



नई दिल्ली  
NEW DELHI

याचिका संख्या./ Petition No. 136/MP/2023

कोरम/ Coram:

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

आदेश दिनांक/ Date of Order: 19<sup>th</sup> of May, 2024

**IN THE MATTER OF:**

Petition under Section 79(1)(b) and (k) of the Electricity Act, 2003 read with Article 12.2 of the Power Purchase Agreement dated 18.11.2019 between the Petitioner and Respondent No. 1 seeking relief on account of Change in Law events, viz., increase in the Central Goods and Services Tax and State Goods and Services Tax, and grant of consequential reliefs therefor.

**AND IN THE MATTER OF:**

**Ayana Renewable Power One Private Limited**

S2904, 29<sup>th</sup> Floor World Trade Centre,  
Brigade Gateway Campus, #26/1,  
Dr. Rajkumar Road, Maleswaram (West),  
Bangalore- 560055

...Petitioner

Versus

1. **M/s Solar Energy Corporation of India Limited,**  
6<sup>th</sup> Floor, Plate – B NBCC Office Block Tower-2,  
East Kidwai, New Delhi – 110 023.
2. **Madhya Pradesh Power Management Company Limited**  
Shakti Bhawan, Rampur,

**Parties Present:** Shri Utsav Mukherjee, Advocate, ARPOL  
Shri Akashdeep Singh, Advocate, ARPOL  
Shri Aman Sheikh, Advocate, ARPOL  
Shri Vikalp Wange, Advocate, ARPOL  
Ms. Mandakini Ghosh, Advocate, SECI  
Ms. Kirti Dhoke, Advocate, SECI

### आदेश/ ORDER

The Petitioner, i.e., Ayana Renewable Power One Private Limited (ARPOPL), is a generating company and owns & operates a solar power project of 300 MW (AC capacity with an equivalent DC capacity of 463.68 MW) at Village Khichiya, District Bikaner in the State of Rajasthan. On 03.08.2017, the Ministry of Power issued Guidelines for Tariff Based Competitive Bidding Process for the Procurement of Power from Grid Connected Solar PV Power Projects (Competitive Bidding Guidelines). Pursuant to the Competitive Bidding Guidelines, Solar Energy Corporation of India (SECI) issued a Request for Selection (RfS) dated 13.03.2019. AROPL submitted the bid on 30.05.2019. The e-Reverse auction was conducted on 12.06.2019, and SECI issued a Letter of Award (LoA) on 25.07.2019. SECI executed a Power Sale Agreement (PSA) with Madhya Pradesh Power Management Company Limited (MPPMCL) dated 16.10.2019. The Scheduled Commissioning date (SCoD) as per the PPA was 23.04.2021 which was subsequently extended by SECI up to 23.09.2021 on account of Covid-19. However, due to a delay in the operationalization of long term access (LTA), SECI again extended the project commissioning deadline up to 60 days from the date of operationalization of LTA. The LTA was operationalized on 23.12.2021. The project was commissioned in three tranches, i.e., 100 MW on 26.11.2021; 50 MW on 07.12.2021; 150 MW on 22.12.2021. The COD of the project is 22.12.2021. ARPOPL has filed the instant Petition seeking a declaration of issuance of Notification No. 8/2021- Central Tax (Rate) dated 30.09.2021 by the Ministry of Finance, Government of India, and issuance of Notification No. F.12(1)FD/Tax/2021-60 dated 30.09.2021 issued by the Department of Finance, Government of Rajasthan (*2021 GST Notifications*) as Change in Law event and compensation thereof.

2. Respondent No. 1, Solar Energy Corporation of India Limited (SECI), has been set up under the administrative control of the Ministry of New and Renewable Energy (MNRE). SECI has been designated as the nodal agency for the implementation of MNRE schemes for developing grid-connected solar power capacity in India.
3. Respondent No. 2 i.e. Madhya Pradesh Power Management Company Limited (MPPMCL) is a holding company for all the DISCOMS of the State of Madhya Pradesh and is engaged in overseeing the distribution activities in Madhya Pradesh.
4. The Petitioner has made the following prayers:
  - a) *Hold and declare that the increase in Central Goods and Services Tax from 2.5% to 6% for purchase of solar based power devices for the Project by way of Notification No.8/2021- Central Tax (Rate) dated 30.09.2021 is a “Change in Law” Event under Article 12.1 of the Power Purchase Agreement dated 18.11.2019 read with Clause 5.7 of the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar Power Projects;*
  - b) *Hold and declare that the increase in State Goods and Services Tax from 2.5% to 6% for purchase of solar based power devices for the Project by way of Notification No. [F.12(1)FD/Tax/2021-60] dated 30.09.2021 is a “Change in Law” Event under Article 12.1 of the Power Purchase Agreement dated 18.11.2019 read with Clause 5.7 of the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar Power Projects;*
  - c) *Consequently, direct the Respondent No. 1 to compensate the Petitioner for the additional expenditure towards Central Goods and Services Tax and State Goods and Services Tax, respectively, amounting to Rs. 7,86,00,218 (Rupees Seven Crores Eighty-Six Lakhs Two Hundred and Eighteen Only), in terms of Article 12 of the Power Purchase Agreement dated 18.11.2019, along with carrying costs at the rate of 15% per annum;*
  - d) *Direct the Respondent No. 1 to reimburse the legal costs incurred by the Petitioner in pursuing the instant Petition;*
  - e) *Any errors/ omissions may kindly be condoned, and opportunity be kindly given to rectify the same and also submit additional pleadings at a suitable later date, if required; and*
  - f) *Grant any order, further relief(s) in facts and circumstances of the case as this Hon’ble Commission may deem just and equitable in favour of the Petitioner.*

**Factual Matrix:**

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

|  |   |
|--|---|
| Location   | Village: Khichiya,<br>District: Bikaner,<br>Rajasthan   |
| Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects   | 03.08.2017  |
| Nodal agency   | SECI  |
| Tariff   | Rs.2.54/kWh   |
| Capacity (MW)  | 300 MW  |
| Power  | Solar PV  |
| Date of Notification No.1/2017-Central Tax (Rate) (2017 CGST Notification)   | 28.06.2017  |
| Date of Notification No. F.12 (56) FD/Tax/2017-Pt-I-40 (2017 SGST Notification)  | 29.06.2017  |
| Date of Notification No. 24/2018- Central Tax (Rate) (2018 GST Notifications)  | 31.12.2018  |
| RfS issued on  | 13.03.2019  |
| Bid submitted on   | 30.05.2019  |
| E-Reverse auction held on  | 12.06.2019  |
| LOA issued on  | 25.07.2019  |
| PSA executed on  | 16.10.2019  |
| Effective date of the PPA  | 23.10.2019  |
| PPA executed on  | 18.11.2019  |
| Agreement was entered between the Petitioner and M/s Siemens Gamesa Renewable Power Private Limited for supply of goods  | 28.11.2019  |
| Agreement was entered between the Petitioner and M/s Siemens Gamesa Renewable Energy Projects Private Limited for supply of goods and services   | 28.11.2019  |
| SCOD of the project  | 23.04.2021  |
| Notification No.8/2021- Central Tax (Rate) and Notification No. [F.12(1)FD/Tax/2021-60] (2021 GST Notifications)   | 30.09.2021  |
| Extended SCOD <ul style="list-style-type: none"> <li>• Vide letter dated 07.09.2020, SECI granted extension on account of Covid-19</li> <li>• Vide letter dated 08.09.2021, SECI granted extension on account of delay of LTA or actual date of commissioning, whichever is earlier</li> </ul> | 23.09.2021<br><br>60 days from the date of operationalization of LTA                                |
| LTA was operationalized on   | 23.12.2021  |
| Commissioning of the project   | 100 MW- 26.11.2021;<br>50 MW- 07.12.2021;<br>150 MW- 22.12.2021<br>(CoD was declared on 22.12.2021) |

6. The instant petition was filed on 06.04.2023. Hearing was conducted on 18.08.2023, wherein the Commission, after hearing the Petitioner, admitted the Petition. Hearing was conducted on

25.10.2023, wherein SECI sought an adjournment and requested the opening of the portal to file the reply. Pursuant to the request of SECI, the Commission adjourned the matter to 24.01.2024 and directed the Petitioner to file its Rejoinder by 30.11.2023. During the course of the hearing dated 24.01.2024, SECI again sought adjournment which was not opposed by the Petitioner. The Commission accordingly listed the matter for hearing on 15.03.2024. During the course of the hearing dated 15.03.2024, the Commission, upon hearing the submissions of the parties reserved the matter for orders and directed the parties to file their respective written submissions. Pursuant to the directions of the Commission, the parties filed their respective submissions.

7. We have heard the learned counsels for the Petitioners and Respondents, carefully perused the records, and considered the parties' submissions o.
8. Before proceeding to the main issues, we feel it is imperative to mention here that Article 4.6.2 of the PPA dated 18.11.2019 stipulates as under:

#### ***4.6 Liquidated Damages not amounting to penalty for delay in Commissioning***

##### ***4.6.1***

...  
***a) Delay beyond the Scheduled Commissioning Date upto (& including) the date as on 24 months from the Effective Date (as applicable): The total PBG amount shall be encashed on per day basis and proportionate to the balance capacity not commissioned***

...  
***4.6.2 The Maximum time period allowed for commissioning of the full Project Capacity with encashment of Performance Bank Guarantee shall be limited to Twenty four (24) months from the Effective Date of this Agreement (as applicable).***

We observe that in the instant petition the PPA (effective date being 23.10.2019) was executed on 18.11.2019, and the SCoD of the project was 23.04.2021. The SCoD was extended first up to 23.09.2021, and subsequently, vide letter dated 08.09.2021, SECI granted an extension up to 60 days from the date of operationalization of the LTA or actual date of commissioning, whichever is earlier. The LTA was operationalized on 23.12.2021, however, the project was fully commissioned on 22.12.2021. We note that vide letter No. SECI/SD/ISTS-4/ARPL/COD-Comm-Certificate/45670 dated 22.12.2021, SECI issued Commissioning Certificate and has

certified that *with the present part commissioning of 150 MW, full Capacity of 300 MW Project stands commissioned*. We further note that neither of the contracting parties has prayed before the Commission to take cognizance of Article 4.6. Nevertheless, the instant order of the Commission shall be applicable for the mutually agreed project capacity under PPA, which is valid.

9. On the basis of the submissions of the contracting parties, the following issues arise for adjudication:

**Issue No. I:** *Whether the introduction of Notification No.8/2021- GST issued by the Ministry of Finance, Government of India and the introduction of Notification No. F.12 (1)FD/Tax/2021-60 dated 30.09.2021 issued by the Department of Finance, Government of Rajasthan amounts to Change in Law events under Article 12 of the Power Purchase Agreement dated 18.11.2019? AND Whether the Petitioner is entitled to compensation in terms of Article 12 of the PPA towards additional expenditure on account of the Change in Law event qua the Notification No. 8/2021 and Notification No. F.12 (1)FD/Tax/2021-60?*

**Issue No. II:** *What should be the discount rate for the calculation of Annuity for 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?*

10. Now, we proceed to discuss the above issues.

**Re: Issue No. I**

***Whether the introduction of Notification No.8/2021- GST issued by the Ministry of Finance, Government of India, and the introduction of Notification No. F.12 (1)FD/Tax/2021-60 dated 30.09.2021 issued by the Department of Finance, Government of Rajasthan amounts to Change in Law events under Article 12 of the Power Purchase Agreement dated 18.11.2019? AND Whether the Petitioner is entitled to compensation in terms of Article 12 of the PPA towards additional expenditure on account of the Change in Law event qua the Notification No. 8/2021 and Notification No. F.12 (1)FD/Tax/2021-60?***

11. Briefly, the Petitioner has submitted that:

a) The 2017 CGST Notification and 2017 SGST Notification were issued by the Ministry of

Finance and were thus the existing law on the last date of bid submission (i.e., 30.05.2019), which have now been amended by issuance of Notification No.8/2021-Central Tax (Rate) and Notification No. [F.12(1)FD/Tax/2021-60] 2021 (*2021 GST Notifications*). The issuance of *2021 CGST Notifications* has increased the rate of GST for solar power-based devices and thus has a direct effect on the Project. Therefore, the *2021 GST Notifications* are Change in Law events under Article 12.1 (ii) of the PPA.

- b) Due to the issuance of the *2021 GST Notifications*, the direct effect on the Project is to the tune of Rs. 7,86,00,218/- towards payment of an additional 3.5% GST. The Petitioner is entitled to relief towards Change in Law on account of *2021 GST Notifications* and falling within the purview of Change in Law.

12. *Per contra*, SECI has submitted as under:

- a) The extent of relief admissible to the Petitioner on account of *2021 GST Notifications* dated 30.09.2021 of GST (if any) is subject to examination and verification of documents by SECI (and MPPMCL) to be submitted by the Petitioner. The tax incidence on goods is at 12%, and on services is at 18%. Accordingly, 12% will be applicable only on 70% of the gross consideration charged and 18% on the remaining 30% of the gross consideration. The applicable rate of GST on the Contract for the supply of goods has changed from 5% to 12%, and 70% of the gross consideration of the contract value under the Contract for Supply and Services (Composite Supply Works Contract) will be taxed at 12% in terms of entry 201A read with Explanation provided in Notification dated 30.09.2021 being the GST rate applicable on the supply of renewable energy devices and parts for their manufacture as specified therein. 30% of the gross consideration of the contract value under the contract for supply and services will be taxed at 18% (i.e., the GST rate applicable on the supply of construction, engineering, installation, commissioning, or other technical services in relation to renewable energy devices).
- b) If *2021 GST Notifications* dated 30.09.2021 issued by the Government of India and Government of Rajasthan are considered as Change in Law events, the Petitioner be directed to furnish the relevant details, including date of delivery of goods, invoices, date on which invoices were raised, Statutory Auditor's Certificate etc. to substantiate the impact of the change in rate of GST on the procurement of solar power-based devices for the solar power project. It is incumbent on the Petitioner to establish the one-to-one



correlation between the project(s), the supply of solar power-based devices, the invoices and other relevant documents for proof of the payment of GST respectively.

13. The Petitioner has filed its Rejoinder on 29.11.2023, wherein it has reiterated the submissions already made in the plaint. Additionally, the Petitioner has submitted as under:

- a) While ascertaining the impact of the Change in Law claim, the Petitioner has considered 70% of the contract value in the case of composite contracts. The Petitioner has also provided Supply and Service Agreements, Independent Auditor's Report dated 30.05.2022, and Invoices dated 31.12.2021 issued by SGRPPL, which clearly depicts CGST and SGST imposed on the Petitioner as 6%, respectively. The scrutiny of supporting documents to establish one to one correlation is carried out at length by the parties during the reconciliation process, pursuant to the decision of this Commission acknowledging and approving the occurrence of the Change in Law event.
- b) SECI, by way of its Reply, has relied on the Explanation contained in the Table with reference to Serial No.201A, Chapter 84, 85 or 94 and the decision of the Rajasthan Appellate Authority for Advance Ruling dated 11.01.2022 in the case M/s. Utsav Corporation. SECI has not disputed that the issuance of the *2021 GST Notifications* is a Change in Law event under Article 12 of the PPA. Rather, SECI has raised contentions regarding the quantum of GST payable. The Petitioner, by way of the present petition, is claiming compensation for reimbursement of the additional GST actually paid by the Petitioner, which is proved by way of the Independent Auditor's Report dated 30.05.2022 on additional Goods and Services Tax.

14. We observe that Article 12 of the PPA dated 18.11.2019 stipulates as under:

**ARTICLE 12: CHANGE IN LAW**

**12.1 Definitions**

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

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



However, Change in Law shall not include (i) any change in taxes on corporate income or (ii) any change in any withholding tax on income or dividends distributed to the shareholders of the SPD, or (iii) any change on account of regulatory measures by the Appropriate Commission.”

**In the event a Change in Law results in any adverse financial loss/ gain to the Solar Power Generator then, in order to ensure that the Solar Power Generator is placed in the same financial position as it would have been had it not been for the occurrence of the Change in Law, the Solar Power Generator/ Procurer shall be entitled to compensation by the other party, as the case may be, subject to the condition that the quantum and mechanism of compensation payment shall be determined and shall be effective from such date as may be decided by the Appropriate Commission.**

In the event of any decrease in the recurring/ nonrecurring expenditure by the SPD or any income to the SPD on account of any of the events as indicated above, SPD shall file an application to the appropriate commission no later than sixty (60) days from the occurrence of such event, for seeking approval of Change in Law. In the event of the SPD failing to comply with the above requirement, in case of any gain to the SPD, SECI shall withhold the monthly tariff payments on immediate basis, until compliance of the above requirement by the SPD.

#### 12.2 Relief for Change in Law

12.2.1 The aggrieved Party shall be required to approach the Appropriate Commission for seeking approval of Change in Law. 12.2.2 The decision of the Appropriate Commission to acknowledge a Change in Law and the date from which it will become effective, provide relief for the same, shall be final and governing on both the Parties.”

#### **Notifications regarding rates qua Goods:**

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

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

#### **Schedule I - 2.5%**

| <b>Sr. No.</b> | <b>Chapter/ Heading/ /Sub-heading/ Tariff-item</b> | <b>Description of Goods</b>   |
|----------------|--|---|
| 234            | 84 or 85   | <p><u>Following renewable energy devices &amp; parts for their manufacture:</u></p> <p>(a) Bio-gas plant;</p> <p>(b) Solar power based devices;</p> <p>(c) <u>Solar power generating system;</u></p> <p>(d) Wind mills, Wind Operated Electricity Generator (WOEG);</p> <p>(e) Waste to energy plants / devices;</p> <p>(f) Solar lantern / solar lamp;</p> <p>(g) Ocean waves/tidal waves energy devices/plants;</p> |

|  |  |  |
|--|--|--|
|  |  |  |
|--|--|--|

(The 2017 SGST Notification has similar provision. Same is not reiterated here.)

- b) Notification No. 8/2021- Central Tax (Rate) dated 30.09.2021 i.e. 2021 CGST 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<br>A | 84,<br>85 or<br>94 | <p>Following renewable energy devices &amp; parts for their manufacture: -</p> <p>(a) Bio-gas plant<br/>(b) Solar power-based devices<br/>(c) Solar power generating system<br/>(d) Wind mills, Wind Operated Electricity Generator (WOEG)<br/>(e) Waste to energy plants / devices<br/>(f) Solar lantern / solar lamp<br/>(g) Ocean waves/tidal waves energy devices/plants<br/>(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> |
|----------|--------------------|---|

(The Notification No. [F.12(1) FD/Tax/2021-60] has similar provision. Same is not being reiterated here.)

**Notifications regarding rates qua Services:**

16. We note that relevant notifications are as under:

- a) Notification No. 11/2017 inter-alia, stipulates as under:

| S. No. | Chapter, Section or | Description of Service | Rate (per | Condition |
|--------|---------------------|------------------------|-----------|-----------|
|--------|---------------------|------------------------|-----------|-----------|

|            | <i>Heading</i>                              |  | <i>cent.)</i> |            |
|------------|---|--|---------------|------------|
| <i>(1)</i> | <i>(2)</i>                                  | <i>(3)</i>   | <i>(4)</i>    | <i>(5)</i> |
| ....       | ....  | ....   | ....          | ....       |
| 3          | <i>Heading 9954 (Construction services)</i> | <i>(i) Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.</i><br><br><i>(Provisions of paragraph 2 of this notification shall apply for valuation of this service.)</i> | 9             | -          |
|            |   | <i>(ii) composite supply of works contract as defined in clause 119 of section 2 of Central Goods and Services Tax Act, 2017.</i>  | 9             | -          |
|            |   | <i>(iii) construction services other than (i) and (ii) above.</i>  | 9             | -          |

b) The 31<sup>st</sup> GST Council Meeting was convened on 22.01.2018. The recommendations made in the GST Council are as under:

“....

- ***III. GST on solar power generating plant and other renewable energy plants***
- *GST rate of 5% rate has been prescribed on renewable energy devices & parts for their manufacture (bio-gas plant/solar power based devices, solar power generating system (SGPS) etc) [falling under chapter 84, 85 or 94 of the Tariff]. Other goods or services used in these plants attract applicable GST*
- ***Certain disputes have arisen regarding GST rates where specified goods attracting 5% GST are supplied along with services of construction etc. and other goods for solar power plant.***
- ***To resolve the dispute the Council has recommended that in all such cases, the 70% of the gross value shall be deemed as the value of supply of said goods attracting 5% rate and the remaining portion (30%) of the aggregate value of such EPC contract shall be deemed as the value of supply of taxable service attracting standard GST rate.***

c) Notification No. 27/2018:

| <i>(1)</i> | <i>(2)</i> | <i>(3)</i> | <i>(4)</i> | <i>(5)</i> |
|------------|------------|------------|------------|------------|
|------------|------------|------------|------------|------------|

|      |                                  |  |   |     |
|------|----------------------------------|--|---|-----|
| “38. | 9954<br>or<br>9983<br>or<br>9987 | <i>Service by way of construction or engineering or installation or other technical services, provided in relation of setting up of following, -</i><br><i>(a) Bio-gas plant</i><br><i>(b) Solar power based devices</i><br><i>(c) Solar power generating system</i><br><i>(d) Wind mills, Wind Operated Electricity Generator (WOEG)</i><br><i>(e) Waste to energy plants / devices</i><br><i>(f) Ocean waves/tidal waves energy devices/plants</i><br><br><b><u>Explanation:- This entry shall be read in conjunction with serial number 234 of Schedule I of the notification No. 1/2017- Central Tax (Rate), published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) dated 28th June, 2017 vide GSR number 673(E) dated 28th June, 2017.</u></b> | 9 | -”; |
|------|----------------------------------|--|---|-----|

d) Notification No. 24/2018:

“ .....

against S. No. 234, in the entry in column (3), the following Explanation shall be inserted in the end, namely: -“**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.**”

e) The Rajasthan Appellate Authority for Advance Ruling vide its decision dated 11.01.2022 in the case of *M/s. Utsav Corporation Gurjar ki Thadi, Jaipur*, has held as under:

*In drawing our conclusions as above, we have based our findings upon the ruling dated 15.05.2019 given by the Rajasthan Appellate Authority for Advance Ruling in the case of Kailash Chandra (Proprietor of Mali Construction) involving similar situation. The Advance Ruling Authority in the instant case had held that the instant supply comprising supply of goods in the form of solar energy based bore well water pumping system along with installation and commissioning of such Water pumping system is a composite supply of works contract attracting GST @ 18% in terms of entry Sl. No. 3 of Notification No. 11/2017-Central Tax (Rate), dated 28.06.2017. However, the ruling that the composite supply .of goods and services in the instant case deserves to be classified as works contract service is not supported by legal position which has been correctly interpreted by the Authority for Advance Ruling for the State of Uttarakhand in the case of M/s Premier Solar Systems Pvt. Limited*

*as reported at 2019-T10L-79-AAR-GST by holding that the supply of solar irrigation water pumping system along with design, erection, commissioning and installation would constitute a composite supply attracting GST @ 5% on goods portion and GST @ 18% on services portion as prescribed in the relevant entry of the notification.*

*Thus, we observed that the effective rate of GST on supply of Goods and Services in relation to the Solar Power Based Devices upto 30.09.2021 is as follows:-*

- (a) 5% on value of goods where the value of goods is to be taken as 70% of the gross consideration and*
- (b) 18% on the value of services where the value of services is to be taken as 30% of the gross consideration.*

*Hence, the effective rate of GST for the composite supply will work out to 8.9% [(5% x 70%) plus (18% x 30%)]. However, with the amendments effected vide Notification No. 06/2021-Central Tax(rate) dated 30.09.2021 and Notification No. 08/2021-Central Tax (rate) dated 30.09.2021, the rate of tax on goods portion stands increased from 5% to 12% and accordingly, the effective rate of GST for the period post 30.09.2021 will stand increased to that extent.*

17. The Commission notes from the submission of the Petitioner that it had executed two contracts viz. Agreement with *M/s Siemens Gamesa Renewable Power Private Limited* for the supply of goods; Agreement with *M/s Siemens Gamesa Renewable Energy Projects Private Limited* for supply and services, which was a composite contract for the supply of goods, testing and commissioning services etc., for establishing the project. Consequently, in the Auditor Report dated 30.05.2022, the supply portion @70% was factored in, and for the service portion, the GST was computed @30%. The Petitioner has sought compensation accordingly. SECI, in its reply dated 31.10.2023, has submitted that 12% will be applicable only on 70% of the gross consideration charged and 18% on the remaining 30% of the gross consideration.
18. From the above, we observe that Clause (v) of Article 12 of the PPA, 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 and Notification No. [F.12(1) FD/Tax/2021-60] dated 30.09.2021 has been issued by the Ministry of Finance, Government of India and the Government of Rajasthan, respectively. 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 as 'Change in Law'.

Hence, we hold that the impugned notifications, viz. Notification No. 8/2021- Central Tax (Rate) dated 30.09.2021 and Notification No. [F.12(1) FD/Tax/2021-60] dated 30.09.2021 (*2021 GST Notifications*) are a Change in Law event as per Article 12 of the PPA dated 18.11.2019. It is pertinent to mention here that the view taken is consistent with similar orders issued by the Commission, viz. *order dated 14.03.2024 in Petition No. 65/MP/2023; order dated 16.01.2024 in Petition No. 308/MP/2022 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.*

19. We further note that GST at the rate of 18% was levied (i.e., 9% of CGST and 9% of SGST) on service contracts, in terms of Ministry of Finance's Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017. Subsequently (on or about 29.06.2017), all the State Governments issued corresponding notifications (Notification No. 11/2017) through which SGST at the rate of 9% was made applicable on such Service Contracts. After the enactment of GST laws, various issues were raised qua the applicable GST rates for contracts providing for supply and services (Composite Contracts) for setting up solar power plants. In order to resolve these issues, the Ministry of Finance, on the recommendations of the Goods and Services Tax Council (GST Council), issued: (a) Notification bearing No. 27/2018-Central Tax (Rate) adding S. No. 38 to the list provided in Notification No. 11/2017 and hence providing that GST at the rate of 18% will also be levied on, inter-alia, that Solar power based devices, Solar power generating system etc. (b) Notification bearing No. 24/2018-Central Tax (Rate), clarifying that for composite contracts, 70% of the taxable value would be treated as the supply component of the contract (to be taxed at 5% - CGST + SGST), and the remaining 30% would be considered as service component of the contract (to be taxed at 18% - CGST + SGST). We note that *2021 GST Notifications*, the applicable rate of GST on the contract for the supply of goods has changed from 5% to 12%, whereas 70% of the gross consideration of the contract value under the Contract for Supply and Services (Composite Supply Works Contract) is to be taxed at 12% in terms of entry 201A read with Explanation provided in Notification No. 8/2021- Central Tax (Rate) dated 30.09.2021. 30% of the gross consideration of the contract value under the contract for supply and services will be taxed at 18% (i.e., the GST rate applicable on the supply of construction, engineering, installation, commissioning, or other technical services in relation to renewable energy devices). Hence, the effective change in GST in the above case is



4.9 %, i.e., from 8.9% to 13.8%.

20. In the instant petition, the bid was submitted by the Petitioner on 30.05.2019. The e-Reverse auction was conducted on 12.06.2019. PPA was executed between the Petitioner and SECI on 18.11.2019, and the SCoD of the project was on 23.04.2021. In terms of the extended SCoD, the Project was required to be commissioned on or before 60 days from the date of operationalization of LTA. The Petitioner commissioned the full capacity of its project on 22.12.2021, whereas the *2021 GST Notifications* were notified on 30.09.2021. As such, the Petitioner's project was affected by the impugned Notifications and is entitled to relief under the GST Laws as per the terms of Article 12 of the PPA. In view of the above discussion, we find and hold that Petitioner is entitled to compensation towards additional expenditure on account of Notification No. 8/2021- Central Tax (Rate) dated 30.09.2021 and Notification No. [F.12(1) FD/Tax/2021-60] dated 30.09.2021 (*2021 GST Notifications*) as per Article 12 of the PPA.
21. Accordingly, the Commission hereby directs the contracting parties to carry out reconciliation of additional expenditure on account of change in law events, viz. the introduction of *Notification No.8/2021- GST issued by the Ministry of Finance, Government of India and the introduction of Notification No. F.12 (1)FD/Tax/2021-60 dated 30.09.2021 issued by the Department of Finance, Government of Rajasthan* by exhibiting clear and one-to-one correlation with the projects and the invoices raised supported with auditor certificate corresponding to the mutually agreed project capacity under PPA, which is valid, between the Petitioner and SECI.
22. The issue is decided accordingly.

**Re: Issue No.II**

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

23. Briefly, SECI submitted that the reconciled claim is to be paid on a monthly annuity basis unless the buying entities specifically agree to make a lump-sum payment and further duly



make such payment in discharge of its obligation. The discounting factor may be considered as 9% and the period for payment of the compensation on account of change in the rate of GST on annuity basis may be taken to be 15 years. The reconciled GST claim may be payable to the Solar Power Developer with the monthly discounting rate. MPPMCL be directed to make payment to SECI towards the reconciled GST claims.

24. *Per Contra*, the Petitioner has submitted that the issue of the cut-off date, even with respect to the Petitioner's claim for Change in Law on account issuance of the *2021 GST Notifications*, is irrelevant as the Petitioner's claim for Change in Law on account of issuance of the *2021 GST Notifications* is limited to the period prior to the COD of the Project. The same is evident from a bare perusal of the Independent Auditors Report dated 30.05.2022 on additional GST, which mentions the last date of invoice 31.12.2021. APTEL, by way of its judgment dated 15.09.2022 in Appeal No. 256 of 2019 titled *Parampujya Solar Energy Pvt. Ltd. & Anr. v. Central Electricity Regulatory Commission & Ors (Parampujya judgement)*, has already held that restricting additional expenditure to the period prior to COD cannot be approved. Article 12 of the PPA does not impose any restriction against compensation for the occurrence of additional expenditure due to a Change in Law for the period post-COD for the Project. Accordingly, applying the aforesaid principle of law to the facts of the present case, the Petitioner has argued that no restriction can be imposed on the grant of compensation to the Petitioner for any expenditure incurred even after COD of the Project, albeit in the present case the Petitioner is not claiming any such relief.
25. The Petitioner submitted that this Commission may grant the dispensation similar to the order dated 21.04.2023 in Petition No. 219/MP/2022 in the present case and direct the Respondents to compensate the Petitioner towards the occurrence of Change in Law events as per the same methodology so that the Petitioner is restored to the same economic position as it would have been had the Change on Law events not occurred.
26. It was placed before us that 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.”*

27. The 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.*
28. We note that the *Central Electricity Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2020* (RE Tariff Regulations, 2020), which 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.
29. We note that the Petitioner’s projects achieved actual commercial operation on 22.12.2021 (i.e. during FY 2021-22). The Commission notified the RE Tariff Order dated 31.03.2021 for FY 2021-22 in pursuance of the *CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2020*. In the *RE Tariff order dated 31.03.2023*, the Commission considered the interest rate of 9% and the term of loan payment as 15 years. Thus, we hold that for the Change in Law events of 2021 GST Notifications, the *discount rate of 9% and annuity payment of 15 years* shall be the appropriate methodology towards change in law compensation.
30. 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.

31. The issue is decided accordingly.

**Re: Issue No. III**

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

32. The Petitioner submitted that it is entitled to receive interest/ carrying cost from the date of payment of GST by the Petitioner till the date of reimbursement by SECI. Article 12.1 of the PPA explicitly envisages the applicability of the restitutionary principles which as per the settled principles of law include carrying cost from the date of impact. As a relief for the occurrence of the Change in Law Events the Petitioner is not only entitled to reimbursement of additional expenditure but is also entitled for carrying costs. If the Petitioner's claim for interest/carrying cost is denied, then mere compensation after the lapse of time will have a diminished value, severely affect the economic position of the Petitioner, and thus will not result in placing the Petitioner in the same economic position. Petitioner is entitled to receive interest/ carrying cost from the date of payment of GST, by the Petitioner till the date of reimbursement by SECI.

33. *Per contra*, SECI has submitted that the Petitioner should be required to establish to the satisfaction of the Commission that it has made prudent and bonafide efforts to minimize the interest cost. The decision of APTEL in A.No.256 of 2019 in the Parampujya judgement is subject to the outcome of the Hon'ble Supreme Court decision in CA.8880/2022 titled *Telangana Northern Power Distribution Co. Ltd. & Anr. Vs. Parampujya Solar Energy Pvt. Ltd. & Ors*

34. We observe that Article 12 of the PPA dated 18.11.2019 stipulates as under:

**ARTICLE 12: CHANGE IN LAW**

***12.1 Definitions***

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

*In this Article 12, the term Change in Law shall refer to the occurrence of any of the following events pertaining to this project only after the last date of the bid submission, including (i) **the enactment of any new law**; or (ii) **an amendment, modification or repeal of an existing law**; or (iii) the requirement to obtain a new consent, permit or license; or (iv) any modification to the prevailing conditions prescribed for obtaining an*

*consent, permit or license, not owing to any default of the Solar Power Generator; or **(v) any change in the rates of any Taxes including any duties and cess or introduction of any new tax made applicable for setting up the solar power project and supply of power from the Solar Power project by the SPD which have a direct effect on the Project.***

*However, Change in Law shall not include (i) any change in taxes on corporate income or (ii) any change in any withholding tax on income or dividends distributed to the shareholders of the SPD, or (iii) any change on account of regulatory measures by the Appropriate Commission.”*

**In the event a Change in Law results in any adverse financial loss/ gain to the Solar Power Generator then, in order to ensure that the Solar Power Generator is placed in the same financial position as it would have been had it not been for the occurrence of the Change in Law, the Solar Power Generator/ Procurer shall be entitled to compensation by the other party, as the case may be, subject to the condition that the quantum and mechanism of compensation payment shall be determined and shall be effective from such date as may be decided by the Appropriate Commission.**

*In the event of any decrease in the recurring/ nonrecurring expenditure by the SPD or any income to the SPD on account of any of the events as indicated above, SPD shall file an application to the appropriate commission no later than sixty (60) days from the occurrence of such event, for seeking approval of Change in Law. In the event of the SPD failing to comply with the above requirement, in case of any gain to the SPD, SECI shall withhold the monthly tariff payments on immediate basis, until compliance of the above requirement by the SPD.*

#### *12.2 Relief for Change in Law*

*12.2.1 The aggrieved Party shall be required to approach the Appropriate Commission for seeking approval of Change in Law. 12.2.2 The decision of the Appropriate Commission to acknowledge a Change in Law and the date from which it will become effective, provide relief for the same, shall be final and governing on both the Parties.”*

35. We observe that the Hon’ble Supreme Court vide *Uttar Haryana Bijli Vitran Nigam Ltd. Vs. Adani Power Ltd. (2019) 5 SCC 325 (Uttar Haryana judgement)* dated 25.02.2019. has held as under:

*Article 13.2 is an in-built restitutionary principle which compensates the party affected by such change in law and which must restore, through monthly tariff payments, the affected party to the same economic position as if such change in law has not occurred. **This would mean that by this clause a fiction is created, and the party has to be put in the same economic position as if such change in law has not occurred, i.e., the party must be given the benefit of restitution as understood in civil law...** ... 13. 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.***

36. From the above, we observe that Article 12.1 of the PPA dated 18.11.2019 specifically stipulates that in the event a Change in Law results in any adverse financial loss/ gain to the Solar Power Generator, in order to ensure that the Solar Power Generator is placed in the same financial position, as it would have been had it not been for the occurrence of the Change in Law, the Solar Power Generator/ Procurer shall be entitled to compensation. We further observe that the Hon'ble Supreme Court vide the *Uttar Haryana judgement* dated 25.02.2019 has held that in case there is an in-built restitutionary principle in the PPA, the affected party has to be put in the same economic position as if such change in law had not occurred, i.e., the party must be given the benefit of restitution as understood in civil law.
37. The Petitioner, in the instant petition, shall be eligible for carrying costs starting from the date when the actual payments were made to the Authorities until the date of issuance of this Order, at the actual rate of interest paid by the Petitioner for arranging funds (supported by Auditor's Certificate) or the rate of interest on working capital as per the applicable RE Tariff Regulations prevailing at that time or the late payment surcharge rate as per the PPAs, whichever is the lowest. Once a supplementary bill is raised by the Petitioner in terms of this order, the provision of Late Payment Surcharge in the PPAs would kick in if the payment is not made by the Respondents within the due date.
38. The Commission further directs that the responding Discoms are liable to pay to SECI all the above-reconciled claims that SECI has to pay to the Petitioner. However, payment to the Petitioner by SECI is not conditional upon the payment to be made by the responding Discoms to SECI.



39. 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 Projects 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.**”*

40. 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.”*

41. Therefore, since the restitution clause is embedded in the PPA, the directions issued in this Order, so far as they relate to additional compensation for the period pre-COD (including carrying cost), claims only shall be enforced. However, in view of the Hon’ble Supreme Court Order dated 12.12.2022, as quoted above, the directions issued in this Order so far as they relate to additional compensation (including carrying cost) for the period post-Commercial Operation Date of the projects 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 31.01.2024 in Petition No. 226/MP/2021 & 227/MP/2021; Order dated 03.05.2024 in Petition No. 197/MP/2023 & 206/MP/2023.*



42. The issue is decided accordingly.

43. The summary of our findings is as follows:

- a) The Notification No. 8/2021- Central Tax (Rate) dated 30.09.2021 by the Ministry of Finance, Government of India, and issuance of Notification No. F.12(1)FD/Tax/2021-60 dated 30.09.2021 issued by the Department of Finance, Government of Rajasthan (*2021 GST Notifications*) are Change in Law events in terms of Article 12 of the PPA dated 18.11.2019.
- b) The Petitioner is entitled to compensation on account of a Change in Law corresponding to the mutually agreed project capacity under PPA, which is valid, as per the terms of Article 12 of the PPA, due to the *2021 GST Notifications*. The contracting parties to carry out reconciliation corresponding to the mutually agreed project capacity under PPA, which is valid between the Petitioner and SECI on account 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 GST Notifications*.
- c) Compensation is to be paid at the discount rate of 9% and an annuity period of 15 years. 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 Petitioner, whichever is later. The liability of SECI/ MPPMCL 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. 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.
- d) The Petitioner shall also be eligible for carrying cost starting from the date when the actual payments were made to the Authorities till the date of issuance of this Order, at the actual rate of interest paid by the Petitioner 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 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.

e) Given the restitution clause in the PPA, the directions issued in this Order, so far as they relate to additional compensation for the period pre-COD (including carrying cost), claims only shall be enforced. However, in view of the Hon'ble Supreme Court Order dated 12.12.2022, as quoted above, the directions issued in this Order so far as they relate to additional compensation (including carrying cost) for the period post-Commercial Operation Date of the projects 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.*

44. Petition No. 136/MP/2023 is disposed of in terms of the above.

Sd/-  
पी. के. सिंह  
सदस्य

Sd/-  
जिष्णु बरुआ  
अध्यक्ष