



नई दिल्ली
NEW DELHI

याचिका संख्या./ Petition No. 226/MP/2021 &
227/MP/2021

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: 31st of January, 2024

IN THE MATTER OF:

Petition under section 79 of the Electricity Act 2003 for approval of change in law and seeking an appropriate mechanism for grant of an appropriate adjustment/ compensation to offset financial/ commercial impact of change in law event on account of rescission of Notification No. 1/2011 - Customs dated 06.01.2011 vide Notification No. 7/2021 - Customs dated 01.02.2021, which has resulted in increase in rate of basic customs duty on solar inverters imported into India, in terms of article 12 of the power purchase agreement executed between Azure Power Forty One Private Limited/Azure Power Maple Private Limited and Solar Energy Corporation of India Limited.

AND IN THE MATTER OF:

In Petition No. 226/MP/2021:

- Azure Power Forty One Private Limited**
5th Floor, Southern Park, D-II,
Saket Place, Saket, New Delhi-110017
- Azure Power India Private Limited**
5th Floor, Southern Park, D-II,
Saket Place, Saket, New Delhi-110017

...Petitioners

Versus

1. M/s Solar Energy Corporation of India Limited

1st Floor, A-Wing D-3, District Centre
Saket, New Delhi, 110017

2. Grid Corporation of Odisha

Janpath, Bhubaneswar,
Odisha - 751022

3. BSES Rajdhani Power Limited (BRPL)

BSES Bhawan, Nehru Place,
New Delhi -110019

...Respondents

In Petition No. 227/MP/2021:

1. Azure Power Maple Private Limited

5th Floor, Southern Park, D-II,
Saket Place, Saket, New Delhi-110017

2. Azure Power India Private Limited

5th Floor, Southern Park, D-II,
Saket Place, Saket, New Delhi-110017

...Petitioners

Versus

1. M/s Solar Energy Corporation of India Limited,

1st Floor, A-Wing D-3, District Centre
Saket, New Delhi, 110017

2. Madhya Pradesh Power Management Company Limited (MPPMCL)

Shakti Bhawan, Rampur,
Jabalpur Madhya Pradesh - 482008

...Respondents

Parties Present:

Shri B Patil, Sr. Advocate, Azure Power
Shri Rahul Chouhan, Advocate, Azure Power
Ms. Shikha Sood, Advocate, Azure Power
Ms. Anushree Bardhan, Advocate, SECI
Ms. Surbhi Kapoor, Advocate, SECI
Ms. Srishti Khindaria, Advocate, SECI
Shri Aneesh Bajaj, Advocate, SECI
Shri Arijit Maitra, Advocate, BRPL

आदेश/ ORDER

The Petitioners, Azure Power Forty One Private Limited (APFPL) (in Petition No. 226/MP/2021) and Azure Power Maple Private Limited (APMPL) (in Petition No. 227/MP/2021) are special purpose companies (SPC) incorporated by Azure Power India Limited (APIPL), being the Petitioner No. 2 in both the petitions. APFPL & APMPL are engaged in the business of development, building, owning, operating and maintaining utility scale grid connected solar power projects. The Petitioners are seeking a declaration of a change in the rate of basic customs duty on the import of solar inverters from 5% to 20% vide Ministry of Finance's Notification No. 07/2021-Customs dated 01.02.2021 and consequent increase in quantum of social welfare surcharge and IGST as Change in Law. The Petitioners have also sought consequential reliefs for the additional cost on account of the change in law event and carrying cost on the additional cost incurred by the Petitioners. The projects were developed pursuant to the bid conducted by SECI through Request for Selection (RfS) dated 10.01.2019 and 13.03.2019. In Petition No. 226/MP/2021, APIPL participated in the bid conducted by SECI, wherein the last date of bid submission was 15.02.2019. APIPL emerged as one of the successful bidders pursuant to its bid submitted on 15.02.2019 and the e-Reverse Auction conducted on 25.02.2019. Accordingly, a letter of Award (LOA) dated 05.03.2019 was issued by SECI in favour of APIPL for the development of solar power projects with a capacity of 300MW AC. APIPL formed M/s Azure Power Forty One Private Limited (APFPL) special purpose company within the provisions of RfS. Similarly, in Petition No. 227/MP/2021, APMPL participated in the bid conducted by SECI wherein the last date of bid submission was 04.06.2019 and emerged as one of the successful bidders pursuant to its bid submitted on 30.05.2019 and e-Reverse Auction conducted on 12.06.2019. Accordingly, the Letter of Award LOA dated 25.07.2019 was issued by SECI in favour of the APMPL for the development of

solar power projects with the capacity of 300MW AC. M/s APIPL formed Azure Power Maple Private Limited (APMPL) special purpose company within the provisions of RfS

2. Respondent No. 1, Solar Energy Corporation of India Limited (SECI), has been set up under the administrative control of the Ministry of New and Renewable Energy (MNRE). SECI has been designated as the nodal agency for the implementation of MNRE schemes for developing grid connected solar power capacity in India.
3. Respondent No. 2 (in Petition No. 226/MP/2021), 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.
4. BSES Rajdhani Power Limited (BRPL) (in Petition No. 226/MP/2021) and Madhya Pradesh Power Management Company Limited (MPPMCL) (in Petition No. 227/MP/2021) are the distribution companies (Discoms) in the respective States of Delhi and Madhya Pradesh.
5. The Petitioners have made the following prayers:

In Petition No. 226/MP/2021:

- a) *Admit the present Petition;*
- b) *Hold and declare the imposition of increased rate of Basic Customs Duty and consequent increase in quantum of Social Welfare Surcharge and IGST on account of rescission of Notification No. 1/2011-Customs dated 06.01.2011 vide Notification No. 07/2021- Customs dated 01.02.2021 issued by the Department of Revenue, Ministry of Finance, Government of India as Change in Law in terms of the PPA which have led to an increase in the expenditure for the Project;*
- c) *Specify and declare that 02.02.2021, i.e. the date of coming into force of the Notification No. 07/2021- Customs dated 01.02.2021 issued by the Department of Revenue, Ministry of Finance, Government of India, is the date from which the Change in Law is effective for the purposes of the PPA;*
- d) *Evolve a suitable mechanism to compensate the Petitioner for the increase in expenditure incurred by the Petitioner on account of Change in Law event;*

- e) *Direct Respondent No. 1 / SECI to compensate the Petitioner with the amount of ₹ 6,87,68,176.85/- towards the additional Basic Customs Duty and consequent increase in Social Welfare Surcharge and IGST as one time lump sum amount or as per the mechanism devised by this Hon'ble Commission in prayer (d), no later than sixty (60) days of the issuance of the final order in the present Petition;*
- f) *Declare that the Carrying Cost, as mentioned in paragraph 5 of the present Petition, is allowed on the additional cost incurred by the Petitioner with effect from 26.08.2021 i.e., date of payment made to the Customs Department by the Petitioner;*
- g) *Allow legal and administrative costs incurred by the Petitioner in pursuing the instant Petition; and*
- h) *Pass such other and further order or orders as the Hon'ble Commission deems appropriate under the facts and circumstances of the present case.*

In Petition No. 227/MP/2021:

- a) *Admit the Petition;*
- b) *Allow the imposition of increased rate of Basic Customs Duty and consequent increase in quantum of Social Welfare Surcharge and IGST on account of rescission of Notification No. 1/2011-Customs dated 06.01.2011 vide Notification No. 07/2021-Customs dated 01.02.2021 issued by the Department of Revenue, Ministry of Finance, Government of India as Change in Law in terms of the PPA which have led to an increase in the expenditure for the Project;*
- c) *Specify and declare that 02.02.2021, i.e. the date of coming into force of the Notification No. 07/2021- Customs dated 01.02.2021 issued by the Department of Revenue, Ministry of Finance, Government of India, is the date from which the Change in Law is effective for the purposes of the PPA;*
- d) *Evolve a suitable mechanism to compensate the Petitioner for the increase in expenditure to be incurred by the Petitioner on account of Change in Law event;*
- e) *Direct Respondent No. 1 / SECI to compensate the Petitioner with the additional duty amount to be paid to Customs Department equivalent to the additional Basic Customs Duty and consequent increase in Social Welfare Surcharge and IGST as one time lump sum amount or as per the mechanism devised by this Hon'ble Commission in prayer*

- (d), no later than sixty (60) days of the issuance of the final order in the present petition or from the date of actual payment made by Petitioner to the Customs Department;
- f) Declare that the Carrying Cost, as mentioned in paragraph 5 of the present Petition, is allowed on the additional cost incurred by the Petitioner with effect from date of payment made to the Customs Department by the Petitioner till the final adjudication of the present Petition by this Hon'ble Commission;
- g) Allow legal and administrative costs incurred by the Petitioner in pursuing the instant Petition; and
- h) To pass such other and further order or orders as the Commission deems appropriate under the facts and circumstances of the present case.

Factual Matrix:

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

Particulars	226/MP/2021	227/MP/2021
Scheme	Setting up of 1200 MW ISTS-Connected Solar Power Projects under Global Competitive Bidding	
Project	300 MW	300 MW
Location	Village Noore ki Bhurj, Khakhuri, Dedasari, Kushla Ram ki Basti, Ismail ki Dhani, Tehsil Bap, District Jodhpur, Rajasthan	Village Sonanda Shekhasar, Bandhari & Kesarapura, Tehsil: Bap District Jodhpur, Rajasthan
Tariff	Rs.2.58/kWh	Rs. 2.54/kWh
Nodal Agency	SECI	
Date of notification of Basic Custom Duty Notification No. 1/2011 (2011 BCD Notification)	06.01.2011	
Bid was submitted by APIPL on	15.02.2019	30.05.2019
E-Reverse Auction was conducted on	25.02.2019	12.06.2019
Request for Selection (RfS) was floated on	10.01.2019	13.03.2019
Letter of Award (LoA) issued on	05.03.2019	25.07.2019
Power Sale Agreement (PSA) executed on	22.08.2019 (with GRIDCO 200 MW) 17.06.2019 (with BRPL for 100 MW)	16.10.2019 (with MPPMCL)
Power Purchase Agreement (PPA)	17.09.2019	27.11.2019

executed on		
Effective date of the PPA	29.08.2019	23.10.2019
Date of Notification No. 07/2021- Customs	01.02.2021	
Purchase order was issued to Wattkraft Industries Pvt. Ltd. by APFPL and APMPL for supply of inverters	21.01.2021 (supply of 1875 Huawei make Solar Inverters)	31.08.2021 (supply of 1622 Nos. String Inverters)
Scheduled commissioning date (SCoD) of the project	01.03.2021	23.04.2021
Extended SCoD	01.08.2021; 31.10.2021; 07.03.2022	23.09.2021; 08.12.2021; 25.11.2022
Projects commissioned on	50 MW- 12.10.2021; 50 MW- 30.10.2021; 50 MW- 30.11.2021; 50 MW- 24.12.2021; 50 MW- 31.01.2022; 50 MW- 07.03.2022 (CoD was declared on 08.03.2022)	53 MW- 14.02.2022 204 MW- 30.03.2022 43 MW- 31.03.2023 (CoD was declared on 31.03.2023)

7. The instant petitions were filed on 17.09.2021. The Commission vide order dated 16.12.2021, disposed of the Petition in line with *the Electricity (Timely Recovery of Costs due to Change in Law) Rules 2021 dated 22.10.2021*. However, pursuant to the directions of APTEL vide order dated 05.04.2022 in O.P No. 1 of 2022 and Appeal Nos. 116, 74, 75 & 76 of 2022, the matter was again listed on 17.05.2022 wherein the Commission directed the parties to file their respective written submissions. The Commission, vide order dated 14.06.2022 in Petition No. 8/SM/2022, in the exercise of its suo-motu powers of review, restored the present petition at the same stage as existed prior to the disposal of the petition and directed the parties to complete their pleadings within one month. Subsequent to the suo-motu order passed by the Commission, the Petitioners' hearings were conducted on 28.06.2023 and 12.09.2023. The parties filed their respective replies/rejoinders. Further hearing was conducted on 10.11.2023 wherein 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 respective submissions.
8. We have heard the learned counsels for the Petitioners and the Respondents and have carefully perused the records and considered the submissions of the parties.

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

Issue No. I: *Whether the imposition of increased rate of basic customs duty and subsequent increase in quantum of social welfare surcharge and IGST on account of rescission of Notification No. 1/2011-Customs dated 06.01.2011 vide Notification No. 07/2021-Customs dated 01.02.2021 issued by the Ministry of Finance, Government of India amounts to Change in Law events under Article 12 of the Power Purchase Agreement? 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 PPA?*

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 Petitioners are entitled to carrying cost towards compensation for Change in Law?*

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

Re: Issue No. I

11. Briefly, the Petitioners have submitted that:

- a) Due to the rescission of Notification No. 1/2011 - Customs dated 06.01.2011, the Basic Customs Duty increased from the existing 5% to 20% on the solar inverters being imported into India with effect from 02.02.2021 and therefore the Petitioners are now required to incur additional expenditure towards procurement of solar inverters required for its Project. The Petitioners are to be compensated by way of a mechanism, as the Commission may determine the additional capital expenditure incurred due to a 'Change in Law' event.
- b) Such additional expenditure on the procurement of solar inverters for setting up the projects has led to an increase in the capital cost of the projects and, if not compensated, would impact the viability of the projects. Such additional capital expenditure would not have been required to be incurred but for the issuance of the BCD Notification by the Government of India. The additional capital expenditure could not have been factored in by the Petitioners at the time of submission of the bid and, as such, has to be compensated to the Petitioners by way of an appropriate mechanism to be determined

by this Commission, in terms of Article 12 of the PPA.

- c) It is for the bidder or the project developers to independently decide the commercials and strategize the procurement of raw materials for its projects while submitting the competitive bid at the time of bid submission. The bid was submitted on an assurance that relief for any event of Change in Law under the PPA post the submission of the bid would be available to the affected party. Reliance is placed on the Commission's order dated 24.01.2021 in Petition No. 356/MP/2019.
- d) At the time of submission of the bid, BCD Notification had not been introduced by the Government. Accordingly, the Petitioners submitted their bids considering the rates of taxes/duties prevalent at that point in time. Further, the Petitioners had also strategized the development of the projects as a prudent utility by minimizing the project's cost. In a competitively bid project, the bidder is bound to make such commercial decisions, which reduces the capital cost of the project. Accordingly, the import of solar inverters was also strategized so as to minimize the capital cost of the projects by avoiding such levies which can be reasonably avoided.
- e) The Petitioners were constrained to pay additional costs due to an increase in the rate of Basic Customs Duty from 5% to 20% on solar inverters imported into India. Further, the increase in basic customs duty (BCD) imposed on the import of solar inverters from 5% to 20% has had a consequential and direct bearing on the increase of the quantum of social welfare surcharge (SWS) and IGST as imposed on such imports.
- f) 5% IGST is also payable under Section 5 of the IGST Act, 2017 on the total cost of the imported items, which includes the assessment value of each imported item along with the impact of BCD and SWS on the BCD. Prior to the issuance of the BCD Notification rescinding Notification No. 1/2011 dated 06.01.2011, the quantum of IGST imposed on the import of solar inverters was 5.275% ad valorem; however, after the issuance of the BCD Notification, the quantum of IGST imposed on import of solar inverters has increased to 6.10% ad valorem.
- g) Total duty paid by the Petitioners includes BCD at the rate of 20% of the assessable value of the imported machinery plus SWS at the rate of 10% on BCD along with IGST at the rate of 5% on the total amount. However, since the present petitions deal with only the impact of the Change in Law event on the solar inverters, the total BCD, SWS and IGST paid by the Petitioners towards the import of solar inverters are to be

compensated.

- h) All the inverters were installed at the project sites prior to the CoD of the project. Also, PPAs do not in any manner restrict the compensation on account of change in law only up to the date of COD. In such a scenario, wherein the PPAs do not restrict the change in law claims up to the COD, SECI cannot in any manner be permitted to introduce such extraneous conditions and/or restrictions, which otherwise are not there in the PPAs.
- i) The Petitioners have incurred an additional non-recurring cost due to the increase in the rate of BCD from 5% to 20% on solar inverters imported into India due to the occurrence of the Change in Law event. Therefore, compensation ought to be allowed to the paid to the Petitioners by SECI in terms of the Change in Law provisions (Article 12) of the PPAs.

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

- a) If the Notification No.07/2021-Customs dated 01.02.2021 issued by the Ministry of Finance is considered as Change in Law, the Petitioners be directed to furnish the relevant details. The Petitioners are also required to place on record the relevant Notifications/documents of the Competent Authority demonstrating the applicability of the social welfare surcharge and IGST on the basic customs duty vide Notification dated 01.02.2021 and the rates claimed with regard to the social welfare surcharge and IGST.
- b) The social welfare surcharge is an obligation imposed on the Petitioners to contribute to the social welfare measures and therefore, constitutes an appropriation from the net turnover of the business of the generation and sale of solar power or an obligation to contribute to social welfare measures as a condition for engaging in business activities. If such an obligation to contribute to social welfare measures is allowed as pass through, the very purpose of contribution to be made for the public interest is frustrated. It will amount to the public at large, contributing to its own interest instead of the obligation being discharged by the person engaged in business activities. The extent of compensation admissible to the Petitioners (if any) on account of levy of BCD on solar inverters as per Notification dated 01.02.2021 of the Government of India is subject to

examination and verification of documents by SECI (and Buying Entities) to be furnished by the Petitioner.

13. Briefly, BRPL has submitted that:

- a) On the date of the bid, i.e. 15.02.2019, the Petitioners were aware of the 2011 Custom Notification.
- b) Since the Petitioners were mandated to commission their projects by 01.03.2021 & 23.04.2021, the Petitioners could not have issued a purchase order just a few days prior to the commissioning deadline date.
- c) The Petitioners have not given details of any extension of SCoD by SECI. Assuming that SECI has extended the SCoD, it cannot be permitted to advance the contention that the Petitioners waited from the date of execution of PPAs to issue its purchase order just near SCoD on the ground that it was expecting an extension of SCoD.
- d) The Petitioners did not seek an extension of SCoD on the grounds that solar inverters were not available in the supplier's countries.
- e) The Petitioners ought to have issued the purchase order at least 6 months prior to its original commissioning date.
- f) Hence, the Respondent cannot be fastened with any financial liability arising solely because of the delay in procuring solar inverters/modules by the Petitioners or, for that matter, owing to the extension of SCoD unilaterally and bilaterally between SECI and the Petitioners without obtaining consent from BRPL which has been ultimately fastened with the financial liability as purportedly and allegedly claimed by the Petitioners.

14. Briefly, GRIDCO Odisha has submitted that Petitioners had enough time to import the solar inverters from outside of India without facing the impact of the increase in BCD. Hence, the legitimacy of the claim of the Petitioners on account of a Change in Law may be verified by the Commission.

15. We observe that Article 12 of the PPAs dated 17.09.2019 and 27.11.2019 stipulates as under:

“12. 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 projects only after the last date of the bid submissions, 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 rate of any Taxes including any duties and cess or introduction of any new tax made applicable for setting up the Solar Power Projects and supply of power from the Solar Power Projects 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 the, in order to ensure that the Solar Power Generator is placed in the same financial position as it would have been has 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 indicated above, SPD shall filed 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 observe that relevant basic custom duty notifications are as under:

Notification No. 1/2011- Customs dated 06.01.2011

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

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

(2) the importer furnishes an undertaking to the Deputy Commissioner of Customs or the Assistant Commissioner of Customs, as the case may be, that such imported goods will be used for the purpose specified and in the event of his failure to comply with this condition, he shall be liable to pay, in respect of such goods as is not proved to have been so used, an amount equal to the difference between the duty leviable on such goods but for the exemption under this notification and that already paid at the time of importation.”

Notification No. 07/2021-Customs dated 01.02.2021:

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

Table

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

Notification No. 03/2021- Customs dated 01.02.2021:

“In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, on being satisfied that it is necessary

in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India, Ministry of Finance (Department of Revenue), No. 57/2017- Customs, dated the 30th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 798 (E), dated the 30th June, 2017, namely:-

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

All goods other than the following goods, namely: -

(a) charger or power adapter;

(b) solar inverter;”

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

.....

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

...

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

19. 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 Projects and supply of power from the Solar Power Projects by the SPD which have a direct effect on the Project*. We further observe that Notification No. 1/2011- Customs dated 06.01.2011 had granted exemption to solar generating units for items required for setting up of a solar power generation project when imported into India, from so much of the duty of customs leviable thereon, as is in excess of 5% ad valorem. However, subsequently, vide Notification No. 7/2021 & 3/2021, the exemptions to the extent of 5% (ad valorem) were reversed, and the basic customs duty on import of the solar inverters was increased from 5% to 20%. The change in rate of BCD from 0% to 20% w.e.f. 01.02.2021 has resulted in the change in the cost of the inputs required for generation, and the same is considered as ‘Change in Law’. We also observe that the increase in the rate of basic customs

duty imposed on the import of machinery and auxiliary equipment for the initial setting up of solar power generation projects has increased the quantum of social welfare surcharge, payable under section 110 of the Finance Act, 2018, on such import, which is fixed at a rate of 10% on aggregate duties and taxes which are levied and collected by the Central Government under section 12 of the Customs Act, 1962 which had a bearing on the increase in the quantum of integrated goods and services tax and Services Tax Act, 2017 (IGST Act) on such import by the Petitioner. Hence, we hold that rescission of the Basic Custom Duty (BCD) Notification No. 1/2011-Customs dated 06.01.2011 by the BCD Notification No. 7/2021 dated 01.02.2021 and increase of the basic customs duty on import of the solar inverters from 5% to 20% qua Notification No. 3/2021 dated 01.02.2021 is an event of Change in Law as per Article 12 of the PPA dated 17.09.2019 & 27.11.2019. We also note that there is an increase in the quantum of social welfare surcharge, payable under Section 110 of the Finance Act 2018, on the import of goods. Hence, we hold that an increase in social welfare surcharge on the import of machinery and auxiliary equipment is also an event of Change in Law as per Article 12 of the PPAs dated 17.09.2019 & 27.11.2019. It is pertinent to mention here that the view taken is consistent with similar orders taken by the Commission, viz. *Order dated 02.06.2023 in Petition No. 168/MP/2021; Order dated 30.11.2023 in Petition No. 214/MP/2021; Order dated 19.12.2023 in Petition No. 171/MP/2021.*

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

Import of Goods

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

The Customs Tariff Act, 1975 has accordingly been amended to provide for levy of integrated tax and the compensation cess on imported goods. Accordingly, any goods which are imported into India shall, in addition to the Basic Customs duty, be liable to integrated tax at such rate as is leviable under the IGST Act, 2017 on a like article on

*its supply in India. Further, **the value of the goods for the purpose of levying Integrated tax shall be assessable value plus Customs Duty levied under the Act, and any other duty chargeable on the said goods under any law for the time being in force as an addition to, and in the same manner as, a duty of customs.***

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

21. We observe that IGST has been levied by the competent authority in compliance with directions issued by the Government of India. In view of the above, we are of the view that in the case of imported goods, the value of IGST levied in addition to the basic customs duty is also to be allowed. Hence, we hold that the increase in the quantum of IGST levied in addition to the basic customs duty on the import of machinery and auxiliary equipment is also an event of Change in Law as per Article 12 of the PPAs dated 17.09.2019 & 27.11.2019.
22. In the instant petitions, the bids were submitted by the Petitioners on 15.02.2019 (in Petition No. 226/MP/2021) and on 30.05.2019 (in Petition No. 227/MP/2021). PPAs were executed between the Petitioners and the SECI on 17.09.2019 and 27.11.2019 in Petition No. 226/MP/2021 and Petition No. 227/MP/2021, respectively and the SCoD the projects were 01.03.2021 (in Petition No. 226/MP/2021) and 23.04.2021 (in Petition No. 227/MP/2021). In terms of the extended SCoD, the projects were required to be commissioned on or before 07.03.2022 and 25.11.2022 in Petition No. 226/MP/2021 and Petition No. 227/MP/2021, respectively. The projects were commissioned on 07.03.2022 and 31.03.2023 in Petition No. 226/MP/2021 & 227/MP/2021, respectively. We observe that Notification No. 1/2011-Customs dated 06.01.2011 was rescinded vide Notification No. 07/2021-Customs dated 01.02.2021 w.e.f. 02.02.2021, and the basic customs duty on import of the solar inverters was increased from 5% to 20% qua Notification No. 3/2021 dated 01.02.2021. As such, the Petitioner's projects were affected by the said notifications. It is pertinent to mention here that in the competitive bidding scenario, the SPDs bid levelled tariff without disclosing the details of the calculations of the project cost including capital expenditure. The component wise details of the capital employed are not required to be declared by the bidders. The design of the bid levelled tariff is solely a decision of the SPDs. We are of the view that the commercial decisions for project implementation including the mode and time of procurement of solar

modules are taken by the Petitioners in their commercial wisdom. Therefore, it would not be appropriate to question the rationale of such commercial decisions taken by the Petitioners. In view of the above, the Petitioners are entitled to compensation on account of Change in Law as per the terms of Article 12 of the PPAs due impugned notifications viz, *rescission of the BCD Notification No. 1/2011-Customs dated 06.01.2011 by the BCD Notification No. 7/2021 BCD Notification No. 3/2021*, increase of quantum of *social welfare surcharge* on the imports, and increase in quantum of *IGST* levied on the imports.

23. 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?

24. The Petitioners have submitted as under:

- a) For considering the cut-off date, the date of procurement of solar inverters be considered. Since procurement is the process of making buying decisions and agreeing/inking to terms, services, or works from an external source, hence, Invoice date / Bill of Entry (**BOE**) date ought to be considered as the procurement date, which would be before the Commercial Operation Date of the projects so as to be eligible for the compensation under Change in Law. The mechanism for payment of compensation under the present Petition ought to be decided specifically without making any reference to previous orders or tariff regulations issued under Section 62 of the Electricity Act, 2003.
- b) The period for payment of the compensation on account of BCD Notification has been taken to be 13 years from the date of Commissioning/cut-off date, and the following methodology may be considered:
 - The debt-equity ratio is 70:30, and the post-tax Return on Equity (RoE) allowed is 14% (pre-tax RoE will be 18.71% if grossed up with the current effective tax rate @ 25.17%);
 - Resultantly, the RoE for the Petitioners should be 18.71 % (pre-tax) return on 30% of the value of projects cost, i.e. 18.71 % (pre tax).

- Therefore, the effective annuity rate should be a weighted average between the cost of debt and cost of equity [i.e., $(10.41\% \times 70\%) + (30\% \times 18.71\%) = 12.90\%$] needs to be considered.
- c) SECI is bound to compensate the Petitioners by the general law of contract and the prevalent industry practice. By virtue of the contract, viz. the PPA executed with SECI, the Petitioners have privity of contract with SECI, and distribution licensees are strangers to said contract, thus, SECI being a contracting party to the PPA, cannot wriggle out of its obligations by making such feeble arguments that a direction ought to be issued to the distribution licensees that the amount which is to be paid by SECI to the Petitioners should be first paid by the distribution licensees.

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

- a) The extent to which the impact of a change in law is to be considered is only on the inverters that are duly installed and commissioned by the date of commercial operation of the power plant. The inverters installed after the commercial operation date of projects are not to be considered for the impact of Change in Law. This Commission may clarify the cut-off date for considering a change in law impact as the Commercial Operation Date of the power project.
- b) The reconciled claim is to be paid on a Monthly Annuity basis unless the Distribution Licensees/Buying Entities specifically agree to make lump-sum payment and further duly make such payment in discharge of their obligation. In the proceedings before the Commission in Petition No. 536/MP/2020 filed by SECI, the annuity scheme had been approved for making payment of the reconciled claim amount on account of Change in Law events. The decision dated 20.08.2021 of the Commission approving the discounting factor at 10.41% was based on the interest rate specified in the Renewable Tariff Regulations, 2017, read with RE Tariff Order dated 19.03.2019 notified by the Commission at the relevant time when the said annuity methodology was considered by the MNRE and implemented by SECI. However, there has been a fall in the interest rate of loans and the Commission has notified the *Central Electricity Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy Sources) 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.

- c) Discoms may be directed to make a payment towards the evaluated change in law claims payable by SECI to Petitioner on a back-to-back basis under the PSAs in a time-bound manner.

26. It was placed before us that this Commission, in the earlier order dated 20.08.2021 in the Petition No. 536/MP/2020, has decided on the methodology of compensation due to Change in Law in the following manner:-

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

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

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

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

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

Tenure of 'Annuity Period'

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

"14. Loan and Finance Charges

Loan Tenure

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

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

27. It is evident 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.*

28. We note that the *Central Electricity Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2020* (RE Tariff Regulations, 2020) were applicable for the period 01.07.2020 to 31.03.2013 were extended to 30.09.2023 vide Notification No. RA-14026(11)/4/2020-CERC dated 27.03.2023.

29. We note that the Petitioner's projects achieved actual commercial operation on 07.03.2022 (i.e. during FY 2021-22) in Petition No. 226/MP/2021 and on 31.03.2023 (i.e. during FY 2022-23) in Petition No. 227/MP/2021. The Commission notified the RE Tariff Order dated 31.03.2021 for FY 2021-22 and 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 31.03.2021*, the Commission considered the interest rate of 9% and the term of the loan repayment as 15 years, and in the *RE Tariff order dated 07.11.2022*, the Commission considered the interest rate of 9.12% and the term of loan payment as 15 years. Thus, we hold that the discount rate of 9% and annuity period of 15 years shall be the appropriate methodology towards change in law compensation in Petition No. 226/MP/2021 and a discount rate of 9.12% and annuity payment of 15 years as the appropriate methodology towards change in law compensation in Petition No. 227/MP/2021.
30. Further, the Commission holds that the liability of SECI/ Discoms for 'Monthly Annuity Payment' starts from the 60th (sixtieth) day from the date of this order or from the date of submission of claims by the Petitioners, whichever is later. In case of delay in the Monthly Annuity Payment beyond the 60th (sixtieth) day from the date of this order or from the date of submission of claims by the Petitioners, whichever is later, a late payment surcharge shall be payable for the delayed period corresponding to each such delayed Monthly Annuity Payment(s), as per respective PPAs/PSAs.
31. The issue is decided accordingly.

Re: Issue No. III

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

32. The Petitioners have submitted that they are entitled to carrying costs on account of the Change in Law event in terms of Article 12 of the PPA and as per the Hon'ble Supreme Court's directions in the *Uttar Haryana Bijli Vitran Nigam Ltd. Vs. Adani Power Ltd. (2019) 5 SCC 325 (Uttar Haryana judgement)*. *Per contra*, SECI has submitted that the judgment of the APTEL dated 15.09.2022 has been assailed before the Supreme Court in Civil Appeal no. 8880/2022 in the case of "*Telangana Northern Power Distribution Co. Ltd. & Anr. Vs. Parampujya Solar Energy Pvt. Ltd. & Ors.*" SECI has further submitted that the final order by

this Commission in this matter shall not be enforced till further orders are passed by the Hon'ble Supreme Court.

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

“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 projects only after the last date of the bid submissions, 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 rate of any Taxes including any duties and cess or introduction of any new tax made applicable for setting up the solar power Projects and supply of power from the Solar Power Projects 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 the, in order to ensure that the Solar Power Generator is placed in the same financial position as it would have been has 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 indicated above, SPD shall filed 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."*

34. We observe that the Hon'ble Supreme Court vide *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.***

35. From the above, we observe that Article 12.1 of the PPAs dated 17.09.2019 and 27.11.2019 specifically stipulates that in the event a Change in Law results in any adverse financial loss/gain to the Solar Power Generator, in order to ensure that the Solar Power Generator is placed in the same financial position as it would have been had it not been for the occurrence of the Change in Law, the Solar Power Generator/ Procurer shall be entitled to compensation. We further observe that the Hon'ble Supreme Court vide *Uttar Haryana judgement* dated 25.02.2019 has held that in case there is an in-built restitutionary principle in the PPA, then the affected 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.

36. The Petitioners, in the instant petitions, shall be eligible for carrying costs 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 Petitioners 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 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.
37. 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 Petitioners. However, payment to the Petitioners by SECI is not conditional upon the payment to be made by the responding Discoms to SECI.
38. 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.**”*

39. 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.”

40. Therefore, in view of 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 02.06.2023 in Petition No. 168/MP/2021; Order dated 30.11.2023 in Petition No. 214/MP/2021; Order dated 19.12.2023 in Petition No. 171/MP/2021; 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.*

41. The issue is decided accordingly.

42. The summary of our findings is as follows:

- a) The rescission of the BCD Notification No. 1/2011-Customs dated 06.01.2011 by the BCD Notification No. 7/2021 dated 01.02.2021, increase in basic customs duty from 5% to 20% qua Notification No. 3/2021 dated 01.02.2021, along with an increase in quantum of social welfare surcharge on the imports, and increase in quantum of IGST levied on the imports are Change in Law events in terms of Article 12 of the PPAs dated 17.09.2019 and 27.11.2019.
- b) Compensation at the discount rate of 9% and annuity period of 15 years shall be the appropriate methodology towards change in law compensation in Petition No. 226/MP/2021 and discount rate of 9.12% and annuity payment of 15 years as the appropriate methodology towards change in law compensation in Petition No. 227/MP/2021. 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. Late payment surcharge shall be payable for the delayed period corresponding to each such delayed Monthly Annuity Payment(s), as per respective PPAs/PSAs.

- c) The Petitioners 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 Petitioners for arranging funds (supported by Auditor's Certificate) or the rate of interest on working capital as per applicable RE Tariff Regulations prevailing at that time or the late payment surcharge rate as per the PPAs, whichever is the lowest. Once a supplementary bill is raised by the Petitioners in terms of this order, the provision of Late Payment Surcharge in the PPAs would kick in if the payment is not made by the Respondents within the due date.
- d) In view of 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.*

43. The Petition No. 226/MP/2021 and the Petition No. 227/MP/2021 are disposed of in terms of the above.

Sd/-
पी. के. सिंह
सदस्य

Sd/-
अरुण गोयल
सदस्य

Sd/-
जिष्णु बरुआ
अध्यक्ष