



नई दिल्ली
NEW DELHI

याचिका संख्या./ Petition No. 197/MP/2023 &
206/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: 03rd of May, 2024

IN THE MATTER OF:

A petition under section 79 of the Electricity Act, 2003 for seeking an appropriate adjustment/ compensation to offset financial/ commercial impact of Change in Law event on account of Hon'ble Supreme Court of India's Order dated 19.04.2021 in Writ Petition (Civil) No. 838 of 2019 titled M.K. Ranjitsinh & Ors. v. Union of India & Ors. whereby it has issued certain directions in terms of which all existing and future overhead low and high voltage power lines in the Priority and Potential habitats of Great-Indian Bustard are necessarily required to be laid under-ground, in terms of Article 12 of the Power Purchase Agreement between the Petitioners and Solar Energy Corporation of India Limited.

AND IN THE MATTER OF:

Petition No. 197/MP/2023:

M/s Azure Power Maple Private Limited,
5th Floor, Southern Park, D-II, Saket Place,
Saket, New Delhi – 110017

...Petitioner

Versus

1. **Solar Energy Corporation of India Limited,**
06th Floor, Plate-B, NBCC Office Block Tower-2,
East Kidwai Nagar, New Delhi-110023.
2. **Madhya Pradesh Power Management Company Limited,**
Shakti Bhawan, Block No. 11,
Rampur, Jabalpur-482008

...Respondents

AND IN THE MATTER OF:

Petition No. 206/MP/2023

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

...Petitioner

VERSUS

1. **Solar Energy Corporation of India Limited,**
06th Floor, Plate-B, NBCC Office Block Tower-2,
East Kidwai Nagar, New Delhi-110023.
2. **Grid Corporation of Odisha Limited (GRIDCO Odisha),**
Janpath, Bhubaneswar,
Odisha - 751022
3. **BSES Rajdhani Power Limited,**
BSES Bhawan, Nehru Place,
New Delhi -110019

...Respondents

Parties Present: Ms. Mannat Waraich, Advocate, APMPL & APFOPL
Shri Mridul Gupta, Advocate, APMPL & APFOPL
Ms. Anusha Nagarajan, Advocate, SECI
Ms. Pallavi Maitra, Advocate, BRPL

आदेश/ ORDER

The Petitioners, M/s Azure Power Maple Private Limited and M/s Azure Power Forty One Private Limited are generating companies engaged in the business of development, building, owning, operating, and maintaining utility-scale grid-connected solar power projects.

2. In Petition No. 197/MP/2023: SECI had initiated a Tariff Based Competitive Bid Process for the procurement of 1200 MW of the power generated from the 1STS-connected Solar Power Project on the terms and conditions contained in the Request for Selection (RFS) issued by SECI vide RFS No SEC1/C&P/SPD/ISTS-IV/RfS/1200MW/032019 dated 13.03.2019. Azure Power Maple Private Limited submitted its bid on 30.04.2019 and an e-reverse auction was held on 12.06.2019. Azure Power Maple Private Limited was declared as a successful bidder and was issued a Letter of Award (LOA) dated 25.07.2019 for the development of a 300 MW ISTS-connected Solar Power Project in the State of Rajasthan. M/s Azure Power Maple Private Limited executed a Power Purchase Agreement (PPA) on 27.11.2019 (effective date as 23.10.2019). As per the PPA, the scheduled date of commissioning was 23.04.2021. The project was commissioned on 14.02.2022 (53 MW), 30.03.2022 (204 MW), and 31.03.2023 (43 MW). SECI executed a Power Sale Agreement (PSA) with M/s Madhya Pradesh Power Management Company Limited on 16.10.2019.

3. In Petition No. 206/MP/2023: SECI had initiated a Tariff Based Competitive Bid Process for procurement of 1200 MW of the power generated from the ISTS connected Solar Power Project on the terms and conditions contained in the Request for Selection (RfS) issued by SECI vide RfS No. SECI/C&P/SPD/ISTS-III/RfS/1200MW/012019 dated 10.01.2019. M/s Azure Power India Private Limited submitted its bid on 15.02.2019 and e-reverse auction was held on 25.02.2019. M/s Azure Power India Private Limited was declared as a successful bidder and was issued Letter of Award (LOA) dated 01.03.2019 for development of 300 MW ISTS-connected Solar Power Project(s) in the State of Rajasthan. M/s Azure Power India Private Limited has formed a project company M/s Azure Power Forty One Private Limited within the provisions of the RfS for development of Solar Power Project, generation and sale of solar power. M/s Azure

Power Forty One Private Limited executed PPA on 17.09.2019 (effective date as 29.08.2019). As per the PPA, the scheduled date of commissioning was 01.03.2021. The project was commissioned on 13.10.2021 (50 MW); 02.11.2021 (50 MW); 30.11.2021 (50 MW); 27.12.2021 (50 MW); 30.01.2022 (50 MW); 07.03.2022 (50 MW). SECI has executed Power Sale Agreement (PSA) with M/s Grid Corporation of Odisha Limited on 22.08.2019 and M/s BSES Rajdhani Power Limited on 17.06.2019.

4. The Petitioners are seeking an appropriate adjustment/ compensation to offset financial/ commercial impact of Change in Law event on account of Hon'ble Supreme Court of India's Order dated 19.04.2021 in Writ Petition (Civil) No. 838 of 2019 titled *M.K. Ranjitsinh & Ors. v. Union of India & Ors. (SC GIB Order)* in terms of Article 12 of the Power Purchase Agreements.
5. Respondent No. 1, Solar Energy Corporation of India Limited (SECI) is a central public sector undertaking under the administrative control of MNRE. SECI is responsible for the implementation of various schemes of MNRE. SECI has been designated as the nodal agency for the implementation of MNRE schemes for developing grid-connected solar power capacity in India and plays the role of the intermediary procurer.
6. Respondent, Grid Corporation of Odisha (GRIDCO Odisha), is a wholly owned undertaking of the State government of Odisha and is engaged in the bulk purchase and sale of power to the distribution companies of Odisha. The rest of the Respondents, i.e., Madhya Pradesh Power Management Company Limited (MPPMCL) and BSES Rajdhani Power Limited (BRPL), are distribution licensees engaged in power distribution activities in the State of Madhya Pradesh and Delhi, respectively.
7. The Petitioners have made the following prayers:
 - a) *Declare the Order dated 19.04.2021 passed by Hon'ble Supreme Court in Writ Petition (Civil) No. 838 of 2019 titled M.K. Ranjitsinh & Ors. v. Union of India & Ors as Change in Law in terms of the PPA which have led to an increase in the expenditure for the Project;*
 - b) *Evolve a suitable mechanism to compensate the Petitioner for the increase in expenditure incurred/to be incurred by the Petitioner on account of Change in Law;*

- c) *Direct Respondent to compensate the Petitioner towards the installation of bird diverters, as a one-time lump sum amount or mechanism devised by this commission in prayer (b);*
- d) *Grant carrying cost along with interest on carrying cost from the date of incurring of the cost by the Petitioner due to occurrence of Change in Law event i.e., incurring the cost of installation of bird diverters till the date on which the full and final payment is made to the Petitioner, thereby, restoring the Petitioner to the same economic position as before the occurrence of the Change in Law event(s);*
- e) *Allow legal and administrative costs incurred by the Petitioner in pursuing the instant petition; and*
- f) *Pass any such other and further reliefs as this Hon'ble Commission deems just and proper in the nature and circumstances of the present case.*

Factual Matrix:

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

Particulars	Petition No. 197/MP/2023	Petition No. 206/MP/2023
Guidelines	Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects issued by the Ministry of Power on 03.08.2017	
Scheme	Setting up of 1200 MW ISTS-Connected Solar Power Projects in India (ISTS IV)	Setting up of 1200 MW ISTS-Connected Solar Power Projects in India (ISTS III)
Location	Village Sonanda, Shelkhasar, Bandhari & Kesarapura, Tehsil: Bap, District: Jodhpur, Rajasthan	Village Noore ki Bhurj, Khakhuri, Dedasari, Kushla ram ki basti, Ismail Ki Dhani, Tehsil; Bap, District; Jodhpur, Rajasthan
Nodal Agency	SECI	SECI
Power	Solar PV	Solar PV
Capacity	300 MW	300 MW
Tariff	Rs.2.54/kWh	Rs. 2.58/kWh
RfS	13.03.2019	10.01.2019
Bid submitted on	30.04.2019	15.02.2019
e-Reverse auction date	12.06.2019	25.02.2019
LoA issued on	25.07.2019	01.03.2019
PSAs executed on	With: MPPMCL- 16.10.2019	With: GRIDCO Odisha- 22.08.2019 BRPL- 17.06.2019

PPA	27.11.2019 (effective dated 23.10.2019)	17.09.2019 (effective dated 29.08.2019)																										
Tariff Adoption Order	25.02.2021 in Petition No. 579/AT/2020	20.11.2019 in Petition No. 204/AT/2019																										
Hon'ble Supreme Court order in the matter of M.K.Ranjitsinh v. Union of India (<i>SC GIB Order</i>)	19.04.2021																											
Scheduled Commercial Operation date (SCoD)	23.04.2021	01.03.2021																										
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9. The instant petitions were filed on 07.06.2023 and were listed for hearing on 03.08.2023, wherein the Commission admitted the Petitions and issued notice to the Respondents. The hearing was further conducted on 05.12.2023, wherein the Commission directed the Respondents to file their written submissions. Further, during the course of the hearing dated 16.02.2024, the Commission, after hearing the submissions of the parties, reserved the matter for orders and directed the parties to file their respective submissions. Pursuant to the directions of the Commission, the parties filed their submissions accordingly.

10. We have heard the learned counsels for the Petitioners and Respondents, carefully perused the records, and considered the submissions of the parties.

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

Issue No. I: Whether Hon'ble Supreme Court's order dated 19.04.2021 in IA. No. 85618 of 2020 (in Writ Petition (Civil) No. 838 of 2019) in the matter of M.K. Ranjitsinh v. Union of India directing installation of bird diverters on transmission lines amounts to a Change in

Law events under Article 12 of the Power Purchase Agreements? AND Whether the Petitioners are entitled to compensation towards additional expenditure on account of a Change in Law event in terms of Article 12.2 of the PPAs?

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

Issue No. III: *Whether the Petitioners are entitled to carrying cost towards compensation for a Change in Law?*

12. Now, we proceed to discuss the above issues

Re: Issue No. I

Whether Hon'ble Supreme Court's order dated 19.04.2021 in IA. No. 85618 of 2020 (in Writ Petition (Civil) No. 838 of 2019) in the matter of M.K. Ranjitsinh v. Union of India directing the installation of bird diverters on transmission lines amounts to a Change in Law event under Article 12 of the Power Purchase Agreements? AND Whether the Petitioners is entitled for compensation towards additional expenditure on account of a Change in Law event in terms of Article 12.2 of the PPAs?

13. Briefly, the Petitioners have submitted as under:

- a) The *SC GIB Order* dated 19.04.2021, which has mandated the installation of bird diverters on the existing overhead power lines, is covered under the definition of Indian Governmental Instrumentality and would qualify under 'enactment of new law' and thus qualify as a change in law event under the PPAs. The *SC GIB Order* also qualifies as Law under Article 141 of the Constitution of India which provides that law declared by the Hon'ble Supreme Court of India shall be binding on all courts within the territory of India. Reliance placed on the Hon'ble Supreme Court judgement in the matter of *Nand Kishore v. State of Punjab (1995) 6 SCC 614*.
- b) The installation of bird diverters, pursuant to the *SC GIB Order* is in the nature of imposition of a requirement for obtaining any consents, clearances and permits which was not required earlier. The PPAs define "Consents, Clearances and Permits" as authorizations, licenses, approvals, registrations, permits, waivers, privileges, acknowledgements, agreements, or concessions required to be obtained from or provided

by any concerned authority for the purpose of setting up the generation facilities and/or supply of power. The Change in Law event has occurred after the last date of the submission of bids i.e. 30.04.2019 (Petition No. 197/MP/2023) and 15.02.2019 (Petition No. 206/MP/2023). The *SC GIB Order* would qualify as a change in law event under Article 12.1 (iii) of the PPA.

- c) A total of 4834 bird diverters have been installed having a cumulative cost of INR 98,90,905/- at the project site (in Petition No. 197/MP/2023) and 1253 bird diverters have been installed having a cumulative cost of INR 25,72,061/- at the project site (in Petition No. 206/MP/2023).
- d) The increase in cost due to the installation of bird diverters as a result of the occurrence of a change in law event under Article 12.1 of the PPAs entitles the Petitioners to relief under Article 12.2 of the PPA, which provides that the aggrieved party shall be required to approach the Appropriate Commission.
- e) The Petitioners would provide the details as sought by SECI upon the directions of this Commission at the time of reconciliation upon approval of the Change in Law.

14. *Per contra*, SECI and GRIDCO Odisha have submitted as under:

- a) The *SC GIB Order* does not qualify as a Change in Law in the present case as:
 - i. The *SC GIB Order* does not result in the introduction of a requirement to obtain a new consent, permit, license;
 - ii. The *SC GIB Order* does not result in a modification in prevailing conditions, i.e., the requirement to underground transmission lines; and
 - iii. The expenditure on the installation of bird diverters is an act in good faith by the generating companies in the interest of and towards the protection of the environment.
 - iv. These expenses have no relation with the revenue or cost of producing or selling electricity and hence cannot be considered as a Change in Law event under Article 12 of the PPAs.
 - v. The Petitioners are required to provide the following details to ascertain the implications of the *SC GIB Order* vis a vis the Petitioners projects, in terms of the above decision of the Hon'ble Supreme Court:

- (a) Whether the projects and transmission infrastructure for the projects of the Petitioner lie wholly or partly in the priority or potential area of Great Indian Bustard;
 - (b) Whether, on the date of *SC GIB Order*, overhead powerlines of the Petitioner existed in the priority/potential area of Great Indian Bustard;
 - (c) Outcome of the study conducted by the Petitioners with regard to the feasibility of the lines to be laid underground; and
 - (d) Recommendations and decisions of the Committee (constituted by Hon'ble Supreme Court as per the *SC GIB Order*) with regard to Petitioner's projects.
- b) The extent of relief admissible to the Petitioners on account of the *SC GIB Order* (if any) is subject to examination and verification of documents by SECI and the Buying Entity (MPPMCL/GRIDCO Odisha/BRPL) to be submitted by the Petitioners.
 - c) The Petitioners failed to demonstrate that the bird diverters installed meet the technical specifications for "*Bird Flight Diverters*" issued by the Hon'ble Supreme Court Committee in consultation with CEA dated 16.06.2022, pursuant to order dated 21.04.2022 in the said matter.
 - d) If the *SC GIB Order* is considered a Change in Law, the Petitioners be directed to furnish the relevant details of the expenditure and installation point of the diverters along with the Statutory Auditor's Certificate to substantiate the impact of the SC GIB Order on the procurement and installation of bird diverters as required for the power project.

15. We observe that Article 12 of the PPA 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.

It 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.

16. We note that the SC GIB Order dated 19.04.2021 states as under:

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

...

11. In the above background, there cannot be disagreement whatsoever that appropriate steps are required to be taken to protect the said species of birds. In that view, insofar as the existing overhead powerlines are concerned the respondents shall take steps forthwith to install divertors and in respect of existing overhead powerlines all future cases of installing the transmission lines a study shall be conducted with regard to the feasibility for the lines to be laid underground. In all such cases where it is feasible, steps shall be

taken to lay the transmission line underground. For the lines to be laid in future if as per the technical report the overhead line alone is feasible and the same is ratified by the Committee, in such event the installation of the divertors shall also be a condition attached in the contract to be entered with generating companies. Insofar as, the cost incurred in the said process, the concerned respondents No. 5 to 8 and 9 to 11 shall work out and provide for the same and the respondents No. 1 to 4 aid in this regard. **It would be open to them to muster the resources in accordance with law. In cases where the power generators are required to bear the additional amount adding to the cost of production, it would be open to regulate the manner in which the cost would be mitigated in accordance with contractual terms. Irrespective of the cost factor the priority shall be to save the near extinct birds.**”

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

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

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

...
 Lines from Rajasthan

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

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

report to be rendered by the committee the further action shall be taken by the respondent.

18. In all cases where the overhead powerlines exist as on today in the priority and potential GIB area the respondents shall take steps forthwith to install divertors pending consideration of the conversion of the overhead cables into underground powerlines. In all such cases where it is found feasible to convert the overhead cables into underground powerlines the same shall be undertaken and completed within a period of one year and till such time the divertors shall be hung from the existing powerlines.”

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

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

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

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

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

*Putting aside for the moment the course above-adopted, let us otherwise examine the view of the Hon'ble Judges of the Full Bench of Punjab and Haryana High Court on the question formulated. It is well known that the general principle underlying the doctrine of res-judicate is ultimately based on considerations of public policy. One important consideration of public policy is that the decisions pronounced by courts of competent jurisdiction should be final, unless they are modified or reversed by appellate authorities, and the other principle is that no one should be made to face the same kind of litigation twice over, because such a process would be contrary to considerations of fairplay and justice. These principles stand enunciated in *Daryao and others v. The State of U.P. & Others* [1962(1) SCR 574]. This court in *The Amalgamated Coalfields Ltd. & Anr. v. The**

*Janapada Sabha, Chhindwara [1963 (Supp.)(1) SCR 172] opined that constructive res-judicata was an artificial form of res-judicata enacted by Section 11 of the Code of Civil Procedure and it should not be generally applied to writ petitions filed under Article 32 and Article 226 of the Constitution. The court then had the occasion to point out that when a matter related to taxation and assessment levied for a different year, the doctrine of res-judicata was itself inapplicable. **This Court still spelled out the binding effect of a decision made under Article 141 of the Constitution as follows:***

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

20. From the above, we observe that in terms of Article 141 of the Constitution of India and the provisions of the PPAs, the *SC GIB Order* amounts to a Change in Law event as the law laid down by the Hon’ble Supreme Court of India has a binding effect, enshrined in the Constitution of India.
21. In the instant petition, the bids were submitted by the Petitioners on 30.04.2019 (in Petition No.197/MP/2023) and 15.02.2019 (Petition No.206/MP/2019). PPAs were executed between the Petitioners and the SECI on 27.11.2019 (Petition No. 197/MP/2023) and 17.09.2019 (Petition No. 206/MP/2019), and the SCoD the projects were 23.04.2021 and 01.03.2021 in Petition No. 197/MP/2023 & 206/MP/2023 respectively. The projects were commissioned on 31.03.2023 and 07.03.2022 in Petition No. 197/MP/2023 & 206/MP/2023 respectively. We observe that the *SC GIB Order* was issued on 19.04.2021, which was after the date of submission of bids and the actual COD of the projects and, as such, the Petitioner’s projects were affected by the said order of the Hon’ble Supreme Court. Therefore, the Petitioners are entitled to compensation on account of a Change in Law as per the terms of Article 12 of the PPAs due impugned order, viz. the *SC GIB Order* dated 19.04.2019.

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

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

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

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

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

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

...

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

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

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

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

25. The issue is decided accordingly.

Re: Issue No. II

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

26. Briefly, the Petitioners have submitted as under:

- a) The expenditure incurred by the Petitioner on account of the change in law ought to be reimbursed through a lumpsum payment along with carrying costs to be calculated as per actuals, in as much as the Petitioner has suffered the entire expenditure upfront and hence annuity payments would not lead to a situation where the Petitioner would be restored to the same financial position. The Petitioner be restituted to the same economic position by way of lump sum payments as opposed to the annuity method of payment.
- b) In the present case, the Petitioners have accrued the entire additional expenditure pursuant to the *SC GIB Order* as a part of its project cost. Such additional expenditure has been incurred by the Petitioners through a mix of debt and equity.
- c) The cost of debt (for 70% of the Project cost) shall be considered as the average of the one-year Marginal Cost of Funds-based Lending Rate (MCLR) as declared by the State Bank of India for the previous year plus 200 basis point, while the cost of equity shall be 14% post-tax (18.71% pre-tax when grossed up with Corporate tax which is 25.17%) (for 30% of the Project cost), i.e., as per CERC RE Tariff Order dated 31.03.2021 based on RE Regulations 2020. Accordingly, the annuity rate calculated is 13.14% $[(10.75\% \times 70\%) + (18.71\% \times 30\%) = 13.14\%]$ per annum.
- d) If it adopts the annuity payment methodology, this Commission ought to apply the principles laid down in the RE Tariff Regulations, 2020, in their entirety and thereby arrive at the discounting factor considering the debt-equity ratio of 70:30.

27. *Per contra*, SECI has submitted that the reconciled claim is to be paid on Monthly Annuity basis unless the Buying Entities specifically agree to make lump-sum payment and further duly make such payment in discharge of its obligation. The payment on annuity basis is consistent with the fact that the claims under the *SC GIB Order* are in 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. There has been a fall in the interest rate of loan and the 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 for the Financial Year 2021-2022. In the said regulations read with RE tariff Order, the Commission has considered the interest rate of 9% and the term of the Loan repayment as 15 years instead of 13 years earlier considered.

28. 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 a 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."

29. It is apparent that this Commission has taken a view that in the case of competitive bidding projects, it is not possible to ascertain either the capital structuring (extent of debt and equity) of the projects or the actual rate of interest of the debt component or the expected rate of return on equity. As the actual deployment of capital by way of debt or equity and their cost in terms of rate of interest or return, respectively, is unknown, the rate can be taken as the uniform rate of compensation for the entire expenditure incurred on account of Change in Law. *The compensation for change in law cannot be a source for earning profit, and therefore, there cannot be any higher rate of return than the prevailing normative cost of debt.*
30. 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.

31. 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% for FY-21-22 and 9.12% for FY-22-23 and the term of the Loan repayment as 15 years. Further, 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. We note that the Petitioners in Petition No. 197/MP/2021 and 206/MP/2023 achieved commissioning on 31.03.2023 and 07.03.2022, respectively. Therefore, applying the principle decided by this Commission in the Order dated 20.08.2021 in Petition No. 536/MP/2020, that the *compensation for change in law cannot be a source for earning profit*, and there cannot be any higher rate of return than the prevailing normative cost of debt, we hold that the discount rate of 9.12% and annuity period of 15 years (for Petition No. 197/MP/2023) and discount rate of 9% and 15 years (for Petition No. 206/MP/2023) shall be the appropriate methodology towards change in law compensation.
32. 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 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.
33. The issue is decided accordingly.

Re: Issue No. III:

Whether the Petitioners are entitled to carrying cost towards compensation for a Change in Law?

34. The Petitioners have submitted that on the basis of Article 12.1 of the PPAs, it is imperative that the Petitioners are granted carrying cost in order to be placed in the same economic position as if the change in law has not occurred. Carrying Cost is compensation towards time value of money for the time gaps between the date on which the affected party incurred additional expenses on account of the Change in Law and the date when it received the compensation for the same, so that the affected party may be restored in the same financial position as if the change in law event has not occurred in the first place. Reliance is placed on APTEL judgement in

Appeal No. 163 of 2020, *Nisagra Renewable Energy Private Limited & Anr. v. MERC & Anr.* Further, the Hon'ble Supreme Court vide decision in Civil Appeal No. 7129 of 2021 titled as *Uttar Haryana Bijli Vitran Nigam Ltd. and Another vs. Adani Power (Mundra) Limited and Another* was pleased to allow interest on carrying cost on the principles of restitution encapsulated in the Change in Law of the PPAs. Therefore, interest on interest (herein carrying cost) are included in the principles of restitution which has also been upheld by the Hon'ble Supreme Court in the aforesaid order while considering a change in law clause in a power purchase agreement which is similar to the present case. Accordingly, the Petitioners are entitled to carrying cost on the basis of principle of restitution which is expressly provided in Article 12.1 of the PPAs. *Per contra*, SECI has submitted that the Petitioners have not produced any document showing that it has incurred the carrying cost and paid additional interest on funds used for the installation and procurement of bird diverters. Without quantifying the costs, seeking reimbursement from the Respondents is not justifiable. In the absence of a specific contractual agreement or a statutory provision stipulating for compound interest or interest or interest, such claim cannot be awarded. In the absence of a specific contractual agreement or a statutory provision stipulating for compound interest or interest or interest, such claim cannot be awarded.

35. We observe that Article 12 of the PPAs stipulates as under:

“ARTICLE 12: CHANGE IN LAW

12.1 Definitions

In this Article, 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.

It 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.

36. We observe that the Hon'ble Supreme Court vide judgement dated 25.02.2019 in the matter of *Uttar Haryana Bijli Vitran Nigam Ltd. & Anr. v. Adani Power Ltd. & Ors* (Uttar Haryana judgment) 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 PPAs 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 *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 a change in law had not occurred, i.e., the party must be given the benefit of restitution as understood in civil law.
38. The Petitioners, in the instant petitions, shall be eligible for carrying costs starting from the date when the actual payments were made to the vendors until the date of issuance of this Order at the actual rate of interest paid by the Petitioners for arranging funds (supported by the 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 Petitioners in terms of this order, the provision of Late Payment Surcharge in the PPAs would kick in if the payment is not made by the Respondents within the due date.
39. Accordingly, the Commission hereby directs the contracting parties to carry out the reconciliation of additional expenditure on account of the *SC GIB Order* along with carrying cost by exhibiting a clear one-to-one correlation with the projects and the invoices raised supported with the auditor certificate.
40. The Commission further directs that the responding Discoms are liable to pay SECI all the above-reconciled claims that SECI has to pay to the Petitioners. However, SECI's payment to the Petitioner is not conditional upon the payment to be made by the responding Discoms to SECI.

41. 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.***

42. 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.”

43. Therefore, given the restitution clause in the PPAs 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 30.11.2023 in*

Petition No. 214/MP/2021; Order dated 19.12.2023 in Petition No. 171/MP/2021; Order dated 26.12.2023 in Petition No. 209/MP/2022; Order dated 07.01.2024 in Petition No. 206/MP/2021; Order dated 16.01.2024 in Petition No. 308/MP/2022; Order dated 31.01.2024 in Petition No. 226/MP/2021 & 227/MP/2021 and Order dated 14.03.2024 in Petition No. 65/MP/2023.

44. The issue is decided accordingly.

45. The summary of our findings is as follows:

- a) The *SC GIB Order* is a Change in Law event in terms of Article 12 of the PPAs dated 27.11.2019 (in petition no. 197/MP/2023) & 17.09.2019 (in petition no. 206/MP/2023).
- b) The Petitioners are entitled to compensation on account of Change in Law as per the terms of Article 12 of the PPAs due to the *SC GIB Order*.
- c) The contracting parties to carry out the reconciliation of additional expenditure on account of the *SC GIB Order* along with carrying cost by exhibiting clear and one-to-one correlation with the projects and the invoices raised supported with the auditor certificate from 19.04.2021 up to 21.03.2024 qua *SC GIB Order* dated 19.04.2021.
- d) Compensation is to be paid at the discount rate of 9.12% and annuity period of 15 years (for Petition No. 197/MP/2023) and discount rate of 9% and 15 years (for Petition No. 206/MP/2023). The liability of SECI/ Discoms for '*Monthly Annuity Payment*' shall start from the 60th (sixtieth) day from the date of this order or from the date of submission of claims by the Petitioners, whichever is later. Provision of late payment surcharge in the respective PPA/PSA shall kick in if the monthly annuity payment is not made by the Respondents within the due date.
- e) The Petitioners shall also be eligible for carrying cost starting from the date when the actual payments were made to the vendors 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 PPAs, 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.*

46. Petitions No.s 197/MP/2023 and 206/MP/2023 are disposed of in terms of the above.

Sd/-
पी. के. सिंह
सदस्य

Sd/-
अरुण गोयल
सदस्य

Sd/-
जिष्णु बरुआ
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