission, in the hearing dated 16.5.2023, admitted the Petition. Further, the Respondents were directed to file their respective replies, with a copy to the Petitioner. In compliance, the Respondents, Haryana Discoms, TPDDL and TPTCL have filed their replies on 9.6.2023, 13.7.2023, and 18.7.2023, respectively. Thereafter, the Petitioner also filed its rejoinders to the same on 1.8.2023.

Submissions of Respondent No. 1 ('UHBVNL') & Respondent No. 2 ('DHBVNL')

13. On behalf of Respondent Nos. 1 & 2, Haryana Power Purchase Centre ('HPPC') has submitted as under:

(a) The mode of payment for relief sought by the Petitioner should be an annuity method of payment spread over the period not exceeding the duration of the PPA as a percentage of the tariff agreed in the PPA.

(b) The Haryana PPA and CIL Rules provide for the additional payment due to a Change in Law by way of adjustment in the Monthly Tariff.

(c) The Commission, in a number of cases, has considered the annuity method as just and equitable. In this regard, reliance has been placed on the orders passed by the Commission in Petition Nos. 536/MP/2020, 187/MP/2018, 342/MP/2018, 343/MP/2018, 19/MP/2019, 46/MP/2019, 176/MP/2019, 47/MP/2019.

(d) No loss would be caused to Petitioner/JPL, in case the Annuity model is adopted as the Petitioner has admitted to the requirement of loan/financing for further payment to the landowners. In case of loan repayment, the loan would have to be paid over a span of the years, then no loss would be caused to JPL in case the compensation is payable on Annual Basis.

(e) Regarding the issue of the Supplementary Bills, the LPS as mentioned in Article 11.8.3, cannot be made applicable as the 'Due Date' for payment of Bill for enhanced compensation, which already stands paid by JPL, is not fixed. As such, Article 11.8.3 may not be applied in the case of the Supplementary Bills raised by JPL. Be that as it may, 'Due Date', if any, be fixed in terms of the Loan Agreement.

(f) There is no provision in the PPA regarding carrying cost or interest for the period till the determination of the relief amount on account of 'Change in Law'.

(g) Since 90% of the capacity is being supplied to Haryana, and the remaining 10% of capacity is sold outside Haryana, the claim for Change in Law would only be borne by HPPC till 90%. Further, any tax rebate accrued in favour of the Petitioner/ JPL on account of payment to the landowner should also be passed on to the Haryana Discoms.

Rejoinder of the Petitioner/JPL to the Submissions of Respondent No. 1 & 2

14. *Per contra*, the Petitioner, *vide* its rejoinder dated 1.8.2023, has submitted as under:

(a) Haryana Discoms did not dispute Petitioner's claims of Change in Law but rather have made submissions only regarding the methodology for recovery of the additional compensation paid by JPL and JPL's entitlement to the LPS and Carrying cost/ interest.

(b) The Hon`ble Supreme Court Orders allowing enhanced land compensation have occurred after the issuance of the CIL Rules. Thus, the method for recovery of the additional expenditure incurred by the Petitioner is to be determined as per the provisions of the CIL Rules and not the Haryana PPA.

(c) Annuity mode for recovery of the additional compensation as suggested by the Haryana Discoms is neither borne out of the terms of Haryana PPA and the CIL Rules nor relevant in the present case.

(d) The Haryana Discoms reliance on the orders passed by the Commission adopting the annuity model of payment is entirely misplaced and does not fit the present matter. In Petition No. 536/MP/2020 & batch matters, SECI and other Petitioners themselves sought compensation to be recovered on an annuity basis. In Petition No. 187/MP/2018 & batch matters, the Commission only suggested that

parties may mutually agree to payment of the compensation on an annuity basis. In Petition Nos. 342/MP/2018, 343/MP/2018, 19/MP/2019, 46/MP/2019, 176/MP/2019, and 47/MP/2019, the Commission held that since the quantum of compensation was not large, it should be discharged by the Procurers as a one-time payment.

(e) Article 11.8.1, read with Article 13.2 of the Haryana PPA, provides for the Supplementary Bill. The demand of Rs. 145.40/- crores (corresponding to 536 acres out of 1248 acres) raised by the DRO/LAC towards enhanced land compensation in light of the Hon'ble Supreme Court Orders was paid by JPL on 29.3.2023. Subsequent demands will be raised for the remaining landowners in the future, whose financial impact cannot be ascertained at present.

(f) The Petitioner suggested a mechanism of recovery and proposed that it will raise the Supplementary Invoice(s) on the Haryana Discoms and TPTCL in terms of Articles 11.8.1(iii) read with Articles 13.4.2 of the PPAs. The adoption of such a mechanism of recovery will ensure timely recovery of the additional compensation on account of a Change in Law. A similar dispensation has been put in place by the Commission in its order in Petition No. 402/MP/2014.

(g) Payment of carrying cost cannot be linked to the date of determination of the Change in Law event. Article 13.2 of the Haryana PPA and Rule 3(1) of the CIL Rules provide that the affected party is to be compensated/restored to the same economic position as if the change in law event has not occurred. In this context, the Hon'ble Supreme Court in the case of *Uttar Haryana Bijli Vitran Nigam Ltd. & Anr. v. Adani Power Ltd. & Ors. (2019)* and *GMR Warora Energy Ltd. v. CERC & Ors. (2023)* has held that carrying costs will be applicable from the date of the Change in Law event. Thus, in the present case also, the carrying cost should be applicable from the date of the Change in Law event, *i.e.*, the Final Order dated 20.10.2022 passed by the Hon'ble Supreme Court or the date of payment of amounts by JPL to the DRO / LAC, as the case may be.

(h) LPS will be attracted when JPL raises its Monthly / Supplementary Invoice, as the case may be, for recovery of the additional compensation and Haryana Discoms' fails to make the payment of the said invoice by its Due Date. However, JPL has yet to raise its invoice, and there is no merit in the Haryana Discoms' contention that LPS cannot be made applicable in the present case.

(i) Haryana Discoms' contention that any tax rebate accrued in favour of JPL on account of payment to the landowners should be passed onto them is misplaced since JPL is not entitled to any tax rebate benefit on account of payment to landowners as land is not a depreciable asset.

Submissions of Respondent No. 3 ('TPTCL')

15. The Respondent No. 3, TPTCL, *vide* its response dated 18.7.2023, has submitted as follows:

(a) The role of the TPTCL in the present case is that of an intermediary procurer/ electricity trader in terms of the relevant provisions of the Act and has a back-to-back arrangement with the Petitioner and the ultimate beneficiary, *i.e.*, TPDDL.

(b) TPTCL is facilitating the sale of 10% of the Plant's net capacity (outside the State of Haryana) to the TPDDL at the same tariff as stipulated under the Haryana PPA.

(c) The contentions raised by the Petitioner that the SC Orders, thereby increasing the compensation to Rs. 22 lakh/- per acre, has consequentially resulted in the increase in the declared price of land, is devoid of merits.

(d) TPTCL PPA does not define the 'Declared Price of Land,' and it is only the Haryana PPA that defines the 'Declared Price of Land.'

(e) The Project in question has been constructed at a land parcel of 1248 acres. Thus, even at the cost of Rs. 22 lakh per acre, the total compensation payable by the Petitioner would work out to Rs. 274,56,00,000/- (which is less than the actual cost of land already paid by the Petitioner). In light of aforesaid, the Petitioner is not entitled to argue that the Final Order dated 22.10.2022 of the Hon'ble Supreme Court has resulted in the increase in the declared price of land post the bid deadline (*i.e.*, 20.1.2009), which would qualify as Change in Law event in terms of Article 13.1.1(d) of the TPTCL PPA.

(f) Any change in Declared Price of Land which does not result in an increase in the total cost of the land over and above Rs. 320 crores, would not qualify as a Change in Law event under the TPTCL PPA. The actual cost of land considered at the time of bid submission is higher than the actual cost incurred; hence, no claim of Change in Law can be sustained.

(g) Bidding in the Project was initiated by HPGCL. TPTCL was neither involved in the bidding process nor had any obligation *qua* the acquisition of land for the Project. It was the Petitioner's sole responsibility to acquire the land for the Project and bear the cost in respect thereof.

Rejoinder of Petitioner/JPL to the Submissions of Respondent No. 3

16. *Per contra*, the Petitioner, *vide* its submission dated 1.8.2023, has submitted as follows:

(a) TPTCL PPA clearly provides that JPL had already executed the Haryana PPA on 7.8.2008 for the supply of 90% of the Project Capacity. TPTCL signed the TPTCL PPA, thereafter on 20.1.2009, and was fully aware of the terms of the Haryana PPA.

(b) TPTCL is liable to compensate the JPL for an increase in land compensation as per the terms and conditions of the TPTCL PPA.

(c) TPTCL is obligated to compensate JPL for any Change in Law event in terms of Article 13.4, read with Article 11.8 of the TPTCL PPA. Even the Commission, in its Order in Petition No. 393/MP/2018, held that when the provisions of the PPA are clear and impose a liability on the trader to establish a payment settlement mechanism, the said liability cannot be made contingent upon similar action being taken by the beneficiaries.

(d) Further, in an order dated 15.8.2020 in Petition No. 158/MP/2019 titled "*Adhunik Power and Natural Resources Limited v. Tamil Nadu Generation and Distribution Corporation Limited & Ors.*", the Commission imposed the liability for payment of the LPS on the trader in terms of its PPA with the generator. Such understanding has also been upheld by the Commission specifically for JPL *vide* Order dated 25.1.2016 in Petition No. 363/MP/2013.

(e) The Petitioner, JPL, is entitled to claim compensation on account of Change in Law from TPTCL by way of the Supplementary Bill, and TPTCL would be liable to compensate the Petitioner for the same.

(f) TPTCL's attempt to compute the amount of the compensation paid/payable to the landowners based merely on the base compensation of Rs. 22 lakh per acre is erroneous. As per Section 23(1) of the Land Acquisition Act, an additional amount of 12% p.a. from the date of the notification and a solatium of 30% is payable to the

landowners over and above the base compensation. JPL has estimated an additional payment of approximately Rs. 206.25 crores due to enhanced compensation to be paid to the landowners. JPL has already paid Rs. 145.40 crores towards the enhanced compensation on 29.3.2023 in response to the demand raised by DRO / LAC.

(g) Based on various awards passed by the DRO/LAC under Section 11 of the Land Acquisition Act, at the time of acquisition of land for the Project, JPL has paid a total sum of Rs. 330 crores as land compensation to the landowners. Accordingly, the Petitioner/ JPL had paid substantially more than the amount estimated in the RFP (Rs. 320 crores) for acquiring the land for setting up of the Project.

(h) Definition of Declared Price of Land in the Haryana PPA is also applicable with respect to TPTCL PPA. The term 'Declared Price of Land' is not defined in the TPTCL PPA. However, the definition provided under the Haryana PPA is also applicable with respect to the TPTCL PPA in terms of Article 1.2.17 of the TPTCL PPA.

(i) TPTCL's contention that it was neither a part of the land acquisition process nor had any obligation *qua* acquisition of land for the Project, is devoid of merits. Since the increase in the compensation to be paid to the landowners has occurred on account of the SC Orders after the cut-off date of 20.1.2009, the said increase in compensation to be paid to the landowners amounts to Change in Law under Article 13 of the TPTCL PPA read with CIL Rules. The obligation of TPTCL to pay the compensation to JPL in terms of Article 13 of the TPTCL PPA and the CIL Rules is not premised on whether TPTCL was involved in the land acquisition process.

Submissions of Respondent No. 4 ('TPDDL')

17. Besides adopting the submissions of Respondent Nos. 1 & 2, TPDDL has made the following submissions in its reply dated 13.7.2023:

(a) Declared Price of Land is different from the cost of implementation of resettlement and rehabilitation package of land for the Project as per Article 13 of the Tata PPA/PSA. Thus, the Petitioner cannot be allowed to keep both under the same scope.

(b) The term Declared Price of Land has been defined under Article 1.1 of the Haryana PPA as "*the amount mentioned in the RFP, at which the identified land for*

the Site will be transferred to the Seller.” As per Clause 2.4(ii) of the RFP, the land cost was declared to be Rs. 300 crores (tentatively), which was further increased to Rs. 320 crores *vide* the clarification to the RFP issued by HPGCL.

(c) The Project has been constructed on a parcel of land of 1248 acres. Therefore, even at the cost of Rs. 22 lakh per acre, the total compensation to be paid by the Petitioner for 1248 acres of land comes out to be Rs. 274.56 crores, which is less than Rs. 320 crores. Any change in the Declared Price of the Land, which does not increase the total cost of the land, does not amount to a Change in Law event.

(d) In September 2008, the DRO/LAC issued an award to the land owners at the rate of Rs 16 lakh per acre. Thereafter, the land compensation was increased to Rs. 22 lakh per acre, and further, the land owners were allowed to receive interest *vide* the SC Orders. Thus, it is evident that the lower award at Rs. 16 lakh per acre issued to the landowners was due to the fault of either the Petitioner or the concerned authorities issuing the award to the landowners.

(e) Due to the revised estimate of Rs. 22 lakh per acre, the DRO/concerned authority has raised a claim of Rs. 145.40 crores on the Petitioner. However, the majority of the cost claimed is with respect to the penal interest payable to the landowners (for the lapse of approximately 14 years from the date of the possession of the land for the Project). Further, it is well settled that the penal interest payable by any party cannot be capitalized. Therefore, TPDDL cannot be expected to pay the penal interest due to the default on the part of the Petitioner/concerned authorities on the pretext of a Change in Law.

(f) Reliance placed by the Petitioner on the Commission’s orders in Petition Nos. 157/GT/2020 and 489/GT/2020 in the case of Aravalli Station cannot be compared with the present Petition as the Project in question was awarded to the Petitioner through a competitive bidding mechanism under Section 63 of the Act and not on cost plus basis under Section 62 of the Act. In a competitive bid tariff, the Petitioner ought to have analysed the risk of gain and loss. Any incidental increase in cost cannot be claimed as a Change in Law.

(g) TPDDL was not a part of the bidding process nor had any liability to ensure land acquisition for the Project. It was Haryana Discoms’ responsibility to arrange for the land and the Petitioner’s responsibility to acquire land for the Project. Thus, TPDDL

cannot be expected to bear any increase in acquisition cost payable to the landowners.

(h) The Petitioner has not submitted the supporting documents or details with regard to its claim of Change in Law due to an increase in the acquisition cost of the Project land.

Rejoinder of the Petitioner to the Submissions of Respondent No.4

18. *Per contra*, the Petitioner, *vide* affidavit dated 1.8.2023, has submitted as under:

(a) HPGCL, at the time of bidding, had clarified that the total land cost was to include the Declared Price of Land plus the amount paid for the Rehabilitation & Resettlement Policy (R&R). Accordingly, all bidders considered total land cost, including R&R cost, as Rs. 320 Crores at the time of bidding. Even if TPDDL's contention is accepted that the 'Declared Price of Land' is different from the R&R Cost, then also the R&R Cost paid by JPL, which is above the land cost and was not envisaged at the time of participating in the bid, ought to be reimbursed to JPL.

(b) TPDDL's attempt to compute the amount of compensation paid/payable to the landowners is erroneous as per the terms of Section 23(1) of the Land Acquisition Act.

(c) JPL has already paid Rs. 145.40 crores towards the enhanced compensation in response to the demand raised by the DRO / LAC. Further, JPL has estimated an additional payment of approximately Rs. 206.25 crores due to the enhanced compensation to be paid to the landowners.

(d) DRO / LAC is the appropriate authority to determine the area of land to be acquired, the rate of compensation, and the total compensation to be awarded to the landowners. Further, the process of land acquisition was entirely undertaken by the Government of Haryana, and JPL played no role in this process. JPL's obligation is to pay the cost of land acquisition to the DRO/LAC, as per their awards, for further disbursement among landowners. Therefore, no fault can be attributed to JPL.

(e) Compensation rate of Rs. 16 lakh per acre awarded by the DRO / LAC for acquisition of land for the Project for the period from 22.9.2008 to 5.12.2011 was the applicable floor rate fixed by the Government of Haryana for acquisition of land. The floor rates for the acquisition of land in the State were revised to Rs. 16 lakhs per

acre for the 'rest of Haryana Sub-Region of National Capital Region,' *i.e.*, the area in which the Project is located, by the Government of Haryana in terms of the Memorandum dated 6.4.2007. The same rate of compensation was also awarded for the Aravalli's Project, which is a similarly placed project situated opposite to JPL's Project.

(f) TPDDL's contention that interest payable by JPL to the landowners cannot be capitalized or allowed to be recovered from the Procurers due to default on the part of JPL /concerned authorities is incorrect.

(g) TPDDL is taking an inconsistent stand which is impermissible in law. TPDDL has contended that JPL has paid lower compensation in comparison to similar projects in the same area, but on the other hand, has contended that orders passed by the Commission in Petition Nos. 157/GT/2020 and 489/GT/2020, with respect to 'Aravalli Power Company Pvt. Ltd.', are not relevant for the present case.

(h) Although the tariff of the Aravalli Project is governed by Section 62 of the Act and the relevant regulations of this Commission, the principle for compensating the parties for the additional expenditure is to be determined in terms of the applicable provisions of the CIL Rules read with the PPA.

(i) The increase in compensation to be paid to the landowners has occurred on account of the SC Orders after the cut-off date of 20.1.2009. Thus, the said increase in compensation to be paid to the landowners amounts to a Change in Law under Article 13 of the TPTCL PPA read with CIL Rules. The obligation of TPDDL to pay compensation to JPL in terms of Article 13 of the PPA and the CIL Rules is not premised on whether TPDDL was involved in the land acquisition process.

(j) All relevant documentary evidence demonstrating Change in Law and consequent additional expenditure incurred is placed on record by the Petitioner/ JPL.

Hearing dated 20.10.2023

19. During the course of the hearing on 20.10.2023, the learned counsels for the Petitioner submitted that JPL has already paid Rs. 145.40 crores towards enhanced compensation to the landowners based on the demand raised by the DRO/LAC on account of the Hon'ble Supreme Court orders and JPL ought to be compensated

toward the same on an upfront basis. JPL is also seeking an in-principle approval to recover the additional expenditure from procurers by way of supplementary invoices as and when the orders are passed by the DRO/LAC and payments are released by JPL. In response to the specific query of the Commission with regard to the source of finance for the already paid amount of Rs. 145.40 crores, the learned counsels submitted that such amount was paid from internal accruals of JPL.

20. Whereas, the learned counsels for Haryana Discoms submitted that the compensation payable to the Petitioner ought to be allowed on an annuity basis for the remaining period of the Haryana PPA. Further, the learned counsel for Haryana Discoms submitted that keeping in view the amount of Rs. 145.40 core has been paid by the Petitioner from internal accruals, the applicable rate of carrying cost ought to be ascertained on the basis of the actual cost of capital/return as such data would be available with the Petitioner in response to which the learned counsel of the Petitioner submitted that as per the judgement of the Hon'ble Supreme Court in the case of *GMR Warora Energy Ltd. v. CERC and Ors. (2023)*, the carrying cost has to be only at the LPS rate.

Hearing dated 19.04.2024:

21. Further, during the course of the hearing dated 19.4.2024, the learned counsels of the Petitioner/ JPL and Respondent No. 4/ TPDDL made their respective submissions. The learned counsel for Respondent No. 3/ TPTCL adopted the submissions of Respondent No. 4/ TPDDL. The Commission, on the request of the parties, allowed the Petitioner and Respondents to file their respective written submissions/ notes of arguments with a copy to the other side.

22. Pursuant to the directions of the Commission, HPPC (on behalf of Respondent Nos. 1 & 2), the Petitioner and Respondent No. 4 filed their respective written

submissions on 26.4.2024, 1.5.2024 and 3.5.2024. The Petitioner and the Respondents have mainly reiterated their submissions already made in their reply and rejoinder, which are not repeated here for the sake of brevity.

Hearing dated 26.9.2024

23. Since the order in the matter, which was reserved on 19.4.2024, could not be issued prior to the Members of the Commission who formed part of Coram demitting office, the matter was re-listed for hearing. During the course of the hearing, learned senior counsel and learned counsel for both sides submitted that since Pleadings are already complete in the matter and the parties have already made their detailed submissions, the same may be considered, and the matter may be reserved for order. Accordingly, the matter was reserved for order.

Analysis and Decision

24. We have heard the learned counsels for the Petitioners and Respondents, carefully perused the records, and considered the submissions made by the parties. Based on the above, the following issues arise for adjudication:

Issue No. 1: Whether the provisions with regard to notice have been complied with?

Issue No. 2: Whether the event so claimed by the Petitioner constitutes a Change in Law event in terms of Haryana PPA and TPTCL PPA or not?

Issue No. 3: If the answer to issue No. 2 is in the affirmative, what compensation/ relief is to be granted?

The aforementioned issues have been dealt with in the succeeding paragraphs.

Issue No. 1: Whether the provisions with regard to notice have been complied with?

25. In the present matter, the Petitioner/ JPL has sought the Change in Law relief on account of increase in the compensation to be paid to the landowners for acquisition of land for the Project in terms of the Hon'ble Supreme Court's Final Order dated

20.10.2022 and other consequential orders under the provisions of the Haryana PPA dated 7.8.2008 and TPTCL PPA dated 20.1.2009 (collectively referred to as 'PPAs') and the CIL Rules. In this regard, the Respondent No. 4/ TPDDL has rejected the claims of the JPL. TPDDL has submitted that the JPL's reliance on the SC Orders and the interpretation of Clause 2.4 (ii) of the RFP dated 20.7.2007 issued by HPGCL is devoid of merits.

26. As regards issuing the notice of Change in Law event, the relevant provisions of CIL Rules provide as under:

"3. Adjustment in tariff on change in law

(1) On the occurrence of a change in law, the monthly tariff or charges shall be adjusted and be recovered in accordance with these rules to compensate the affected party so as to restore such affected party to the same economic position as if such change in law had not occurred.

(2) For the purposes of sub-rule (1), the generating company or transmission licensee, being the affected party, which intends to adjust and recover the costs due to change in law, shall give a three weeks prior notice to the other party about the proposed impact in the tariff or charges, positive or negative, to be recovered from such other party.

(3) The affected party shall furnish to the other party, the computation of impact in tariff or charges to be adjusted and recovered, within thirty days of the occurrence of the change in law or on the expiry of three weeks from the date of the notice referred to in sub-rule (2), whichever is later, and the recovery of the proposed impact in tariff or charges shall start from the next billing cycle of the tariff.

As per the sub-rule (2) of Rule 3, the affected generating company, which intends to adjust and recover the costs due to the Change in Law, is required to give three weeks prior notice to the other party about the proposed impact in tariff or charges, positive or negative to be recovered from the other party. Further, sub-rule (3) of Rule 3 provides that the affected party is to furnish to the other party the computation of impact in tariff or charges to be adjusted and recovered within thirty days of the occurrence of Change in Law or on the expiry of three weeks from the date

of the notice referred to in sub-rule (2), whichever is later and the recovery of the proposed impact in the tariff or charges shall start from the next billing cycle of tariff.

27. Whereas, the relevant provisions of the Haryana PPA and TPTCL PPA, in regard to the notice of Change in Law event, stipulate as under:

Article 13.3 of Haryana PPA

“13.3 NOTIFICATION OF CHANGE IN LAW

13.3.1 If the Seller is affected by a Change in Law in accordance with Article 13.2 and wishes to claim a Change in Law under this Article, it shall give notice to the Procurers of such Change in Law as soon as reasonably practicable after becoming aware of the same or should reasonably have known of the Change in Law.

13.3.2 Notwithstanding Article 13.3.1, the Seller shall be obliged to serve a notice to all the Procurers under this Article 13.3.2 if it is beneficially affected by a Change in Law. Without prejudice to the factor of materiality or other provisions contained in this Agreement, the obligation to inform the Procurers contained herein shall be material. Provided that in case the Seller has not provided such notice, the Procurers shall jointly have the right to issue such notice to the Seller.

13.3.3 Any notice served pursuant to this Article 13.3.2 shall provide, amongst other things, precise details of:
(a) the Change in Law; and
(b) the effects on the Seller of the matters referred to in Article 13.2”.

Article 13.3 of TPTCL PPA

“13.3 NOTIFICATION OF CHANGE IN LAW

13.3.1 If JPL is affected by a Change in Law in accordance with Article 13.2 and wishes to claim a Change in Law under this Article, it shall give notice to TPTCL of such Change in Law as soon as reasonably practicable after becoming aware of the same or should reasonably have known of the Change in Law.

13.3.2 Notwithstanding Article 13.3.1, JPL shall also serve a notice to TPTCL under this Article 13.3.2 if it is beneficially affected by a Change in Law. Without prejudice to the factor of materiality or other provisions contained in this Agreement, the obligation to inform TPTCL contained herein shall be material. Provided that in case JPL has not provided such notice, TPTCL shall have the right to issue such notice to JPL.

13.3.3 Any notice served pursuant to this Article 13.3.2 shall provide, amongst other things, precise details of:
(c) the Change in Law; and
(d) the effects on JPL of the matters referred to in Article 13.2”.

28. In the present case, JPL issued the first intimation notice to Haryana Discoms and TPTCL on 2.12.2022 referring to the terms of PPAs and CIL Rules *inter alia* stating the increase in the compensation towards the acquisition of land for the Project from Rs. 16 lakhs to Rs. 22 lakhs plus all the statutory benefits including interest under the Land Acquisition Act by the Hon'ble Supreme Court vide Final Order dated 20.10.2022 in SLPs filed by some of the landowners, which constituted a Change in Law. It was also stated that JPL is estimated to incur the additional liability of approximately 206.25 crores in relation to land measuring 1248 acres, and the process of exact determination of compensation by the DRO/LCA was underway. Thereafter, on 25.1.2023, JPL issued the Change in Law notice to the Haryana Discoms and TPTCL under Article 13 of the PPAs and Rule 3 of the CIL Rules elaborating the above event constituted a Change in Law event under the PPAs as well as the CIL Rules and JPL being entitled to be restored to the same economic position as if the said Change in Law event had not occurred. This was again followed up by JPL by issuing another notice dated 15.2.2023 *inter alia* stating that the DRO/LAC is currently tabulating the final amount due and payable to the landowners pursuant to the Final Order dated 20.10.2022 and since the same is a time-consuming process, the parties may determine the manner of recovery of such enhanced compensation so that JPL is in position to pay the same to the landowners as and when demand is raised by the district authorities.

29. In response to the above, HPPC, on behalf of Haryana Discoms, by its letter dated 21.2.2023, responded to the notice stating that the notice served by JPL on account of enhancement of land compensation is not in line with Rule 3 of CIL Rules. Further, HPPC also advised JPL to approach the Appropriate Commission for adjustment of the amount of impact in monthly tariff or charges under a change in law

in line with CIL Rules after receiving the exact amount from State Authorities. *Per contra*, TPTCL, on the recommendation of TPDDL, *vide* its letter dated 22.2.2023, rejected JPL's claim in respect of the Change in Law event. Thus, in the absence of any mutual understanding between the Petitioner/JPL and Respondents, JPL approached this Commission for necessary actions.

30. Further, after the filing of the present Petition, on 28.3.2023, the DRO/LAC raised a demand of Rs. 145,40,16,320/- on JPL towards the enhanced compensation for land *qua* 535.75 acres and sought the release of the same on or before 31.3.2023. Accordingly, JPL made the payment of the said amount to DRO/LAC on 29.3.2023 and *vide* its further notice dated 30.3.2023, also apprised Haryana Discoms and TPTCL about the developments.

31. In terms of the above sequence of events and correspondence, JPL, in our view, has complied with the requirement of serving the notice of Change in Law to the other side in terms of the relevant provisions of the PPAs as well as CIL Rules. Albeit, it is noticed that the exact impact of the Change in Law (*qua* 536 acres out of 1248 acres) came to be determined in terms of the demand letter of the DRO/LAC dated 28.3.2023, i.e., after the filing of the present case and the Respondents, TPDDL and TPTCL having already disputed the claim of Change in Law, the recovery of the Change in Law impact as envisaged under sub-rule (3) of Rule 3 of CIL Rules has not commenced.

32. The issue is answered accordingly.

Issue No. 2: Whether the event so claimed by the Petitioner constitutes a Change in Law event in terms of both Haryana PPA and TPTCL PPA?

33. Indisputably, both the Haryana PPA and TPTCL PPA define the term Change in Law therein, and hence, in terms of Rule 2(c) of the CIL Rules, this definition as

contained in these agreements will prevail over the definition specified in the said Rules.

34. Article 13 of the Haryana PPA dealing with the events of Change in Law is extracted as under:

“13.1.1 ‘Change in Law’ means the occurrence of any of the following after the date, which is seven (7) days prior to the Bid Deadline:

i) the enactment, bringing into effect, adoption, promulgation, amendment, modification or repeal, of any Law or (ii) a change in interpretation of any Law by a Competent Court of Law, tribunal or Indian Governmental Instrumentality provided such Court of Law, tribunal or Indian Governmental Instrumentality is final authority under Law for such interpretation or (iii) change in any consents, approvals or licenses available or obtained for the Project, otherwise than for default of the Seller, which results in any change in any cost of or revenue from the business of selling electricity by the Seller to the Procurers under the terms of this Agreement, or (iv) any change in the (a) Declared Price of Land for the Project or (b) the cost of implementation of the resettlement and rehabilitation package of the land for the Project mentioned in the RFP or (c) the cost of implementing Environmental Management Plan for the Power Station mentioned in the RFP;

but shall not include (i) any change in any withholding tax on income or dividends distributed to the shareholders of the Seller, or (ii) change in respect of UI Charges or frequency intervals by an Appropriate Commission.

Provided that if Government of India does not extend the income tax holiday for power generation projects under Section 80 IA of the Income Tax Act, upto the Scheduled Commercial Operation Date of the Power Station, such non-extension shall be deemed to be a Change in Law.

13.2 APPLICATION AND PRINCIPLES FOR COMPUTING IMPACT OF CHANGE IN LAW

While determining the consequence of Change in Law under this Article 13, the Parties shall have due regard to the principle that the purpose of compensating the Party affected by such Change in Law, is to restore through Monthly Tariff Payments, to the extent contemplated in this Article 13, the affected Party to the same economic position as if such Change in Law has not occurred.

.....

b) Operation Period:

As a result of Change in Law, the compensation for any increase/decrease in revenues or cost to the Seller shall be determined and effective from such date, as decided by the Central Electricity Regulatory Commission whose decision shall be final and binding on both the Parties, subject to rights of appeal provided under applicable Law.

Provided that the above-mentioned compensation shall be payable only if and for increase/ decrease in revenues or cost to the Seller is in excess of an

amount equivalent to one percent (1%) of Letter of Credit in aggregate for a Contract Year.

13.4 TARIFF ADJUSTMENT PAYMENT ON ACCOUNT OF CHANGE IN LAW

13.4.1 Subject to Article 13.2, the adjustment in Monthly Tariff Payment shall be effective from:

- (a) the date of adoption, promulgation, amendment, re-enactment or repeal of Law or Change in Law; or
- (b) the date of order/judgment of the Competent Court or tribunal or Indian Governmental Instrumentality, if the Change in Law is on account of a change in interpretation of Law.

13.4.2 The payment for Changes in Law shall be through Supplementary Bill as mentioned in Article 11.8. However, in case of any change in Tariff by reason of Change in Law, as determined in accordance with this Agreement, the Monthly Invoice to be raised by the Seller after such change in Tariff shall appropriately reflect the changed Tariff.”

35. Similarly, Article 13 of the TPTCL is extracted as under:

“Article 13 : CHANGE IN LAW

13.1 DEFINITIONS

In this Article 13, the following terms shall have the following meanings:

13.1.1 “Change in Law” means the occurrence of any of the following after the Effective Date:

(a) the enactment, bringing into effect, adoption, promulgation, amendment, modification or repeal, of any Law or

(b) a change in interpretation of any Law by a Competent Court of Law, tribunal or Indian Governmental Instrumentality provided such Court of Law, tribunal or Indian Governmental Instrumentality is final authority under Law for such interpretation or

(c) change in any consents, approvals or licenses available or obtained for the Project, otherwise than for default of JPL, which results in any change in any cost of or revenue from the business of selling electricity by JPL to TPTCL under the terms of this Agreement, or

(d) any change in the (a) Declared Price of Land for the Project or (b) the cost of implementation of the resettlement and rehabilitation package of the land for the Project mentioned in the RFP or (c) the cost of implementing Environmental Management Plan for the Power Station mentioned in the RFP;

but shall not include (i) any change in any withholding tax on income or dividends distributed to the shareholders of JPL, or (ii) change in respect of UI Charges or frequency intervals by an Appropriate Commission.

Provided that if Government of India does not extend the income tax holiday for power generation projects under Section 80 IA of the Income Tax Act, upto the Scheduled Commercial Operation Date of the Power Station, such non-extension shall be deemed to be a Change in Law.

13.2 APPLICATION AND PRINCIPLES FOR COMPUTING IMPACT OF CHANGE IN LAW

While determining the consequence of Change in Law under this Article 13, the Parties shall have due regard to the principle that the purpose of compensating the Party affected by such Change in Law, is to restore through Monthly Tariff Payments, to the extent contemplated in this Article 13, the affected Party to the same economic position as if such Change in Law has not occurred.

.....
b) Operation Period

As a result of Change in Law, the compensation for any increase/decrease in revenues or cost to JPL shall be determined and effective from such date, as decided by the CERC whose decision shall be final and binding on both the Parties, subject to rights of appeal provided under applicable Law.

Provided that the above-mentioned compensation shall be payable only if and for increase/ decrease in revenues or cost to JPL is in excess of an amount equivalent to one percent (1%) of Letter of Credit in aggregate for a Contract Year.

13.4 TARIFF ADJUSTMENT PAYMENT ON ACCOUNT OF CHANGE IN LAW

13.4.1 *Subject to Article 13.2, the adjustment in Monthly Tariff Payment shall be effective from:*

- (a) the date of adoption, promulgation, amendment, re-enactment or repeal of Law or Change in Law; or*
- (b) the date of order/judgment of the Competent Court or tribunal or Indian Governmental Instrumentality, if the Change in Law is on account of a change in interpretation of Law.*

13.4.2 *The payment for Changes in Law shall be through Supplementary Bill as mentioned in Article 11.8. However, in case of any change in Tariff by reason of Change in Law, as determined in accordance with this Agreement, the Monthly Invoice to be raised by JPL after such change in Tariff shall appropriately reflect the changed Tariff.”*

36. The term “Law” has been defined under Article 1.1 of both the Haryana PPA and TPCTL PPA as under:

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

37. The events broadly covered under ‘Change in Law’ are as under:



- a) Any enactment, bringing into effect, adoption, promulgation, amendment, modification, or repeal of any law, or
- b) Any change in interpretation of any Law by a Competent Court of law, Tribunal, or Indian Governmental Instrumentality acting as the final authority under law for such interpretation or
- c) Any change in any consents, approvals, or licenses available or obtained for the Project, otherwise than for default of JPL
- d) *Any change in the Declared Price of Land for the Project* or the cost of implementation of the resettlement and rehabilitation package of the land for the Project mentioned in the RFP or the cost of implementing the Environmental Management Plan for the Power Station mentioned in the RFP.
- e) Further, the purpose of compensating the Party affected by such Change in Law is to restore through monthly tariff payments, to the extent contemplated in Article 13, the affected party to the same economic position as if such “Change in Law” has not occurred.
- f) The adjustment in monthly tariff payment shall be effective from the date of adoption, promulgation, amendment, re-enactment, or repeal of Law or Change in Law or the date of order/judgment of the Competent Court or tribunal or Indian Governmental Instrumentality if the Change in Law is on account of a change in interpretation of Law.
- g) The decision of the Commission with regard to the determination of the compensation and the date from which such compensation shall become effective shall be final and binding on both parties, subject to rights of appeal provided under the Act.
- h) The compensation shall be payable for any decrease in revenue or increase in expenses to the seller (JPL) in excess of an amount equivalent to 1% of the value of the standby Letter of Credit in aggregate for the relevant Contract Year.

38. In the present matter, the Petitioner has approached the Commission seeking a declaration that an increase in compensation paid/to be paid to the land owners for the acquisition of land for the Project in terms of the Final Order dated 20.10.2022 in SLP (c) Nos. 18536-18541 of 2022 & batch and consequential orders passed by the Hon'ble Supreme Court qualify as Change in Law under the PPAs and the CIL Rules.

39. Before delving further, it may be pertinent to note the observations of the Hon'ble Supreme Court in the Order dated 20.10.2022, which are reproduced below:

“8. However, at the same time, considering the evidence on record and the sale instances which were relied upon on behalf of the landowners and while considering the fact that the landowners shall be entitled to just and reasonable compensation for the lands acquired and taking into consideration the decision of this Court in the case of Arawali Power Company Private Limited (supra), we are of the opinion that if the landowners in the present case are awarded compensation at the rate of Rs. 22,00,000/- per acre, the same can be said to be just and reasonable compensation. The impugned common judgment and order is required to be modified to the aforesaid extent.

9. Now so far as the landowners in the appeals arising out of RFA Nos. 4322/2016, 4682/2016, 804/2017 and 805/2017 are concerned, considering the order passed by the High Court dated 17.08.2018 passed while condoning the delay in filing/refiling the appeals on condition that the landowners shall not be entitled to interest on the enhanced amount of compensation, if any, the landowners shall not be entitled to interest for the period of delay in filing/refiling the said appeals before the High Court.

10. In view of the above and for the reasons stated above, the present appeals succeed. The impugned common judgment and order passed by the High Court is hereby modified and it is observed and directed that the landowners whose lands have been acquired for Jhajjar Thermal Power Plant shall be entitled to compensation at the rate of Rs. 22,00,000/- per acre. The landowners shall also be entitled to all the statutory benefits including interest which may be available under the Act, 1894. However, it is observed and directed that so far as the landowners in the appeals arising out of RFA Nos. 4322/2016, 4682/2016, 804/2017 and 805/2017 are concerned, they shall not be entitled to any interest on the enhanced amount of compensation for the period of delay in filing/refiling the appeals before the High Court”.

40. As per the Petitioner, the above order, whereby the Hon'ble Supreme Court has increased the rate of compensation to be awarded to the landowners from Rs. 16 lakh per acre to Rs. 22 lakh per acre, along with all statutory benefits, including interest which may be available under the Land Acquisition Act, constitutes a Change in Law event under the PPAs. It is submitted that Article 13.1.1(iv) of the PPAs provides that occurrence of 'any change in the Declared Price of Land for the Project' after the cut-off date as a Change in Law and since the increase in the land compensation on account of the Hon'ble Supreme Court's Final Order and consequential orders has occurred after the respective cut-off date under the PPAs, such change in the Declared Price of Land for the Project qualifies as Change in Law event under Article 13.1.1(iv)

of the PPAs. The Petitioner has also pointed out that in terms of the above Final Order and consequential orders, the DRO/LAC also proceeded to raise a demand of Rs. 145,40,16,320/- dated 28.3.2023 on the Petitioner towards the enhanced land compensation *qua* some of the landowners who approached the Hon'ble Supreme Court, which corresponds to 536 acres out of 1248 acres.

41. The Respondent Nos.1 and 2, *i.e.* Haryana Discoms, have, as such, not objected to the above Change in Law claim of JPL; however, they limited their submissions to the modalities of compensation to be paid for the additional expenditure on account of payment of increased land compensation in light of the SC Orders. On the other hand, Respondent No. 3/TPTCL, as well as Respondent No. 4/TPDDL have vehemently objected to the above Change in Law claim of the Petitioner/JPL.

42. Indisputably, both the PPAs, as quoted above, categorically provide that any change in the 'Declared Price of Land' for the Project post the cut-off date *i.e.* 3.8.2008 for the Haryana PPA and 20.1.2009 for the TPTCL PPA, would constitute a Change in Law event thereby entitling the Petitioner to claim the Change in Law relief(s) in this regard. Moreover, the term 'Declared Price of Land' has not been defined in the TPTCL PPA but has been defined in the Haryana PPA. However, TPTCL PPA specifically provides, in Article 1.2.17, that any capitalised term used but not defined in the said PPA shall have the same meaning ascribed to such term in the RFP and Other Project Documents. The term 'Project Documents' further includes DISCOM PPA, *i.e.*, Haryana PPA attached as Scheduled 19 to TPTCL PPA. The relevant extract of the above provisions of TPTCL PPA is as under:

"Article 1.2.17

Any capitalized term, used but not defined in the PPA, shall have the meaning ascribed to such term in the RFP, and other Project-Documents.

Article 1.1 Definitions

Project Documents mean:

- (a) Construction contracts
- (b) Fuel supply agreements
- (c) O&M contracts, if applicable
- (d) RFQ & RFP
- (e) DISCOM PPA and any other agreements designated in writing as such from time to time by the DISCOMS and JPL;

DISCOM PPA means the power purchase agreement executed between the DISCOMS of Haryana and JPL attached as Schedule 19 herein;

Thus, by virtue of the above provisions, the term 'Declared Price of Land' appearing in the TPTCL PPA shall have the same meaning as defined in the Haryana PPA. The Haryana PPA defines the said term as under:

"Declared Price of Land" means the amount as mentioned in the RFP, at which the identified land for the Site will be transferred to the Seller"

43. The RFP for the Project was issued by HPGCL, on behalf of Haryana Discoms, on 10.7.2007. Clause 2.4 of the RFP provided as under:

"2.4. The Procurer has initiated development of the project at Matenhail (District Jhajjar) and shall complete the following tasks in this regard by such time as specified hereunder:

- i. The site for the Project has already been identified as indicated in Annexure 5;***
- ii. Issue of Section 6 notification by Government of Haryana under Land Acquisition Act, 1894 for the land identified for the Project will be completed at least thirty (30) days prior to Bid Deadline. Intimation of Declared Price of Land and intimation of the estimated costs of the draft resettlement and rehabilitation package, relating to land required for the Power Station will also be given at least thirty (30) days prior to Bid Deadline. It is to be noted that the Successful Bidder is to necessarily acquire 100% of the land set aside for the project and bear the associated costs including interest, if any. The Selected Bidder shall make full and final payment of the land already acquired / to be acquired for this Project within a period of thirty (30) days from the issuance of Letter of Intent (LoI). Tentatively, land cost is likely to be around Rs. 300 crore (Rupees three hundred crore only)."***

Subsequently, by Clarifications to the RFP documents, the amount of Rs. 300 crores, as indicated above, was revised to Rs. 320 crores.

44. Moreover, in furtherance to RFP, HPGCL also issued a Detailed Project Report in December 2007, which *inter alia* provided as under:

“3.2 Land for the Project

For the establishment of 1150 + 15% MW (minimum 1000 MW) coal based power plant, suitable land has been identified and the acquisition process is on. The notification under Section 4 has been issued by District Revenue Officer DRO, Jhajjar on 19.04.2007. The case for notification under section 6 has been forwarded to State Government.

The land is mostly privately owned barren land with some patches of agricultural land of low yield. Area has no human dwelling; Government land involved is only one acre.”

45. In the above context, the Respondent, TPDDL, has firstly argued that in terms of Clause 2.4(ii) of the RFP, HPGCL was required to intimate the ‘Declared Price of Land’ to the Petitioner at least 30 days prior to the Bid Deadline i.e. 10.3.2008 and as such, there is no document on record to suggest such intimation about the ‘Declared Price of Land’ to the Petitioner. It has also submitted that the words “intimation of Declared Price of Land’ as used in the said Clause 2.4(ii), cannot be construed to mean the tentative land cost of Rs. 300 crores (later revised to Rs. 320 crore) in the latter part of the said Clause and the use of word ‘tentative’ itself shows that HPGCL had not given any guarantee that cost of acquisition of land will not increase more than what has been provided in the RFP.

46. We are, however, not persuaded by the above submissions of the Respondent. A bare reading of the provisions of the RFP and DPR, as quoted above, reveals that the process of land acquisition for the Project was already initiated by the State of Haryana, and all steps required under the Land Acquisition Act were taken by the State Authorities and the bidders including the Petitioner had no role in the acquisition process, besides the payment of costs. While it is true that neither the Petitioner nor the Haryana Discoms have confirmed the issuance of any intimation(s) of Declared Price of Land and the estimated cost of R&R package relating to the Project land given by HPGCL in terms of Clause 2.4(ii) of the RFP, even the absence of such separate intimation, in our view, cannot adversely affect the right of the successful bidder to claim the Change in Law relief *qua* change in the Declared Price of Land, if any, after

the cut-off date. Pertinently, the RFP itself provided the likely cost in this regard to be factored in by the prospective bidders. Pertinently, prior to the bid deadline, the amount indicated in Clause 2.4(ii) was also revised by HPGCL from Rs. 300 crores to Rs. 320 crores, thereby clearly conveying the requirement on the part of the bidders to factor in such revised cost while placing their bids.

47. The Respondent, TPDDL, has further argued that the “Declared Price of Land” is nothing but the minimum floor rate, as evident from the Memo dated 6.4.2007 issued by the Government of Haryana and, therefore, cannot be considered as tentative land cost declared by HPGCL under Clause 2.4(ii) of the RFP. It has also been argued that the Final Order dated 20.10.2022, as such, does not refer to any change in the ‘Declared Price of Land’ but instead enhances only the cost of acquisition of land. Moreover, it has nowhere stated either under the RFP or the PPAs that the compensation ultimately payable for the acquisition of land under Section 11 of the Land Acquisition shall not be more than the Declared Price of Land and JPL’s attempt to juxtapose the ‘Declared Price of Land’ with ‘Market Value of Land’ is erroneous.

48. Evidently, the likely land cost indicated by HPGCL in Clause 2.4(ii) of the RFP not only included the ‘Declared Price of Land’ but also the costs towards the R&R packages. This is evident from the total compensation paid by JPL to the landowners for acquiring the total land for the Project after having been selected as the successful bidder as under:

S.No.	Particulars	Amount (INR)
1.	Letter dated 19.02.2010 issued by DRO/LAC to JPL noting the amount of award of Land and Structure.	291,84,94,335
2.	Awards dated 28.05.2010, 14.07.2010, 23.08.2010, 05.12.2011, and 12.03.2010 passed by DRO/LAC, wherein INR 2,17,47,583/- has been awarded for land for ‘Water Pipeline and Structure’.	2,17,47,583
3.	Awards dated 18.09.2010, 30.08.2010, 01.12.2011, 05.12.2011, 15.09.2010, 26.08.2011, and 23.06.2010 for Project land, Air valve, Railway line, and Pump House issued after the Letter dated 19.02.2010.	5,59,51,091

4.	Annuity, in accordance with the Haryana Government Notification dated 07.12.2007 regarding 'Policy for Rehabilitation and Resettlement of landowners-land acquisition oustees whose land has been acquired on or after 05.03.2005'	30,48,35,718
	Total	330,10,28,727

49. Pertinently, the rate of compensation awarded by the DRO/LAC for the acquisition of land for the Project from 22.9.2008 to 5.12.2021 was Rs.16 lakh per acre, which was also the applicable floor rate fixed by the Government of Haryana for the acquisition of land in 'rest of Haryana sub-Region of National Capital Region' in terms of its Memo dated 6.4.2007. The fact of award of compensation at the rate of Rs.16 lakh per acre has also been noted in the Final Order dated 20.10.2022, which ultimately enhances this rate of compensation to Rs. 22 lakh per acre and further extends all the statutory benefits, including interest as may be available under the Land Acquisition Act to concerned land owners. This enhancement in the rate of compensation, along with all other statutory benefits to be paid to the landowners for the acquisition of land for the Project by the Hon'ble Supreme Court, in our view, has to be considered as a change (increase) in the 'Declared Price of Land' as envisaged in the Change in Law clause of the PPAs.

50. As noted above, the term "Declared Price of Land" as defined in the Haryana PPA does not connote any special meaning but *the amount mentioned in the RFP at which the Site will be transferred to the Seller*. While there was no separate intimation of the Declared Price of Land to the bidders, the RFP itself conveyed the likely land cost, which evidently comprised not only the land acquisition cost but also the R&R package cost. Subsequently, the DRO/ LAC proceeded to pass the various awards, under Section 11 of the Land Acquisition Act, for the acquisition of the Project land, granting compensation at the rate of Rs.16 lakh per acre, along with other Compulsory Acquisition Charges, as per the floor rates fixed by the Government of Haryana in its

Memo dated 6.4.2007 which subsequently, came to be enhanced by the Hon'ble Supreme Court in Final Order dated 20.10.2022 and consequential orders under Section 23 of the Land Acquisition Act. This enhancement in the rate of compensation is nothing but the change/increase in the Declared Price of Land, i.e., the prevailing rates as considered by the DRO/LAC in the awards passed by them under Section 11 of the Land Acquisition Act basis which the Project land/Site was ultimately transferred to the Seller.

51. It has to be kept in mind that the Petitioner is not before us seeking the Change in Law relief in respect of the difference between the likely cost indicated in the RFP and the actual cost incurred towards the acquisition of Project Land in terms of various awards passed by the DRO/LAC in this regard. The Petitioner is seeking the Change in Law relief for the enhancement of the land compensation rate, as originally considered by the DRO/LAC in their awards, by the Hon'ble Supreme Court in the Final Order dated 22.10.2022 and the other consequential orders. Neither HPGCL nor the bidders could have foreseen such developments at the relevant point in time and consequently, neither such cost could have been 'intimated' nor factored into while placing their bid. Any contrary submissions advanced by TPDDL in this regard cannot be sustained.

52. The Respondents, TPDDL and TPTCL, have also sought to argue that even if the Declared Price of Land is to be considered as Rs. 22 lakh per acre, the total compensation to be paid by the Petitioner for 1248 acres of land for the Project comes out at Rs. 274,56,00,000/- which is less than Rs. 320 crores. Therefore, any change in the Declared Price of Land also does not increase the total cost of land over and above Rs. 320 crores, leading to the Change in Law event under the PPAs. Per contra, the Petitioner has submitted that the compensation rate of Rs. 22 lakh/acre is only the

base compensation that is payable to the landowners under Section 23(1) of the Land Acquisition Act and does not include the 12% additional amount and 30% solatium payable over and above the base compensation in terms of Section 23 of the said Act. The attempt of the Respondents to compute the amount of total compensation paid/ payable to the land owners based merely on the base compensation is erroneous. We have considered the submissions made by the parties. As already noted above, in terms of the various awards passed by the DRO/LAC from 22.9.2008 to 5.12.2011, the Petitioner had already paid the total compensation of Rs. 330,10,28,727/- to the landowners for the total land acquired for the Project. Further, as rightly pointed out by the Petitioner, the enhancement of the compensation rate to Rs. 22 lakh per acre in the Final Order dated 20.10.2022 is only the base compensation under Section 23(1) and is not inclusive of additional amount @ 12% under Section 23(1A) or the solatium of 30% of the base compensation under Section 23(2) of the Land Acquisition Act, which have indeed been awarded by the DRO/LAC while computing the final amount due and payable to land owners in furtherance to the orders passed by the Hon'ble Supreme Court. Hence, we find the approach of the Respondents, TPDDL, and TPTCL to compute the total land compensation by considering merely the base rate of Rs. 22 lakh per acre as misconceived and erroneous.

53. The Respondents have further contended that the Demand letter dated 28.3.2023 issued by the DRO for Rs. 145.40 crores accounts for payment of interest @ 9% (total of Rs. 5.38 crore) and penal interest @ 15 % (total Rs. 117.41 crore) for the period 2008-09 and 2009-23 respectively and as per Clause 2.4(ii) of the RFP, liability of the interest component(s) is required to be borne by the Petitioner only and as such cannot be passed on to the Respondents. However, we also find the said contention misplaced. The liability of the above interest components has arisen as a result of the enhancement of the rate of compensation by the Hon'ble Supreme Court

in the Final Order dated 22.10.2022. In the said order itself, the Hon'ble Supreme Court has held that the landowners are entitled to not only compensation at the rate of Rs. 22 lakh per acre but also all the statutory benefits, including the interest available under the Land Acquisition Act. Accordingly, the Petitioner has been required to bear the liability of these interest components as determined by the DRO/LAC pursuant to the Final Order dated 22.10.2022. The liability of the Petitioner to bear associated cost 'including interest therein', cannot be read as to also include the liability of interest arising out of the change in the Declaration of Price of Land, i.e., Change in Law event.

54. The Respondents, TPDDL, and TPTCL have also argued that neither of them had any role in the land acquisition process, and the land acquisition process was to be undertaken by the Haryana Discoms. Therefore, no liability can be fixed on TPDDL or TPTCL. *Per contra*, the Petitioner has submitted that the increase in land compensation to be paid to the landowners has occurred on account of the Hon'ble Supreme Court's Final Order dated 20.10.2022 and other consequential orders, after the cut-off dates of the PPAs and that the obligation of TPDDL or TPTCL to pay the compensation to the Petitioner is not premised on whether TPTCL or TPDDL was involved in the land acquisition process. We have considered the submissions made by the parties. As rightly pointed out by the Petitioner, the liability of the Respondents to make payments towards the Change in Law compensation under the PPAs is indeed not premised upon their being part of the tendering process and/or land acquisition process. Hence, it cannot be considered as a valid ground to contest their liability to make the Change in Law compensation as arising out of the provisions of the agreements.

55. This issue is answered accordingly.

Issue No.3: If the answer to issue No. 2 is in the affirmative, what compensation/relief is to be granted?

56. Having held that the Petitioner is entitled to recover the additional expenditure incurred on account of payment of the additional compensation to the landowners on account of the Change in Law event from the Haryana Discoms and TPTCL in light of the Hon`ble Supreme Court Orders, we further proceed with the next issue, *i.e.*, compensation/relief to be given to the Petitioner.

57. Before proceeding further, it is to be noted that the Change in Law claim of the Petitioner is only disputed by TPTCL and TPDDL which is already dealt with in the preceding part of this order. On the other hand, the Haryana Discoms have restricted its submissions only towards (i) the methods of recovery of the additional compensation paid by the Petitioner, (ii) payment of Late Payment Surcharge ('LPS'), carrying cost, and (iv) regarding the Supplementary Invoices.

58. The Respondent, HPPC, has submitted that the mode of payment of the additional compensation for relief should be on an annuity method spread over the period not exceeding the duration of the PPA as a percentage of the tariff agreed upon in the PPA. Further, it has also been submitted that the Haryana PPA and CIL Rules provide for additional payment by way of adjustment in monthly tariff. Also, no loss can be attributed to the Petitioner if the annuity model is accepted considering that the Petitioner has admitted to avail of the loan/financing for further payment to the landowners. HPPC has also submitted that as per Article 11.8.3 of the Haryana PPA, a Late Payment Surcharge cannot be made applicable as the Due Date for payment of bills for enhanced compensation is not fixed, and admittedly, no bills have been raised so far. It has also been submitted that the PPA specifically provides that no direct or consequential losses can be claimed by the Petitioner, and therefore, in the

absence of the specific provision in the agreement, the claim of carrying cost cannot be granted. Without prejudice, HPPC has also submitted that the carrying cost, if allowed, ought to be lower than normative or actual, which is in line with the principle of reasonability and the reliance placed by the Petitioner during the hearing on the Judgment of Hon'ble Supreme Court in GMR Warora Energy Ltd. v. CERC and Ors. [(2023) SCC OnLine 464], to contend that carrying cost has to be only at LPS is misplaced as the said judgement is not applicable to the facts of the present case.

59. *Per contra*, the Petitioner has submitted that the Annuity mode for recovery of the additional compensation is neither borne out of the terms of Haryana PPA and CIL Rules nor relevant /feasible in the present case. It is also submitted that no difficulty or limitation in making the one-time payment has been made out either by the Haryana Discoms or by TPDDL. The Petitioner has also pointed out that it has already paid the amount of Rs. 145,40,16,320/- to DRO/LAC in terms of a demand raised, and various proceedings are also underway for raising further demands on the Petitioner for the enhanced land compensation. Therefore, it is required that the Petitioner has available funds to pay the DRO/LAC demands, as and when raised, as well as to ensure its operations are being carried out without any hindrance; therefore, the Petitioner ought to be paid the amount of Rs. 145.40 crores, as already paid by it to DRO/LAC, as a one-time payment. As regards the carrying cost, the Petitioner has submitted that the principle of restitution is inbuilt in Article 13.2 of the PPAs and Rule 3(1) of the CIL Rules and in terms of catena of judgments including Uttar Haryana Bijli Vitran Nigam Limited and Anr. v. Adani Power Ltd. & Ors. [(2019) 5 SCC 325, Uttar Haryana Bijli Vitran Nigam Limited and Anr. v. Adani Power (Mundra) Ltd. and Anr, (2023) 2 SCC 624 and GMR Warora Energy Ltd. v. CERC & Ors. 2023 SCC Online 464, the Petitioner is entitled to carrying cost.

60. We have considered the submissions made by the parties. The entitlement to carrying cost where the agreement specifically contains restitutionary principles is no longer *res-integra*. The APTEL, in its judgment dated 13.4.2018 in Appeal No. 210 of 2017 (*Adani Power Ltd (APL) vs CERC & Ors*), has allowed the carrying cost on the claim under a Change in Law and held as under:

“In the present case we observe that from the effective date of Change in Law the Appellant is subjected to incur additional expenses in the form of arranging for working capital to cater the requirement of impact of Change in Law event in addition to the expenses made due to Change in Law. As per the provisions of the PPA the Appellant is required to make application before the Central Commission for approval of the Change in Law and its consequences. There is always time lag between the happening of Change in Law event till its approval by the Central Commission and this time lag may be substantial. As pointed out by the Central Commission that the Appellant is only eligible for surcharge if the payment is not made in time by the Respondent Nos. 2 to 4 after raising of the supplementary bill arising out of approved Change in Law event and in PPA there is no compensation mechanism for payment of interest or carrying cost for the period from when Change in Law becomes operational till the date of its approval by the Central Commission. We also observe that this Tribunal in SLS case after considering time value of the money has held that in case of re-determination of tariff the interest by a way of compensation is payable for the period for which tariff is re-determined till the date of such re-determination of the tariff. In the present case after perusal of the PPAs we find that the impact of Change in Law event is to be passed on to the Respondent Nos. 2 to 4 by way of tariff adjustment payment as per Article 13.4 of the PPA... From the above it can be seen that the impact of Change in Law is to be done in the form of adjustment to the tariff. To our mind such adjustment in the tariff is nothing less then re-determination of the existing tariff.

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

61. The aforesaid judgment of the APTEL was challenged before the Hon’ble Supreme Court wherein the Hon’ble Supreme Court vide its judgment dated 25.2.2019 in Civil Appeal No. 5865 of 2018 with Civil Appeal No. 6190 of 2018 (*Uttar Haryana Bijili Vitran Nigam Limited & Anr. Vs. Adani Power Ltd. & Ors.*) has upheld the

directions of payment of carrying cost to the generator on the principles of restitution and held as under:

“10. A reading of Article 13 as a whole, therefore, leads to the position that subject to restitutionary principles contained in Article 13.2, the adjustment in monthly tariff payment, in the facts of the present case, has to be from the date of the withdrawal of exemption which was done by administrative orders dated 06.04.2015 and 16.02.2016. The present case, therefore, falls within Article 13.4.1(i). This being the case, it is clear that the adjustment in monthly tariff payment has to be effected from the date on which the exemptions given were withdrawn. This being the case, monthly invoices to be raised by the seller after such change in tariff are to appropriately reflect the changed tariff. On the facts of the present case, it is clear that the respondents were entitled to adjustment in their monthly tariff payment from the date on which the exemption notifications became effective. This being the case, the restitutionary principle contained in Article 13.2 would kick in for the simple reason that it is only after the order dated 04.05.2017 that the CERC held that the respondents were entitled to claim added costs on account of change in law w.e.f. 01.04.2015. This being the case, it would be fallacious to say that the respondents would be claiming this restitutionary amount on some general principle of equity outside the PPA. Since it is clear that this amount of carrying cost is only relatable to Article 13 of the PPA, we find no reason to interfere with the judgment of the Appellate Tribunal... 16...There can be no doubt from this judgment that the restitutionary principle contained in Clause 13.2 must always be kept in mind even when compensation for increase/decrease in cost is determined by the CERC.”

62. In the present case also, Article 13 of the PPAs contains restitutionary principle and provides as under:

Haryana PPA & TPTCL PPA

“13.2 APPLICATION AND PRINCIPLES FOR COMPUTING IMPACT OF CHANGE IN LAW

While determining the consequence of Change in Law under this Article 13, the Parties shall have due regard to the principle that the purpose of compensating the Party affected by such Change in Law, is to restore through Monthly Tariff Payments, to the extent contemplated in this Article 13, the affected Party to the same economic position as if such Change in Law has not occurred.

63. Besides the above provision of the PPAs, the sub-rule (1) of Rule 3 of the CIL Rules (*supra*) also contains a restitutionary principle inasmuch as it requires to compensate the affected party so as to restore such affected party to the same economic position as if the Change in Law had not occurred. Accordingly, the

Petitioner is eligible for a carrying cost on the additional expenditure/cost incurred on account of the Change in Law event so allowed by this Commission.

64. Insofar as the rate of carrying cost is concerned, as considered by the Commission in its various orders, including the order dated 17.9.2018 in Petition No. 235/MP/2015 [AP(M)L vs UHBVNL & Ors.], the Petitioner shall be eligible for the carrying cost at the actual interest rate paid by the Petitioner for arranging funds (supported by the Auditor's Certificate) or the Rate of Interest on Working Capital rate as per the applicable CERC Tariff Regulations or the Late Payment Surcharge Rate as per the PPAs, whichever is the lower. For the sake clarity, the actual interest rate paid by the Petitioner for arranging funds shall be taken as actual rate of short-term working capital funding of the Petitioner at the relevant point as supported by the Auditor's Certificate.

65. For computing the impact of Change in Law during the Operation Period, the PPAs, as such, do not prescribe any formula or methodology for compensating the affected party except for having regard to restoring the affected party through Monthly Tariff Payments to the same economic position as if the Change in Law had not occurred. Thus, for the Operating Period, the PPAs vest the discretion of devising the methodology for awarding the Change in Law compensation to the Commission. Similarly, Sub-rule (4) of Rule 3 of the CIL Rules provides as under:

“(4) The impact of change in law to be adjusted and recovered may be computed as one time or monthly charges or per unit basis or a combination thereof and shall be recovered in the monthly bill as the part of tariff.”

The above sub-rule also envisages the recovery of Change in Law impact as a one-time payment or through monthly charges or per unit basis or any combination of them to be recovered in the monthly bill as part of the tariff.

66. However, keeping in view the overall facts & circumstances including the aspect of the additional expenditure of Rs.145,40,16,320/- already incurred by the Petitioner towards enhanced land compensation during the Operating period, and such sum is unlikely to be substantial compared to the amounts under the running Monthly Bills being raised by the Petitioner upon the Haryana Discoms, we deem it appropriate to direct the payment of such compensation by the Procurers as a one-time payment. Accordingly, the Petitioner shall be entitled to claim the above additional expenditure along with carrying cost, to be computed from the date of incurring such additional cost till the date of this order at the rate indicated above, as a one-time payment to be paid within the period of sixty days from the date of raising of the supplementary invoice(s) to that effect. The failure on their part to make the payments within the above stipulated period would kick off the liability of the Late Payment Surcharge. It is also clarified that the liability of the Haryana Discoms and TPTCL *qua* this enhanced land compensation shall be in proportion to their contracted capacity under the PPAs. Needless to add, both the TPTCL PPA and Tata PSA being back-to-back, TPDDL shall be liable to make Change in Law compensation to TPTCL as paid by it to the Petitioner under the TPTCL PPA.

67. The Petitioner has also submitted that so far, it has made payment to the landowners who have approached the Hon'ble Supreme Court, corresponding to approx. 536 acres out of a total of 1248 acres, and thus, the landowners for approximately 712 acres are yet to receive the compensation in accordance with the Hon'ble Supreme Court Order, as and when they approach the Hon'ble Supreme Court, and DRO/LAC raises the demand in this regard. The Petitioner has also pointed out that as on date, 8 SLPs are currently pending before the Hon'ble Supreme Court and the DRO/LAC has also allowed enhanced land compensation to erstwhile

landowners, who had filed the necessary proceedings under Section 28A of the Land Acquisition Act but the exact claim in this regard is yet to be raised. In this regard, the Petitioner has also prayed to allow the recovery of the additional expenditure from the Respondents, by way of the Supplementary Invoices, as and when it makes payment as per the orders passed by DRO/LAC along with the computation of exact compensation to be paid to the landowners. As to the manner of its recovery, JPL has also suggested that as and when orders with computation of enhanced compensation are passed by DRO/LAC and the payments towards the same are released by JPL, it will raise the Supplementary Invoice on the Procurers along with demand raised by DRO/LAC and proof of payment by JPL. Also, JPL will carry out an annual reconciliation with Procurers of amounts paid by JPL to DRO/LAC and the amounts claimed from /paid by the Procurers.

68. Having already held that the increase in the compensation to be paid to the landowners for the acquisition of land for the Project in terms of the Hon'ble Supreme Court's Final Order dated 22.10.2022 and the other consequential orders constitutes a Change in Law events under the provisions of the PPAs, we see no reason for not permitting the Petitioner to claim the enhanced compensation from the Procurers with regard to the balance land/landowners, as and when, the necessary orders are passed by the DRO/LAC, and the payments towards the same are released by it. Accordingly, the Petitioner will be entitled to raise the Supplementary Invoice(s) towards the enhanced land compensation after having made the payments in terms of the orders/demands of DRO/LAC, and the Procurers will be required to pay such amounts within the period of sixty days from the date of such invoice(s). Needless to add, the Petitioner, along with such Supplementary Invoices, shall provide all the necessary supporting documents, including demands raised by the DRO/LAC and proof of payments.

69. Accordingly, Petition No. 102/MP/2023 is disposed of in terms of the above discussions and findings.

Sd/-
(Harish Dudani)
Member

sd/-
(Ramesh V. Babu)
Member

sd/-
(Jishnu Barua)
Chairperson

