



नई दिल्ली
NEW DELHI

याचिका संख्या./ Petition No. 138/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: 19th of May, 2024

IN THE MATTER OF:

Petition under Section 79(1)(b) read with Section 79(1)(f) of the Electricity Act, 2003 for (i) approval of 'Change in Law'; and (ii) consequential relief to compensate for the increase in capital cost due to promulgation of Notification No. 08/2021–Integrated Tax (Rate) dated 30.09.2021 issued by Ministry of Finance, Government of India increasing in the rate of Goods and Services Tax (GST) on solar power-based devices (including solar cells and modules) in terms of Article 12 of the power purchase agreement dated 31.05.2020 between Mega SuryaUrja Private Limited and Solar Energy Corporation of India Limited.

AND IN THE MATTER OF:

Mega SuryaUrja Private Limited
Mahindra Towers, P. K. Kurne Chowk,
Worli, Mumbai - 400 018

...Petitioner

Versus

1. **M/s Solar Energy Corporation of India Limited,**
1st Floor, D-3, A Wing,
Religare Building District Centre,
Saket, New Delhi - 110017

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

...Respondents

Parties Present: Shri Nitish Gupta, Advocate, MSPL
Shri Shubham Singh, Advocate, MSPL
Ms. Parichita Chowdhury, Advocate, MSPL
Ms. Shikha Ohri, Advocate, SECI
Shri Kartik Sharma, Advocate, SECI
Ms. Poorva Saigal, Advocate, HPPC
Shri Ravi Nair, Advocate, HPPC
Shri Devyanshu Sharma, Advocate, HPPC

आदेश/ ORDER

The Petitioner, Mega SuryaUrja Private Limited (MSUPL), is a generating company and is a special purpose vehicle of M/s Mahindra Susten Pvt Ltd (MSPL) for establishing a 250 MW Solar Power Project 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. As per the RfS, the last date for submission of the bid was 30.05.2019, and MSPL submitted the bid as per bid acknowledgement receipt dated 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 the Haryana Power Purchase Center (HPPC) dated 19.03.2020. The Scheduled Commissioning date (SCoD) as per the PPA is 25.09.2021, which was subsequently extended by SECI to 29.06.2022 on account of the Force-Majeure event, i.e., Covid-19/Delay in the operationalization of the LTA. The project was commissioned in two parts, i.e., 175 MW on 20.05.2022 and 75 MW on 17.06.2022. The Petitioner has filed the instant Petition seeking approval of a change in law events viz. promulgation of Notification No. 08/2021–Integrated Tax (Rate) (2021 GST Notification) dated 30.09.2021 and is seeking relief to compensate for the increase in capital cost of the project.

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) to facilitate the implementation of the Jawaharlal Nehru National Solar Mission (NSM) for the development, promotion, and commercialization of solar energy technologies in the country and to achieve targets set out in the NSM.
3. Respondent No. 2 Haryana Power Purchase Centre (HPPC) is a joint forum of Uttar Haryana Bijli Vitran Nigam Ltd. and Dakshin Haryana Bijli Vitran Nigam Ltd. (Haryana Discoms) and is overseeing distribution activities in the State of Haryana.
4. The Petitioner has made the following prayers:
 - a) *Hold, declare and acknowledge that the promulgation of Notification No. 08/2021–Integrated Tax (Rate) dated 30.09.2021 issued by Ministry of Finance, Government of India increasing the rate of Goods and Services Tax (GST) on solar power-based devices qualifies as ‘Change in Law’ in terms of Article 12 of the PPA executed between the Petitioner and the Respondent and that the Petitioner is entitled to relief thereunder;*
 - b) *Hold that the Petitioner is entitled to carrying cost at 10.25% P.A. from the date of incidence till the date of COD of the Project so as to restitute the Petitioner to the same economic position as if the Change in Law event has not occurred;*
 - c) *Declare and allow the Petitioner to claim additional cost of INR 65,72,17,174 (Sixty Five Crore Seventy Two Lakhs Seventeen Thousand One Hundred Seventy Four) plus the carrying cost calculated at the rate of 10.25% totalling to INR 2,56,36,258, (Two Crore Fifty Six Lakhs Thirty Six Thousand Two Hundred Fifty Eight) considered from the date of incidence to the date of COD on account of the Change in Law event, as described hereinabove;*
 - d) *Direct the Respondent to pay total lump sum amount as calculated based on the date of incidence to COD, and to pay the remaining amount through equal monthly annuity of INR 74,42,767.25 (Seventy Four Lakhs Forty Two Thousand Seven Hundred Sixty Seven Point Two Five) spread throughout the remaining period of 15 years from the date of COD, as per the methodology prescribed by this Hon’ble Commission vide its order dated 20.08.2021 in Petition No. 536/MP/2020. The directions sought from this Hon’ble*

Commission shall stand revised / modified subject to the date of actual payment to be made by the Respondent;

- e) Direct that payment of lumpsum amount / monthly annuity / carrying cost by SECI to the Petitioner will not be conditional upon the payment to be made by the Respondent No. 2 to SECI;*
- f) Direct SECI to pay in lumpsum the monthly annuities becoming due from COD till the date of 1st payment by SECI along with carrying cost at 10.25%, and;*
- g) Grant such order, further relief(s) in the facts and circumstances of the case as this Ld. Commission may deem just and equitable in favour of the Petitioner.*

Factual Matrix:

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

Location	Village: Seora and Daddu ka Goan, Tehsil: Kolayat, District: Jodhpur, 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)	250 MW
Power	Solar PV
Date of Notification No.1/2017-Integrated Tax (Rate) (2017 GST Notification)	28.06.2017
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	19.03.2020
Effective date of the PPA	25.03.2020
PPA executed on	31.05.2020
Engineering, Procurement and Construction (EPC) Agreement was entered between the Petitioner and M/s. Mahindra Susten Pvt. Ltd. (EPC contractor)	28.09.2021
Petitioner entered into an agreement for supply of Solar Power Generating System with MSPL	
SCOD of the project	25.09.2021

Notification No. 08/2021– Integrated Tax (Rate) dated 30.09.2021 issued by Ministry of Finance, Government of India (<i>2021 GST Notification</i>)	30.09.2021
Extended SCOD	18.12.2021 01.01.2022 25.02.2022 and 12.05.2022 (on account of Covid-19) 29.06.2022 (on account of delay in operationalization of LTA)
COD of the project	175 MW- 20.05.2022 75 MW- 17.06.2022
MSUPL issued change in law notice to SECI/HPPC	14.11.2022

6. The instant petition was filed on 13.04.2023. Hearing was conducted on 23.08.2023, wherein the Commission, after hearing the Petitioner, admitted the Petition. In response to the specific query of the Commission regarding the status of the Project and the extension to the Scheduled Commercial Operation Date, the Petitioner submitted that the SCoD of the Project had been extended due to a delay in the operationalization of LTA. The Petitioner submitted that it would furnish details regarding the status of the project and SCoD along with its additional affidavit. Pursuant to the directions of the Commission, the Petitioner filed its Additional Affidavit on 31.08.2023. After hearing the submission of the Petitioner, the Commission admitted the petition and directed the Petitioner to file an additional affidavit. Hearing was conducted on 28.11.2023 wherein the Commission directed HPPC to file its reply, and the Petitioner was directed to file its rejoinder accordingly. The Petition was listed for hearing on 14.02.2024, but due to paucity of time, the matter could not be taken up. Accordingly, the matter was adjourned to 05.03.2024. On 05.03.2024, the Commission heard the submissions of the parties, reserved the matter for orders, and directed the parties to file their written submissions within two weeks.
7. We have heard the learned counsels for the Petitioners and Respondents, carefully perused the records, and considered the parties' submissions .
8. Before proceeding to the main issues, we feel it is imperative to mention here that Article 4.6.2 of the PPA dated 31.05.2020 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 25.03.2020) was executed on 31.05.2020, and the SCoD of the project was 25.09.2021. The SCoD was extended first up to 18.12.2021; thereafter, it was further extended to 01.01.2022 and 25.02.2022. Further, the SCoD was subsequently extended up to 29.06.2022 on account of the delay in operationalization of LTA. The LTA was operationalized on 29.06.2022, however, the project was fully commissioned on 17.06.2022. We note that vide letter No. SECI/SD/ISTS-IV/MSPL/COD-Comm-Cert/49611 dated 17.06.2022, SECI issued Commissioning Certificate and has certified that *with the present part commissioning of 75 MW, the full capacity of 250 MW project stands commissioned*. We further note that the contracting parties mutually agreed to novate the said Article 4.6 for the mutually agreed project capacity under PPA.

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. 08/2021–Integrated Tax (Rate) issued by the Ministry of Finance, Government of India amounts to a Change in Law event 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?*

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. 08/2021–Integrated Tax (Rate) issued by the Ministry of Finance, Government of India amounts to a Change in Law event 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?

11. Briefly, the Petitioner has submitted that:

- a) The increase in the GST rates on the import of solar modules and on Solar Power Generators (erstwhile, Solar Power Generating Systems), which are the primary components required for setting up the project, from 5% to 12% could not have been factored in by the Petitioner during the time of submitting the bid. Since the *2021 GST Notification* has been issued after the bid date, i.e., 30.05.2019 which is also the cut-off date for determination of Change in Law in terms of Article 12.1 of the PPA. The Petitioner is entitled to seek relief on account of the said Change in Law. The burden of the increase in the rate of taxation of Solar Modules as per the *2021 GST Notification* has been borne by the Petitioner. This significant increase in the tax incidence has resultantly increased the capital cost of the Project, as set out below:

Particulars	Amount (INR)
Total Cost post-GST Notification 2021 (inclusive of all taxes)	12,20,64,67,295.00
Total Cost pre-GST Notification 2021 (inclusive of all taxes)	11,54,92,50,121.00
Increase in Tax incidence	65,72,17,174.00

- b) The Petitioner has imported Solar Modules on which such an increase in tax incidence of GST has resulted in an additional GST outlay to the tune of INR 50,82,12,601. Prior to 01.10.2021, 70% of the value of SPGS was taxed at the rate of 5%, and the balance of 30% of the value of SPGS was taxed at 18%, having an effective GST rate of 8.90%. However, with effect from 01.10.2021, 70% of the value is taxed at the rate of 12%, and the balance

30% value with 18%, having an effective GST rate of 13.80%. This increase in the effective GST rate has resulted in additional GST on equipment procurement, amounting to INR 14,90,04,573. Thus, the total impact on account of the *2021 GST Notification* is INR 65,72,17,174 (GST on Solar Modules and GST on SPGS).

12. *Per contra*, briefly, SECI has submitted that in order to qualify for any relief under Article 12 of the PPA dealing with Change in Law, the claims raised by the Petitioner should fall within the scope and ambit of the said provision. This Commission may be pleased to decide whether the *2021 GST Notification* dated 30.09.2021 qualifies as a Change in Law event. If there is the supply of services in addition to the supply of goods, namely, renewable energy devices, in terms of the explanation, the Rajasthan Appellate Authority for Advance Ruling vide decision dated 11.01.2022 in the case of *M/s. Utsav Corporation* has clarified that if the Contract entered into by the Petitioner involves the supply of Solar power-based devices, including carrying out the activity of erection, installation, and commissioning of such system, it will fall under the composite supply of works contract. The tax incidence on goods is at 12%, and the 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. In case of composite works contract, subject to admissibility of *2021 GST Notification* dated 30.09.2021 as Change in Law, any change in rate of GST which the Petitioner can claim as per *2021 GST Notification* dated 30.09.2021 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 *2021 GST Notification*.
13. Further, HPPC has submitted that subject to the declaration of the *2021 GST Notification* dated 30.09.2021 as a Change in Law by this Commission, any increase in the tax rate of GST claimed by the Petitioner is to be considered only qua the increase of GST from 5% to 12% on goods as there has been no increase in tax on the services. In order to establish a one-to-one correlation between the Solar Power Project and the supply of goods and/or services, the Petitioner must provide to SECI and HPPC the respective invoices and other relevant documents demonstrating payments based on the revised GST rate in terms of the *2021 GST Notification* dated 30.09.2021. In terms of the PPA, the commercial supply of power from the Project of the Petitioner is to commence from the Commercial Operation of the Project, and therefore, the impact, if any, can

only be considered on the equipment that is duly installed and commissioned by the date of commercial operation date and not for the equipment installed after the commercial operation date.

Rejoinder of the Petitioner

14. The Petitioner has filed its Rejoinder against the reply filed by SECI and HPPC on 09.01.2024 and 12.02.2024, respectively, wherein it has reiterated the submissions already made in the plaint, and therefore, the same are not reproduced herewith for the sake of brevity. Additionally, the Petitioner has submitted as under:

- a) The Petitioner has executed an EPC Agreement dated 28.09.2021 with MSPL wherein Article 3.2 delineates the scope of the agreement and clearly shows that the same is a composite agreement for the supply and installation of solar power-based devices, i.e., it is an agreement for the supply of goods and services. The explanation to Entry 201 A would squarely apply in the case of the Petitioner, and the net effect of the *2021 GST Notification* would result in an aggregate increase of 8.29% for such composite contracts. While Article 16 states that the Contract Price is inclusive of all taxes, the same is qualified further: ‘as applicable on Effective Date’ (i.e., 20.01.2021) and ‘basis the assumptions set out in Schedule 12’. Clearly, the Effective date is much prior to the promulgation of the *2021 GST Notification*, while Schedule 12 states that such Contract Price is subject to ‘Change in Law’ as per Article 17 r/w Article 17.2.1, which states that in case such Change in Law results in an increase of the liability of the Contractor, the parties shall agree to an adjustment to reflect such increased liability. In terms thereof, the Petitioner had revised the contract price due to the imposition of GST as per Article 19 of the EPC Agreement, and hence, SECI’s submissions do not deserve any consideration.
- b) SECI’s averments on the use of the term solar power generator instead of solar power generating system in the *2021 GST Notification* do not affect the present matter. Actual expenditure has been incurred on the basis of the assessment of the competent Authority, and therefore, there does not arise any question as to whether such items come under the purview of the *2021 GST Notification*. Further, a mere change in the nomenclature of the term from SPGS to SPG does not change the function of the device, and it still produces electricity based on solar power. SPGS includes SPG along with transmission and

distribution equipment. Even if SPGS is considered to be of a broader definition than SPG, still it would be covered under the purview of Change in Law.

- c) SECI's contention that no claim should be allowed against the solar modules imported after the COD of the project is of no merit in the present facts of the case as all the required solar modules were imported by the Petitioner during the period 02.11.2021 to 07.03.2022 and COD of the project was 29.06.2022. Thus, all the solar modules were imported by the Petitioner before the project's COD .

Analysis and Decision:

15. We observe that Article 12 of the PPA dated 31.05.2020 stipulates as under:

“ARTICLE 12: CHANGE IN LAW

12.1 Definitions

*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 (ii) 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 Central Commission for seeking approval of Change in Law.

12.2.2 The decision of the Central Commission to acknowledge a Change in Law and the date from which it will become effective, provide relief for the same, shall be final and governing on both the Parties.”

16. We observe that the relevant provisions of the EPC contract dated 28.09.2021 are as under:

3 PURPOSE AND SCOPE OF CONTRACT

...

3.2 Scope

3.2.1 The scope and responsibility of the Contractor shall include:

- a. **procurement, supply & delivery of the Equipment and Material at the Site required for the development, commissioning and operation of the Project on the terms and conditions contained herein.***
- b. carrying out the Work in accordance with this Agreement;*
- c. designing, engineering, supply, material handling, packaging, transit insurances, loading, unloading, factory tests/inspection, site storage, installation, start-up, testing, commissioning and all related activities for the Equipment, components, systems, facilities etc required for the purpose of carrying out the Work and developing the Project under this Agreement;*
- d. coordination with the suppliers of Equipment for inspection of Equipment at the time of acceptance and assisting the Owner in issuance of necessary acceptance certificates, unloading, storage, handling and in-plant transportation of Equipment at Site; e. carrying out successful Acceptance Test for each part capacity commissioned and for complete capacity; obtaining all the statutory, CEA/State Authority approvals, as per the scope mentioned in **SCHEDULE 9**;*
- f. **all other services required for the completion of construction, erection, installation, assembling, testing and Commissioning of the Project; ensuring system stability and healthiness and***
- g. imparting training to Owner's personnel not exceeding five in number at Site for the operation and maintenance of the Project (limited to 10 days) after successful Acceptance of the Project by the Owner, provided that such training shall be availed by the Owner within six (6) months from the Acceptance Date.*

Notifications regarding rates qua Goods:

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

- a) 2017 CGST Notification:

Schedule I - 2.5%

Sr. No.	Chapter/ Heading/ /Sub-heading/ Tariff-item	Description of Goods
234	84 or 85	<p><u>Following renewable energy devices & 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>

b) 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 A	84, 85 or 94	<p><u>Following renewable energy devices & parts for their manufacture:</u></p> <p>(a) Bio-gas plant</p> <p>(b) Solar power-based devices</p> <p>(c) Solar power generating system</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> <p>(h) Photo voltaic cells, whether or not assembled in modules or made up into panels.</p> <p><i>[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.</i></p>
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Notifications regarding rates qua Services:

18. We note that relevant notifications are as under:

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

<i>S. No.</i>	<i>Chapter, Section or Heading</i>	<i>Description of Service</i>	<i>Rate (per cent.)</i>	<i>Condition</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>	<i>(5)</i>
....
3	Heading 9954 (Construction services)	(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. (Provisions of paragraph 2 of this notification shall apply for valuation of this service.)	9	-
		(ii) composite supply of works contract as defined in clause 119 of section 2 of Central Goods and Services Tax Act, 2017.	9	-
		(iii) construction services other than (i) and (ii) above.	9	-

b) The 31st 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>
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“38.	9954 or 9983 or 9987	<i>Service by way of construction or engineering or installation or other technical services, provided in relation of setting up of following, -</i> <i>(a) Bio-gas plant</i> <i>(b) Solar power based devices</i> <i>(c) Solar power generating system</i> <i>(d) Wind mills, Wind Operated Electricity Generator (WOEG)</i> <i>(e) Waste to energy plants / devices</i> <i>(f) Ocean waves/tidal waves energy devices/plants</i> <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>	9	-”;
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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.

- f) The Gujarat Appellate Authority for Advance Ruling vide decision dated 12.07.2022 in an Appeal filed by M/s. Apar Industries Limited, has inter-alia, held as under:

“15. Further we find that the Entry No. 234 appearing under Schedule-I to the Notification No.01/2017-IT (Rate) dated 28.06.2017 which provides applicable rate of GST at 5% on supplies of renewable energy devices & parts for their manufacture viz. Solar power generating system, falling under Chapter 84,85 or 94, was omitted vide Notification No. 8/2021-IT (Rate) dated 30.09.2021. The description of goods covered under Entry No.234 now appears at Entry No. 201A under Schedule-II to the Notification No. 01/2017-IT(Rate)dated 28.06.2017, amended vide Notification No. 8/2021-IT(Rate) dated 30.09.2021 w.e.f. 1.10.2021, which provides for applicable rate of GST at 12%. **The description of renewable energy devices & parts for their manufacture viz. ‘Solar power generating system’ appearing at entry No. 234 of schedule-I now stands amended as ‘Solar power generator’ under Entry No. 201A of schedule-II.**

15.1 Therefore we find that the product in question viz. Solar LT/HT XLPE Cables supplied for Solar Power Generating System, classified under Chapter 5, forms integral part of Solar Power Generating System is eligible for benefit of entry at Sr. No. 234 appearing under Schedule-I to Notification No.01/2017- Integrated Tax (Rate) dated 28.06.2017 and liable to be taxed @ 5% GST upto 30.09.2021. Thereafter the same will be covered under entry Sr. No. 2014 appearing under Schedule-II to the Notification No.01/2017-IT (Rate) dated 28.06.2017 amended vide Notification No. 08/2021-IT (Rate) dated 30.09.2021 and liable to be taxed @12% GST w.e.f. 01.10.2021.”

19. The Commission notes from the submission of the Petitioner that it had executed an EPC Agreement with MSPL for supply and services which was a composite contract for the supply of goods and also services for establishing the project. We also observe that the description of

renewable energy devices and parts for their manufacture, viz. ‘Solar power generating system’ stands amended as ‘Solar power generator.’ SECI, in its reply dated 20.11.2023, 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.

20. 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 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 a 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 notification viz *the 2021 GST Notification is a Change in Law event as per Article 12 of the PPA dated 31.05.2020*. 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;*
21. 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 Notification No. 8/2021- Central Tax (Rate) dated 30.09.2021, 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%.

22. 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 31.05.2020, and the SCoD of the project was on 25.09.2019. In terms of the extended SCoD, the Project was required to be commissioned on or before 29.06.2022. The Petitioner commissioned the full capacity of its project in two parts, i.e., 175 MW was commissioned on 20.05.2022, and 75 MW was commissioned on 17.06.2022, whereas the *2021 GST Notification* was notified on 30.09.2021. As such, Petitioner's project was affected by the impugned Notifications and is entitled to relief for the change under the GST Laws as per the terms of Article 12 of the PPA. In view of the above discussion, we hold that the Petitioner is entitled to compensation towards additional expenditure on account of the 2021 GST Notification as per Article 12 of the PPA.
23. 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- Integrated Tax (Rate) issued by the Ministry of Finance, Government of India* 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.

24. 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 a Change in Law?

25. Briefly, SECI submitted that the payment on an annuity basis is consistent with the fact that the change in the rate of GST claims is an addition to the capital cost of the power project and not an operating and maintenance expense of a recurring nature to be incurred on year on year basis. If the Change in Law event had occurred prior to the cut-off date, the Petitioner would have factored the higher cost to be incurred in establishing the solar power project in the per unit tariff to be quoted. Accordingly, the impact of Change in Law occurring after the cut-off date can be serviced through an annuity. There has been a fall in the interest rate of loans, and this Commission has notified the *Central Electricity Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2020 (Renewable Tariff Regulations 2020)* and *RE Tariff Order dated 31.03.2021*. In the said regulations read with RE Tariff Order, this Hon'ble Commission has considered only the interest rate of 9% and the term of the Loan repayment as 15 years instead of 13 years considered earlier. The annuity rate may be considered as 9%, and the period for payment of the compensation on account of change in the rate of GST on an annuity basis has been taken as 15 years from the date of commercial operation date. HPPC may be directed to make payments to SECI towards the reconciled GST claims. Further, HPPC has submitted that in terms of the Suo-Motu Order of the Commission dated 07.11.2022 in 14/SM/2022, the rate of interest to be calculated should be 9.12%, and the term of loan repayment should be 15 years. *Per Contra*, the Petitioner has submitted that it has prepared a detailed calculation of annuity payments, wherein the Petitioner is claiming a total lumpsum of INR 8,93,13,206.99 payable from the date of COD till the date of actual payment, and the remaining amount has been claimed through equal monthly annuity of INR 74,42,767.25 spread throughout the remaining period of 15 years (at an interest rate of 10.25%). The lumpsum payment and annuity payments calculated in the present Petition might get revised based on

the actual date from when the Respondent initiates the payment process. The Petitioner requests this Commission to provide relief to the Petitioner as per the methodology provided vide order dated 20.08.2021 passed in Petition No. 536/MP/2020 so as to ensure that the Petitioner is restituted to the same economic position as if the Change in Law event has not occurred.

26. It was placed before us that this Commission, in the earlier order dated 20.08.2021 in 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. This Commission has taken the 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. 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. The Commission has notified the CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2020 and 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.

30. We note that the Petitioner's projects achieved actual commercial operation on 17.06.2022 (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 for Change in Law events of 2021 GST Notification, the *discount rate of 9.12%* and *annuity payment of 15 years* as the appropriate methodology towards change in law compensation.
31. 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.
32. The issue is decided accordingly.

Re: Issue No. III

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

33. The Petitioner had submitted that restitution is an integral part of the compensation granted under Change in Law, and such carrying cost being inherent to any compensation ought to be granted under the ambit of the Change in Law provision. Article 12 of the PPA provides for the relief available to the affected party against the consequences of a Change in Law event in order to ensure that the affected party is put in the same financial position as it would have been had the Change in Law event never occurred. The explicit presence of such restitution clause means that the Petitioner is entitled to carrying cost over and above the additional increase in total project cost. The Petitioner has submitted that it is entitled to carrying cost on the additional cost incurred by it as a result of the promulgation of GST Notification 2021, and the same will have to be paid

for the following two periods:

Period 1 - from when the Petitioner incurred the additional cost on account of promulgation of GST Notification 2021 till the approval of Change in Law by this Hon'ble Commission; and

Period 2 - from the date of approval of Change in Law over the period of amortisation, in the scenario this Hon'ble Commission does not allow compensation by way of one-time upfront lumpsum payment.

34. *Per contra*, SECI has submitted that the carrying cost is to be restricted to the cost of financing of a prudent and efficient utility, i.e., the interest rate at which such utility can borrow money from the lenders and financial institutions after due and sincere efforts to minimize the interest cost. The amount due from SECI or Buying Entity(ies) to the Petitioner under Change in Law gets crystallized only on the decision being passed by the Commission allowing Change in Law, and therefore, there cannot be any carrying cost for the period prior to the decision of the Commission in terms of agreed position as per Article 12 of the PPA. The Parampujya judgement dated 15.09.2022 of APTEL has also been challenged by SECI before the Hon'ble Supreme Court in Civil Appeal No.000505-000510 of 2023. Hence, this Commission should not pass any Order in this respect in order to maintain parity. Further, HPPC has submitted that PPA in the present case does not have any provision entitling the Petitioner for carrying cost due to the implications of the occurrence of any Change in Law Events. So, the Petitioner is not entitled to carrying costs.

35. We observe that Article 12 of the PPA dated 31.05.2020 stipulates as under:

“ARTICLE 12: CHANGE IN LAW

12.1 Definitions

*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 (ii) 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 Central Commission for seeking approval of Change in Law.

12.2.2 The decision of the Central Commission to acknowledge a Change in Law and the date from which it will become effective, provide relief for the same, shall be final and governing on both the Parties.”

36. 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.***

37. From the above, we observe that Article 12.1 of the PPA dated 31.05.2020 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 the law had not occurred, i.e., the party must be given the benefit of restitution as understood in civil law.
38. 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.
39. 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.

40. 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.**”*

41. 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.”

42. 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 said 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.

43. The issue is decided accordingly.

44. The summary of our findings is as follows:

- a) The *2021 GST Notification* is a Change in Law event in terms of Article 12 of the PPA dated 31.05.2020.
- b) The Petitioner is entitled to compensation on account of 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 Notification*.
- c) The contracting parties will carry out reconciliation corresponding to the mutually agreed project capacity under the PPA, which is valid for additional expenditure as per Article 12 of the PPAs, by exhibiting a clear and one-to-one correlation with the projects and the invoices raised supported by an auditor certificate on account of the *2021 GST Notification*.
- d) Compensation is to be paid at the discount rate of 9.12% and an annuity period of 15 years. The liability of SECI/ HPPC 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.
- e) 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.
- f) 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.*

45. Petition No. 138/MP/2023 is disposed of in terms of the above.

Sd/-
पी. के. सिंह
सदस्य

Sd/-
अरुण गोयल
सदस्य

Sd/-
जिष्णु बरुआ
अध्यक्ष