



नई दिल्ली
NEW DELHI

याचिका संख्या./ Petition No. 109/MP/2023

कोरम/ Coram:

श्री जिष्णु बरुआ, अध्यक्ष/Shri Jishnu Barua, Chairperson
श्री अरुण गोयल, सदस्य/ Shri Arun Goyal, Member
श्री पी. के. सिंह, सदस्य / Shri P. K. Singh, Member

आदेश दिनांक/ Date of Order: 1st of May, 2024

IN THE MATTER OF:

Petition under Section 79 of the Electricity Act, 2003 read with Articles 12.2 of the Power Purchase Agreements dated 31.12.2019 for the development of 450 MW ISTS connected Wind-Solar Hybrid power project, entered between Adani Solar Energy Jaisalmer One Private Limited (formerly known as SBE Renewables Ten Projects Private Limited) and Solar Energy Corporation of India Limited seeking Change in Law compensation along with Carrying Cost.

AND IN THE MATTER OF:

Adani Solar Energy Jaisalmer One Private Limited,
(Formerly known as SBE Renewables Ten Projects Pvt. Ltd.)
Registered office: C 105, Anand Niketan New Delhi
South Delhi-110021 IN

.....Petitioner

Versus

- Solar Energy Corporation of India Limited,**
6th Floor, Plate-B, NBCC Office Block Tower-2,
East Kidwai Nagar, New Delhi-110023.
- Chhattisgarh State Power Distribution Company Limited,**
4th Floor, Vidhyut Sewa Bhawan

Danganiya, Raipur – 492013

3. **Haryana Power Purchase Centre,**
2nd Floor, Shakti Bhavan, Sector- 6,
Panchkula-134108

....Respondents

Parties Present:

Shri Amit Kapur, Advocate, AHEJOL
Ms. Sakshi Kapoor, Advocate, AHEJOL
Ms. Priyakshi Bhatnagar, Advocate, AHEJOL
Shri Subham Bhut, Advocate, AHEJOL
Shri Ravi Sinha, AHEJOL
Ms. Sonia Madan, Advocate, HPPC
Shri M. G. Ramachandran, Sr. Advocate, SECI
Ms. Anushree Bardhan, Advocate, SECI
Ms. Surbhi Kapoor, Advocate, SECI

आदेश/ ORDER

The Petitioner, M/s Adani Solar Energy Jaisalmer One Private Limited (ASEJOPL) (formerly known as M/s SBE Renewables Ten Projects Pvt. Ltd.) is a generating company and is engaged in the business of generation of electricity and has set up the Project in the State of Rajasthan having a total Wind-Solar Hybrid capacity of 450 MW. Solar Energy Corporation of India Limited (SECI) has been designated as the implementing agency for the implementation of the scheme for “*Setting-up of 2500 MW ISTS-connected Wind-Solar Hybrid Power Projects*” under the Guidelines issued by the Ministry of New & Renewable Energy (MNRE) vide F.No. 238/78/2017-Wind dated 25.05.2018, under the National Wind-Solar Hybrid Policy issued by MNRE dated 14.05.2018. SECI floated a Request for Selection (RfS) vide RfS No. SECI/C&P/HPD/1200MW/HYB/T1/RfS/062018 dated 22.06.2018 for selection of hybrid power developers (HPDs) for development of cumulative capacity of 1200 MW. *M/s SBE Renewables Ten Private Limited* submitted the bids on 20.11.2018, and the e-reverse auction was conducted on 05.12.2018. SBE Renewables Ten Private Limited was declared a successful bidder and Letters of Award for an aggregate capacity of 450 MW (LoA No. SECI/C&P/HPD/T1/LOA/SBERTPL/P1/28522 & LoA No. SECI/C&P/HPD/T1/LOA/SBERTPL/P2/28523) were issued on 25.01.2019. *M/s SBE Renewables Ten Private Limited* formed a project company, *M/s. SBE*

Renewable Ten Projects Private Limited (the Petitioner) within the provisions of the RfS for the development of 150 MW and 300 MW ISTS-connected Wind-Solar Hybrid Power Project(s), generation and sale of wind-solar hybrid power under the above RfS. The Petitioner executed the Power Purchase Agreements on 31.12.2019 (with an effective date as 08.11.2019). As per the PPAs, the scheduled commissioning date was 07.05.2021. Pursuant thereto, the Petitioner also executed the Wrap Agreement on 21.12.2021 with SECI providing consolidation/merger of aforesaid two PPAs (150MW +300MW) dated 31.12.2019 into a single PPA with an intent of implementing the project as a single project of 450 MW hybrid capacity. SECI has executed Power Sale Agreements (PSAs) with Chhattisgarh State Power Distribution Company Limited and Haryana Power Purchase Centre for the onward sale of 450 MW hybrid power. The Petitioner is seeking a change in law compensation along with carrying cost.

2. 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 & Renewable Energy (MNRE). SECI is responsible for the implementation of various schemes of MNRE. SECI is the Intermediary Procurer of power from renewable generators for further sale to buying entities.
3. Respondents No. 2 and 3, Chhattisgarh State Power Distribution Company Limited (CSPDCL) and Haryana Power Purchase Centre (HPPC) are the distribution licensees engaged in power distribution activities in the States of Chhattisgarh and Haryana.
4. The Petitioner has made the following prayers:
 - a) *Admit the present Petition;*
 - b) *Hold and declare that the following are the Change in Law events under Article 12.1 of the PPAs dated 31.12.2019 read with Wrap Agreement dated 21.12.2021: -*
 - i. ***Hon'ble Supreme Court's Order dated 19.04.2021 in I.A. No. 85618 of 2020 in M.K. Ranjitsinh v. Union of India, Writ Petition (Civil) No. 838 of 2019 directing installation of bird diverters on transmission lines;***
 - ii. *Department of Revenue, Ministry of Finance, (Government of India)'s Notification No. 07/2021-Customs dated 01.02.2021; Notification No. 03/2021-Customs dated 01.02.2021 read with Ministry of Finance's letter No. D.O.F No. 334/02/2020-TRU dated 01.02.2021 increasing the rate of Basic Custom Duty (BCD) from 5% to 20% on Solar Inverter;*

- iii. Department of Revenue, Ministry of Finance, (Government of India)'s **Notification No. 8/2021-Central Tax (Rate)** dated 30.09.2021 read with Ministry of Finance's (State of Rajasthan) Notification dated 30.09.2021 increasing the rate of GST from 5% to 12%;
- c) Direct Respondent No.1 i.e., SECI to compensate Adani Solar for the additional expenditure incurred due to the above Change in Law events.
- d) Allow Carrying Costs at the applicable Late payment surcharge (LPS) rate computed on compounding basis for each Change in Law event from respective date of occurrence of Change in Law events till the date of actual realisation of compensation.
- e) Pass such further order(s) as this Ld. Commission may deem just and proper in the facts and circumstances of the case and in interest of justice.

Factual Matrix:

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

Location	450MW (300 MW & 150MW) project located at Khodal, Devka, Rajdal, Madihari, Junejo ki Dhani, Mati ka Gol-Village, Shiv- Tehsil, Bamer-District and Rivdi, Sangramsingh ki Dhani-Village, Fatehgarh-Tehsil, Jaisalmer-District, State of Rajasthan
Nodal agency	SECI
Tariff	Rs.2.67/kWh
Capacity (MW)	450 MW (300 MW + 150 MW)
Power	WIND SOLAR HYBRID
Date of notification of Basic Custom Duty Notification No. 1/2011 (2011 BCD Notification)	06.01.2011
Date of Notification No.1/2017-Central Tax (Rate) (2017 GST Notification)	28.06.2017
RfS was floated on	22.06.2018
Bid submitted on	20.11.2018
E-Reverse auction held on	05.12.2018
Letter of Award (LOA) issued on	25.01.2019
Power Sale Agreement (PSA) executed on	400 MW with CSPDCL- 20.06.2019; 50 MW with HPPC- 11.07.2019
Effective date of the PPA	08.11.2019
PPAs executed on	31.12.2019

Date of notification of Basic Custom Duty Notification No. 7/2021 and Notification No. 3/2021 (2021 BCD Notifications)	01.02.2021
Hon'ble Supreme Court order in the matter of M.K. Ranjitsinh v. Union of India (SC GIB Order)	19.04.2021
Scheduled Commercial Operation Date (SCoD) of the projects	07.05.2021
Date of Notification of 8/2021- Central Tax (Rate) (2021 GST Notification)	30.09.2021
Date of notification No. F.12(1)FD/Tax/2021-60 by the Government of Rajasthan, Finance Department	30.09.2021
Extended SCOD of the projects	07.10.2021; 22.12.2021; As per letter dated 26.08.2022, of SECI, SCoD was further extended to 29.09.2022 or date of operationalisation of LTA, whichever is later.
LTA Operationalized date	04.12.2022
COD of the projects	04.12.2022
Wrap Agreement	21.12.2021

6. The present petition was filed on 15.03.2023. The Petition was listed for hearing on 10.08.2023, and the Commission, after hearing the submissions of the parties, admitted the petition. On 25.10.2023, the Commission, after hearing the submissions of the parties, permitted the Petitioner to file its Rejoinder. On 18.12.2023, the Commission permitted HPPC to demonstrate the need to tag the instant Petition with Petitions No. 345/MP/2022 and 31/MP/2023. During the course of the hearing dated 03.01.2024, HPPC submitted that as the Petitioner has not made any claims regarding the imposition of safeguard duty, there is no need to tag the instant petition with the aforesaid petitions. The Commission, after hearing the submissions of the parties, permitted the parties to file their respective written submissions and the matter was reserved for Orders.
7. We have heard the learned counsels for the Petitioner and Respondents and have carefully perused the records and considered the submissions of the parties.
8. On the basis of the submissions of the contracting parties, the following issues arise for adjudication:

Issue No. I: *Whether Hon'ble Supreme Court's order dated 19.04.2021 in IA. No. 85618 of 2020 (in Writ Petition (Civil) No. 838 of 2019) in the matter of M.K. Ranjitsinh v. Union of India directing installation of bird diverters on transmission lines; introduction of Notification No. 03/2021 and Notification No. 07/2021-Customs dated 01.02.2021 issued by the Department of Revenue, Ministry of Finance, Government of India; the introduction of Notification No.8/2021- GST issued by Ministry of Finance, Government of India issued by Government of India amounts to Change in Law events under Article 12 of the Power Purchase Agreement dated 31.12.2019? AND Whether the Petitioner is entitled to compensation towards additional expenditure on account of a Change in Law event in terms of Article 12.2 of the PPA?*

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

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

9. Before analysing the issues at hand, it is pertinent to mention that HPPC, in its submissions, contended that the instant Petition should be dismissed on the sole ground of being time-barred as Change in Law claims relate to 2021 and the Petition was filed in the year 2023. *Per Contra*, the Petitioner has submitted that it has claimed a Change in Law during the construction period of the project only, and the CoD of the project is 04.12.2022. Upon completion/ COD of the project, the Petitioner acted in a prompt manner with respect to submitting its change in law claims. Further, in order to compute the change in law impact, it is important to complete the project first. Even otherwise, if the limitation period of three years under the Limitation Act, 1963, from the cause of action (2021) is considered, the present petition is filed within the limitation. The provisions of the PPAs do not specify a timeline within which it is required to approach the Commission. HPPC cannot introduce an extraneous qualification/filter that is not borne out from either the PPAs or guidelines.
10. We note that Part X, S.No.113 (Suits for which there is no prescribed period) of the Schedule specified under the Limitation Act, 1968 states as follows:

Description of suit	Period of limitation	Time from which period begins to run
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PART X.—SUITS FOR WHICH THERE IS NO PRESCRIBED PERIOD

113. Any suit for which no period of limitation is provided elsewhere in this Schedule.	Three years.	When the right to sue accrues.
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11. From the above, we observe that the right to sue (where no specific period of limitation is mentioned) for any party accrues within three years from the cause of action.

12. In the instant Petition, the Petitioner has submitted that the following change in law events impacted its project, and the Petitioner is entitled to compensation under Article 12.1 of the PPAs dated 31.12.2019 read with Wrap Agreement dated 21.12.2021: -

- a) Hon'ble Supreme Court's Order dated 19.04.2021 in I.A. No. 85618 of 2020 in *M.K. Ranjitsinh v. Union of India, Writ Petition (Civil) No. 838 of 2019* directing the installation of bird diverters on transmission lines (*SC GIB Order*)
- b) Department of Revenue, Ministry of Finance, (Government of India)'s Notification No. 07/2021-Customs dated 01.02.2021; Notification No. 03/2021-Customs dated 01.02.2021 read with Ministry of Finance's letter No. D.O.F No. 334/02/2020-TRU dated 01.02.2021 increasing the rate of Basic Custom Duty (BCD) from 5% to 20% on Solar Inverter (*2021 BCD Notifications*)
- c) Department of Revenue, Ministry of Finance, (Government of India)'s Notification No. 8/2021-Central Tax (Rate) dated 30.09.2021 read with Ministry of Finance's (State of Rajasthan) Notification dated 30.09.2021 increasing the rate of GST from 5% to 12% (*2021 GST Notification*)

13. We note that change in law events *viz.* *SC GIB Order* dated 19.04.2021; *2021 BCD Notifications* dated 01.02.2021 and *2021 GST Notifications* dated 30.09.2021 were issued in 2021. As per PPAs dated 31.12.2019 read with the Wrap Agreement dated 21.12.2021, the SCoD of the project was 07.05.2021, and the Petitioner achieved commissioning on 04.12.2022. After achieving the CoD, vide letter dated 03.03.2023, the Petitioner sought reimbursement of additional cost incurred against which SECI, vide letter dated 07.03.2023, requested the

Petitioner to approach the Commission for approval of the change in law claims. Subsequently, the Petitioner filed the petition on 15.03.2023. As per the law of limitation, the period of limitation is 3 years. Even if we consider the cut-off date for computation of the limitation period as 01.02.2021, the Petition was filed within the limitation period, i.e., within 01.02.2024. Hence, we hold that the instant petition is filed within the prescribed time and as per law.

14. Now, we proceed to discuss the aforesaid issues:

Re: Issue No. I

Whether Hon'ble Supreme Court's order dated 19.04.2021 in IA. No. 85618 of 2020 (in Writ Petition (Civil) No. 838 of 2019) in the matter of M.K. Ranjitsinh v. Union of India directing installation of bird diverters on transmission lines; introduction of Notification No. 03/2021 and Notification No. 07/2021-Customs dated 01.02.2021 issued by the Department of Revenue, Ministry of Finance, Government of India; the introduction of Notification No.8/2021- GST issued by Ministry of Finance, Government of India issued by Government of India amounts to Change in Law events under Article 12 of the Power Purchase Agreement dated 31.12.2019? AND Whether the Petitioner is entitled for compensation towards additional expenditure on account of a Change in Law event in terms of Article 12.2 of the PPA?

15. Briefly, the Petitioner has submitted as under:

Re. SC GIB Order

- a) The bid in the instant petition was submitted on 20.11.2018, which is also the cut-off date as per Article 12.1.1 of the PPAs. As on the Cut-Off date, i.e., 20.11.2018, there was no requirement to install bird diverters.
- b) The *SC GIB Order* resulted in the introduction of additional requirements to install bird diverters and lay transmission lines under the ground.
- c) The Petitioner was obligated to lay dedicated transmission lines from the Project for connection to the ISTS. As the Project location falls within the potential habitat of GIB, the dedicated transmission line for connection to the ISTS is also subject to measures as prescribed by the *SC GIB Order*. The Petitioner's obligations were not only confined to the construction of the power plant but it was also obligated to lay dedicated transmission lines and arrange interconnection facilities to ensure the evacuation of power from the Project. Therefore, in view of the *SC GIB Order*, the Petitioner installed bird diverters on the Fatehgarh-II (new) PS 220kV S/c line. In addition, there is also a 33kV overhead transmission line (under the Petitioner's scope) that connects the generation end of the plant to Fatehgarh PS. From Fatehgarh PS it is upgraded to 220kV and fed into the grid.

As per the *SC GIB order*, in all existing overhead powerlines in the priority and potential GIB areas, steps shall be taken to install bird diverters pending consideration regarding undergrounding of such powerlines. Since 220 kV and 33 kV overhead transmission lines were falling under the GIB area, the Petitioner was required to install the Bird Diverters on overhead transmission lines. *SC GIB Order* allows pass-through of the costs incurred by the generators due to the installation of bird diverters. Therefore, this Commission ought to grant change in law reliefs to the Petitioner on the ground that the *SC GIB Order* recognised that payment of compensation for the expenditure incurred due to compliance with the directives.

- d) The following number of bird diverters have been installed conforming to the Central Electricity Authority’s (*CEA*) “*Technical Specifications for Bird Flight Diverters*” (dated 01.02.2021 and amended on 28.04.2022).

Installed BFD numbers at 220 KV	Installed BFD numbers at 33 KV
11,799	29,600

- e) The Commission vide order dated 08.03.2023 in Petition No. 245/AT/2022 in the matter of *SECI v. AMP Energy Green Private Limited & Ors.* has held that the *SC GIB Order* requiring the additional actions/measures to be adopted by the developers located in the potential and priority habitat of GIB after the cut-off date would qualify as the change in law under Article 12 of the PPAs.
- f) The *SC GIB Order* has resulted in an additional expenditure of INR 3.54 Crores including the Carrying Costs of Rs. 53 Lakhs computed up to 31.03.2023) as the Petitioner has installed bird diverters on 220 kV and 33 kV transmission lines.

Re. 2021 BCD/2021 GST Notifications

- g) After the cut-off date of 20.11.2018, *2021 BCD Notifications* were notified. The Ministry of Finance (Department of Revenue) issued Notification No. 3/2021- Customs and Notification No. 7 of 2021- Customs dated 01.02.2021, pursuant to which the exemptions granted by the Ministry of Finance to the extent of 5% (ad valorem) by its earlier notification was reversed and the Basic Customs Duty (BCD) on import of solar inverters was increased from 5% to 20%. Further, the Department of Revenue, Ministry of Finance, (Government of India)’s Notification No. 8/2021-Central Tax (Rate) dated

30.09.2021 read with Ministry of Finance’s (State of Rajasthan) Notification dated 30.09.2021 (*2021 GST Notification*), was also notified increasing the rate of GST from 5% to 12%.

- h) An increase in the rate of BCD/GST by the Ministry of Finance is a Change in Law event under the first, and the fifth bullet of Article 12 of the PPA.
- i) *2021 BCD Notifications & 2021 GST Notification* fall under the ambit of ‘Law’ in terms of Article 1.1 of the PPAs. These notifications are issued by Indian Governmental Instrumentality and have a *force of law*.
- j) The increase in the BCD rate led to a proportionate increase in Social Welfare Surcharge as well as IGST (leviable upon BCD component):

Duty/surcharge/tax imposed	Regime <u>as on cut-off date</u> - Notification No. 1/2011- Customs dated 06.01.2011 was in operation (in %)	Regime <u>after cut-off date</u> - Notification No. 7/2021- Customs dated 01.02.2021 (in %)	Net increase in rate of tax (in %)
BCD	5	20	15
Social Welfare Surcharge [@ 10% on BCD as per Section 110 of Finance Act, 2018]	0.5	2	1.5
IGST [@ 5% on BCD + Social Welfare Surcharge as per MoF’s Notification No. 1/2017 – Integrated Tax (Rate) dated 28.06.2017]	0.28	1.10	0.83
Total	5.78	23.10	17.33

- k) As per Section 110 of the Finance Act, 2018, Social Welfare Surcharge is also a “*duty of Customs*” under the Customs Act, 1962. All provisions of the Customs Act, 1962, along with the Rules and Regulations thereunder relating to assessment, levy, non-levy, exemption, interest, appeal, penalties, etc., shall apply to Social Welfare Surcharge in a similar manner as applicable to other custom duties under the Customs Act, 1962.
- l) Thus, in law, there is no difference between Social Welfare Surcharge and other customs duties in terms of nature, applicability, and levy.
- m) The *2021 BCD Notifications* have resulted in the additional recurring expenditure (on BCD) of Rs. 7.34 Crores, including carrying costs of Rs. 1.28 Crores computed up to 31.03.2023 and the *2021 GST Notification* has resulted in the additional recurring

expenditure of Rs. 164.02 Crores including Carrying Cost of Rs. 21.26 Crores compounded up to 31.03.2023.

16. Briefly, SECI has submitted as under:

Re. SC GIB Order

- a) The Petitioner is required to provide the following details to ascertain the implications of *SC GIB Order* vis a vis the Project of the Petitioner:
 - i. Whether the project and transmission infrastructure for the project of the Petitioner lies wholly or partly in the priority or potential area of Great Indian Bustard?
 - ii. Whether, on the date of *SC GIB Order*, the overhead powerlines of the Petitioner existed in the priority/potential area of Great Indian Bustard?
 - iii. Outcome of the study conducted by the Petitioner with regard to the feasibility of the lines to be laid underground and
 - iv. Recommendations and decisions of the Committee (constituted in pursuance of *SC GIB Order*) with regard to the project of the Petitioner.
- b) The entitlement of the Petitioner to any relief and, if so, the extent of such relief is to be considered on the basis of the Petitioner providing the requisite documents and information.

Re. 2021 BCD Notifications

- c) Social Welfare Surcharge may not be considered as a cost for setting up of the project as it does not form part of the profit and loss account related to the Business of setting up of the Power Project and supply of power under the PPAs. The Social Welfare Surcharge is an obligation imposed on the Petitioner to contribute to the Social Welfare measures and therefore, constitute an appropriation from the net turnover of the business of the generation and sale of solar power or an obligation to contribute to social welfare measures as a condition for engaging in business activities. If such an obligation to contribute to Social Welfare measures is allowed as pass through, the very purpose of contribution to be made for the public interest is frustrated. It will amount to the public at large contributing for its own interest instead of the obligation being discharged by the person engaged in business activities.

- d) The admissibility and extent of compensation admissible to the Petitioner on account of levy of Basic Customs Duty on Solar Inverters (if any) as per *2021 BCD Notifications* of Government of India is subject to examination and verification of documents by SECI, CSPDC, HPPC to be furnished by the Petitioner.
- e) The Petitioner is also required to place on record the relevant Notifications/documents of the Competent Authority demonstrating the applicability of Social Welfare Surcharge and IGST on the levy of Customs Duty vide Notification dated 01.02.2021 and the rates claimed with regard to the Social Welfare Surcharge and IGST.

Re. 2021 GST Notification

- f) The Commission may be pleased to decide with regard to the admissibility of GST Notification dated 30.09.2021 as an event of Change in Law within the scope of Article 12 of the PPAs read with provisions of PSAs.
- g) In case of composite works contract, subject to the admissibility of the *2021 GST Notification* as a Change in Law, any increase in the rate of GST which the Petitioner can claim is only for the increase of GST from 5% to 12% on goods (which constitutes 70% of the gross consideration) there being no increase in tax on service part of 30% as per the said Notification.
- h) The extent to which relief may be admissible to the Petitioner on account of the *2021 GST Notification* is subject to examination and verification of documents by SECI (and the Buying Entity-CSPDCL and HPPC) to be submitted by the Petitioner.

17. Briefly, HPPC has submitted as under:

Re. SC GIB Order

- a) The Petitioner is required to provide the following details to ascertain the implications of *SC GIB Order* Petitioners' projects:
 - i. Whether the projects (2 in number) and transmission infrastructure for the projects of the Petitioner lie wholly or partly in the priority or potential area of Great Indian Bustard;
 - ii. Whether, on the date of SC GIB Order, overhead powerlines of the Petitioner existed in the priority/potential area of Great Indian Bustard;
 - iii. Outcome of the study conducted by the Petitioner with regard to the feasibility of the lines to be laid underground and

- iv. Recommendations and decisions of the Committee (constituted by Hon'ble Supreme Court as per the GIB Order) with regard to Petitioners' projects.
- b) In the absence of the aforesaid data/information, the claim of the Petitioner is liable to be rejected as the same is not in terms with the order dated 19.04.2021.

Re. 2021 BCD Notifications

- c) The increase or decrease in the Basic Custom Duty has to be considered as a Change in Law event under Article 12 of the PPA.
- d) Social Welfare Surcharge may not be considered as a cost for setting up of the project as it does not form part of the profit and loss account related to the Business of setting up of the Solar Power Project and supply of solar power under the PPA. The Social Welfare Surcharge is an obligation imposed on the Petitioner to contribute to the Social Welfare measures and, therefore, constitutes an appropriation from the net turnover of the business of the generation and sale of solar power or an obligation to contribute to social welfare measures as a condition for engaging in business activities. If such an obligation to contribute to Social Welfare measures is allowed as pass through, the very purpose of contribution to be made for the public interest is frustrated. It will amount to the public at large contributing for its own interest instead of the obligation being discharged by the person engaged in business activities.
- e) The admissibility and extent of compensation admissible to the Petitioner on account of levy of Custom Duty as per Notification dated 01.02.2021 of Government of India on solar inverters (if any) is subject to examination and verification of documents by HPPC to be furnished by the Petitioner. It is submitted that the Certificate of Chartered Account is a sole document in support of the Petitioner's claim .

Re. 2021 GST Notification

- f) The extent of relief admissible to the Petitioner on account of the *2021 GST Notification* (if any) is subject to examination and verification of documents to be submitted by the Petitioner.
- g) There can be no increase in tax on the service part of 30% as per the said Notification dated 30.09.2021. The value of goods is to be taken as 70% of the gross consideration, while the value of services is to be taken as 30% of the gross consideration. The tax incidence on goods is at 12%, and the services are at 18%. Accordingly, 12% will be

applicable only on 70% of the gross consideration charged and 18% on the remaining 30% on services.

- h) The claim of the Petitioner is not supported by all the invoices. Further, the claim of the Petitioner is also devoid of the following details-
- i. Date of Purchase Order;
 - ii. Date of the raising of Invoice by the Supplier;
 - iii. Date of handing over of the goods to the common carrier/delivery date;
 - iv. Date at which Goods were installed at the site;
 - v. Date of Bill of Lading in case of imported goods;
 - vi. Date of Custom clearance in case of imported goods;
 - vii. Date of arrival of the goods at the project site;
 - viii. Date of rendering of the actual services;
 - ix. The GST/Tax Invoice raised;
 - x. Supporting document in rest of each above documents.

The Petitioner's submissions dated 14.02.2024 with respect to queries raised by SECI/HPPC

18. The Petitioner has submitted as under:

Whether the project lies in the GIB area?

- a) The Petitioner's 220kV and 33kV dedicated transmission lines completely lie in the potential GIB area. Reliance is placed on **the Schematic diagram of Adani Solar's dedicated transmission line connecting generation end of Project to delivery point/ ISTS**

Whether the overhead powerlines existed on the date of SC GIB Order?

- b) As on the date of the *SC GIB Order*, the Petitioner had erected the entire 220kV line and 33kV line (dedicated transmission lines). Respective energization approvals for 33 kV and 220 KV lines were sought only after the installation of bird divertors in compliance with the *SC GIB Order* and with the readiness of the generating station (i.e., both solar and wind projects). The documents submitted by the Petitioner are as follows:
- i. Energization approval for the 220 KV line was granted by CEA on 01.08.2022 after the inspection conducted on 10.06.2022
 - ii. Energisation approval for 33 kV transmission lines used for connecting wind turbine projects – as is evident from the diagram on records. These lines were energized along with commissioning with wind portion of the project. No separate approval was sought for 33 kV transmission lines.

The outcome of the feasibility study

- c) Relying on the *SC GIB Order*, Bird diverters were duly installed on the existing lines.

Recommendations of the Committee constituted as per the GIB Order

- d) The invoices for the expenditure incurred in the installation of bird diverters of the dedicated transmission lines have already been placed on record (as part of the CA certificate)
- e) No separate requirement/obligation qua declaration of COD of such dedicated transmission lines.
- f) As regards HPPC's contention *qua* documentary evidence submission for this claim, it is clarified that (along with submitting the requisite information to SECI) the Petitioner has also separately submitted to HPPC *vide* letter dt 27.03.2023 for necessary reconciliation of Change in Law claims.
- g) HPPC's contention that the Petitioner has the remedy to offset the expenditure incurred by them for installing the bird diverters as part of the expenditure incurred under CSR is erroneous. As per settled position *qua* Change in Law, if at the time of submission of the bid (Bid Cut-off date), there was no applicability of *SC GIB Order*, it will amount to Change in Law if it is introduced by Indian Governmental Instrumentality in terms of the PPA and any financial implications cast upon the SPD on account of Change in Law shall be compensated. HPPC cannot introduce an extraneous qualification or filter that is not borne out from either the PPA or Guidelines.

19. We observe that Article 12 of the PPA stipulates as under:

ARTICLE 12: CHANGE IN LAW

Definitions

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12.1.1 "**Change in Law**" means the occurrence of any of the following events after the date, **which is the last date of bid submission**, resulting into any additional recurring/ nonrecurring expenditure by the HPD or any income to the HPD:

- the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law;

- **a change in the interpretation or application of any Law by any Indian Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of Law;**
- *the imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier;*
- *a change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits; except due to any default of the HPD;*
- **any statutory change in tax structure** (including changes in taxes, duties or cess- applicable only for the solar project component) or introduction of any new tax made applicable for setting up of Wind-Solar Hybrid Power Project and supply of power from the Project by the HPD and has direct effect on the Project, shall be treated as per the terms of this Agreement.

but shall not include (i) any change in any withholding tax on income or dividends distributed to the shareholders of the HPD, or (ii) any change on account of regulatory measures by the Appropriate Commission.

12.2 Relief for Change in Law

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

12.2.2 *The decision of the 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 all the Parties.*

Re. SC GIB Order

20. We note that vide SC GIB Order it was held as under:

*5. The State as well as the Central Government therefore, have a duty cast to preserve the endangered species and as such the expenses incurred will have to be provided by them either under the schemes available or by earmarking the same in such manner. **Needless to mention that in the instant case the preservation is by undergrounding the powerlines and in that context if cost is incurred, it would also be permissible to pass on a portion of such expenses to the ultimate consumer subject to approval of the Competent Regulatory Authority.***

...
 11. *In the above background, there cannot be disagreement whatsoever that appropriate steps are required to be taken to protect the said species of birds. In that view, insofar as the existing overhead powerlines are concerned the respondents shall take steps forthwith to install divertors and in respect of existing overhead powerlines all future cases of installing the transmission lines a study shall be conducted with regard to the feasibility for the lines to be laid underground. In all such cases where it is feasible, steps shall be taken to lay the transmission line underground. For the lines to be laid in future if as per the technical report the overhead line alone is feasible and the same is ratified by the Committee, in such event the installation of the divertors shall also be a condition attached in the contract to be entered with generating companies. Insofar as, the cost*

incurred in the said process, the concerned respondents No. 5 to 8 and 9 to 11 shall work out and provide for the same and the respondents No. 1 to 4 aid in this regard. **It would be open to them to muster the resources in accordance with law. In cases where the power generators are required to bear the additional amount adding to the cost of production, it would be open to regulate the manner in which the cost would be mitigated in accordance with contractual terms. Irrespective of the cost factor the priority shall be to save the near extinct birds.**”

14. In the light of the contentions urged on this aspect of the matter, **we are conscious that the laying of the underground power line more particularly of high-voltage though not impossible, would require technical evaluation on case-to-case basis and an omnibus conclusion cannot be reached laying down a uniform method and directions cannot be issued unmindful of the fact situation.** Though that be the position the consensus shall be that all low voltage powerlines to be laid in the priority and potential habitats of GIB shall in all cases be laid underground in future. In respect of low voltage overhead powerlines existing presently in the priority and potential habitats of GIB, the same shall be converted into underground powerlines. **In respect of high-voltage powerlines in the priority and potential habitats of GIB, more particularly the powerlines referred in the prayer column of I.A. No.85618/2020 and indicated in the operative portion of this order shall be converted into underground power line.** ...

16. ... The details of the powerlines for installation of divertors from Rajasthan are as follows:

<u>b) List of powerlines for installation of divertors from Rajasthan</u>	<u>Capacity</u>
1) Jaisalmer - Ramgarh - 1 (40 Km)	132 kv
2) Jaisalmer - Ramgarh - 2 (40 Km)	132 kv

Lines from Rajasthan

<u>b) List of powerlines from Rajasthan for undergrounding</u>	<u>Capacity</u>
1) Kanoi-Salkha (21 Km)	33 kv
2) Sam-Dhanana (45Km)	33 kv
3) Tejuva-Kuchr (17 Km)	33 kv
4) Khuchri horizontal-parallel (21 Km)	33 kv

17. The respondents No.5, 6 and 9 to 11 while arranging to lay the powerlines underground in respect of the powerlines, the feasibility of which is not in doubt shall proceed with the work right away. However, in cases where the respondents find that there are issues relating to feasibility, the matter shall be referred to the committee with all relevant material and particulars. The committee shall assess the matter and arrive at a conclusion as to whether the underground powerline is feasible or not. Based on the report to be rendered by the committee the further action shall be taken by the respondent.

18. In all cases where the overhead powerlines exist as on today in the priority and potential GIB area the respondents shall take steps forthwith to install divertors pending consideration of the conversion of the overhead cables into underground

powerlines. In all such cases where it is found feasible to convert the overhead cables into underground powerlines the same shall be undertaken and completed within a period of one year and till such time the divertors shall be hung from the existing powerlines.”

21. From the above, we observe that Order dated 19.04.2021 of the Hon’ble Supreme Court in I.A. No. 85618 of 2020 in *M.K. Ranjitsinh v. Union of India, Writ Petition (Civil) No. 838 of 2019 (SC GIB Order)*, mandates that the additional actions/measures are to be adopted by the developers located in the potential and priority habitat of GIB. We observe that that additional expenditure after the cut-off date would qualify as the Change in Law under Article 12 of the PPAs. We note that as on the date of submission of bids, i.e. 20.11.2018, the Petitioner would not have been in a position to anticipate the additional expenditure required to be incurred in adopting the measures in terms the *SC GIB Order* dated 19.04.2021.

22. We note that Article 141 in the Constitution of India stipulates as under:

141. Law declared by Supreme Court to be binding on all courts

The law declared by the Supreme Court shall be binding on all courts within the territory of India.

23. Hon’ble Supreme Court of India in its judgment dated 21.09.1995 in a case titled *Nand Kishore vs State of Punjab*, has held as under:

*Putting aside for the moment the course above-adopted, let us otherwise examine the view of the Hon'ble Judges of the Full Bench of Punjab and Haryana High Court on the question formulated. It is well known that the general principle underlying the doctrine of res-judicate is ultimately based on considerations of public policy. One important consideration of public policy is that the decisions pronounced by courts of competent jurisdiction should be final, unless they are modified or reversed by appellate authorities, and the other principle is that no one should be made to face the same kind of litigation twice over, because such a process would be contrary to considerations of fairplay and justice. These principles stand enunciated in *Daryao and others v. The State of U.P. & Others* [1962(1) SCR 574]. This court in *The Amalgamated Coalfields Ltd. & Anr. v. The Janapada Sabha, Chhindwara* [1963 (Supp.)(1) SCR 172] opined that constructive res-judicata was an artificial form of res-judicata enacted by Section 11 of the Code of Civil Procedure and it should not be generally applied to writ petitions filed under Article 32 and Article 226 of the Constitution. The court then had the occasion to point out that when a matter related to taxation and assessment levied for a different year, the doctrine of res-judicata was itself inapplicable. **This Court still spelled out the binding effect of a decision made under Article 141 of the Constitution as follows:***

“If for instance, the validity of a taxing statute is impeached by an assessee who is called upon to pay a tax for a particular year and the matter is taken to the High Court or brought before this Court and it is held that the taxing statute is

*valid, it may not be easy to hold that the decision on this basic and material issue would not operate as res judicata against the assessee for a subsequent year. That, however, is a matter on which it is unnecessary for us to pronounce a definite opinion in the present case. In this connection, it would be relevant to add that even if a direct decision of this Court on a point of law does not operate as res judicata in a dispute for a subsequent year, such a decision would, **under Art.141, have a binding effect not only on the parties to it, but also on all courts in India as a precedent in which the law is declared by this Court.** The question about the applicability of res judicata to such a decision would thus be a matter of merely academic significance.”*

24. From the above, we observe that in terms of Article 141 of the Constitution of India and the provisions of the PPAs, the SC GIB Order amounts to a Change in Law event as the law laid down by the Hon'ble Supreme Court of India has a binding effect, enshrined in the Constitution of India. Accordingly, the Petitioner is entitled to the additional expenditure ~~which it had to incur~~ on account of the SC GIB Order dated 19.04.2021. It is pertinent to mention here that the view taken is consistent with a similar order issued by the Commission in the Order dated 08.03.2023 in Petition No. 245/AT/2022.

25. Before proceeding further, it is pertinent to mention here that the SC GIB Order dated 19.04.2021 was amended on 21.03.2024 as under:

62. We are accordingly of the view that the order passed by this Court on 19 April 2021 needs to be suitably modified. A blanket direction for undergrounding high voltage and low voltage power lines of the nature that was directed by this Court would need recalibration for the reasons discussed above. This task is best left to domain experts instead of an a priori adjudication by the Court. Experts can assess the feasibility of undergrounding power lines in specific areas, considering factors such as terrain, population density, and infrastructure requirements. This approach allows for more nuanced decision-making tailored to the unique circumstances of each location, ensuring that conservation objectives are met in a sustainable manner.

67. The Committee shall be at liberty to assess the efficacy of bird diverters and subject to its own findings on efficacy, to lay down specifications for bird diverters with due regard to the parameters specified by the Central Electricity Authority. It shall also identify the number of bird diverters required for the successful implementation of conservation efforts. In this regard, the Committee may also consider the recommendations of the technical expert committee constituted by the Ministry of Power by OM No 25-7/42/2019 – PG dated 27 May 2022.

68. The injunction which has been imposed in the order dated 19 April 2021 in respect of the area described as the priority and potential areas shall accordingly stand recalled subject to the condition that the Expert Committee appointed by this Court may lay down suitable parameters covering both the priority and potential areas.

69. In the event that the Committee considers it appropriate and necessary to do so, it would be at liberty to recommend to this Court any further measures that are required to enhance the protection of the GIB. This may include identifying and adding suitable areas beyond the designated priority zones outlined above, if deemed crucial for the conservation of the species. Such additional areas could serve as vital habitats, corridors, or breeding grounds for the GIB, contributing significantly to its long-term survival.

70. We request the Committee to complete its task and submit a report to this Court through the Union Government on or before 31 July 2024.

...
72. The Union of India and the concerned ministries are directed to implement the measures described in the preceding paragraph, which it has undertaken to implement. Further, they are directed to continue implementing the measures detailed in paragraph 8(d) of this judgment. The directions contained in the order dated 19 April 2021 shall accordingly stand substituted by those contained in the present judgment. **The project clearances which have been granted pursuant to the recommendations of the earlier committee appointed in terms of the order dated 19 April 2021 shall not be affected by the present judgment.**

26. The Hon'ble Supreme Court, vide judgment dated 17.03.2023 in the matter of Govt. of NCT of Delhi through the Secretary, Land and Building Department and Another v. K.L. Rathi Steels Limited and others [2023 SCC Online SC 288] has held as under:

66. Although, the expression "for any other sufficient reason" in Order XLVII Rule 1 CPC is wide enough to take within its scope and ambit many circumstances or situations which do not fall in the earlier part of the Order XLVII Rule 1 CPC which are the two grounds (i) and (ii) referred to above, in my view, the Explanation to the said provision carves out an exception to the expression "for any other sufficient reason" as a ground for review of a judgment in ground (iii). The Explanation being in the nature of an exception is to be read outside the scope of the expression "for any other sufficient reason" in Order XLVII Rule 1 CPC. In other words, if, on a question of law, a decision of a Court is reversed by a subsequent decision of a superior Court (Larger Bench in the instant case) and the same is reopened on the basis of the said subsequent decision there would be no finality of judgments of the Court even between the parties thereto. **It is, hence, observed that even an erroneous judgment or order is binding on the parties thereto even if subsequently that very judgment is reversed in a decision of a superior Court.** Otherwise, there would be chaos and no finality of any decision of a Court which is against public policy. Judgments rendered by a Court of competent jurisdiction as per the prevailing law are binding on the parties to the said judgment. Merely because that judgment is subsequently overruled by a subsequent decision of a superior Court in any other case, the same shall not be a ground for review of such judgment.

27. From the above, we observe that the SC GIB Order dated 19.04.2021 stands modified on 21.03.2024, and the injunction imposed vide Order dated 19.04.2021 stands recalled. It was also

held that the Expert Committee appointed may lay down suitable parameters covering both the priority and potential areas on or before 31.07.2024. Further, the project clearances which have been granted pursuant to the recommendations of the earlier committee appointed in terms of the order dated 19.04.2021 shall not be affected by the present judgment. We observe that the Petitioner has already incurred the additional expenditure qua *SC GIB Order* dated 19.04.2021 (post the bid submission date, i.e., 20.11.2018). Accordingly, we hold that the Petitioner is entitled to the additional expenditure done in accordance with *SC GIB Order* dated 19.04.2021 as a Change in Law event under Article 12 of the PPAs. Accordingly, the Commission hereby directs the contracting parties to carry out reconciliation of additional expenditure as per Article 12 of the PPAs by exhibiting clear and one-to-one correlation with the projects and the invoices raised supported with auditor certificate from 19.04.2021 up to 21.03.2024 qua *SC GIB Order* dated 19.04.2021.

Re. 2021 GST Notifications

28. The Petitioner has submitted that as regards SECI/HPPC’s reliance on Order dated 11.01.2022 passed by Rajasthan Appellate Authority for Advance Ruling in *M/s Utsav Corporation case* to contend the tax position qua composite contracts, the Petitioner has clarified that Adani Solar has executed separate and independent agreements for supply of goods and services with its vendors. Further, as per SECI’s own admission, if there are separate contracts for goods and services, the supply of goods will attract a GST of 12% and the supply of services will attract a GST of 18%. Accordingly, claim qua increase in GST rate is arising out of the agreements executed with vendors for the supply of solar power generators, windmills, wind-operated electricity generators, etc., wherein as on the cut-off date, the applicable GST rate was 5%, and this rate subsequently was increased to 12%.

29. We observe that the relevant notifications are as under:

a) Notification No.1/2017-Central Tax (Rate) dated 28.06.2017 (*2017 GST Notification*):

Schedule I - 2.5%

<i>Sr. No.</i>	<i>Chapter/ Heading/ /Sub-heading/ Tariff-item</i>	<i>Description of Goods</i>
234	84, 85 or 94	<u>Following renewable energy devices & parts for their manufacture:</u> (a) <i>Bio-gas plant;</i>

		<p>(b) Solar power-based devices; (c) <u>Solar power generating system</u>; (d) Windmills, Wind Operated Electricity Generator (WOEG); (e) Waste to energy plants/devices; (f) Solar lantern / solar lamp; (g) Ocean waves/tidal waves energy devices/plants; (h) Photo voltaic cells, whether or not assembled in modules or made up into panels;</p>
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b) Notification No. 8/2021- Central Tax (Rate) dated 30.09.2021 (2021 GST Notifications) stipulate as under:

(b) in Schedule II – 6%, -

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

201 A	84, 85 or 94	<p>Following renewable energy devices & parts for their manufacture: - (a) Bio-gas plant (b) Solar power-based devices (c) Solar power generating system (d) Wind mills, Wind Operated Electricity Generator (WOEG) (e) Waste to energy plants/devices (f) Solar lantern / solar lamp (g) Ocean waves/tidal waves energy devices/plants (h) Photo voltaic cells, whether or not assembled in modules or made up into panels.</p> <p>[Explanation: If the goods specified in this entry are supplied, by a supplier, along with supplies of other goods and services, one of which being a taxable service specified in the entry at S. No. 38 of the Table mentioned in the notification No. 11/2017-Central Tax (Rate), dated 28th June, 2017 [G.S.R. 690(E)], the value of supply of goods for the purposes of this entry shall be deemed as seventy per cent. of the gross consideration charged for all such supplies, and the remaining thirty per cent. of the gross consideration charged shall be deemed as value of the said taxable service.</p>
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(Similar provisions were inserted by Government of Rajasthan, Finance Department vide Notification No. F.12(1)FD/Tax/2021-60 dated 30.09.2021)

30. From the above, we observe that Clause (v) of Article 12 of the PPAs, in seriatim, specifically stipulates that any change in rates of taxes, duties, and cess, or introduction of any new tax made applicable for setting up of Solar Power Project and supply of power from the Solar Power Project by the SPD which have a direct effect on the Project, is a Change in Law event. The Notification No. 8/2021- Central Tax (Rate) dated 30.09.2021 has been issued by the Ministry

of Finance, Government of India. The change in rate of Goods and Services Tax from 5% to 12% w.e.f. 01.10.2021 has resulted in the change in the cost of the inputs required for generation, and the same is considered a 'Change in Law'. Hence, we hold that the impugned notifications viz *the 2021 GST Notification is a Change in Law event as per Article 12 of the PPAs dated 31.12.2019 read with Wrap Agreement dated 21.12.2021*. It is pertinent to mention here that the view taken is consistent with similar orders issued by the Commission, viz. *order dated 05.04.2023 in Petition No. 268/MP/2021; order dated 05.04.2023 in Petition No. 216/MP/2022 and order dated 21.04.2023 in Petition No. 219/MP/2022; order dated 17.05.2023 in Petition No. 174/MP/2022; order dated 20.07.2023 in Petition No. 273/MP/2021; Order dated 16.01.2024 in Petition No. 308/MP/2022 and Order dated 14.03.2024 in Petition No. 65/MP/2023*.

Re. 2021 BCD Notifications

31. We observe that relevant basic custom duty notifications are as under:

Notification No. 1/2011- Customs dated 06.01.2011

*"In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), and in supersession of the notification of the government of India in the Ministry of Finance (Department of Revenue) No. 30/2010 – Customs, dated 27th Feb. 2010, the Central Government on being satisfied that it is necessary in the public interest so to do, **hereby exempts all items of machinery, including prime movers, instruments, apparatus and appliances, control gear and transmission equipment and auxiliary equipment (including those required for testing and quality control) and components, required for the initial setting up of a solar power generation project or facility, when imported into India, from so much of the duty of customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), as is in excess of 5% ad valorem, and from the whole of the Additional Duty of Customs leviable thereon under section 3 of the said Customs Tariff Act, subject to the following conditions, namely:-***

(1) the importer produces to the Deputy Commissioner of Customs or the Assistant Commissioner of Customs, as the case may be, a certificate, from an officer not below the rank of a Deputy Secretary to the Government of India in the Ministry of New and Renewable Energy to the effect that the goods are required for initial setting up of a project or facility for the generation of power using solar energy, indicating the quantity, description and specification thereof; and the said officer recommends the grant of this exemption ; and

(2) the importer furnishes an undertaking to the Deputy Commissioner of Customs or the Assistant Commissioner of Customs, as the case may be, that such imported goods will be used for the purpose specified and in the event of his failure to comply with this condition, he shall be liable to pay, in respect of such goods as is not proved to have been so used, an amount equal to the difference

between the duty leviable on such goods but for the exemption under this notification and that already paid at the time of importation.”

Notification No. 07/2021-Customs dated 01.02.2021:

“In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and section 3 of the Customs Tariff Act, 1975 (51 of 1975), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby **rescinds the notifications of the Government of India in the Ministry of Finance (Department of Revenue), published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) specified in column (2), vide corresponding G.S.R. number specified in column (3), of the Table, except as respects things done or omitted to be done before such rescission, namely:-**

Table

S.NO	Notification No.	GSR No.
1	1/2011-Customs, dated the 6th January, 2011	6 (E), dated the 6th January, 2011

Notification No. 03/2021- Customs dated 01.02.2021:

“In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India, Ministry of Finance (Department of Revenue), No. 57/2017- Customs, dated the 30th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 798 (E), dated the 30th June, 2017, namely:-

(ix) against S.No. 13, in column (3), for the entry, the following entry shall be substituted, namely: -

All goods other than the following goods, namely: -

(a) charger or power adapter;

(b) solar inverter;”

32. The Petitioner has further submitted that as a result of the rescission of the Basic Customs Duty (BCD) Notification No.1/2011-Customs dated 06.01.2011 by the BCD Notification No. 7/2021, Custom Duty on solar Inverters was raised to 20% from the earlier applicable rate of 5%. The Petitioner has submitted that the rescission of the BCD Notification dated 06.01.2011 has led to an increase in the taxes as under:

Duty/surcharge/tax imposed	Regime <u>as on cut-off</u> date - Notification No. 1/2011- Customs dated 06.01.2011 was in operation (in %)	Regime <u>after cut-off</u> date - Notification No. 7/2021- Customs dated 01.02.2021 (in %)	Net increase in rate of tax (in %)
BCD	5	20	15
Social Welfare Surcharge [@ 10%	0.5	2	1.5

on BCD as per Section 110 of Finance Act, 2018]			
IGST [@ 5% on (BCD + Social Welfare Surcharge as per MoF's Notification No. 1/2017 – Integrated Tax (Rate) dated 28.06.2017)]	0.28	1.10	0.83
Total	5.78	23.10	17.33

33. We observe that Section 110 of the Finance Act 2018 mandates as follows:

.....
There shall be levied and collected, in accordance with the provisions of this Chapter, for the purposes of the Union, a duty of Customs, to be called a Social Welfare Surcharge, on the goods specified in the First Schedule to the Customs Tariff Act, 1975 (hereinafter referred to as the Customs Tariff Act), being the goods imported into India, to fulfil the commitment of the Government to provide and finance education, health and social security.

...

34. We observe that the Petitioners have submitted that as a result of the *rescission of the Basic Customs Duty (BCD) Notification No. 1/2011-Customs dated 06.01.2011 by the BCD Notification No. 7/2021*, the custom duty on solar Inverters was raised to 20% from the earlier applicable rate of 5%.

35. We observe that Clause (v) of Article 12 of the PPAs, in seriatim, specifically stipulates that *any change in rates of taxes, duties, and cess, or introduction of any new tax made applicable for setting up of Solar Power Projects and supply of power from the Solar Power Projects by the SPD which have a direct effect on the Project*. We further observe that Notification No. 1/2011-Customs dated 06.01.2011 had granted exemption to solar generating units for items required for setting up a solar power generation project when imported into India, from so much of the duty of customs leviable thereon, as is in excess of 5% ad valorem. However, subsequently, vide Notification No. 7/2021 & 3/2021, the exemptions to the extent of 5% (ad valorem) were reversed, and the basic customs duty on import of the solar inverters was increased from 5% to 20%. The change in rate of BCD from 5% to 20% w.e.f. 01.02.2021 has resulted in the change in the cost of the inputs required for generation, and the same is considered a 'Change in Law'.

We also observe that the increase in the rate of basic customs duty imposed on the import of machinery and auxiliary equipment for the initial setting up of solar power generation projects has increased the quantum of social welfare surcharge, payable under section 110 of the Finance Act, 2018, on such import, which is fixed at a rate of 10% on aggregate duties and taxes which are levied and collected by the Central Government under section 12 of the Customs Act, 1962 which had a bearing on the increase in the quantum of integrated goods and services tax and Services Tax Act, 2017 (IGST Act) on such import by the Petitioner. Hence, we hold that rescission of the Basic Custom Duty (BCD) Notification No. 1/2011-Customs dated 06.01.2011 by the BCD Notification No. 7/2021 dated 01.02.2021 and increase of the basic customs duty on import of the solar inverters from 5% to 20% qua Notification No. 3/2021 dated 01.02.2021 is an event of Change in Law as per Article 12 of the PPAs dated 31.12.2019. We also note that there is an increase in the quantum of social welfare surcharge, payable under Section 110 of the Finance Act 2018, on the import of goods. Hence, we hold that an increase in social welfare surcharge levied by the Indian Government Instrumentality on the import of machinery and auxiliary equipment is also an event of Change in Law as per Article 12 of the PPA dated 31.12.2019 read with Wrap Agreement dated 21.12.2021. It is pertinent to mention here that the view taken is consistent with similar orders taken by the Commission, viz. *Order dated 02.06.2023 in Petition No. 168/MP/2021; Order dated 30.11.2023 in Petition No. 214/MP/2021; Order dated 19.12.2023 in Petition No. 171/MP/2021 and Order dated 31.01.2024 in Petition No. 226/MP/2021 & 227/MP/2021.*

36. We observe that the Directorate General of Taxpayer Services, Central Board of Excise & Customs, on its official website www.cbic.gov.in, has clarified as under:

Import of Goods

*The import of goods has been defined in the IGST Act, 2017 as bringing goods into India from a place outside India. All imports shall be deemed as inter-State supplies and accordingly Integrated tax shall be levied in addition to the applicable Custom duties. The IGST Act, 2017 provides that **the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under the Customs Act, 1962. The integrated tax on goods shall be in addition to the applicable Basic Customs Duty (BCD) which is levied as per the Customs Tariff Act. In addition, GST compensation cess, may also be leviable on certain luxury and de-merit goods under the Goods and Services Tax (Compensation to States) Cess Act, 2017.***

The Customs Tariff Act, 1975 has accordingly been amended to provide for levy of integrated tax and the compensation cess on imported goods. Accordingly, any goods

*which are imported into India shall, in addition to the Basic Customs duty, be liable to integrated tax at such rate as is leviable under the IGST Act, 2017 on a like article on its supply in India. Further, **the value of the goods for the purpose of levying Integrated tax shall be assessable value plus Customs Duty levied under the Act, and any other duty chargeable on the said goods under any law for the time being in force as an addition to, and in the same manner as, a duty of customs.***

The value of the imported article for the purpose of levying cess shall be assessable value plus Basic Customs Duty levied under the Act, and any sum chargeable on that goods under any law for the time being in force as an addition to, and in the same manner as, a duty of customs. The integrated tax paid shall not be added to the value for the purpose of calculating cess.

37. We observe that IGST has been levied by the competent authority in compliance with directions issued by the Government of India. In view of the above, we are of the view that in the case of imported goods, the value of IGST levied in addition to the basic customs duty is also to be allowed. Hence, we hold that the increase in the quantum of IGST levied in addition to the basic customs duty on the import of machinery and auxiliary equipment is also an event of Change in Law as per Article 12 of the PPAs dated 31.12.2019 read with Wrap Agreement dated 21.12.2021.
38. In the instant petition, the bid was submitted by the Petitioner on 20.11.2018. The PPAs were executed between the Petitioner and the SECI on 31.12.2019, and the SCoD of the project was 07.05.2021. Pursuant thereto, the Petitioner also executed the Wrap Agreement on 21.12.2021 with SECI providing consolidation/merger of the aforesaid two PPAs (150MW +300MW) dated 31.12.2019 into a single PPA with an intent of implementing the project as a single project of 450 MW hybrid capacity. As per SECI's letter dated 26.08.2022, SCoD was extended to 29.09.2022 or the date of operationalisation of LTA, whichever is later. LTA was operationalized on 04.12.2022, and accordingly, the project was commissioned on 04.12.2022. We observe that *SC GIB Order* was published on 19.04.2021; Notification No. 1/2011-Customs dated 06.01.2011 was rescinded vide Notification No. 07/2021-Customs dated 01.02.2021 w.e.f. 02.02.2021 (*2021 BCD Notifications*), and the GST rates were amended vide Notification No. 8/2021- Central Tax (Rate) dated 30.09.2021 w.e.f. 01.10.2021 (*2021 GST Notification*), as such, the Petitioner's project was affected by the said orders/notifications. Therefore, the Petitioner is entitled to compensation on account of Change in Law as per the terms of Article 12 of the PPAs read with Wrap Agreement dated 21.12.2021, due to the impugned order/notifications viz. *SC GIB Order; 2021 GST Notification; 2021 BCD Notifications*, increase of quantum of *social welfare surcharge* on the imports, and increase in quantum of *IGST* levied on the imports.

39. The issue is decided accordingly.

Re: Issue No.II

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

40. The Petitioner has submitted that in terms of PPAs, SECI is bound to pay the entire quantum of the compensation upfront lump sum payment within 45 days of such Supplementary Bill being raised by the Petitioner. SECI and HPPC's proposal of annuity payment @ 9% is financially unviable as it will not preserve the actual time value of money in order to reconstitute the Petitioner to the same economic position prior to the Change in Law event. The annuity payment mechanism, if mutually agreed upon between the parties and adopted as a payment mechanism, ought to be based on Pre -Tax WACC (*after considering applicable norms for Debt and Equity in the normative Debt: Equity, i.e., 70:30*). The Annuity Rate of 13.84% p.a. ought to be adopted.
41. *Per contra*, SECI has submitted that there has been a fall in the interest rate of the loan, and the Commission has notified the *Central Electricity Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2020* and passed the *RE Tariff Order* dated 07.11.2022. In the said regulations read with the RE tariff Order, the Commission has considered the interest rate of 9.12% and the term of the Loan repayment as 15 years. The same parameters for making payment on an annuity basis may be considered by the Commission in case compensation is allowed. HPPC and CSPDCL may be directed to make a payment towards the reconciled change in law claims.
42. Further, HPPC submitted that there is a clear rationale for the annuity payment methodology. The extent to which the impact of the change in law is to be considered is only on the equipment that is duly installed and commissioned by the date of commercial operation of the power plant. The equipment installed after the commercial operation date of the project is not to be considered for the impact of Change in Law. If the Petitioner is allowed to recover the Change in Law impact in lump-sum, then SECI and, consequentially, HPPC would have paid for the capital cost even without there being an actual supply of power in the future. If, for any reason, the Petitioner abandons the project and discontinues the supply of power, there is no methodology for adjustments of the lump sum payments already made.

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

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

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

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

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

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

Tenure of 'Annuity Period'

69. SPDs have submitted that the annuity period should be 13 years. It is observed that

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

“14. Loan and Finance Charges

Loan Tenure

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

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

44. It is apparent that this Commission has taken a view that in the case of competitive bidding projects, it is not possible to ascertain either the capital structuring (extent of debt and equity) of the projects or the actual rate of interest of the debt component or the expected rate of return on equity. As the actual deployment of capital by way of debt or equity and their cost in terms of rate of interest or return, respectively, is unknown, the rate can be taken as the uniform rate of compensation for the entire expenditure incurred on account of Change in Law. *The compensation for change in law cannot be a source for earning profit, and therefore, there cannot be any higher rate of return than the prevailing normative cost of debt.*
45. We note that the *Central Electricity Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2020* (RE Tariff Regulations, 2020) were applicable for the period 01.07.2020 to 31.03.2023 now stands extended to 30.06.2024 vide Notification No. RA-14026(11)/4/2020-CERC dated 28.03.2024.
46. The Commission has notified the CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2020, and the RE Tariff Order dated 07.11.2022. In the said regulations read with the RE tariff Order; we have considered the interest rate of 9.12% for FY-22-23 and the term of the Loan repayment as 15 years. The Commission vide order dated 08.09.2023 in 10/SM/2023 extended the applicability of the order dated 07.11.2022 in Petition No. 14/SM/2022 until further Orders.
47. We note that the Petitioner’s projects achieved actual commercial operation on 04.12.2022 (i.e., during FY 2022-23). The Commission notified the RE Tariff Order dated 07.11.2022 for FY

2022-23 in pursuance of the CERC (*Terms and Conditions for Tariff determination from Renewable Energy Sources*) Regulations, 2020. In the RE Tariff order dated 07.11.2022, the Commission considered the interest rate of 9.12% and the term of loan payment as 15 years. Thus, we hold that the *discount rate of 9.12% and annuity payment of 15 years* are the appropriate methodology for change in law compensation.

48. Further, the Commission holds that the liability of SECI/ Discoms for ‘Monthly Annuity Payment’ starts from the 60th (sixtieth) day from the date of this order or from the date of submission of claims by the Petitioner, whichever is later. The provision of late payment surcharge in the respective PPA/PSA shall kick in if the monthly annuity payment is not made by the Respondents within the due date.
49. The issue is decided accordingly.

Re: Issue No. III:

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

50. The Petitioner has submitted that it is entitled to carrying cost on a compounding basis to reconstitute it back to its original economic position. Reliance is placed on the Hon’ble Supreme Court’s judgement in the matter of *Uttar Haryana Bijli Vitran Nigam Ltd. v. Adani Power (Mundra) Ltd.*, 2022 SCC OnLine SC 1068; *GMR Warora Energy Limited Vs. CERC & Ors.*, 2023 SCC OnLine SC. *Per Contra*, SECI and HPPC submitted that PPAs in the present case do not have any provision dealing with restitutionary principles of restoration to the same economic position. Therefore, the Petitioner is not entitled to claim relief of carrying cost. Further, the enforceability of the dated APTEL judgment dated 15.09.2022 in A.No. 256 of 2019 & Batch titled as *Parampujya Solar Energy Private Limited & Ors. vs. CERC & Ors.* (Parampujya case) has been stayed by the Hon’ble Supreme Court order dated 12.12.2022 in Civil Appeal No. 8880 of 2022.
51. We observe that Article 12 of the PPA stipulates as under:

ARTICLE 12: CHANGE IN LAW

Definitions

...
12.1.1 “**Change in Law**” means the occurrence of any of the following events after the date, **which is the last date of bid submission**, resulting into any additional recurring/ nonrecurring expenditure by the HPD or any income to the HPD:

- *the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law;*
- ***a change in the interpretation or application of any Law by any Indian Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of Law;***
- *the imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier;*
- *a change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits; except due to any default of the HPD;*
- ***any statutory change in tax structure (including changes in taxes, duties or cess- applicable only for the solar project component) or introduction of any new tax made applicable for setting up of Wind-Solar Hybrid Power Project and supply of power from the Project by the HPD and has direct effect on the Project, shall be treated as per the terms of this Agreement.***

but shall not include (i) any change in any withholding tax on income or dividends distributed to the shareholders of the HPD, or (ii) any change on account of regulatory measures by the Appropriate Commission.

12.2 Relief for Change in Law

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

12.2.2 *The decision of the 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 all the Parties.*

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

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

Date of the projects in question, as indeed towards Operation & Maintenance (O&M) expenses, along with carrying cost subject, however, to necessary prudence check.

53. In view of the above, this Commission holds that the Petitioner, in the instant petitions, shall be eligible for carrying costs starting from the date when the actual payments were made to the authorities/vendors until the date of issuance of this Order, at the actual rate of interest paid by the Petitioner for arranging funds (supported by Auditor's Certificate) or the rate of interest on working capital as per the applicable RE Tariff Regulations prevailing at that time or the late payment surcharge rate as per the PPA, whichever is the lowest. Once a supplementary bill is raised by the Petitioner in terms of this order, the provision of a Late Payment Surcharge in the PPA would kick in if the payment is not made by the Respondents within the due date.
54. Accordingly, the Commission hereby directs the contracting parties to carry out the reconciliation of additional expenditure on account of the Hon'ble Supreme Court's GIB order dated 19.04.2021, the introduction of *2022 BCD Notification and 2021 GST Notification*, and as per Article 12 of the PPA along with carrying cost by exhibiting clear and one to one correlation with the projects and the invoices raised supported with auditor certificate.
55. The Commission further directs that the responding Discom is liable to pay to SECI all the above-reconciled claims that SECI has to pay to the Petitioner. However, payment to Petitioner by SECI is not conditional upon the payment to be made by the responding Discoms to SECI.
56. The Hon'ble Supreme Court, in its Order dated 12.12.2022, in Civil Appeal no. 8880/2022 in the case of "*Telangana Northern Power Distribution Co. Limited & Anr. Vs. Parampujya Solar Energy Pvt. Limited & Ors.*" (and in similar Orders dated 03.01.2023 and 23.01.2023) has held as under:

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

57. Therefore, the directions issued in this Order so far as they relate to compensation for the period post Commercial Operation Date of the project in question as also towards carrying cost (pre-COD & post-COD) shall not be enforced and shall be subject to further orders of the Hon'ble Supreme Court in Civil Appeal No. 8880/2022 in *Telangana Northern Power Distribution*

Company Limited & Anr. V. Parampujya Solar Energy Pvt. Limited & Ors, and connected matters. It is pertinent to mention that the view taken is consistent with the views taken in *Order dated 21.12.2023 in Petition No. 267/MP/2022 & batch* and *Order dated 09.01.2024 in Petition No. 255/MP/2022*.

58. The summary of our findings is as follows:

- a) The Hon'ble Supreme Court's GIB Order dated 19.04.2021 in IA. No. 85618 of 2020 (in Writ Petition (Civil) No. 838 of 2019) in the matter of *M.K. Ranjitsinh v. Union of India*; introduction of Notification No. 3/2021 and Notification No. 07/2021-Customs dated 01.02.2021 and Notification No. 8/2021 issued by the Department of Revenue, Ministry of Finance, Government of India amount to Change in Law events under Article 12 of the PPAs dated 31.12.2019.
- b) The Petitioner is entitled to compensation on account of a Change in Law as per the terms of Article 12 of the PPAs due to the *SC GIB Order, 2021 BCD Notifications, increase of quantum of social welfare surcharge on the imports, and an increase in the quantum of IGST levied on the imports* and *2021 GST Notification*.
- c) The contracting parties to carry out reconciliation of additional expenditure as per Article 12 of the PPAs by exhibiting clear and one-to-one correlation with the projects and the invoices raised supported with auditor certificate on account of *2021 BCD Notifications, an increase of the quantum of social welfare surcharge on the imports, and increase in quantum of IGST levied on the imports; 2021 GST Notification* and from 19.04.2021 up to 21.03.2024 qua *SC GIB Order* dated 19.04.2021.
- d) Compensation at the discount rate of 9.12% and annuity payment of 15 years shall be the appropriate methodology towards change in law compensation. The liability of SECI/ Discoms for 'Monthly Annuity Payment' shall start from the 60th (sixtieth) day from the date of this order or from the date of submission of claims by the Petitioners, whichever is later. Provision of late payment surcharge in the respective PPA/PSA shall kick in if the of monthly annuity payment is not made by the Respondents within the due date .
- e) The Petitioner shall also be eligible for carrying cost starting from the date when the actual payments were made to the Authorities/vendors 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 RE Tariff Regulations prevailing at that time or the late payment surcharge rate as per the

PPAs, 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 PPAs would kick in if the payment is not made by the Respondents within the due date.

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

59. The Petition No. 109/MP/2023 is disposed of in terms of the above.

Sd/-
पी. के. सिंह
सदस्य

Sd/-
अरुण गोयल
सदस्य

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