



नई दिल्ली
NEW DELHI

याचिका संख्या./ Petition No. 255/MP/2022

कोरम/ Coram:

श्री जिष्णु बरुआ, अध्यक्ष/Shri Jishnu Barua, Chairperson
श्री आई. एस. झा, सदस्य/ Shri I. S. Jha, Member
श्री अरुण गोयल, सदस्य/ Shri Arun Goyal, Member
श्री पी. के. सिंह, सदस्य / Shri P. K. Singh, Member

आदेश दिनांक/ Date of Order: 09th of January, 2024

IN THE MATTER OF:

Petition under Section 79(1)(b) and 79(1)(f) of the Electricity Act, 2003 read with Article 12 of the long-term Power Purchase Agreement dated 03.05.2019 entered into between Torrent Solargen Limited and Solar Energy Corporation of India Limited for approval of Change in Law events and consequential compensation.

AND IN THE MATTER OF:

Torrent Solargen Limited,
Samanvay, 600 Tapovan,
Ambawadi, Ahmedabad
Gujarat-380 015

...Petitioner

Versus

- M/s Solar Energy Corporation of India Limited,**
1st Floor, A-Wing, D-3, District Centre,
Saket, New Delhi-110 017
- Haryana Power Purchase Centre,**
2nd Floor, Shakti Bhawan, Sector-6,

Parties Present: Ms. Divya Chaturvedi, Advocate, TSL
Shri Saransh Shaw, Advocate, TSL
Shri Jai Dhanani, Advocate, TSL
Shri M. G. Ramachandran, Sr. Advocate, SECI
Ms. Tanya Sareen, Advocate, SECI
Ms. Anushree Bardhan, Advocate, SECI
Ms. Surbhi Kapoor, Advocate, SECI
Shri Aneesh Bajaj, Advocate, SECI
Shri Shubham Arya, Advocate, HPPC
Ms. Reeha Singh, Advocate, HPPC

आदेश/ ORDER

The Petitioner, Torrent Solargen Limited (TSL) is a generating company and has set up its 115 MW ISTS-connected wind power project in the state of Gujarat. M/s Torrent Power Limited (parent company) has been declared as a successful bidder against the Request for Selection (RfS) issued by the Solar Energy Corporation of India Limited (SECI) vide RfS dated 30.06.2018 for the selection of wind power developers (WPDs) for development of the cumulative capacity of 1200 MW and have been issued Letter of award (LoA) dated 24.10.2018 for development of wind power project(s), generation and sale of wind power under the above RfS. M/s Torrent Power Limited (parent company) has formed a project company, M/s Torrent Solargen Limited (the Petitioner), within the provisions of RfS for development of wind power project, generation and sale of wind power under the above RfS. The Petitioner is seeking approval of a change in rates of Goods & Services Tax (GST) from 5% to 12% qua Ministry of Finance Notification dated 30.09.2021 as a Change in Law event in terms of Article 12 of the Power Purchase Agreement (PPA) dated 03.05.2019 and sought compensation accordingly.

2. Respondent No. 1, Solar Energy Corporation of India Limited (SECI), has been set up under the administrative control of the Ministry of New and Renewable Energy (MNRE) to facilitate the implementation of various schemes of MNRE and the achievement of targets set therein. SECI is acting as an intermediary procurer in line with the provisions of 'Guidelines for Competitive Bidding Process for Procurement of Power from Grid Connected WPPs', issued by the Ministry of Power and holds a power trading license in terms of Section 12 of the Electricity Act, 2003.

3. Respondent No. 2, Haryana Power Purchase Centre (HPPC) is a power procurement agency established for procuring electricity from various sources for the purpose of supply to the distribution licensees in the state of Haryana. HPPC represents the distribution licensees for the purpose of power purchases from various sources within and outside the state of Haryana.
4. The Petitioner has made the following prayers:
- (a) *Admit the present Petition;*
 - (b) *Hold and declare that the **change in rate of Goods and Service Tax applicable to Supply Contracts for setting up of Petitioner's wind power project notified by the Ministry of Finance, Department of Revenue vide its Notifications No.8/2021 dated 30.09.2021 amounts to a Change in Law** event under Article 12 of the Power Purchase Agreement dated 03.05.2019;*
 - (c) *Hold and declare that the **Petitioner is entitled to a sum of Rs.37 Crores on account of the impact of such Change in Law** event on the Petitioner's Wind Power Project;*
 - (d) *Direct the Respondent (SECI) to make payment of the sum of Rs. 37 Crores (or such amount as may be payable pursuant to the commissioning of the Project of the Petitioner) towards compensation for such Change in Law events to the Petitioner;*
 - (e) *Direct the Respondent (SECI) to make payment towards the **increase in Interest During Construction of the Petitioner's Project** as and when the Petitioner approaches the Respondent with the relevant documents;*
 - (f) *Direct the Respondent (SECI) to make payment towards the **applicable carrying cost** in the event there is a delay in making payment towards the aforesaid Change in Law claim of the Petitioner;*
 - (g) *Allow **necessary amendment(s) to the Power Purchase Agreement dated 03.05.2019 to account for the aforementioned Change in Law** event and direct Respondent No. 1 to execute such necessary amendment(s); and*
 - (h) *Pass such other order(s) which the Hon'ble Commission deems fit in the facts and circumstances of the instant case.*

Factual Matrix:

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

Location	Tehsil: Bhuj, Nakhatrana, Mandvi Dist: Kutch Gujarat
Scheme	Setting up of 2500 MW ISTS connected Wind Power Projects (Tranche VI)
Nodal agency	SECI
Tariff	Rs.2.76/kWh
Capacity (MW)	115 MW
Power	Wind
Date of Notification No.1/2017-Central Tax (Rate) (2017 GST Notification)	28.06.2017
RfS issued on	30.06.2018; 03.08.2018 (Amended RfS)
Bid submitted by Torrent Power Limited (TPL) on	29.08.2018
E-Reverse auction held on	25.09.2018
LOA issued on	24.10.2018
Power Sale Agreement (PSA) executed on	21.01.2019
Effective date of the PPA	22.01.2019
PPA executed on	03.05.2019
Supply Agreement entered on	17.09.2021
Erection & Commissioning Agreement executed between TSL and GE Industrial Pvt. Ltd.	29.09.2019
SCOD of the project as per PPA	22.07.2020
Date of Notification of 8/2021- Central Tax (Rate) (2021 GST Notification)	30.09.2021
Extended SCOD	28.10.2022
COD of the project	27 MW- 27.05.2023 13.5 MW- 17.06.2023 16.2 MW- 26.06.2023 13.5 MW- 04.07.2023 16.2 MW- 06.07.2023 24.3 MW- 11.07.2023 4.3 MW- 15.07.2023

6. The present petition was filed on 18.08.2022. The petition was listed for hearing on 16.02.2023, wherein the Commission, after hearing the submissions of parties, admitted the Petition. Further hearing was conducted on 15.05.2023, where the Commission permitted the parties to file their replies. On 23.08.2023, the Commission, after hearing the submissions of the parties, reserved the matter for orders and directed the parties to file their respective submissions.

Hearing dated 23.08.2023

7. During the course of the hearing dated 23.08.2023, it was held as under:

*Learned counsel for the Petitioner submitted that the present Petition has been filed, inter alia, for approval of a **Change in Law and consequential relief to compensate the Petitioner for an increase in its Project cost due to the revision of Goods and Services Tax** applicable on renewable energy devices and manufacturing parts for wind mills and wind operated electricity generators, in terms of the Notification No. 8/2021 dated 30.9.2021 issued by the Department of Revenue, Ministry of Finance, Government of India.*

*2. Learned senior counsel for the Respondent No. 1, SECI, stated that the said Notification would amount to a Change in Law under the Power Purchase Agreement. Learned senior counsel further submitted that **reconciled claims towards Change in Law are to be paid on a monthly annuity basis unless the distribution licensees/buying entities specifically agree to make a lump-sum payment and further duly make such payment in discharge of their obligations.** Learned senior counsel also submitted that, **as per the order of the Hon'ble Supreme Court dated 12.12.2022 in Civil Appeal No. 8880 of 2022, the enforceability of the Commission's order(s) to be passed in pursuance of the APTEL's judgment dated 15.9.2021 in Parampujya Case has been stayed with regard to the issues of carrying cost, compensation on account of the impact of the Change in Law for the period post Commercial Operation Date of the Projects, and towards O&M expenses.** Learned senior counsel also urged **the Commission to clarify whether the late payment surcharge would be payable as per the Late Payment Surcharge Rules, 2022, or as per the provisions of the PPA & the PSA.***

*3. In response, learned counsel for the Petitioner clarified that the Change in Law claims of the **Petitioner are for the period prior to the Commercial Operation Date only.** However, the Petitioner is praying for the **carrying cost as the expression 'relief' used in the Change in Law clause, as held by the Hon'ble Supreme Court in various judgments, is of the widest amplitude.** Learned counsel also submitted that in the Petition, **the Petitioner has also prayed for a direction to SECI for making payment towards increase in Interest During Construction (IDC) as a result of a Change in Law event leading to an increase in the project cost. However, the said prayer of IDC may be considered as withdrawn with a liberty to raise such a prayer in the future if necessary.***

4. Further, considering the request of the learned senior counsel for SECI and the learned counsel for the Petitioner, the Commission permitted the parties to file their respective written submissions, if any, within two weeks. The Commission also directed the Petitioner to file an affidavit indicating the withdrawal of its prayer relating to IDC claims within two weeks.

5. Subject to the above, the Commission reserved the matter for order.

Analysis and Decision:

8. We have heard the learned counsels for the Petitioner 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 introduction Notification No.8/2021- GST issued by the Ministry of Finance, Government of India amounts to Change in Law events under Article 12 of the Power Purchase Agreement dated 03.05.2019? AND Whether the Petitioner is entitled to compensation towards additional expenditure on account of the 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 Change in Law?

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

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

Re: Issue No. I:

11. Briefly, the Petitioner TSL has submitted that the introduction of Notification No.8/2021- GST issued by the Ministry of Finance, Government of India may be declared as a Change in Law event under Article 12 of the Power Purchase Agreement, which has led to an increase in the expenditure for the project. Further, the GST Amendment dated 30.09.2021 has resulted in an increase in the total contract value of the supply contract executed between the Petitioner and its contractors wherein the GST payable on the supply of equipment for setting up the project has increased substantially i.e. from 5% to 12%. In view of the GST Amendment, the Petitioner is liable to provisionally incur an additional impact of approximately Rs.37 crores in setting up its project, which is payable under the Supply Agreement read with the Amendment signed by the Petitioner with its Contractor. TSL has further submitted that the total contract value inclusive of taxes payable by it to its Contractor under the Supply Agreement, has increased from Rs. 5,52,45,54,000 to Rs. 5,89,28,57,600. Therefore, the total impact on TSL is Rs. 36,83,03,600. Since the present GST Amendment is a statutory change in the GST structure that existed on the date of bid submission and is made applicable for the setting up of wind power projects, the said amendment is a Change in Law event as per Article 12 of the PPA. Reliance is placed by TSL on APTEL judgement dated 27.04.2021 in A.No. 172 of 2017, titled *Coastal Gujarat Power Limited v. CERC & Ors*; CERC order dated 06.04.2023 in Petition No. 268/MP/2021 titled *M/s. Powerica Limited v. SECI & Ors*.

12. *Per-contra*, SECI has submitted that SCoD of the project was 22.07.2020, which was further

extended up to 28.10.2022. TSL has commissioned the project in a phased manner from 26.05.2023 to 14.07.2023. The extent to which relief is admissible to the Petitioner on account of the Notification dated 30.09.2021 is subject to examination and verification of documents by SECI and HPPC. Further, HPPC has submitted that the impact, if any, can only be considered on the equipment that is duly installed and commissioned by the date of commercial operation date and not the equipment installed after the CoD.

13. 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:

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

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

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

“12.2 Relief for Change in Law

12.2.1 The aggrieved Party shall be required to approach the 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.”

14. We observe that the extract of the 2021 GST Notification is as under:

(b) in Schedule II – 12%, -

...

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

201 A	84, 85 or 94	<i>Following renewable energy devices & parts for their manufacture: - (a) Bio-gas plant (b) Solar power-based devices (c) Solar power generating system (d) Wind mills, Wind Operated Electricity Generator (WOEG) (e) Waste to energy plants / devices (f) Solar lantern / solar lamp (g) Ocean waves/tidal waves energy devices/plants (h) Photo voltaic cells, whether or not assembled in modules or made up into panels.</i>
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15. The Commission observes that as per Article 12 of the PPA, 'Change in Law' means the enactment/coming into effect/ adoption/ promulgation/ amendment/ modification or repeal of any Law in India; change in the interpretation of any law in India; imposition of a requirement for obtaining any consents or change in tax or introduction of any tax made applicable for supply of power by the WPD as per the terms of this Agreement, resulting into any additional recurring/ non-recurring expenditure or any income to the WPD. Clause (e) 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 wind power project and supply of power by the WPD after the date of submission of the bid, shall be treated as per the terms of PPA. Notification No. 8/2021-Central Tax (Rate), Notification No. 8/2021- Integrated Tax (Rate) dated 30.09.2021 has been issued by the Ministry of Finance, Government of India. The impugned notifications have been issued in pursuance of an Act of Parliament. The change in rate of Goods and Services Tax from 5% to 12% w.e.f. 01.10.2021 has resulted in the change in the cost of the inputs required for generation, and the same is considered as a 'Change in Law'. Further, SECI, during the hearing held on 23.08.2023, has also agreed that the revision in the rate of GST from 5% to 12% in terms of Ministry of Finance, Department of Revenue, Notification No. 8/2021 dated 30.9.2021 squarely qualifies to be a Change in Law event. Hence, the Commission holds that the introduction of the 2021 GST Notification is covered as a 'Change in Law' under Article 12.1.1 of the PPA. It is pertinent to mention here that the view taken is consistent with similar orders issued by the Commission, viz. order dated 05.04.2023 in Petition No. 268/MP/2021; order dated 05.04.2023 in Petition No.216/MP/2022; order dated 17.05.2023 in Petition No.

174/MP/2022; order dated 02.06.2023 in Petition No. 168/MP/2021; order dated 30.11.2023 in Petition No. 214/MP/2021; order dated 05.12.2023 in Petition No. 283/MP/2022 & 286/MP/2022; order dated 21.12.2023 in Petition No. 267/MP/2022, 268/MP/2022, 269/MP/2022; order dated 26.12.2023 in Petition No. 209/MP/2022.

16. In the instant petition, the bid was submitted by TPL on 29.08.2018. PPA was executed between TSL and the SECI on 03.05.2019, and the SCoD of the project was 22.07.2020. In terms of the extended SCoD, the project was required to be commissioned on or before 28.10.2022. The project was commissioned on 14.07.2023 (i.e. COD of the project was 15.07.2023). We observe that the GST rates were amended vide Notification No. 8/2021- Central Tax (Rate) dated 30.09.2021 w.e.f. 01.10.2021. As such, we find that the Petitioner's project was affected by the impugned notification. Therefore, TSL is entitled to compensation on account of a Change in Law as per the terms of Article 12 of the PPA due to impugned notification i.e. *2021 GST Notification*. It is pertinent to mention here that during the course of the hearing held on 23.08.2023, the Petitioner clarified that the Change in Law claims are for the period prior to the Commercial Operation Date only.
17. 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?

18. TSL has submitted that the Commission, in its Order dated 20.08.2021 in Petition No.536/MP/2020, held while calculating the compensation for Change in Law that an interest rate higher than the prevailing normative cost of debt cannot be considered. The aforesaid order where 10.41% has been held to be the discount rate of annuity payments has also been upheld similarly in 2022 by this Commission in its order dated 07.02.2022 in Petition No.24/RP/2021. Further, the provisions of Late Payment Surcharge under the PPA entered into between the parties would be applicable if the payment towards the claim amount of the Petitioner allowed by the Commission is not made by SECI within the due date. Late Payment Surcharge rate would be applicable in accordance with the rate mentioned in the PPA, i.e., in terms of Article 10.3.3 of the PPA. In terms of Article 12 of the PPA, the Commission has been vested with the power to "provide relief", and therefore, the Commission may exercise the aforesaid power in terms of

applicable settled legal position, including the law laid down in *Parampujya Judgment* as well as orders passed by the Commission.

19. *Per-contra*, SECI has submitted that the reconciled claim is to be paid on a monthly annuity basis unless the distribution licensees/Buying entities specifically agree to make lump-sum payments and further duly make such payments in discharge of its obligations. 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. There has been a fall in the interest rate of the loan, and the Commission has notified the Central Electricity Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2020 (Renewable Tariff Regulations 2020) and passed the RE Tariff Order dated 07.11.2022 in Petition No.14/SM/2022 for the FY 2022-2023. SECI has further submitted that HPPC may be directed to make payment towards evaluated claims payable by SECI to Petitioner on a back-to-back basis under the PSA in a time-bound manner. Further, in addition, HPPC submitted that, this Commission vide order dated 27.03.2023 in 3/SM/2023 has considered the interest rate of 9.12% and terms of loan payment as 15 years instead of 13 years. So, the subsequent developments which have taken place after the passing of the order dated 20.08.2021 may be considered by this Commission with regard to the payment mechanism.
20. It was placed before us that this Commission, in its order dated 20.08.2021 in Petition No. 536/MP/2020, has already decided on the methodology of compensation due to a Change in Law event as under:

65. We find that in Petition No. 536/MP/2020, SECI and the Respondents (SPDs as well as the Discoms) are on the same page in so far as the rate of interest on loan is considered. This is evident from the computation of the weighted average cost of capital advanced by the contending parties. Majority of the parties have used 10.41% (as mentioned in the CERC RE Tariff Order dated 19.03.2019) as the reference rate of interest for building their arguments for the rate of annuity payment. In other words, the parties have accepted this rate as the appropriate normative rate of interest for any debt that they might have taken. 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.*

21. We have taken a consistent view on the determination of the appropriate methodology for payment of compensation on account of the Change in Law event. We have considered 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, 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 normative rate of interest as determined by CERC 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.*
22. We note that the Petitioner’s project was commissioned in parts i.e. 27 MW on 26.05.2023; 24 MW on 16.06.2023, 16.2 MW on 21.06.2023; 13.5 MW on 03.07.2023; 16.2 MW on 05.07.2023; 24.3 MW on 10.07.2023; 4.3 MW on 14.07.2023 which is during FY 2023-24. The Commission notified the RE Tariff Order dated 31.03.2021 for FY 2021-22 and the RE Tariff Order dated 07.11.2022 for FY-2022-2023. The Commission vide order dated 27.03.2023 stated that Order dated 07.11.2022 in Petition No. 14/SM/2022 shall continue to be in force until further orders. In the RE tariff Order dated 07.11.2022 issued in pursuance of the CERC (*Terms and Conditions for Tariff determination from Renewable Energy Sources*) Regulations, 2020, the Commission considered the interest rate of 9.12% and the term of the loan repayment as 15 years. 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 therefore, 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* shall be the appropriate methodology towards change in law compensation.
23. Further, the Commission holds that the liability of SECI/ Discoms for ‘*Monthly Annuity Payment*’ starts from the 60th (sixtieth) day from the date of this order or from the date of submission of claims by the Petitioner, whichever is later. 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 Petitioner, 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.

24. The issue is decided accordingly.

Re: Issue No. III

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

25. TSL has submitted that it is entitled to the payment of carrying cost change in law. This Commission is fully within its powers to not just grant compensation to the Petitioner for the aforesaid Change in Law event, but also to allow carrying cost on the said compensation to restore the Petitioner to its previous economic position. In terms of the judgments passed by APTEL, it is no longer *res integra* that the Petitioner is entitled to the payment of carrying cost along with the compensation for Change in Law. Hon'ble Supreme Court vide its judgement dated 12.12.2022 in Civil Appeal No. 8880 of 2022 has only directed this Commission to not adjudicate upon the claims that have been allowed by the Tribunal in the Parampujya Judgment, i.e., the *Parampujya judgment* is not to be enforced till further Order in that particular case only. Therefore, the aforesaid Order has only been passed in the context of the appeals referred to in Para 109 of the *Parampujya Judgment* and not passed *in rem*. Further, Article 12 of the PPA does not impose any impediment/restriction on the affected party from being granted the relief of carrying cost. *Per-contra*, the Respondents have submitted that PPA in the present case does not have any provision dealing with restitutionary principles of restoration to the same economic position. Therefore, the Petitioner is not entitled to claim relief of carrying cost. 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. Additionally, HPPC has submitted that the Petitioner is not entitled to receive compensation towards carrying costs until the matter in issue in Civil Appeal No. 8880/2022 attains finality.

26. 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:

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

27. In view of the above, this Commission holds that the Petitioner, in the instant petitions, shall be eligible for carrying costs starting from the date when the actual payments were made to the authorities until the date of issuance of this Order, at the actual rate of interest paid by Petitioner for arranging funds (supported by Auditor’s Certificate) or the rate of interest on working capital as per the applicable RE Tariff Regulations prevailing at that time or the late payment surcharge rate as per the PPA, whichever is the lowest. Once a supplementary bill is raised by the Petitioner in terms of this order, the provision of a Late Payment Surcharge in the PPA would kick in if the payment is not made by the Respondents within the due date.

28. The Commission further directs that the responding HPPC is liable to pay to SECI all the above-reconciled claims that SECI has to pay to the Petitioner. However, payment to the Petitioner by SECI is not conditional upon the payment to be made by the responding HPPC to SECI.

29. 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.”

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

31. The issue is decided accordingly.

32. Further, during the course of the hearing held on 23.08.2023, the Petitioner submitted that in the instant petition, it had also prayed as under:

*e) Direct the Respondent (SECI) to make payment towards the **increase in Interest During Construction of the Petitioner's Project** as and when the Petitioner approaches the Respondent with the relevant documents;*

33. The Petitioner vide affidavit dated 06.09.2023 has submitted that it may be allowed for not pressing the said prayer pertaining to the claim of IDC, with a liberty that the said claim may be raised by it at a later stage as and when required. We grant the liberty to the Petitioner to raise the claims of IDC (if any) in accordance with the prevailing law at the relevant time.

34. The summary of our findings is as follows:

- a) The *2021 GST Notification 2020* is a Change in Law event in terms of Article 12 of the PPA dated 03.05.2019.
- b) The Petitioner is entitled to compensation on account of Change in Law as per the terms of Article 12 of the PPA due to the impugned notification viz. *2021 GST Notification 2020*.
- c) Compensation is to be paid at the discount rate of 9.12% and an annuity period of 15 years. The liability of SECI/ Discoms for '*Monthly Annuity Payment*' shall start from the 60th (sixtieth) day from the date of this order or from the date of submission of claims by the Petitioner, whichever is later. Late payment surcharge shall be payable for the delayed period corresponding to each such delayed Monthly Annuity Payment(s), as per respective PPAs/PSAs.

- d) The Petitioner shall also be eligible for carrying cost starting from the date when the actual payments were made to the Authorities till the date of issuance of this Order, at the actual rate of interest paid by the Petitioner for arranging funds (supported by Auditor's Certificate) or the rate of interest on working capital as per applicable RE Tariff Regulations prevailing at that time or the late payment surcharge rate as per the PPA, whichever is the lowest. Once a supplementary bill is raised by the Petitioner in terms of this order, the provision of a Late Payment Surcharge in the PPA would kick in if the payment is not made by the Respondents within the due date.
- e) The directions issued in this Order so far as they relate to compensation for the period post Commercial Operation Date of the projects in question as also towards carrying cost (pre-COD & post-COD) shall not be enforced and shall be subject to further orders of the Hon'ble Supreme Court in Civil Appeal No. 8880/2022 in *Telangana Northern Power Distribution Company Ltd. & Anr. V. Parampujya Solar Energy Pvt. Ltd. & Ors.*, and connected matters.
- f) Liberty is granted to the Petitioner to raise the claims of IDC (if any) in accordance with the prevailing law at the relevant time.

35. The Petition No. 255/MP/2022 is disposed of in terms of the above.

Sd/-
पी. के. सिंह
सदस्य

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अरुण गोयल
सदस्य

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आई. एस. झा
सदस्य

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