



नई दिल्ली
NEW DELHI

याचिका संख्या./ Petition No. 262/MP/2022

कोरम/ Coram:

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

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

IN THE MATTER OF:

Petition under Section 79 of the Electricity Act, 2003 and Article 12 read with Article 16.3.1 of the Power Purchase Agreement dated 30.03.2021 executed by the Petitioner and NTPC Limited, seeking relief on account of Change in Law increasing the rate of Goods and Services Tax and imposing Basic Customs Duty.

AND IN THE MATTER OF:

Rising Sun Energy (K) Private Limited,
PHD, UGF, 4/2, August Kranti Marg,
Siri Institutional Area, New Delhi - 110016

...Petitioner

Versus

- 1. NTPC Limited,**
NTPC Bhawan, Core-7, Scope Complex,
7, Institutional Area, Lodi Road,
New Delhi – 110003
- 2. Chhattisgarh State Power Distribution Company Limited,**
4th Floor, Vidhyut Sewa Bhawan,
Danganiya, Raipur – 492013

...Respondents

Parties Present:

Shri Jafar Alam, Advocate, RSEKPL
Shri Ashwin Ramanathan, Advocate, RSEKPL
Shri B. S. Dandona, RSEKPL
Shri A. S. Midha, RSEKPL
Shri Basava Prabhu Patil, Sr. Advocate, CSPDCL
Shri Akshat Shrivastava, Advocate, CSPDCL
Shri Geet Ranjan Ahuja, Advocate, CSPDCL
Shri Gopal Jain, Sr. Advocate, NTPC
Shri Adarsh Tripathi, Advocate, NTPC
Shri Ajitesh Garg, Advocate, NTPC

आदेश/ ORDER

The Petitioner, Rising Sun Energy (K) Private Limited (RSEKPL) is a generating company and is developing a 190 MW Solar Power Generating System (SPGS) based on photovoltaic technology. NTPC in terms of the provisions of Section 63 of the Electricity Act, 2003 and the applicable Guidelines for Tariff Based Competitive Bidding Process for Procurement of Solar Power notified by the Central Government, has issued the Request for Selection (RfS) No. RE-CS-0000-BOO-7 dated 12.01.2021 for selection of SPDs for the development of 190 MW of solar PV project and for generation and supply of solar power to NTPC. The Petitioner was declared as a successful bidder, and NTPC issued the Letter of Award (LOA) [RE-CS-0000-BOO-7-LOA-0138] dated 02.03.2021 to the Petitioner. The Petitioner has set up the Solar Power Project based on Photo Voltaic technology of 190 MW capacity at Village-Nokh, Tehsil-Pokran in Jaisalmer District of Rajasthan as per the terms and conditions of the RfS. The Petitioner has executed the Power Purchase Agreement (PPA) with NTPC on 30.03.2021. NTPC has agreed to purchase power up to the contracted capacity of 190 MW at the rate of Rs 2.25/kWh i.e. levelised tariff as per the terms of PPA. The scheduled date of commissioning as per PPA is 31.03.2022 (i.e., 12 months from the Effective Date of the PPA viz. 01.04.2021). The Petitioner has filed the instant petition seeking relief on account of Change in Law increasing the rate of Goods and Services Tax and imposing Basic Customs Duty.

2. Respondent No. 1, NTPC Limited (NTPC) is a Government of India Undertaking and a generating company under the Electricity Act, 2003 and is also engaged inter alia in the activity of trading of electricity. NTPC facilitates the development of ISTS connected solar

power projects in India and procures solar power from such projects established by solar power developers for onward sale to the distribution licensees and/ or utilize such power for flexible operation of NTPC's thermal power plants as per the Scheme of "Flexibility in Generation and Scheduling of Thermal Power Stations to reduce emissions" issued by the Ministry of Power, Government of India on 05.04.2018.

3. Respondent No. 2, Chhattisgarh State Power Distribution Company Limited (CSPDCL) is a distribution licensee engaged in power distribution activities in the State of Chhattisgarh.
4. The Petitioner has made the following prayers:
 - a) Declare that the issuance **of Notification No. 8/2021 Central Tax (Rate) and Notification No. 8/2021 Integrated Tax (Rate) dated 30.09.2021 by the Ministry of Finance, Government of India and Notification No. 8/2021 State Tax (Rate) by the Department of Finance, Government of Rajasthan, are Change in Law events under Article 12 of the Power Purchase Agreement dated 30.03.2021;**
 - b) Declare that the issuance of **Office Memorandum No. 283/3/2018-GRID SOLAR dated 09.03.2021** by the Ministry of New and Renewable Energy and the Finance Act, 2022 (effective from 01.04.2022) by the Government of India, imposing Basic Customs Duty on the import of solar photovoltaic cells and modules, is a Change in Law event under Article 12 of the Power Purchase Agreement dated 30.03.2021;
 - c) Direct Respondent No. 1 **to pay** Change in Law compensation in terms of Article 12 of the PPA of an estimated amount of INR 55,63,48,848/- (Rupees Fifty Five Crores Sixty Three Lakhs Forty Eight Thousand Eight Hundred Forty Eight Only) on account of issuance of **Notification No. 8/2021 Central Tax (Rate)** and Notification No. 8/2021 Integrated Tax (Rate) dated 30.09.2021 by the Ministry of Finance, Government of India and Notification No. 8/2021 State Tax (Rate) by the Department of Finance, Government of Rajasthan, **along with interest/ carrying cost at a rate of 200 basis points above the average State Bank of India Marginal Cost of Funds based Lending Rate (one year tenor) from the date of expenditure by the Petitioner till the date of payment of compensation by Respondent No.1;**
 - d) Direct Respondent No. 1 **to pay** Change in Law compensation in terms of Article 12 of the PPA of an estimated amount of INR 3,00,14,56,375/- (Rupees Three Hundred Crores Fourteen Lakhs Fifty Six Thousand Three Hundred and Seventy Five Only) on account of issuance of **Office Memorandum No. 283/3/2018-GRID SOLAR dated 09.03.2021 by the Ministry of New and Renewable Energy and the Finance Act, 2022 (effective from 01.04.2022)** by the Government of India, along with interest/ carrying cost at a rate of 200 basis points above the average State Bank of India Marginal Cost of Funds based Lending Rate (one year tenor) from the date of expenditure by the Petitioner till the date of payment of compensation by Respondent No.1;

- e) **Alternatively** and without prejudice to prayer (c) above, direct that Respondent No.1 pay the Petitioner an **annuity payment** of INR 5,51,96,590/- (Rupees Five Crores Fifty One Lakhs Ninety Six Thousand Five Hundred Ninety Only) payable as yearly instalments on account of increase in the rates of Goods and Services Tax, which includes interest/ carrying costs at the rate of 200 basis points above the State Bank of India Marginal Cost of Funds based Lending Rate (one year tenor), in terms of Article 12 of the Power Purchase Agreement dated 30.03.2021;
- f) **Alternatively** and without prejudice to prayer (d) above, direct that Respondent No.1 pay the Petitioner an estimated **additional tariff of INR 0.6026 per kWh on account of imposition of Basic Customs Duty**, which includes interest/ carrying costs at the rate of 200 basis points above the State Bank of India Marginal Cost of Funds based Lending Rate (one year tenor), in terms of Article 12 of the Power Purchase Agreement dated 30.03.2021;
- g) Direct Respondent No. 1, to reimburse the legal and administrative costs incurred by the Petitioner in pursuing the instant Petition; and
- h) Pass such other further orders as this Hon'ble Commission may deem just in the facts of the present case.

Factual Matrix:

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

| | |
|---------------------------------------------------------------------------------------------------------|----------------------------------------------------------------|
| Location | Village Nokh, Tehsil-Pokran in Jaisalmer district of Rajasthan |
| Nodal agency | NTPC |
| Tariff | Rs.2.25/kWh |
| Capacity | 190 MW |
| Power | Solar |
| Date of notification of Basic Custom Duty Notification No. 1/2011 (2011 BCD Notification) | 06.01.2011 |
| Date of Notification No.1/2017-Central Tax (Rate) (2017 GST Notification) | 28.06.2017 |
| RfS was floated on | 12.01.2021 |
| Bid submitted on | 09.02.2021 |
| E-Reverse auction held on | 19.02.2021 |
| Letter of Award (LOA) issued on | 02.03.2021 |
| MNRE issued Official Memorandum (OM) No. 283/3/2018-GRID SOLAR regarding revision of BCD rates (BCD OM) | 09.03.2021 |
| PPA executed on | 30.03.2021 |
| Effective date of the PPA | 01.04.2021 |
| Power Sale Agreement (PSA) executed on | 01.09.2021 |
| Tariff was adopted vide Order in Petition No. 210/AT/2021 on | 21.12.2021 |
| Date of Notification of 8/2021- Central Tax (Rate) (2021 GST Notification) | 30.09.2021 |
| Date of notification No. F.12(1)FD/Tax/2021-60 by the Government of Rajasthan, Finance Department | 30.09.2021 |

| | |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| Scheduled Commissioning Date (SCOD) of the project | 31.03.2022 |
| The Finance Act, 2022, No. 6 of 2022 Notification (2022 BCD Notification) | 30.03.2022 |
| Extended SCOD in view of Article 2.1.2 of the PPA dated 30.03.2021 | 21.10.2022 |
| COD of the project (qua 164 MW) | 03.11.2023 |
| COD of the project (qua 26 MW) | 03.04.2024 |
| The maximum time period allowed for the commissioning of the full Project Capacity with encashment of Performance Bank Guarantee/POI shall be limited to 180 days beyond the SCoD or extended SCoD as per Article 4.6.2 of the PPA | 18.04.2023 |

6. The present petition was filed on 01.08.2022. The Petition was listed for hearing on 15.12.2022, and the Commission, after hearing the submissions of the Petitioner, admitted the Petition and directed them to serve a copy of the Petition to the Respondents. Hearing was further conducted on 21.03.2023, wherein the Commission, after hearing the submissions of the parties, permitted the parties to file their respective submissions. Subsequently, the hearing was conducted on 25.05.2023, wherein the Commission, upon hearing the submissions of the parties, directed the parties to carry out time-bound reconciliation of the Petitioner's Change in Law claim and to place on the record the status/outcome of such process on the next date of hearing. During the course of the hearing dated 16.08.2023, the *Petitioner, as well as the Respondents submitted that pursuant to the directions of this Commission, they had reconciled the Change in Law claims of the Petitioner.* Further, upon the request of CSPDCL, the Commission directed CSPDCL to file its Reply. *Hearing was further conducted on 10.10.2023, and the Petitioner submitted that the incremental GST claim amount indicated in the statement is provisional, and the final incremental GST claim amount will be intimated after the Commercial Operation of the Project.* Further, the Petitioner submitted that it could not achieve commercial operation as the necessary transmission infrastructure for evacuation of power within the Nokh Solar Power Park required to be developed by the Solar Power Park Developer, Rajasthan Solar Park Development Co. Ltd., was not ready. The Petitioner further submitted that the infrastructure is now ready and is likely to be energized by 15.10.2023, and consequently, its Project is likely to be commissioned on 18.10.2023. The relevant date for determining the Petitioner's entitlement to Change in Law claims is the bid cut-off date. NTPC submitted that CSPDCL had raised the issue regarding a delay in the adoption of tariffs and extension of SCoD. So, they sought time from the Commission to file its Reply on affidavit. The Commission permitted NTPC to file its Affidavit and also directed the Petitioner to mention the matter after commissioning its project. Hearing was further conducted on

13.12.2023, wherein the Commission noted that none was present on behalf of NTPC and after, hearing the submissions of the parties, reserved the matter for orders. Subsequently, NTPC requested the Commission for a brief oral hearing and the hearing in the petition was again scheduled on 12.01.2024. The Commission, after hearing the submissions of the parties, permitted the parties to file their respective written submissions.

RoP dated 24.04.2024

7. This Commission, vide RoP dated 24.04.2024, observed as under:

In continuation of the Record of Proceedings for the hearing dated 12.1.2024, the Commission has directed the contracting parties to the PPA and CSPDCL to file an affidavit to the effect whether Article 4.6.2. of the PPA stands novated to the extent of the actual commissioning of the capacity in terms of Section 62 of the Indian Contract Act, 1872.

2. The Article 4.6.2 of the PPA reads as follows: “4.6.2 The maximum time period allowed for commissioning of the full Project Capacity with encashment of Performance Bank Guarantee/POI shall be limited to 180 days beyond the SCD or extended SCD as the case may be. In case, the commissioning of the Power Project is delayed beyond 180 days from the SCD or extended SCD, it shall be considered as an SPD Event of Default and the Project capacity shall stand reduced /amended to the capacity commissioned within the SCD or extended SCD. This Agreement for the balance capacity will stand terminated and shall be reduced from the project capacity.”

3. The Commission further directed the contracting parties to the PPA and CSPDCL to file an affidavit on or before 29.4.2024.

8. Pursuant to the directions of the Commission, the contracting parties have filed their written submissions.
9. We have heard the learned counsels for the Petitioner and the Respondents, carefully perused the records, and considered the submissions of the parties.
10. Before proceeding to the main issues, we feel it is imperative to mention here that Article 4.6.2 of the PPA dated 30.03.2021 stipulates as under:

*4.6.2 The maximum time period allowed for commissioning of the full Project Capacity with encashment of Performance Bank Guarantee/POI shall be limited to 180 days beyond the SCD or extended SCD as the case may be. **In case, the commissioning of the Power Project is delayed beyond 180 days from the SCD or extended SCD, it shall be considered as an SPD Event of Default and the Project capacity shall stand reduced /amended to the capacity commissioned within the SCD or extended SCD.***

This Agreement for the balance capacity will stand terminated and shall be reduced from the project capacity.

11. This Commission has observed that the maximum time period allowed for commissioning of the full Project Capacity with encashment of Performance Bank Guarantee was limited to 180 days beyond the SCoD or extended SCoD. In the instant case, the SCoD of the project was 31.03.2022, which was extended up to 21.10.2022 by SECI. However, the project (164 MW) was commissioned on 03.11.2023, and the remaining 26MW was commissioned on 03.04.2024. The Commission, vide RoP dated 24.04.2024, directed the parties to file the submission to the effect that whether Article 4.6.2. of the PPA stands novated to the extent of the actual commissioning of the capacity in terms of Section 62 of the Indian Contract Act, 1872. The Parties have made their submissions as under:

a) Briefly, the Petitioner has submitted as under:

- i. Despite being ready for commissioning on 20.10.2022, the Petitioner's Project was prevented from commissioning on account of the non-availability of the required transmission infrastructure, which had to be provided by the Solar Power Park Developer- RSDCL under the Implementation and Support Agreement dated 29.05.2021.
- ii. It had written several letters to RSDCL, requesting that it expedite its work in the solar park and ensure that the evacuation infrastructure is ready and provided on time.
- iii. No alternate interim arrangement was made by RSDCL to facilitate the evacuation of power from the Petitioner's Project.
- iv. The entire 190 MW of inverters were charged by the Petitioner by 03.11.2023, only 164 MW was allowed to be commissioned and the balance 26MW was curtailed on account of the *CEA Working Group Report, 2022*.
- v. The Petitioner, as a matter of formality, has made the request for an extension of SCoD to the actual date of COD i.e., 03.04.2024.
- vi. The issue of invocation/ novation of Article 4.6.2 of the PPA is completely extraneous and beyond the scope of the present Petition. In none of the pleadings filed in the present Petition has the issue of applicability of Article 4.6.2 of the PPA, been agitated by any party.
- vii. None of the parties has shown any intention of invoking Article 4.6.2 of the PPA. On the contrary, the Petitioner's Project has been continuously supplying power to

NTPC and CSPDCL since November 2023, which has been accepted by all parties.

- viii. Therefore, the PPA is valid, binding, and in force between the parties. Any other view on the matter would not only have disastrous sector-wide implications but would also be wholly unconscionable, in violation of the legislative mandate of the Act and policy objectives of the Central Government, and a serious blow to India's efforts to enhance its renewable generation capacity. The Petitioner reserves its right to respond and address any submissions to the contrary by NTPC or CSPDCL.
- b) Briefly, NTPC has submitted as under:
- i. The Petitioner was clearly informed vide letter dated 09.08.2022 that since the RSDCL has filed a Petition No. 104/MP/2022 for extension of connectivity from the date of 01.06.2022 to 15.03.2023 for the Nokh Solar Park of 925 MW Capacity and LTA Operationalization from 01.06.2022 to 31.03.2023, the final SCD extension will be provided in line with the decision of this Commission. The LTA granted to M/s RSDCL has been made effective from 08.03.2023. It is the Petitioner's responsibility for arranging evacuation of the contracted capacity and maintaining it throughout the term of the Agreement.
 - ii. NTPC is only an intermediary agency and the delay and extension of the timelines for operationalization of the connectivity and LTA necessary for development of the project cannot be attributed to NTPC Limited.
 - iii. The readiness of power evacuation system being constructed by RSDCL got delayed as the project falls in the potential habitats of Great Indian Bustard and problematic issues related to the Covid-19 pandemic, route constraints. and required safety clearances for DTL approaching 765 KV GSS PGCIL, Bhadla II. The final date for LTA operationalisation is yet to be decided as the petition (104/MP/2022) for extension of connectivity and LTA extension is under consideration before this Commission, and therefore, the final extension of SCD is subject to the outcome of Petition No. 104/MP/2022.
- c) Briefly, CSPDCL has submitted that "*Article 4.6.2 of the PPA may be novated subject to the condition that CSPDCL shall be indemnified from any additional cost which may arise due to extended SCD.*"

12. We observe that the Petitioner has submitted that the issue of invocation/ novation of Article 4.6.2 of the PPA is beyond the scope of the present Petition. None of the parties has shown any intention of invoking Article 4.6.2 of the PPA. On the contrary, the Petitioner's Project has been continuously supplying power to NTPC and CSPDCL since November 2023, which has been accepted by all parties. NTPC has submitted that NTPC is only an intermediary agency, and the delay and extension of the timelines for operationalization of the connectivity and LTA necessary for the development of the project cannot be attributed to NTPC. The final SCoD extension will be provided in line with the decision of this Commission in 104/MP/2022. CSPDCL has submitted that Article 4.6.2 of the PPA may be novated subject to the condition that CSPDCL shall be indemnified from any additional cost which may arise due to extended SCoD. We observe that in the instant case, the SCoD of the project was 31.03.2022, which was extended up to 21.10.2022 by SECI. The LTA was granted to RSDCL on 08.03.2023. Thereafter, the transmission line was commissioned by RSLDC on 20.10.2023, 164 MW was commissioned by the Petitioner on 03.11.2023, and the remaining 26MW was commissioned on 03.04.2024. Further, as per the documents available on record, the contracting parties have reconciled on 10.08.2023 the expenditure on account of Change in Law for 190 MW. Perusal of the invoices show that the solar panel invoices are for the period from 30.01.2022 till 12.09.2022 that is, before the extended SCOD of 21.10.2022. We are of the view that since the reconciled invoices are for the period prior to the already extended SCOD and are already reconciled, the question of indemnification does not arise. We further note that neither of the contracting parties has prayed before the Commission to take cognizance of Article 4.6 of the PPA. Nevertheless, the instant order of the Commission shall be applicable for the mutually agreed project capacity under PPA, which is valid.

13. Further, on the basis of the submissions of the contracting parties, the following issues arise for adjudication:

Issue No. I: *Whether the introduction of Notification No.8/2021- GST issued by the Ministry of Finance, Government of India, and the imposition of increased rate of basic customs duty and vide MNRE OM No. 283/3/2018-GRID SOLAR dated 09.03.2021 and the Finance Act, 2022 dated 30.03.2022 issued by Government of India amounts to Change in Law events under Article 12 of the Power Purchase Agreement dated 30.03.2021? 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 Power Purchase Agreement dated 30.03.2021?

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

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

Re: Issue No. I

15. Briefly, the Petitioner submitted as under:

- a) GST Amendment Notifications and the BCD Notifications are ‘Change in Law’ events under Article 12.1.1 of the PPA as they were issued after the last date of bid submission, i.e., 10.02.2021, thereby resulting in additional non-recurring expenditures to be borne by the Petitioner with effect from 01.10.2021 and 01.04.2022 respectively.
- b) With the issuance of the GST Amendment Notifications, the Petitioner is incurring additional expenditure in setting up the Project in the following manner:
 - i. The applicable rate of GST on the supply of modules under the Module Supply Agreement has increased from 5% to 12% of the value of such supplies;
 - ii. The Petitioner has executed an EPC Contract for the supply of balance of plant equipment along with associated services like erection, installation, commissioning, and testing of SPGS;
 - iii. 70% of the gross consideration of the contract value under the *EPC Contract* will be taxed at 12% (i.e., in terms of entry 201A read with the Explanation provided therein is the GST rate applicable on the supply of SPGS) and
 - iv. 30% of the gross consideration of the contract value under the *EPC Contract* will be taxed at 18% (i.e., the GST rate applicable on the supply of construction, engineering, installation, or other technical services in relation to SPGS.)
- c) The GST on the Module Supply Agreement has increased from 5% to 12%. The GST Amendment Notifications have resulted in an increase in the effective tax rates under GST Laws from 8.9% earlier to 13.8% (on gross consideration) on the above EPC Contract with effect from 01.10.2022.
- d) The estimated additional amount that the Petitioner will incur in developing the SPGS on account of the issuance of the GST Amendment Notifications is approximately INR

42,63,43,233/- under the Module Supply Agreement and INR 13,00,05,615 under the EPC Contract, cumulatively amounting to INR 55,63,48,848/-.

- e) The rates of BCD sought to be imposed by the Government of India by the BCD Notifications (including surcharge on such BCD) are set out below:

| Items | Up to 31.03.2022 | BCD w.e.f. 01.04.2022 | Surcharge on BCD | Effective Rate of BCD |
|--------------|-----------------------------|----------------------------------|-----------------------------|----------------------------------|
| Solar Module | 0% | 40% | 10% | 44% |
| Solar Cell | 0% | 25% | 10% | 27.5% |

- f) The estimated additional amount incurred/ to be incurred by the Petitioner in the procurement of solar modules for the Project on account of issuance of BCD Notifications is approximately INR 3,00,14,56,375/- (Rupees Three Hundred Crores Fourteen Lakhs Fifty Six Thousand Three Hundred Seventy Five Only), which includes IGST at 12% paid on the BCD amounting to INR 32,15,84,612/- (Rupees Thirty Two Crores Fifteen Lakhs Eighty Four Thousand Six Hundred Twelve Only). Further, the Petitioner is also entitled to interest/ carrying cost on the above additional expenditure of INR 43,32,17,333/-. The said estimates may eventually vary from the actual additional expenditure that may be incurred.
- g) Due to the issuance of the BCD Notifications, the Petitioner has incurred and expects to incur additional expenditure at an effective rate of 44% on the erstwhile price of solar modules (i.e., BCD of 40% on the solar modules plus 10% surcharge on such BCD).
- h) For the purpose of considering BCD as a Change in Law, the MNRE has considered projects wherein the last date of bid submission was on or before the announcement on 09.03.2021 regarding the imposition of Basic Customs Duty (BCD). Therefore, the relevant date for the purpose of considering BCD as a Change in Law is 09.03.2021, i.e., the date of the MNRE OM.
- i) For GST being considered as a Change in Law, MNRE has considered projects wherein the last date of bid submissions was on or before 30.09.2021, i.e., on or before issuance of notification regarding the increase in GST rate. Therefore, the relevant date for the purpose of considering GST as a Change in Law is 30.09.2021, i.e., the date of the GST Amendment Notification.
- j) The cut-off date (i.e., 10.02.2021) in the present case is prior to 09.03.2021 (for BCD) and 30.09.2021 (for GST), respectively; it is submitted that the aforesaid claims are, therefore, squarely covered under the Change in Law clause of the PPA.

- k) The Change in Law events that occurred prior to the notification of *these Rules shall be dealt with in accordance with the prevalent dispensation/rule* position at the time of occurrence of the event. This position was also affirmed by APTEL in its judgment dated 05.04.2022 in O.P. No. 1 of 2022.
- l) The Petitioner has duly notified NTPC of the occurrence of the Change in Law events by letter dated 16.05.2022. However, NTPC, by its letters dated 02.06.2022 and 03.06.2022, demanded that the Petitioner approach this Commission for seeking Change in Law relief under Article 12 of the PPA.
- m) Both NTPC and CSPDCL have been given sufficient notice of the Change in Law events much prior to the actual commencement of supply.
- n) The Petitioner has actually incurred substantial expenditure on account of Change in Law events, and the amount of expenditure has also been reconciled between the parties. It is not open for either NTPC or CSPDCL to raise extraneous issues between them to prejudice the Petitioner's claim herein.
- o) The parties carried out the reconciliation process and reconciled the Petitioner's claims vide reconciliation statement 10.08.2023 as under
- i. BCD + GST on BCD – INR 295.60 Crores
 - ii. Incremental GST of 7% on supply of modules – INR 42.21 Crores
 - iii. Incremental GST of 4.9% on EPC Contract – INR 10.93 Crores
- l) Based on the amounts already reconciled by the parties, the Petitioner, in terms of the formula and mechanism given under Article 12.1.1(f) of the PPA, is entitled to an incremental tariff of **INR 0.78/ kWh** on account of BCD introduction. On account of the GST Notifications, the incremental tariff in terms of the formula and mechanism given under Article 12.1.1(f) of the PPA is estimated to be **INR 0.15/kWh**.
- m) The computation of incremental tariff provided by the Petitioner in relation to the GST impact corresponds to additional capex of approximately INR 55.16 Crores, out of which approximately INR 53.14 Crores has been reconciled, and the balance amount of INR 2.02 Crores is yet to be reconciled.
- n) PSA at Recital III between CSPDCL and NTPC itself recognizes that the SCoD under the PPA shall be extended in case of delay in the adoption of tariff.
- o) CSPDCL has also failed to point out any contractual provision requiring its approval. Any obligation to inform CSPDCL regarding the extension of SCoD of the Project, if at

all, maybe of NTPC under the PSA. The Petitioner is under no obligation to intimate CSPDCL regarding any extension granted under the PPA with NTPC.

- p) The issue of delay in providing the transmission infrastructure by RSDCL has no bearing on the additional GST and BCD implication on the Project at all. While the SCoD of the Project is 21.10.2022, the delay in providing the necessary transmission infrastructure by RSDCL resulted in the commissioning of the Project getting delayed beyond the SCoD.
- q) None of the provisions of the bid documents, including the PPA, require the developer to procure modules from a particular source or within specific timelines. Developers under the bid documents are at liberty to plan their construction schedules considering the SCoD under the PPA. The revised SCoD under the PPA was 21.10.2022, and accordingly, the Petitioner was at liberty to decide how to procure its solar modules.
- r) It is accepted industry practice to procure modules closer to the SCoD, and any idling of modules would result in irreparable losses. Reliance is placed on APTEL judgement dated 10.10.2017 in Appeal No. 343 of 2016 titled *Balarch Renewable Ltd. v. HERC & Ors.*

16. *Per-contra*, NTPC has submitted as under:

- a) In terms of the regulatory jurisprudence, the burden of any such liability arising out of a change in law has to be passed on to the ultimate beneficiary and targeting one single entity such as NTPC, who under the present circumstances is merely acting as a facilitator in the channel of transmission of power cannot be solely saddled with any such liabilities. In view of the back to back transactions, it is important to note that NTPC is not individually liable for any obligation towards the SPD arising out of the present arrangement between the parties.
- b) If at all there is any amount which the Petitioner is entitled to recover, the same has to be paid at one instance as a direction that may be passed by this Commission after assessing the exact liability and paying the consequential amounts arising thereof at one go.
- c) The reconciled amount in the present case is around INR 350 Crores, and if NTPC (being a mere facilitator) is exposed to this huge liability without the same having passed on to the ultimate beneficiary, then the entire trading business would become futile. NTPC cannot be left to pursue its remedy separately as the same would only

multiply litigations, too, in a case where DISCOM is already a contesting party in the present case, being a back-to-back transaction.

- d) The Petitioner was clearly informed vide letter dated 09.08.2022 that since RSDCL has filed a Petition No. 104/MP/2022 for extension of connectivity from the date of 01.06.2022 to 15.03.2023 for the Nokh Solar Park of 925 MW Capacity and LTA Operationalization from the date of 01.06.2022 to 31.03.2023, the final SCoD extension will be provided in line with the decision of this Commission. It is pertinent to mention that the project has already been commissioned at the partial capacity of 164 MW on 03.11.2023, and the remaining capacity of 26 MW is expected to be commissioned by 31.03.2024.
- e) The delay in tariff adoption is attributable to CSPDCL as CSPDCL delayed the signing of the PSA. Any delay in the former will have a domino effect and delay the other. The root cause of the delay is therefore attributable to CSPDCL.
- f) It was due to the said delay in execution and further seeking approval in terms of the PSA between NTPC & CSPDCL, the Tariff adoption of the project got delayed. There is no force in the contention of the CSPDCL that it cannot be held liable for any delay on the part of NTPC in getting the tariff adopted, which led to the additional expenditure for the project due to the imposition of BCD.
- g) Merely a delay in filing an affidavit cannot defeat the substantive justification/ stand of the NTPC to the plea taken by CSPDCL, and thus, the huge liability of 350 Crores cannot be simply saddled on the shoulders of NTPC without there being a definite time bound direction for the same to be ultimately reimbursed by CSPDCL. Needless to say, the CSPDCL raised the objection of delay for the first time by way of its Reply after a substantial period of one year had lapsed after the filing of the present petition.
- h) The only relevant date for determining the Petitioner's entitlement to Change in Law claims is the bid cut-off date, which in the present case was 09.02.2021, i.e., prior to BCD OM dated 09.03.2021. Therefore, under no circumstances, the CSPDCL can escape its reciprocal obligations prescribed under the PSA dated 01.09.2021, which has to be read in furtherance of the PPA dated 30.03.2021 as a back-to-back arrangement.

17. CSPDCL has submitted as under:

- a) The Petitioner and NTPC were both duty-bound to ensure that before the date of imposition of BCD, Solar PV Cells and Modules/ Panels ought to have been procured.

- b) CSPDCL, being unaware of such delays and the Petitioner purposely sitting on such Notification, now cannot be permitted to take shelter from a Change in law, and CSPDCL cannot be burdened with such liability.
- c) The Petitioner cannot be permitted to raise a claim of BCD Notification when it had time to issue procurement orders to avoid such exorbitant inflation which the Petitioner estimates to be 380 crores approx. (with IGST and Interest/ carrying cost).
- d) Relief and prayers sought with respect to Change in law on account of BCD Notification dated 09.03.2021 do not qualify as a Change in law event in terms of Article 12 of the PPA.
- e) The Petitioner nowhere in his petition states what prevented the petitioner from making procurement prior to the imposition of BCD and whether time extension/revision was done in consultation or consent with the answering respondent. In the absence of any reasoning or substantial grounds to show what prevented the petitioner from procuring and timely intimating the answering respondent, the petitioner cannot be permitted to raise any claim in this regard, and this particular event in the present case does not qualify to be a Change in Law event.
- f) Failure by the Petitioner to communicate to the concerned parties well in time for them to act and prepare accordingly for the future financial impact disentitles the Petitioner from raising such claim from them, and therefore, the Petitioner is not entitled to any relief under this head.
- g) The Petitioner nowhere in its petition has stated why, from the date of signing of the PPA till the date of issuance of GST Notification, energy renewable devices were not procured by them. The Petitioner cannot be permitted to take advantage of its own fault and take shelter under Article 12 of the PPA and make a claim to this effect calling it a Change of Law event. CSPDCL is not liable for these delays and, hence, should not be loaded with the additional financial burden that has arisen due to this delay.
- h) Mere stating that the transactions being back-to-back would not amount to making the CSPDCL liable for any or every liability arising out of the delay and latches on account of NTPC, especially when such delay and latches are not attributable to the respondent.
- i) NTPC did not have to wait for the execution of PSA to initiate the process of tariff adoption as detailed in the RfS. NTPC approached this Commission after a considerable delay on 15.09.2021, which resulted in further delay of activities of the project. In addition, there was a delay of 272 days in the allotment of land by SPPD (Solar Power

Park Developer). Hence, the averments of NTPC that CSPDCL is responsible for the delay are meritless and deserve to be rejected.

- j) The Petitioner and NTPC were both duty-bound to ensure that before the date of imposition of BCD, Solar PV Cells and Modules/ Panels ought to have been procured. Secondly, the possibility of such impact ought to have been duly and timely informed to the answering CSPDCL. CSPDCL, being unaware of such delays and Petitioner purposely sitting on such Notification, now cannot be permitted to take shelter of Change in law and the answering respondent cannot be burdened with such liability.
- k) There is no explanation or reasoning provided by the Petitioner in its entire petition as to how and on what basis the SCoD and COD got delayed and whether such delays can be attributed to CSPDCL.
- l) With regard to adjustments of tariff on account of change in law as per para 3(1) to 3(3) of MoP Notification dated 22.10.2021, the Petitioner should have given to NTPC within three weeks prior notice about the proposed impact in the tariff or charges, positive or negative. Thereafter, the Petitioner had to provide a computation of the impact. In reality, the Petitioner, after a substantial delay, intimated about the imposition of BCD and GST on 16.05.2023. While the imposition of BCD was notified on 09.03.21 and imposed w.e.f. 01.04.2022, GST was imposed w.e.f. 1.10.2021, but the actual notice was served on 16.05.2022. Hence, the petitioner has not complied with the provisions of the notification and, therefore, is not entitled to any claim under the Change in law rule.
- m) Any event subsequent to the signing of PPA would not automatically qualify itself as a Change in Law event unless the party aggrieved claiming relief under Change in Law is able to show that:
 - i. Firstly, there was no time for them to act before such change in law was given effect to and;
 - ii. Secondly, they did have time before the change in law came into effect, and they did everything to avoid or lower the impact of such in law.
- n) Only if these two conditions are satisfied can the event qualify as a Change in Law event. In the present case, it is apparent that the Petitioner has not demonstrated its bona fides with regard to its own actions and also failed to assign reasons as to why Article 12 of the PPA shall be enforced. The mere occurrence of Change in law is not substantial for invoking such provision and would vary on a case-to-case basis.

- o) In terms of the directions issued by this Commission, CSPDCL undertook a reconciliation process, and thus certain inquiries were made from the Petitioner, wherein the Petitioner informed the answering respondent and attributed the reasons for delay in tariff adoption, financial closure to NTPC, whereas delay in allotment of land by solar power park developer was attributed to Rajasthan Government. CSPDCL is not liable for these delays and, hence, should not be loaded with additional financial burdens that have arisen due to this delay.
- p) NTPC granted a time extension to the Petitioner vide letter dated 09.02.2022, without even taking into consideration CSPDCL's opinion, in spite of the fact that CSPDCL has the maximum stake after PSA was executed on 31.08.2021. No reason for grant of extension has also been provided in the order by NTPC.
- q) Since the project has not been commissioned to date, CSPDCL should not be made liable to bear the interest/ carrying cost as the delay cannot be attributable to the answering respondent. The Petitioner has prayed for payments through Annuity and Lumpsum basis, whereas there is no clause in the PPA/PSA for payment of such modes.

18. We observe that Article 12 of the PPA stipulates as under:

ARTICLE 12: CHANGE IN LAW

12.1 Definitions

12.1.1 "Change in Law" means the occurrence of any of the following events after the last date of bid submission resulting into any additional recurring/ non-recurring expenditure by the SPD or any income to the SPD. The phrase "Change in Law" would include changes brought out through change in Law, Rules, Regulations or orders of Indian Governmental Instrumentality including;

- a. 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; or*
- b. 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; or*
- c. the imposition of a requirement for obtaining any Consents, Clearances, Permits and/or licenses which was not required earlier; or*
- d. 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 SPD; or*
- e. Any introduction/modification /changes in rates of any tax/duty/cess/surcharge or similar charges on import of solar power equipment or parts thereof safeguard duty and/or antidumping duty and/or custom duty which has direct effect on the*

cost for setting up of Solar PV Power Project and supply of power by the SPD after the date of submission of Bid, shall be treated as per the terms of this Agreement.

- f. *In case of change in law on account of **Anti-Dumping Duty and/or Safe-Guard Duty and/or Custom Duty etc.** on Solar PV Modules, the Solar Power Developer shall be entitled for increase/decrease in tariff. **This increase/decrease in tariff shall be for an amount equivalent to INR 0.005/KWh (0.5 Paisa/KWH) for every increase/decrease of INR 01 (One) lakh/MW of impact on cost of Solar PV modules**, which shall be effected based on the documentary evidence submitted to the concerned authority, which shall inter alia includes, Bill of Lading (BL), Bill of Entry (BOE) at the Port of arrival, duty paid at the port of arrival, Lorry receipt (LR), Goods Receipt (GR), Insurance papers etc. upto project site. This increase/decrease in tariff due to this change in cost of PV modules shall be limited upto 150% (One hundred & fifty percent) of the solar project capacity allocated to the project developer.*
- g. *However, the above shall not include*
- i. *any change in taxes on corporate income or any withholding tax on income or dividends distributed to the shareholders of the SPD, or*
 - ii. *any change on account of regulatory measures by the Central Commission.*

12.2 Relief for Change in Law

In the event a Change in Law results in any adverse financial loss/ gain to the SPD then, in order to ensure that the SPD 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 SPD/Procurer/Discom shall be entitled to compensation by the other party, as the case may be, as follows:

12.2.1 The aggrieved Party shall be required to approach the Central Commission for seeking approval of Change in Law.

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

Notifications regarding rates qua Goods:

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

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

Schedule I - 2.5%

| Sr. No. | Chapter/ Heading/ /Sub- heading/ Tariff-item | Description of Goods |
|----------------|---------------------------------------------------------------------|-----------------------------|
|----------------|---------------------------------------------------------------------|-----------------------------|

| | | |
|-----|--------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 234 | 84, 85 or 94 | <p><i>Following renewable energy devices & parts for their manufacture:</i></p> <p>(a) <i>Bio-gas plant;</i></p> <p>(b) <i>Solar power based devices;</i></p> <p>(c) <i>Solar power generating system;</i></p> <p>(d) <i>Wind mills, Wind Operated Electricity Generator (WOEG);</i></p> <p>(e) <i>Waste to energy plants / devices;</i></p> <p>(f) <i>Solar lantern / solar lamp;</i></p> <p>(g) <i>Ocean waves/tidal waves energy devices/plants;</i></p> <p>(h) <i>Photo voltaic cells, whether or not assembled in modules or made up into panels;</i></p> |
|-----|--------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

b) Notification No. 8/2021- Central Tax (Rate) dated 30.09.2021 (2021 GST Notifications) stipulate as under:

(b) in Schedule II – 6%, -

...

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

| | | |
|----------|--------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 201 A | 84, 85 or 94 | <p><i>Following renewable energy devices & parts for their manufacture: -</i></p> <p>(a) <i>Bio-gas plant</i></p> <p>(b) <i>Solar power-based devices</i></p> <p>(c) <i>Solar power generating system</i></p> <p>(d) <i>Wind mills, Wind Operated Electricity Generator (WOEG)</i></p> <p>(e) <i>Waste to energy plants / devices</i></p> <p>(f) <i>Solar lantern / solar lamp</i></p> <p>(g) <i>Ocean waves/tidal waves energy devices/plants</i></p> <p>(h) <i>Photo voltaic cells, whether or not assembled in modules or made up into panels.</i></p> <p><i>[Explanation: If the goods specified in this entry are supplied, by a supplier, along with supplies of other goods and services, one of which being a taxable service specified in the entry at S. No. 38 of the Table mentioned in the notification No. 11/2017-Central Tax (Rate), dated 28th June, 2017 [G.S.R. 690(E)], the value of supply of goods for the purposes of this entry shall be deemed as seventy per cent. of the gross consideration charged for all such supplies, and the remaining thirty per cent. of the gross consideration charged shall be deemed as value of the said taxable service.</i></p> |
|----------|--------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

(Similar provisions were inserted by Government of Rajasthan, Finance Department vide Notification No. F.12(l)FD/Tax/2021-60 dated 30.09.2021)

Notifications regarding rates qua Services:

20. We note that relevant notifications are as under:

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

| S. No. | Chapter, Section or Heading | Description of Service | Rate (per cent.) | Condition |
|--------|--------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|-----------|
| (1) | (2) | (3) | (4) | (5) |
| | | | | |
| 3 | Heading 9954 (Construction services) | (i) Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. (Provisions of paragraph 2 of this notification shall apply for valuation of this service.) | 9 | - |
| | | (ii) composite supply of works contract as defined in clause 119 of section 2 of Central Goods and Services Tax Act, 2017. | 9 | - |
| | | (iii) construction services other than (i) and (ii) above. | 9 | - |

b) The 31st GST Council Meeting was convened on 22.01.2018. The recommendations made by the GST Council are as under:

“....

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

c) Notification No. 27/2018:

| (1) | (2) | (3) | (4) | (5) |
|------|--------------|-----------------------------------------------------------------------------------------------------------------------------------------------|-----|-----|
| “38. | 9954 or 9983 | Service by way of construction or engineering or installation or other technical services, provided in relation of setting up of following, - | 9 | -”; |

| | | | |
|------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|
| or 9987 | <p>(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) Ocean waves/tidal waves energy devices/plants</p> <p><u>Explanation:-</u> This entry shall be read in conjunction with serial number 234 of Schedule I of the notification No. 1/2017- Central Tax (Rate), published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) dated 28th June, 2017 vide GSR number 673(E) dated 28th June, 2017.</p> | | |
|------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|

d) Notification No. 24/2018:

“

against S. No. 234, in the entry in column (3), the following Explanation shall be inserted in the end, namely: -“Explanation: If the goods specified in this entry are supplied, by a supplier, along with supplies of other goods and services, one of which being a taxable service specified in the entry at S. No. 38 of the Table mentioned in the notification No. 11/2017-Central Tax (Rate), dated 28th June, 2017 [G.S.R. 690(E)], **the value of supply of goods for the purposes of this entry shall be deemed as seventy per cent. of the gross consideration charged for all such supplies, and the remaining thirty per cent. of the gross consideration charged shall be deemed as value of the said taxable service.**”

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

In drawing our conclusions as above, we have based our findings upon the ruling dated 15.05.2019 given by the Rajasthan Appellate Authority for Advance Ruling in the case of Kailash Chandra (Proprietor of Mali Construction) involving similar situation. The Advance Ruling Authority in the instant case had held that the instant supply comprising supply of goods in the form of solar energy based bore well water pumping system along with installation and commissioning of such Water pumping system is a composite supply of works contract attracting GST @ 18% in terms of entry Sl. No. 3 of Notification No. 11/2017-Central Tax (Rate), dated 28.06.2017. However, the ruling that the composite supply .of goods and services in the instant case deserves to be classified as works contract service is not supported by legal position which has been correctly interpreted by the Authority for Advance Ruling for the State of Uttarakhand in the case of M/s Premier Solar Systems Pvt. Limited as reported at 2019-TI0L-79-AAR-GST by holding that the supply of solar irrigation water pumping system along with design, erection, commissioning and installation would constitute a composite supply attracting GST @ 5% on goods portion and

GST @ 18% on services portion as prescribed in the relevant entry of the notification.

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

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

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

21. From the above, we observe that Clause (v) of Article 12 of the PPA, in seriatim, specifically stipulates that *any change in rates of taxes, duties, and cess, or introduction of any new tax made applicable for setting up of Solar Power Project and supply of power from the Solar Power Project by the SPD which have a direct effect on the Project*, is a Change in Law event. The Notification No. 8/2021- Central Tax (Rate) dated 30.09.2021 has been issued by the Ministry of Finance, Government of India. The change in rate of Goods and Services Tax from 5% to 12% w.e.f. 01.10.2021 has resulted in the change in the cost of the inputs required for generation, and the same is considered a 'Change in Law'. Hence, we hold that the impugned notifications viz *the 2021 GST Notification is a Change in Law event as per Article 12 of the PPA dated 11.02.2020*. 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 and order dated 21.04.2023 in Petition No. 219/MP/2022; order dated 17.05.2023 in Petition No. 174/MP/2022; order dated 20.07.2023 in Petition No. 273/MP/2021; Order dated 16.01.2024 in Petition No. 308/MP/2022.*
22. We also note that the Petitioner has executed an EPC Contract for the supply of balance of plant equipment along with associated services like erection, installation, commissioning and testing of SPGS. Further, we observe that GST at the rate of 18% was levied (i.e., 9% of CGST and 9% of SGST) on such service contracts, in terms of Ministry of Finance's Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017. *Notification No. 27/2018 stipulates a composite*

tax structure of 8.9% [i.e., 5% on 70% of the consolidated taxable value of contracts + 18% on 30% of the consolidated taxable value of the contracts]. Subsequently, vide *Notification No. 24/2018* against S. No. 234, for solar power generating stations, if the goods are supplied, by a supplier, along with supplies of other goods and services being a taxable service, the taxable value of supply of goods is deemed to be *seventy per cent* and the remaining *thirty per cent* is deemed to be the value of the taxable service. Hence, there is a change in the methodology of application of the rates of GST due to which the Petitioner had to incur additional costs. We note that vide *Notification No. 8/2021- Central Tax (Rate)* dated 30.09.2021, the applicable rate of GST on the contract for the supply of goods has changed from 5% to 12%, whereas 70% of the gross consideration of the contract value under the Contract for Supply and Services (Composite Supply Works Contract) is to be taxed at 12% in terms of entry 201A read with Explanation provided in *Notification No. 8/2021- Central Tax (Rate)* dated 30.09.2021. 30% of the gross consideration of the contract value under the contract for supply and services will be taxed at 18% (i.e., the GST rate applicable on the supply of construction, engineering, installation, commissioning or other technical services in relation to renewable energy devices). Hence, the effective change in GST in the above case is 4.9 %, i.e., from 8.9% to 13.8%. We hold that the Petitioner is eligible for an effective change of 4.9% in GST for the EPC Contract executed for the supply of balance of plant equipment along with associated services like erection, installation, commissioning, and testing of the project. It is pertinent to mention here that the view taken is consistent with similar orders issued by the Commission, viz. *order dated 14.03.2024 in Petition No. 65/MP/2023*.

23. We observe that relevant basic custom duty notifications are as under:

a) **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.”

b) **MNRE vide its O.M. dated 09.03.2021:**

The following proposal of MNRE to impose BCD on solar cells and modules (without grandfathering of bid out projects) has been agreed to by the Ministry of Finance:

| Item | Upto 31.03.2022 | w.e.f. 01.04.2022 |
|--------------|-----------------|-------------------|
| Solar Module | 0% | 40% |
| Solar Cell | 0% | 25% |

...

...

5. The Ministry of Finance has also advised that the customs notification in this regard shall be issued at appropriate time.

6. In view of above, the undersigned is directed to inform all RE implementing agencies and other stakeholders, to take note of above trajectory and to include provisions in their bid documents, so that bidders take the trajectory into account while quoting tariffs, in all bids where the last date of bid submission is subsequent to this OM. In all such bids, the imposition of BCD as per above trajectory shall not be considered as change-in-law.

c) **Section 110 of the Finance Act 2018:**

..... 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. ...

d) **The Finance Act, 2022, No. 6 of 2022 Notification dated 30.03.2022:**

...

(4) in Chapter 85,—

(i) for the entry in column (4) occurring against tariff items 8518 21 00, 8518 22 00, 8518 29 00, and 8518 30 00, the entry “20%” shall be substituted;

(ii) for tariff item 8524 11 00 and the entries relating thereto, the following shall be substituted, namely:—

“8524 11 00 - - Of liquid crystals 15% - ”;

(iii) for the entry in column (4) occurring against tariff item 8541 42 00, the entry “25%” shall be substituted;

(iv) for the entry in column (4) occurring against tariff item 8541 43 00, the entry “40%” shall be substituted;

(v) for the entry in column (4) occurring against tariff item 8541 49 00, the entry “40%” shall be substituted;

| (1) | | (2) | (3) | (4) | (5) |
|------------|---|---------------------------------------------------------------------------|----------|------------|----------|
| 8541 42 00 | - | Photovoltaic cells not assembled in modules or made up into panels | u | 25% | - |
| 8541 43 00 | - | Photovoltaic cells assembled in modules or made up into panels | u | 40% | - |

24. We 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. MNRE O.M. dated 09.03.2021 affirmed that the BCD rates of photovoltaic cells not assembled were proposed to be increased to 25% w.e.f. 01.04.2022, and the rates of photovoltaic cells assembled into modules were proposed to be increased to 40% w.e.f. 01.04.2022, as such, the RE implementing agencies and other stakeholders should bid accordingly. Further, subsequent to 09.03.2021, the imposition of BCD as per the proposed trajectory shall not be considered a change in law. In the instant petition, we note that the bid was submitted on 09.02.2021 i.e., well before MNRE O.M. dated 09.03.2021. Vide the Finance Act, 2022, dated 30.03.2022, the BCD rates of photovoltaic cells not assembled were increased to 25%, and the rates of photovoltaic cells assembled into modules were increased to 40% w.e.f. 01.04.2022. We 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.

25. Hence, we find and hold that increase of the basic customs duty on import of the solar modules to 40% qua the Finance Act, 2022, No. 6 of 2022 Notification dated 30.03.2022 is an event of Change in Law as per Article 12 of the PPA dated 30.03.2021. 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 PPA 30.03.2021. Hence, we hold that *2022 BCD notification* is an event of Change in Law as per Article 12 of the PPA dated 30.03.2021.
26. In the instant petition, the bid was submitted by the Petitioner on 09.02.2021, i.e., prior to *2021 GST Notification* and *2022 BCD Notification*. The PPA was executed between the Petitioner and the NTPC on 30.03.2021, and the SCoD of the project was on 31.03.2022. In terms of the extended SCoD, the Project was required to be commissioned on or before 21.10.2022. The Petitioner commissioned 164 MW on 03.11.2023 and the remaining 26 MW on 03.04.2024. We observe that GST rates were amended vide Notification No. 8/2021- Central Tax (Rate) dated 30.09.2021 w.e.f. 01.10.2021 and BCD rates increased qua *2022 BCD Notification*. We have already held that *2021 GST Notification* and *2022 BCD Notification* are the events of Change in Law as per Article 12 of the PPA dated 30.03.2021. As such the Petitioner's project was affected by the said notifications. Therefore, the Petitioner is entitled to compensation on account of Change in Law as per the terms of Article 12 of the PPA due to impugned notifications viz. *2021 GST Notification* and *2022 BCD Notification*.
27. We further note that Article 12.1.1.f of the PPA dated 30.03.2021 stipulates as under:

ARTICLE 12: CHANGE IN LAW

12.1 Definitions

12.1.1 "Change in Law" means the occurrence of any of the following events after the last date of bid submission resulting into any additional recurring/ non-recurring expenditure by the SPD or any income to the SPD. The phrase "Change in Law" would include changes brought out through change in Law, Rules, Regulations or orders of Indian Governmental Instrumentality including;

...

...

f. In case of change in law on account of Anti-Dumping Duty and/or Safe-Guard Duty and/or Custom Duty etc. on Solar PV Modules, the Solar Power Developer shall be entitled for increase/decrease in tariff. This increase/decrease in tariff shall be for an amount equivalent to INR 0.005/KWh (0.5 Paisa/KWH) for every

increase/decrease of INR 01 (One) lakh/MW of impact on cost of Solar PV modules, which shall be effected based on the documentary evidence submitted to the concerned authority, which shall inter alia includes, Bill of Lading (BL), Bill of Entry (BOE) at the Port of arrival, duty paid at the port of arrival, Lorry receipt (LR), Goods Receipt (GR), Insurance papers etc. upto project site. This increase/decrease in tariff due to this change in cost of PV modules shall be limited upto 150% (One hundred & fifty percent) of the solar project capacity allocated to the project developer.

28. From the above, we observe that as per Article 12.1.1.f. in case of a change in law on account of Custom Duty, etc., on Solar PV Modules, the Petitioner shall be entitled to increase/decrease in tariff. Further, the increase/decrease in tariff shall be for an amount equivalent to INR 0.005/KWh (0.5 Paisa/KWH) for every increase/decrease of INR 01 (One) lakh/MW of impact on the cost of Solar PV modules, which shall be effected based on the documentary evidence. The increase/decrease in tariff due to this change in the cost of PV modules shall be limited up to 150% (One hundred & fifty percent) of the solar project capacity allocated to the Petitioner.
29. We note that the Petitioner has commissioned 190 MW, viz. 164 MW was commissioned on 03.11.2023, and the remaining 26MW was commissioned on 03.04.2024. As per the documents available on records, the contracting parties have reconciled on 10.08.2023 the expenditure on account of Change in Law for 190 MW as under:
- i. BCD + GST on BCD – INR 295.60 Crores
 - ii. Incremental GST of 7% on supply of modules – INR 42.21 Crores
 - iii. Incremental GST of 4.9% on EPC Contract – INR 10.93 Crores
30. In view of the above, we hold that the Petitioner is entitled to compensation towards additional expenditure on account of the *2021 GST Notification* and *2022 BCD Notification* as per Article 12 of the PPA dated 30.03.2021. The compensation is to be effected as per Article 12.1.1.f. of the PPA dated 30.03.2021. Accordingly, the Commission hereby directs the contracting parties to carry out the reconciliation of additional expenditure by exhibiting clear and one-to-one correlation with the projects and the invoices raised supported with auditor certificate corresponding to the mutually agreed project capacity under PPA, which is valid.
31. The issue is decided accordingly.

Re: Issue No. II:

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

32. The Petitioner has submitted that it is entitled to claim carrying costs as the PPA specifically contains a restitutive provision. Therefore, the Petitioner stands entitled to claim interest/carrying cost on additional expenditure incurred due to GST Amendment Notifications and BCD Notifications. *Per-contra*, CSPDCL submitted that the Petitioner is not entitled to interest/carrying cost as the Petitioner's project has not been commissioned to date. NTPC submitted that the settled principle of restitution in terms of change in law clearly restricts the reimbursement towards the impact of change in law only under the situation where costs arising on account of the said change in law event have been borne by a Party. Hon'ble Supreme Court in *National Highways Authority of India vs. ITD Cementation India Ltd. (2015) 14 SCC 21* has clearly affirmed the said principle where the absence of proof of payment disentitles a party from making any claim. If at all the Respondents are directed to bear any liabilities, equal treatment may be followed by directing the CSPDCL, who shall further duly pass on/reimburse the same to NTPC in a time-bound manner, following the principles of Restitution and considering the back to back nature of the transaction in the present case.

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

ARTICLE 12: CHANGE IN LAW

12.1 Definitions

12.1.1 "Change in Law" means the occurrence of any of the following events after the last date of bid submission resulting into any additional recurring/ non-recurring expenditure by the SPD or any income to the SPD. The phrase "Change in Law" would include changes brought out through change in Law, Rules, Regulations or orders of Indian Governmental Instrumentality including;

- a) 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; or*
- b) 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; or*
- c) the imposition of a requirement for obtaining any Consents, Clearances, Permits and/or licenses which was not required earlier; or*
- d) 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 SPD; or*
- e) Any introduction/modification /changes in rates of any tax/duty/cess/surcharge or similar charges on import of solar power equipment or parts thereof safeguard duty and/or antidumping duty and/or custom duty which has direct effect on the*

cost for setting up of Solar PV Power Project and supply of power by the SPD after the date of submission of Bid, shall be treated as per the terms of this Agreement.

- f) *In case of change in law on account of Anti-Dumping Duty and/or Safe-Guard Duty and/or Custom Duty etc. on Solar PV Modules, the Solar Power Developer shall be entitled for increase/decrease in tariff. This increase/decrease in tariff shall be for an amount equivalent to INR 0.005/KWh (0.5 Paisa/KWH) for every increase/decrease of INR 01 (One) lakh/MW of impact on cost of Solar PV modules, which shall be effected based on the documentary evidence submitted to the concerned authority, which shall inter alia includes, Bill of Lading (BL), Bill of Entry (BOE) at the Port of arrival, duty paid at the port of arrival, Lorry receipt (LR), Goods Receipt (GR), Insurance papers etc. upto project site. This increase/decrease in tariff due to this change in cost of PV modules shall be limited upto 150% (One hundred & fifty percent) of the solar project capacity allocated to the project developer.*
- g) *However, the above shall not include*
- i. *any change in taxes on corporate income or any withholding tax on income or dividends distributed to the shareholders of the SPD, or*
 - ii. *any change on account of regulatory measures by the Central Commission.*

12.2 Relief for Change in Law

In the event a Change in Law results in any adverse financial loss/ gain to the SPD then, in order to ensure that the SPD 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 SPD/Procurer/Discom shall be entitled to compensation by the other party, as the case may be, as follows:

12.2.1 The aggrieved Party shall be required to approach the Central Commission for seeking approval of Change in Law.

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

34. We observe that the Hon'ble Supreme Court vide Uttar Haryana Bijili Vitran Nigam Ltd & Anr v. Adani Power Ltd. & Ors (*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 PPA dated 30.03.2021 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 Petitioner, in the instant petition, shall be eligible for carrying costs starting from the date when the actual payments were made to the authorities until the date of issuance of this Order at the actual rate of interest paid by the Petitioner for arranging funds (supported by Auditor's Certificate) or the rate of interest on working capital as per the applicable RE Tariff Regulations prevailing at that time or the late payment surcharge rate as per the PPA, whichever is the lowest. Once a supplementary bill is raised by the Petitioner in terms of this Order, the provision of Late Payment Surcharge in the PPA would kick in if the payment is not made by the Respondents within the due date.
37. The Commission clarifies that the payment of carrying costs is to be made in lumpsum. The Commission further directs that the CSPDCL is liable to pay NTPC all the above claims that NTPC has to pay to the Petitioner. However, payment to the Petitioner by NTPC is not conditional upon CSPDCL's payment to NTPC.

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 (Parampujya judgement)*. 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.”

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, given the restitution clause in the PPA, the directions issued in this Order, so far as they relate to additional compensation for the period pre-COD (including carrying cost) claims only shall be enforced. However, in view of the Hon’ble Supreme Court Order dated 12.12.2022, as quoted above, the directions issued in this Order so far as they relate to additional compensation (including carrying cost) for the period post-Commercial Operation Date of the projects shall not be enforced and shall be subject to further orders of the Hon’ble Supreme Court in Civil Appeal No. 8880/2022 in *Telangana Northern Power Distribution Company Limited & Anr. V. Parampujya Solar Energy Pvt. Limited & Ors*, and connected matters. 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; Order dated 31.01.2024 in Petition No. 226/MP/2021 & 227/MP/2021 and Order dated 14.03.2024 in Petition No. 65/MP/2023.

41. The issue is decided accordingly.

42. The summary of our findings is as follows:

- a) The *2021 GST Notification* and *2022 BCD Notification* are a Change in Law event in terms of Article 12 of the PPA dated 30.03.2021.
- b) The Petitioner is entitled to compensation on account of the Change in Law corresponding to the mutually agreed project capacity under the PPA, which is valid, as per the terms of Article 12 of the PPA due to the *2021 GST Notification* and *2022 BCD Notification*.
- c) The contracting parties are to carry out reconciliation of additional expenditure on account of the introduction of the *2021 GST Notification* and *2022 BCD Notification* along with carrying cost by exhibiting clear and one-to-one correlation with the projects and the invoices raised supported with auditor certificate corresponding to the mutually agreed project capacity under PPA, which is valid. The compensation is to effected as per Article 12.1.1.f. of the PPA dated 30.03.2021.
- 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 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.
- e) The payment of carrying cost is to be made in lumpsum.
- f) Given the restitution clause in the PPA, the directions issued in this Order, so far as they relate to additional compensation for the period pre-COD (including carrying cost) claims only shall be enforced. However, in view of the Hon'ble Supreme Court Order dated 12.12.2022, as quoted above, the directions issued in this Order so far as they relate to additional compensation (including carrying cost) for the period post-Commercial

Operation Date of the projects shall not be enforced and shall be subject to further orders of the Hon'ble Supreme Court in Civil Appeal No. 8880/2022 in *Telangana Northern Power Distribution Company Limited & Anr. V. Parampujya Solar Energy Pvt. Limited & Ors, and connected matters.*

43. Petition No. 262/MP/2022 is disposed of in terms of the above.

Sd/-
पी. के. सिंह
सदस्य

Sd/-
अरुण गोयल
सदस्य

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जिष्णु बरुआ
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