

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No. 141/MP/2016
with IA No.888/2024**

**Coram:
Shri Jishnu Barua, Chairperson
Shri Harish Dudani, Member**

Date of Order: 12th March, 2025

In the matter of

Petition under Section 79 of the Electricity Act, 2003 read with Articles 13 and 17 of the PPA dated 22.4.2007 seeking increase in tariff as a result of increase in capital cost of the Mundra UMPP due to change in law events during the construction period.

And

In the matter of

Implementation of the APTEL judgment dated 25.10.2024 in Appeal Nos. 385/2017, 383/2017, 401/2017, 404/2017 and 40/2018 against Commission's order dated 31.8.2017 in Petition No. 141/MP/2016

And

In the matter of

Coastal Gujarat Power Limited
(A Tata Power Company)
34, Sant Tuka Ram Road
Carnac Bunder, Mumbai-400 021

.....**Petitioner**

Vs

- 1) Gujarat Urja Vikas Nigam Limited
Sardar Patel Vidyut Bhawan, Race Course,
Vadodara-390 007, Gujarat
- 2) Maharashtra State Electricity Distribution Company Limited
4th Floor, Prakashgad, Plot No. G-9, Bandra (East),
Mumbai-400 051, Maharashtra
- 3) Ajmer Vidyut Vitaran Nigam Limited
Hathi Bhata, Old Power House
Ajmer, Rajasthan
- 4) Jaipur Vidyut Vitaran Nigam Limited
Vidyut Bhawan, Janpath
Jaipur, Rajasthan



5) Jodhpur Vidyut Vitaran Nigam Limited
New Power House, Industrial Area
Jodhpur, Rajasthan

6) Punjab State Power Corporation Limited
PP&R, Shed T-1, Thermal Design, Patiala – 147001, Punjab

7) Uttar Haryana Bijli Vitran Nigam Limited
Vidyut Sadan, Plot No. C-16, Sector 6,
Panchkula – 134112, Haryana

8) Dakshin Haryana Bijli Vitran Nigam Limited
Vidyut Nagar, Vidyut Sadan,
Hissar – 125005, Haryana

..... Respondents

Parties Present

Shri. Amit Kapur, Advocate, TPCL
Shri. Malcolm Desai, Advocate, TPCL
Shri. Samikrith Rao, Advocate, TPCL
Ms. Swapna Seshadri, Advocate, GUVNL
Shri. Shubham Arya, Rajasthan Discoms
Ms. Reeha Singh, Rajasthan Discoms
Ms. Tanya Singh, Rajasthan Discoms

ORDER

Background

The Petitioner, a subsidiary of Tata Power Company Ltd (TPCL), has set up a 4000 MW Mundra UMPP in the State of Gujarat, based on imported coal, after TPCL was selected as the successful bidder through tariff-based competitive bidding carried out in accordance with Section 63 of the Electricity Act, 2003. The tariff of Mundra UMPP was adopted by this Commission vide order dated 19.9.2007 in Petition No.18/2007 under Section 63 of the 2003 Act. The Petitioner entered into a PPA dated 22.4.2007 with the distribution companies in the States of Gujarat, Maharashtra, Rajasthan, Punjab, and Haryana for the supply of 3800 MW from Mundra UMPP for a period of 25 years. The units of the Mundra UMPP were commissioned as shown below:



Unit No.	COD
Unit-1	7.3.2012
Unit-2	30.7.2012
Unit-3	27.10.2012
Unit-4	21.1.2013
Unit-5	22.3.2013

2. Thereafter, Petition No.141/MP/2016 was filed by the Petitioner before this Commission, seeking the following reliefs:

“(a) Hold and declare that each of the item set out in Table No.1 at Paragraph 10 above constitutes Change in Law events, in terms of the PPA, impacting capital costs of the Project during the Construction Period;

(b) Hold and declare that the Capital Cost of the Project has increased to the tune of Rs. 269.66 Crores along with carrying cost on account of the said Change in Law events during the Construction Period;

(c) Restitute the Petitioner to the same economic condition as if the said Change in Law had not occurred by increasing the Petitioner's Non-escalable capacity charges as per the formula prescribed in terms of the provisions of the PPA along with carrying cost;

(d) Permit the Petitioner to raise Supplementary Bills in terms of the PPA, to recover the aforesaid amounts/ tariff due and payable to the Petitioner; and

(e) Pass any such other and further reliefs as this Hon'ble Commission deems just and proper in the nature and circumstances of the present case.”

3. The Commission, vide its order dated 31.8.2017, decided the change in law claims of the Petitioner, as tabulated below:

“119. Based on the above analysis and decision, the summary of our decision under change in law during the Construction period of the project is as under:

Change in Law Event	Decision
<i>Declared Price of Land</i>	<i>Allowed in terms of para 43 of this order</i>
<i>Adjustment of Revenue from Sale of Infirm Power during construction period</i>	<i>Not allowed in terms of para 58 of the order</i>
<i>Levy of Clean Energy Cess on coal consumed for generation of infirm power</i>	<i>Not allowed</i>
<i>Changes in Basic Customs Duty and Countervailing duty on imported coal consumed for generation of infirm power</i>	<i>Not allowed</i>
<i>Changes in Excise Duty on Civil Materials during the Construction period</i>	
<i>(i) Steel & Cement</i>	<i>Not allowed</i>
<i>(ii) LDO & HFO</i>	<i>Allowed</i>
<i>Reduction in Central Sales Tax during the Construction period</i>	<i>Allowed</i>



Change in Law Event	Decision
<i>Increase in Gujarat Value Added Tax during the Construction period</i>	<i>Allowed</i>
<i>Increase in rate of Service Tax on Works Contract during the construction period</i>	<i>Not Allowed</i>
<i>Levy of Green Cess on coal consumed during construction period</i>	<i>At present not payable in terms of the interim directions of the Hon'ble Supreme Court. If paid/ payable, the same shall be adjusted against the revenue earned from sale of infirm power.</i>
<i>(i) 8.1.2012 to 31.3.2012</i>	
<i>(ii) April, 2012 to 31.3.2013</i>	
<i>Additional conditions imposed by MOE&F towards expenditure on CSR activity during construction period</i>	<i>Not Allowed</i>
<i>Additional Stamp Duty paid on Indenture of Mortgage</i>	<i>Not allowed</i>
<i>Carrying cost</i>	<i>Not allowed</i>

4. Aggrieved by the Commission's order dated 31.8.2017, the Petitioner TPCL filed appeal (Appeal No. 385/2017) before the Appellate Tribunal for Electricity (in short 'APTEL'), Also, some of the Procurers/distribution licensees challenged the order dated 31.8.2017 by filing appeals before APTEL, viz., Appeal No. 401/2017 (PSPCL), Appeal No. 404/2017 (UHBVNL) and Appeal No. 40/2018 (AVVNL). Thereafter, APTEL, vide a common judgment dated 25.10.2024, disposed of the said appeals on the issues thereunder, the relevant portions of which are extracted below:

A. Claim relating difference under the actual cost of land acquired by TPCL and the declared price of land as per letter dated 23rd October, 2016 of Power Finance Corporation (PFC)

LAND REQUIREMENT AND AVAILABILITY

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*"56. Thus, in the said email, which can be construed as an amendment to the terms/conditions of the RFP, PFC acknowledges that water pipeline corridor is required for the power project and the expenditure involved for the same is not included in the price of identified land measuring 2750 acres for the power station. **The natural implication thereof would be that the expenditure incurred by TPCL for acquiring additional land for water outfall channel and taking on lease further land for intake channel needs to be included in the declared price of land for the project and any escalation in such expenditure would definitely fall within the ambit of (Change in Law) as envisaged under Article 13.1.1 of the PPA. Therefore, the word "Land" used in Article 13.1.1(iv) would include not only identified land of 2750 acres but also the additional land acquired/taken on lease for water outfall and intake channel.***



57. xxx

58. It also cannot be said that the sum of Rs.1.12 crores specified in the said email dated 23rd October, 2006 of PFC for water pipeline corridor is only indicative and not final. Therefore, TPCL is entitled to be compensated for actual expenditure on acquisition of 268 hectares of land for water outfall channel as well as for lease of 41 hectares of land for water intake channel, as claimed by it.

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60.The PFC has given the indicative price of Rs.1.83 crores on MGR land in the email dated 23rd October, 2006 but, admittedly, the MGR has not materialized and in its place TPCL has implemented coal convener system. **Therefore, the Commission has rightly held that amount of Rs.1.83 crores shall be reduced from the claims of TPCL.**

61. We have gone through the judgement of the Hon'ble Supreme Court in the case *Haryana Power Purchase Centre vs. Sasan Power Limited & ors.* 2024 1 SCC 247 upon which heavy reliance has been placed by the Learned Counsel for the procurers.... We **have already explained herein above that the claim of TPCL for escalated expenditure incurred by it on water pipeline corridor is in consonance with the RFP as amended vide email dated 23rd October, 2006 of PFC and, therefore, definitely falls within the ambit of Change in Law as envisaged under Article 13.1.1 of the PPA...**

66. We are unable to discern as to how the procurers are affected by any findings of the Commission in the impugned order with regards to R&R.....

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69. **Accordingly, the findings of the Commission on the issue under consideration, as noted herein above, stand modified by holding that the difference between indicative price of water pipeline corridor and the actual expenditure incurred by TPCL on it qualifies as Change in Law event and TPCL would be entitled to be compensated for the same...."**

B. Changes in the excise duty on civil material including Steel and Cement during the Construction period:

"78. Hence, it is amply clear that no law existed before the cut-off date in this case exempting cement and steel required for construction of a Mega Power Project for Custom Duty and, therefore, it does not lie in the mouth of the Appellant – TPCL to say that it logically expected that any such benefit is available to its Mundra UMPP...

79. Learned Counsels for the procurers had cited the findings of the Hon'ble Supreme Court in *Sasan Power Limited* case (*supra*). However, we find that in the *Sasan* case, the Apex Court was dealing with the question related to the imposition of custom duty of mining equipment whereas the issue at hand involved in this appeal relates to imposition of excise duty on civil material i.e. steel and cement. Therefore, patently, the observations of Hon'ble Supreme Court in *Sasan* case are not applicable to the instant case.

80. Hence, we do not find any error in the findings of the Commission on this issue and accordingly affirm the same."

C. Additional Stamp Duty paid by TPCL on indenture of Mortgage:

"84. We find ourselves in agreement with the findings of the Commission on this issue. Nothing has been brought either before the Commission or before this Tribunal on behalf of the TPCL to demonstrate that any law existed on the cut-off date i.e. 30th November, 2006 providing that stamp duty payable on a mortgage deed involving several transactions



was not to be calculated as per the value of the total amount of each of those transactions..... Thus, we concur with the observation of the Commission that the Hon'ble Supreme Court by way of judgement dated 11th August, 2015, has only clarified the law with regards to the payment of stamp duty on mortgage deed which even existed on the cut-off date also and there has been no fresh declaration of law or any change in the interpretation of law subsequent to the cut-off date.

85. Therefore, we do not find any ground to interfere in the findings of the Commission on this issue.”

D. The increase in rate of Service Tax on Works Contract;

E. Additional conditions imposed by Ministry of Environment and Forest (MOE&F), Govt. of India; and

F. Carrying Cost

“93. We find that these three issues have been dealt with in detail in the judgement of this Tribunal dated 27th April, 2021 in Appeal No. 172 of 2017 (Coastal Gujarat Power Limited vs. CERC & Ors.). We note that the said judgement has been rendered by this Tribunal in absolutely identical facts and circumstances, which fact is not disputed on behalf of the respondents. ...

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97. We feel complete agreement with the reasoning given by this Tribunal in the above noted judgement in upholding the claims of the power generator on the above noted three issues under Change in Law clause of the PPA and see no reason to take a contrary view.

98. xxxx...

99. Accordingly, we set aside the findings of the Commission on these three issues and we find it appropriate to direct the Commission to compute within one month from the date of this judgement, the impact of Change in Law on these three issues in favour of TPCL. The Respondents shall, thereafter, deposit the amount so calculated with the Commission within two weeks and upon such deposit, TPCL shall be permitted to withdraw the said amount by furnishing Bank Guarantee to the satisfaction of the Commission. We clarify that such withdrawal shall be subject to the outcome of the above-mentioned appeals before the Hon'ble Supreme Court.”

E. Conclusion

100. We sum up our findings on the above noted disputed issues as under: -

Sl. No.	Issue	Decision
1.	Claim related to difference between the actual cost of land acquired by TPCL for the power project and the declared price of land as per the RFP.	We uphold the findings of the Commission on this issue with the modification that the difference between indicative price of water intake corridor and the actual expenditure incurred by TPCL on it also is covered by the Change in Law Clause of the PPA and TPCL is entitled to be compensated for



Sl. No.	Issue	Decision
		<i>the same subject to prudence check by the Commission.</i>
2.	<i>Changes in the Excise Duty on Civil Material including Steel and Cement during the construction period.</i>	<i>We affirm the findings of the Commission on this issue.</i>
3.	<i>Additional Stamp Duty paid by TPCL on indenture of mortgage.</i>	<i>We affirm the findings of the Commission on this issue.</i>
4.	<i>Increase in rate of Service Tax on "Works Contract"</i>	<i>We set aside the findings of the Commission on these three issues and hold that these are covered by previous judgement of this Tribunal in Appeal No. 172 of 2017 (Coastal Gujarat Power Limited vs. CERC) decided on 27th April, 2021. In terms of the said judgement, we uphold the claims of TPCL on all the three issues and direct the Commission to compute within one month from the date of this judgement, the impact of Change in Law on these three issues in favour of TPCL. We further direct that the Respondents shall deposit the amount so calculated by the Commission within two weeks from the date of Commission's order and upon such deposit, TPCL shall be permitted to withdraw the said amount by furnishing Bank Guarantee to the satisfaction of the Commission. We also clarify that such withdrawal shall be subject to the outcome of Civil Appeal Nos. 2284 & 2285 of 2021, 2295 & 2296 of 2021, 4488 & 4489 of 2021, 4929-4930 of 2021 and 1433 & 1444 of 2022 before the Hon'ble Supreme Court.</i>
5.	<i>Additional conditions imposed by MOEFCC vided amended EC</i>	
6.	<i>Carrying Cost</i>	

5. Pursuant to the APTEL judgment above, the Petitioner filed an Interlocutory Application (Dy. No.888/2024) seeking the implementation of APTEL judgment dated 25.10.2024, on the issues allowed in the table above.



Hearing dated 22.11.2024

6. Thereafter, the Petition, along with the IA, was listed for hearing on 22.11.2024, and the Commission, based on the consent of the learned counsel for the parties, directed TPCL, vide ROP, to file the following additional information, on affidavit, after serving copies on the Respondents:

“The auditor certified detailed computation of the change in law compensation claims, including the difference between the indicative price of water intake corridor land and actual expenditure, Service Tax increase on Works Contract, MoEFF&CC additional conditions, and carrying cost, with editable Excel format and supporting documents.”

7. Accordingly, the Commission, after permitting the Respondents to file their replies, reserved its order in the Petition.

8. In compliance with the directions of this Commission, the Petitioner vide affidavit dated 29.1.2024 has placed on record certain documents for prudence check. The submissions of the Petitioner in the said affidavit are mainly as under:

- (a) Some of the certificates required already form part of the record.
- (b) Reference to the relevant documents/certificates in relation to the events, viz., Service Tax on Works Contract, Additional conditions mandated by MoEF&CC, and the carrying cost (rate of funding at which TPCL had arranged to cover the shortfall) placed on record in Petition No. 141/MP/ 2016 has been tabulated;
- (c) With regard to the claim for the Declared price of Land (including for water intake and outfall channel), the following documents have been submitted:

268 Ha. Land for Water Outfall Channel:

(i) The Petitioner has acquired 268 Ha. of land for the Water Outfall Channel at the price of Rs.80.51,94,986/- (80.52 Crore), details of which are as under:

(ii) On 29.11.2008, an MOU with M/s. Radhaswami Salt Works and M/s. Balaji Salt Works (salt pan lessees) was executed for voluntary renunciation of their leasehold rights, at a consideration of Rs.8.55 lakh/ acre, in favour of the Government of Gujarat. The total amount paid to M/s. Radhaswami Salt Works and M/s. Balaji Salt Works for surrendering their leasehold rights was Rs.36,76,50,634/- (36.77 crore).



(iii) On 11.3.2010 and 15.7.2011, the Collector of Kutch District, by its orders allotted the Land admeasuring 235-64-15 Ha-Ac-Sqm at village Mota Khandagra and land admeasuring 32-37-60 Ha-Ac-Sqm at village Tragdi respectively, to the Petitioner (i.e. total of 268-01-75 Ha) at the price of Rs.43,75,44,352/- (43.75 crore), for acquiring land for water outfall channel of Mundra UMPP.

(iv) In view of the above, the Petitioner paid a total consideration of Rs.80,51,94,986/- [i.e., Rs.43,75,44,352/- towards allotment by the Collector and Rs.36,76,50,634/- towards the consideration paid for surrendering of leasehold rights] for acquiring 268-01-75 Ha. of land for construction of water outfall channel for the Mundra UMPP. (Copy of the Statutory Auditor's Certificate dated 29.11.2024 validating that the Petitioner incurred a sum of Rs.80,51,94,986/- (Rs.80.52 Crores) for acquiring 268-01-75 Ha. of land for the Construction of water outfall channel.

41 Ha. of APSEZL land for the Water Intake Channel

(i) For the water intake channel, the Petitioner, on 22.10.2010, executed an agreement with Mundra Port SEZ Limited / Adani Port and SEZ Limited to ensure the (i) Timely availability of water through this common intake channel;(ii) Operation and maintenance of sea water intake channel and (iii) Continuous and uninterrupted supply of 630,000 cubic meter/hour of sea water for cooling of the Power Plant for the period of 30 years.

(ii) Under the said agreement, the Petitioner is required to pay an annual fee of Rs. 4.74 crores, considering the base year as 2010-2011, with an increase in payment at the rate of 10% every 3 years.

(iii) Basis the annual fee of Rs. 4.74 crores (which will increase by 10% after every 3 years), the total amount which the Petitioner will pay to MPSEZL / APSEZL for the entire lease period till the year 2040 is stated to be Rs. 270.29 crores (inclusive of taxes), and till 31.03.2024 the Petitioner has already incurred an amount of Rs. 89.90 Crores. A copy of the Auditor's Certificate for the payments made to MPSEZL / APSEZL for the said land has been submitted.

(iv) Considering future cash flow over the years, compensation through a one-time lump sum payment at Net Present Value over the total cost payable to MPSEZL/APSEZL towards the said land for the water intake channel shall be considered. NPV is a financial metric used to assess the value of an overall cash outflow in future years on a given date by considering the present value of its expected future cash outflows. NPV is calculated by discounting those



future cash flows back to their present value using a specific discount rate, typically the cost of capital.

(v) The claim raised by the Petitioner for the payments made to APSEZL over the period 2010-22 to 2040-41 is calculated by using the NPV method to derive how much equivalent present cash outflow would have been in 2016, had this claim been recovered.

(vi) Accordingly, the total amount to be paid to APSEZL over the 30-year contract period is Rs. 230.61 crores (without taxes) and Rs. 270.29 crores (with taxes), which is equivalent to the amount of Rs. 104 crores as on 1.4.2016, based on the NPV workings. The breakdown of components involved in calculating NPV as provided by the Petitioner are as follows:

- a. Future Cash Flows: These are the expected outflows, usually projected over a certain time horizon. In the present case, it is Rs. 270.29 Crores.
- b. Discount Rate: This is the rate used to convert future cash flows to their present value. It reflects the opportunity cost of capital and the time value of money. In the present case, the given case discount rate is at 10.60% as per bid documents.
- c. Present Value: The present value of each future cash flow is calculated using the formula as under.

$$NPV = [cash\ flow / (1+i)^t] ,\ in\ this\ Cash\ flow = Cash\ out\ flow\ every\ year\ over\ 30\ years,\ "i"\ is\ the\ discount\ rate ,\ and\ "t"\ is\ the\ number\ of\ time\ periods.$$

(vii) The Petitioner has submitted the Auditor's certificate for the total fees paid for the entire term to APSEZL amounting to Rs. 270.29 crores along with the Chartered Accountant's certificate dated 29.11.2024 re. calculation of NPV.

(viii) The claim of NPV in the original Petition and the IA was Rs. 110 crores as on 1.4.2016. However, the same is revised downwards to Rs. 104 crores since the earlier figure included the carrying cost for the period 2011 to 2015, amounting to Rs. 8.27 crores. There has been a change in the tax regime (i.e. Service tax @ 15% in 2016 changed to GST @ 18% being the tax payable on leasehold land), which led to an increase of Rs. 1.69 crores. Moreover, the lease amount for the last six months in 2040-41, amounting to Rs. 0.58 crores were not considered while calculating the NPV in the year 2016. Resultantly, the claim of NPV has been revised to Rs.104 crores as against Rs. 110 crores, originally claimed.

Total claim on account of 'Land'

(ix) The total cost incurred by the Petitioner towards 'Land' and as claimed by the Petitioner, in the Petition and IA are as under:



Sl. No.	Land Type	Area (Hectares-Acres-Square mtrs)	Amount (Rs. in crores)
1	Government Land	909-61-56	48.30
2	Outfall Channel Land	268-01-75	80.52
3	Private Land	51-62-81	11.03
4	Forest Land	130-00-00	15.04
5	Total value of the payment made for intake channel	41-00-00	104.00
6	Amount considered at the time of bid	-	(-) 29.8
7	Cost disallowed as per the APTEL judgment and the Commission's order	-	(-) 4.22
8	Total	-	224.87

(x) The Petitioner has relied on the Auditors' certificate dated 29.3.2016 filed in Petition No. 141/MP/2016 to prove its claim made under Sl. Nos. 1, 3, and 4 above (totaling Rs.154.89 crores). Further, the Petitioner has also relied on the Auditor's Certificate dated 29.11.2024 to prove its claim under Sl. No. 2 and for Sl. No. 5, the Petitioner has submitted an Auditor's Certificate dated 29.11.2024 for the total fee to be paid for the entire term to APSEZL, amounting to Rs. 270.29 crores, along with the Chartered Accountant's certificate dated 29.11.2024, i.e., calculation of NPV of Rs. 104 Crores.

(xi) Out of the aforesaid total cost of Rs. 224.87 crores, a sum of Rs. 40.35 crores [i.e., Rs. 48.30 crores under Sl. No.1 (+) Rs. 11.03 crores under Sl. No. 3 (+) Rs. 15.04 crores under Sl No.4 (-) Rs. 29.8 crores under Sl.No.6 (-) Rs. 4.22 crores under Sl. No.7 of the above table) was already allowed by the Commission's order dated 31.8.2017. The total additional cost allowed vide APTEL's judgment dated 25.10.2024 is Rs. 190.52 crores, which has now been (on a bona-fide submission by the Petitioner), revised downwards to Rs.184.52 crores, on account of the reduction in claim of NPV as enumerated above (i.e., Rs. 80.52 crores under Sl. No. 2 (+) Rs. 104 crores under Sl.No.5 of the above table).

(xii) On account of the above, the claim of the Petitioner, based on all the relevant documents, for the additional cost incurred towards land, in the light of this Commission's order dated 31.8.2017 read with the APTEL judgment dated 25.10.2024 is Rs. 224.87 crores.

Service Tax on Works Contract and the Additional conditions mandated by MoEF&CC

(a) APTEL, vide its judgment dated 25.10.2024, allowed the Petitioner's claim for Service Tax on Works Contract and the Cost towards the additional



conditions imposed by MoEF&CC through a corrigendum of EC as a change in law event. Accordingly, the Petitioner has claimed the following:

(i) Service Tax on Works Contract– The Petitioner has claimed Rs.21,21,87,233/- (21.22 crores, i.e., the difference between the actual Service Tax for Works Contract paid by the Petitioner and the Service Tax applicable at the time of bid) for the period from 2007-08 to 2014-15 along with the Statutory Auditors Certification in support its claim.

(ii) Additional conditions imposed by MOEF&CC - The Petitioner has claimed Rs.24.60 crores towards the One-time capital cost towards the Corporate Environment Responsibilities (CER / CSR activities) along with Statutory Auditors Certification in support of its claim.

Total claim

(b) Considering the revised claim of Rs. 224.87 crores, the Petitioner has claimed the following, in terms of the formula provided in Article 13.2(a) of the PPA:

Sl. No.	Particulars	Amount (dated 19.11.2024)	Revised amount (dated 29.11.2024)
1.	Total Principal claim in the IA and additional affidavit	Rs. 246.27 crores	Rs. 240.27 Crores
2.	Said claim converted to incremental capacity charges in terms of formula under Article 13(2) at a factor of 4.9254 (revised to 4.8054)	Rs. 328.80 crores	Rs. 320.79 crores
3.	Carrying cost on above said claim till 25.10.2024	Rs. 195.38 crores	Rs. 190.62 crores
4.	Total claim payable to Petitioner TPCL (as on 25.10.2024) (Sl. No. 2 + 3 above)	Rs. 524.18 crores	Rs. 511.41 crores

Reply of the Procurers (PSCPL, Rajasthan Discoms and GUVNL)

9. In response to the above submissions of the Petitioner (vide IA dated 19.11.2024 and the additional affidavit dated 29.11.2024), the Procurers (GUVNL, PSPCL, and the Rajasthan Discoms) have, vide their replies dated 3.12.2024, submitted the following.

(c)The additional cost for land sought by the Petitioner is high, and such additional costs are not admissible even as per the judgment dated 25.10.2024. The Petitioner has claimed 268 Ha. of land for the water outfall channel, whereas the claim for the intake channel is only 41 Ha. Such an excess requirement of land does not auger well and has not been explained.



- (d) A detailed breakdown of costs is essential to enable a prudence check. Therefore, the Petitioner cannot unilaterally determine the total expenditure without allowing the Commission to assess the individual cost components. APTEL has already upheld this Commission's finding that the declared price under Article 13 of the PPA pertains only to the acquisition cost of land and does not include miscellaneous costs.
- (e) The Petitioner ought to have furnished a detailed break-up of the costs so that the Commission can ascertain whether the claim pertains solely to acquisition cost or includes other expenditures as well. Merely relying on the audited accounts is insufficient as accounting standards are intended for the preparation of accounts and do not impact the price to be considered under the PPA.
- (f) The cost of acquiring 268 Ha. as per the Collector's order is significantly lower than the amount claimed by the Petitioner. Specifically, the total acquisition cost is Rs. 39,34,81,775, comprising Rs. 34,16,80,175 for approximately 235 Ha. and Rs. 5,18,01,600 for approximately 32 Ha. being the occupancy price. Any additional sums, such as stamp duty or non-agricultural conversion tax, cannot be considered.
- (g) The amount of Rs. 36,76,50,634 claimed by the Petitioner is with regard to the MoU dated 29.11.2008, for voluntary renunciation of leasehold rights with salt pan lessees (M/s. Radhaswami Salt Works and M/s. Balaji Salt Works). The said amount, as claimed by TPCL, is not directed to be paid by an order of the Collector or any other order but is a voluntary payment by TPCL itself. The amount paid for the surrender of lease rights cannot be termed as the Declared price of land or part of the acquisition cost.
- (h) The Petitioner has not produced any lease agreement to substantiate its claim regarding the 41 Ha. of leased land. Notably, even the O&M agreement does not contain any clause indicating that TPCL has leased the land in question.
- (i) The Petitioner's claim for an annual fee of Rs. 4.74 crores is misleading. Article 4.7 of the O&M agreement dated 22.10.2010 between APSEZL (then MPSEZL) requires payment of a fee of Rs. 4.74 crores for the use of the 'Facility', which includes the water channel constructed by APSEZ/MPSEZ. The fee covers the use of the entire facility, encompassing construction, operation, and maintenance costs.
- (j) The payment of annual fees of Rs. 4.74 crores by the Petitioner cannot be considered at a Net Present Value and added to the capital cost without the Petitioner incurring the same. The Respondents also disputed the use of the NPV model.



- (k) The Petitioner had claimed the amount even prior to the COD of the first unit even though the impact of change in law is an increase in tariff, which can be applicable only from the date of the COD or when the amount exceeds Rs. 50 crores, whichever is later. The Petitioner is required to state the date on which the expenditure crossed each Rs. 50 crores slab (if at all) as the impact under Article 13.2 (a), is only with effect from such date. Therefore, the Petitioner has not given full information and cannot claim any carrying cost.
- (l) In terms of Article 13.2(a) of the PPA, the calculation of tariff for any increase/decrease as per the change in law claims is to be taken for blocks of Rs. 50 crores, and the claim should be allowed accordingly. The Petitioner has not provided any calculation for computing carrying cost and has also not provided as to how the interest rate is taken.
- (m) Even assuming, but not admitting, that there is any revision in the capacity charges, there is an aspect to be considered on recovery of penalty for shortfall in generation, which is based on the capacity charges. If the capacity charges are revised, the penalty amount payable by the Petitioner would also have to be revised accordingly. This amount also needs to be adjusted.

Analysis

10. Before proceeding, we make it clear that the scope of the remand in the present case is limited to the prudence check of the documents/claims of the Petitioner, as is evident from the APTEL judgment dated 25.10.2024. In terms of this, the documents/information available on record has been examined and based on a prudence check, we deal with the claims of the Petitioner, as mentioned in the subsequent paragraphs.

A. Declared Price of Land

11. With regard to the 'Declared Price of Land', the Commission vide order dated 31.8.2017, held as under:

"42. As per Annexure 5 of the RFP read with Schedule 1A of the PPA, the land identified for the Project is 2750 acres (1100 Ha) which comprised of 1250 acres for Main Plant, 1000 acres for Ash disposal/dyke and 500 acres for colony. No provision was made in the RFP for land for water intake/outfall channel and MGR land. However, in terms of Clause 1.4 (ii) and (vii) of the RFP, PFC vide its e-mail dated 23.10.2006 had intimated to the bidders the indicative declared price of land for the Project which comprised of ₹28.68 crore for Power station, ₹1.12 crore for Water Pipeline corridor (intake and outfall channels) and an amount of ₹ 1.83 crore MGR land other than MPSEZL amounting to ₹ 1.83 crore. A tentative provision was also made for 10 crore towards R&R package. It is therefore evident that even though RFP did not identify the land for water intake channel, PFC had intimated the



indicative price of land for water channel (outfall/intake channel). The Petitioner has submitted that the Project site was illustrative and was to be finalized by the developer considering the ground realities. It has also submitted that the declared price is the indicative price to be paid by the developer on handing over the project by the Procurers and since the same was not handed over within six months, the Petitioner has with the help of state Government/Private individuals had acquired/leased 3459 acres (1400 Ha) (approx) of land which comprised of 2697 acres (1092 Ha) of land for Power plant and associated facilities. The respondent has submitted that any land acquired in addition to 2750 acres (1100 Ha) as per RFP cannot be considered for change in law. The respondents have however submitted that the acquisition of 1092 Ha of identified land at 74.37 crore as against the declared price of ₹ 29.80 crore (including rehabilitation costs) may be considered as change in law subject to prudence check. Under Article 13 of the PPA, any change in law is to be limited to the change in price for the identified land for the site as per PPA and cannot be considered for change in the area of land for the Project. We notice that as against the RFP identified land of 2750 acres (1100 Ha) for Power station with an indicative price of ₹ 28.68 crore, the Petitioner has acquired 2697 acres (1092 Ha) of land (910 Ha of Govt land for 48.30 crore plus 130 Ha of Forest Land for ₹ 15.04 crore plus 52 Ha of land for ₹ 11.03 crore) for Power Plant and associated infrastructural facilities for a total amount of ₹ 74.37 crore. Accordingly, in terms of Article 13.1.1(iv)(a) of the PPA and on prudence check, we are of the considered view that a change in law event has occurred due to change in the declared price of land acquired by the Petitioner for the Power station and associated infrastructural facilities. Thus, the difference between the indicative price and the actual price incurred by the Petitioner is considered as a change in law event and the Petitioner is entitled to be compensated for it. Thus, the financial impact on account of change in law in the declared price of land works out to ₹ 45.15 crore (1092/1100 x 74.37-28.68) and the Petitioner is entitled to recover the same from the Procurers.

Water Pipeline Corridor (Intake and Outfall channel)

43. As stated, the identified land of 2750 acres (1100 Ha) did not include land for intake and outfall channel. However, the PFC email dated 23.10.2006 had indicated the declared price of ₹ 29.80 crore for identified land 2750 acres (1100 Ha) towards Power plant and Water Pipeline Corridor (intake and outfall channel). The Petitioner has submitted that the identified land of 1100 Ha does not include land for water intake and outfall channel and hence the Petitioner with the help of the State Government /private Individuals had acquired 1092 Ha of land for Power Plant and associated facilities, 268 Ha of land for water outfall channel and 41 Ha of leased land at an annual fee of ₹ 4.74 for a period of 30 years. The respondents have submitted that the land for Water intake and outfall channel are not part of the identified land and is therefore not covered under Article 13 of the PPA. Admittedly, the RFP identified land of 2750 acres (1100 Ha) does not contain any provision of land for Water intake/outfall channel. However, the DPR in July, 2006 had proposed total land 252 acres (102 Ha) (approx) for Water outfall and intake channels out of the total land of 2697 acres (1092 Ha) proposed for the Project. PFC had also given an indicative price of ₹ 1.12 crore for water channel corridor. In the absence of anything to the contrary, the indicative price of ₹ 1.12 crore was for acquiring 102 ha land for water intake and outfall channel. Against this, the Petitioner had acquired 764 acres (309 Ha) of land which comprised of 663 acres (268 Ha) of land for Water outfall channel and had leased 101 acres (41 Ha) of land for intake channel. Thus, against the DPR proposed land of 102 Ha for Water intake/outfall channel, the Petitioner had acquired total 309 Ha (268 Ha for Water outfall and leased 41 Ha for intake channel), which is admittedly more than the land envisaged under the DPR and cannot be passed on to the consumers under change in law. Accordingly, the lease of land of 41 Ha cannot fall within the change in law event under Article 13 of the PPA and will be to the account of the Petitioner. In our view, the PFC



indicative declared price of ₹ 1.12 crore towards Land for Water Pipeline corridor (intake /outfall channel) is towards the DPR identified land of 102 Ha for Water outfall/intake channel. As change in law under Article 13.1.1(iv) (a) covers the change in the declared price of the identified land, we are inclined to restrict the acquisition of 268 Ha of land acquired by the Petitioner for water outfall channel for ₹ 80.52 crore to 102 Ha of land for water outfall/intake channel as per the DPR for ₹ 1.12 crore. Thus, there has been impact of change in the declared price of land and the Petitioner is entitled to be compensated for actual expenditure on acquisition of 102 Ha of land (out of 268 Ha) over and above the indicative price of ₹1.12 crore towards Water intake/outfall channel. Thus, the financial impact on account of change in law in the declared price of land for 102 Ha towards Water intake/outfall channel works out to ₹ 29.53 crore (102/268 x 80.52-1.12) and the Petitioner is entitled to recover the same from the Procurers.”

12. It is evident that in the order dated 31.8.2017, only the change in the Declared Price of Land acquired by the Petitioner for the power station and the associated infrastructure facilities (909 Ha of Government Land, 130 Ha of Forest Land and 52 Ha of Private Land) was considered as a Change in Law and the change in the Declared Price of Land towards the land in excess of 102 ha for water intake and outfall channels, was rejected by the Commission. In the appeal (Appeal No.385/2017) filed by the Petitioner, seeking a change in the Declared Price of Land towards water intake and outfall channel as a change in law event, the APTEL vide its judgment dated 25.10.2024, rejected the submissions of the Procurers and held that the Petitioner is entitled to be compensated for the actual expenditure on acquisition of additional land for water outfall channel and water intake channel (*detailed findings quoted in para 4 (a) above*). The gist of the findings of APTEL on this issue are mainly as under:

- (a) “Land” as used in Article 13.1.1(iv) would include not only identified land of 2750 acres but also the additional land acquired for the water outfall channel and water intake channel.
- (b) The submission of the Procurers that the total land envisaged for the Project is only 1092 hectares (i.e., 2750 acres) inclusive of all aspects is rejected.
- (c) The Petitioner is entitled to be compensated for the actual expenditure on the acquisition of the additional land for the water outfall channel and water intake channel.
- (d) The Commission’s order dated 31.8.2017, to this extent, is modified by holding that the difference between the indicative price of the water pipeline corridor and



the actual expenditure incurred by the Petitioner qualifies as a 'change in law' event and the Petitioner is entitled to be compensated for the same.

13. It is therefore evident that in addition to the change in law claim towards the Project Land (as allowed in the Commission's order dated 31.8.2017), the claim towards the change in Declared Price of Land for water intake and outfall channels has also been allowed vide APTEL judgment.

Change in the Declared Price of Land for Water Outfall Channel

14. As regards the 'Change in Declared Price of Land for Water Outfall Channel,' we have examined the submissions of the parties as mentioned in paras 8 and 9 above. It is pertinent to mention that most of the contentions of the Procurers are in the nature of new arguments, and some of the arguments, which were raised before APTEL, had been considered and rejected in its judgment dated 25.10.2024. Hence, these arguments have not been considered. Even otherwise, these arguments of the Procurers are not acceptable cannot be accepted for the following reasons:

- (a) As a technical requirement (like purification and cooling of water in order to protect the ecosystem), the land requirement for a water outfall channel is always more than that of an intake channel. Thus, the land requirement for both cannot be the same.
- (b) Agricultural tax and other taxes imposed by the Collector in its order form part of the land cost, and it is unreasonable to state that the land cost, without considering the taxes paid for such land, is to be considered while determining the actual cost of land.
- (c) The submissions of the Petitioner that the land required for the outfall channel was already leased by the Government, and in order to procure such land, the cost of voluntary renunciation had to be paid, without which the Petitioner would not have been able to make use of the land, is acceptable.
- (d) Apart from the Auditor's certification, the MoU signed with M/s Radhaswami Salt Works & M/s Balaji Salt Works for voluntary renunciation of their leasehold rights; and the Collector's Orders for land acquisition are relevant documentary evidence which are sufficient to determine/validate, the claims of the Petitioner.

15. In the above background, and taking into consideration the certification provided by the Statutory Auditor and other supporting documentary evidence furnished by the



Petitioner, we hold that the total cost incurred by the Petitioner for acquiring 268 Ha of land for Water Outfall Channel is Rs. 80,51,94,986/- (Rs.80.52 crore i.e., Rs.36,76,50,634/- paid to M/s Radhaswami Salt Works & M/s Balaji Salt Works for voluntary renunciation of their leasehold rights; and Rs.43,76,44,352/- paid for acquisition of 268 Ha Land for Water Outfall Channel as per the Collectors orders).

Change in Declared Price of Land for Water Intake Channel

16. The Petitioner has submitted that it had, on 22.10.2010, executed an agreement with MPSEZL / APSEZL to ensure the timely availability of water through a common water intake channel, and for the same, it is required to pay an annual fee of Rs.4.74 crores (base price in 2010-2011) with an increase in payment at the rate of 10% every 3 years to MPSEZL / APSEZL. A copy of the said agreement has been enclosed. In terms of the said agreement, it can be determined that the total amount that the Petitioner will have to pay to MPSEZL / APSEZL for the entire term, i.e., till the year 2040, is Rs. 270.29 crores and the same has been certified by a Statutory Auditor. The Petitioner has also submitted the calculation of the NPV of the annual fee payable by the Petitioner over the term of the aforesaid agreement (i.e., future cash flow over the entire lease period), indicating that the present value (i.e., as on 1.4.2016) of the expected cash flow to be incurred by the Petitioner is Rs. 104 crores. The Petitioner has claimed Rs. 104 crores as the NPV of the total cost payable to MPSEZL / APSEZL for the land for the Water Intake Channel and has also submitted that till 31.3.2024, a total amount paid as an annual fee to MPSEZL / APSEZL is Rs.89.87 crores. A copy of the certification from the Statutory Auditor has also been enclosed.

17. As detailed in para 9 above, some of the Respondents/Procurers have objected to the said claim of the Petitioner. It is pertinent to note that similar arguments taken by the



Procures were rejected by APTEL in its judgment dated 25.10.2024, the relevant portion of which is extracted below:

"We do not find any merit in the arguments on behalf of the procurers that total land envisaged for the project is only 1092 hectares i.e. 2750 acres inclusive of all aspects."

18. We, therefore, find no reason to consider the same arguments on remand. We have examined the agreement dated 22.10.2010, executed by the Petitioner with MPSEZL / APSEZL, and observe that the Petitioner has not claimed any O&M charges and the Construction cost. The recital of the agreement makes it clear that the Petitioner, for the use of the water intake channel, is required to pay the annual fee of Rs. 4.74 crore (considering the base year as 2010-2011 with an increase in payment at the rate of 10% every 3 years) to MPSEZL / APSEZL. Further, the annual fee paid by the Petitioner is over and above the O&M cost paid for the maintenance of the water intake channel. Moreover, for the construction of the intake channel, the Petitioner has separately entered into a development agreement dated 30.12.2008 with MPSEZL / APSEZL. Thus, it is clear that the cost of Rs. 4.74 crores (considering the base year as 2010-2011 with an increase in payment at the rate of 10% every 3 years) paid to the MPSEZL / APSEZL and considered by the Petitioner while computing its claim is the cost incurred for utilizing the land for water intake channel and do not include any maintenance cost or construction cost.

19. As stated, the Petitioner has furnished a copy of the agreement dated 22.10.2010 executed with MPSEZL / APSEZL, the calculation of the annual fees paid to the MPSEZL / APSEZL (along with the certification from the Chartered Accountant) and also a Statutory Auditor certification to substantiate that till March 2024, the Petitioner had paid an amount of Rs.89.87 crores to MPSEZL / APSEZL. The documentary evidence furnished by the Petitioner is sufficient to determine/validate the claims raised by the Petitioner. Accordingly, on prudence check, we hold that the compensation payable for the water



intake channel shall be on the actual cost incurred by the Petitioner for the payments made to MPSEZL / APSEZL as annual fees. For this, we devise the following compensation methodology:

(i) As per the PPA, the compensation through capacity charge is payable only if the cost incurred by the Petitioner is during the construction period of the project. Since the last unit of the Project was commissioned on 22.3.2013, only the annual fee paid during the years 2011, 2012, and 2013 (i.e., Rs.13.37 crore) can be considered for calculating the incremental capacity charges under Article 13.2(a) of PPA. For the period starting from 1.4.2013, the operational period of the generating station, the compensation to the Petitioner TPTCL shall be governed by Article 13.2 (b) of the PPA, which pertains to the change in law events during the operational period. Accordingly, the Petitioner shall be entitled to recover the annual fee paid to MPSEZL / APSEZL from the Respondents/Procurers on the production of proof of the actual payment and subject to the condition that the combined annual change in law compensation exceeds the limit mentioned in the PPA (i.e., 1% of the Letter of Credit (LC) in aggregate for each contract year).

(ii) Accordingly, for the period 2013-14 to 2023-24, for which the Petitioner has already paid the annual fee to MPSEZL / APSEZL, we hold on prudence check that the amount of Rs.76.50 crores shall be paid by the Procurers to the Petitioner within two months, from the date of this order. The Petitioner shall also be entitled to the carrying cost against this payment at the interest rates as allowed in this order (*as dealt with under para 37 read with para 28 below*).

(iii) For the future annual payments (starting from the year 2024-25), we hold that the Petitioner, after making payment of the annual fees to MPSEZL / APSEZL, shall raise a supplementary invoice on the Respondents/Procurers (along with proof of the payments made to MPSEZL / APSEZL) and the Procurers shall release the invoiced claim, as per terms of the PPA, as applicable to supplementary invoices.

Total change in law claims towards change in the Declared Price of Land

20. As stated in para 15 above, the total cost incurred by the Petitioner and allowed towards water outfall channel is Rs. 80,51,94,986/- and the total cost incurred/to be incurred towards water intake channel is Rs. 270.29 crores (out of which Rs. 89.87 crores have already been paid to MPSEZL / APSEZL and the remaining amount will be paid in future, as annual fees). As decided in the para above, out of Rs. 89.87 crores, only an



amount of Rs.13.37 crores will be considered for calculating the enhanced capacity charges, and the remaining Rs. 76.50 crores will be paid by the Procurers along with the carrying cost. Further, the annual fee to be paid in the future will be reimbursed by the Procurers as and when invoiced by the Petitioner, along with proof of the payments made to MPSEZL / APSEZL.

21. Additionally, the Commission vide its order dated 31.8.2017 had allowed an amount of Rs. 48.30 crores towards the Government Land, Rs.11.03 crores towards Private Land, and Rs.15.04 crores towards Forest Land (land for Power Plant and associate infrastructure facilities). Accordingly, the total cost considered for calculating the additional capacity charges payable, as per Article 13.2(a) of the PPA (limited to the claim for land), is Rs.168.26 crores [Rs.80.52+Rs.13.37+Rs.48.30+Rs.11.03+Rs.15.04]. As per PFC's email dated 23.10.2006, the indicated declared price for the entire identified land of 1100 Ha is Rs.29.80 crores. Therefore, the difference between the cost to be considered for calculating capacity charges (limited to the claim of land) and the cost considered by the Petitioner while submitting the Bid is Rs.138.46 crores (Rs.168.26 Crores less Rs.29.80 crores). As per the APTEL judgement dated 25.10.2024, the cost towards Measurement Fees, Barbed Wire Fencing, Jungle Cleaning, Leveling & MGR land (amounting to Rs 4.22 crores) has been disallowed from the total additional cost incurred for land. Therefore, the total additional cost allowed for calculating the incremental capacity charges in terms of the Commission's order dated 31.8.2017 read with the APTEL judgement dated 25.10.2024 is **Rs.134.24 crores** [Rs.138.46 crores less Rs.4.22 crores], the details of which, as on 31.3.2013 i.e., 9 days after the COD of the generating station, are as under:



Sl. No.	Land Type	Area (Hectares-Acres-Square mtrs)	Amount (Rs. in crores)
1	Government Land	909-61-56	48.30
2	Outfall Channel Land	268-01-75	80.52
3	Private Land	51-62-81	11.03
4	Forest Land	130-00-00	15.04
5	Total value of the payment made for intake channel	41-00-00	13.37*
6	Amount considered at the time of bid	-	(-) 29.8
7	Cost disallowed as per APTELS judgment dated 25.10.2024 read with the Commission's order dated 31.8.2017	-	(-) 4.22
8	Total claim allowed	-	134.24#

*Rs.8.04 crore as on 31.3.2012 i.e 24 days after the COD of the first unit

Rs.128.91 crore as on 31.3.2012 i.e. 24 days after the COD of the first unit

B. Service Tax on Works Contract and Additional Conditions mandated by MoEFCC

22. As regards the change in law claims of the Petitioner towards Service Tax on Works Contract and for Additional Conditions mandated by the MoEF&CC for the Environment Clearance issued to the Petitioner vide corrigendum dated 26.4.2011, the Commission vide its order dated 31.8.2017 disallowed the same. In the appeal (Appeal No. 385/2017) filed by the Petitioner, the APTEL, vide its judgment dated 25.10.2024, allowed the same observing as under:

“93. We find that these three issues have been dealt with in detail in the judgement of this Tribunal dated 27th April, 2021 in Appeal No. 172 of 2017 (Coastal Gujarat Power Limited vs. CERC & Ors.). We note that the said judgement has been rendered by this Tribunal in absolutely identical facts and circumstances, which fact is not disputed on behalf of the respondents.

94. In the said judgement, this Tribunal has allowed the claim of Appellant- Coastal Gujarat Power Limited for compensation on account of increase in service tax on works Contract under Change in Law. The relevant portion of the judgement is quoted herein below: -

“74. We are of the considered opinion that CERC has failed to appreciate that at the time of bidding for UMPPs various works contracts are not finalized but are contemplated to be finalized, inter alia, within fourteen months period thereafter [Article 3.1.2 of PPA]. To work out the bid numbers, each participant in the bid process is expected to factor in the applicable tax rates prevalent as on the Cut-Off Date which are beneficial to the person. Any change in such rates after the Cut-Off Date are covered by Article 13. It is not contested that Service Tax @ 12% on service component of a Works Contract considered by CGPL in its Bid amounts to approximately 2% of total contract value (including materials and services). Hence, the enhancement of the rate to 4% of total contract value (including levy of Secondary & Higher Education Cess @ 1%) constitutes a CIL event deserving restitution. We agree with the submission that in terms of



Article 3.1.2 of the PPA, various Works Contracts (such as EPC & BTG contracts) were contemplated to be finalized either within twelve months from the Effective Date (i.e. 22.04.2007) or fourteen months from the date of issuance of Letter of Intent (i.e. 28.12.2006), each date being well after the Cut-Off Date (i.e. 30.11.2006). The CIL provision, for the purpose of Works Contract, is to be interpreted in light of Article 3.1.2 of the PPA.

75. What is crucial and must be the decisive factor, however, is the fact that the option of paying an amount equivalent to 2% of the gross amount charged for the Works Contract instead of 12% on the Service Component was granted to the Contractor(s) employed by CGPL for executing the Works Contract. This was not within the choice, domain or discretion of the appellant. It cannot be penalized or faulted by denying it the offset of adverse effect of such CIL, due to the exercise of option by the contractor to pay Service Tax on Works Contract at the then prevalent rate of 2% and thereafter at the increased rate of 4% on the gross or total value of the contract.

76. It is the argument of the respondents that the claim of the appellant that it has been additionally burdened to the extent that there was an increase to 4% is misconceived. It is contrarily argued that by exercise of the option, there was discharge of the service tax liability at 12% and, therefore, the benefit of 12% has to be passed on to the Procurers. It is submitted that the benefit of 12% is likely to be higher than the expenditure of 2% and 4% because otherwise the person would not exercise the option of paying the tax at 2% or 4% as opposed to 12%. These arguments are based on unfounded assumptions. The Commission has not gathered the requisite information nor done the necessary mathematical exercise to find out the net effect of the changes brought about as a result of change in law, levy and method of calculation.

77. The reversal by impugned order dated 31.10.2017, thus, must be vacated and the dispensation on the subject upon correct view taken initially by original order dated 17.03.2017 being restored. We order accordingly. The Commission shall be obliged to undertake the exercise of ascertaining the net effect of the change effected by the option exercised after CIL event and the subsequent change in rate of the tax and allow adjustment accordingly to recompense the party which has suffered the impact.

XXX

96. On the aspect of carrying cost also, this Tribunal has upheld the claim of Appellant – Coastal Gujarat Power Limited in this regard in the following words: -

“169. Thus, we accept the contention of the appellant and direct that the carrying cost in respect of the additional expenditure allowed on account of nexus with CIL events shall also be allowed for the period(s) from which the Seller (appellant) incurred such additional expenditure, be it by payment to State under taxation laws or otherwise borne for infrastructural developments mandated by law. Needless to add, the CERC will have to pass necessary orders in such regard.”

97. We feel in complete agreement with the reasoning given by this Tribunal in the above noted judgement in upholding the claims of the power generator on the above noted three issues under Change in Law clause of the PPA and see no reason to take a contrary view....

98. It was brought to our notice on behalf of the Respondents that said judgement dated 27th April, 2021 has been challenged before the Hon'ble Supreme Court by the procurers by way of Civil Appeal Nos. 2284 & 2285 of 2021, 2295 & 2296 of 2021, 4488 & 4489 of 2021, 4929-4930 of 2021 and 1433 & 1444 of 2022 by Gujarat Urja Vikas Nigam Ltd., Haryana Utilities, Punjab State Power Corporation Ltd., Rajasthan Utilities and Maharashtra State Electricity Distribution Company Ltd. respectively and an interim order in the following words has been passed by the Apex Court:-

“In the meantime, the impugned orders passed by the authority are stayed on the condition that the respective appellants deposit the balance amount due and payable under the impugned orders with the Registry of this Court within a period of four weeks from today and on such deposit, the contesting respondent (s) are permitted to withdraw the amount by furnishing the



bank guarantee to the satisfaction of the Registry and the withdrawal of the amount shall be subject to the outcome of the appeals.”

99. Accordingly, we set aside the findings of the Commission on these three issues and we find it appropriate to direct the Commission to compute within one month from the date of this judgement, the impact of Change in Law on these three issues in favour of TPCL. The Respondents shall, thereafter, deposit the amount so calculated with the Commission within two weeks and upon such deposit, TPCL shall be permitted to withdraw the said amount by furnishing Bank Guarantee to the satisfaction of the Commission. We clarify that such withdrawal shall be subject to the outcome of the above-mentioned appeals before the Hon'ble Supreme Court.”

23. Thus, APTEL, in its judgement dated 25.10.2024, has allowed the change in law claims of the Petitioner towards Service Tax on Work Contract and the Additional Conditions imposed by MOEFCC as a change in law event, including the Carrying cost, and has directed the Commission to compute the amounts payable by the Respondent /Procurers to the Petitioner on these counts. We examine the same as under:

Service Tax on Works Contract

24. We have considered the submissions of the Petitioner, the documentary evidence, including the Statutory Auditor's certification of the amounts relating to the construction period. On prudence check of the documentary evidence, it is noticed that the total additional impact incurred by the Petitioner for the increase in Service Tax on Works Contract is Rs.21,21,87,233/- (Rs 21.22 crore i.e., the difference between the actual Service Tax for Works Contract paid and the Service Tax applicable at the time of bid) for the period from 2007-08 to 2014-15 and the Petitioner is entitled to claim the said amount as change in law from the Respondents/Procurers. Accordingly, we allow the amount of Rs. 21,21,87,233/- as a change in law towards the increase in Service Tax on Works Contract.

Additional Conditions imposed by MOEF&CC

25. We have considered the submissions of the Petitioner, the documentary evidence, including the Statutory Auditor's certification of the amounts claimed under this head. On



prudence check of the documentary evidence, it is noticed that the total additional impact incurred by the Petitioner as the one-time capital cost for Corporate Environment Responsibilities (CER) activities is Rs.24.60 crores, and the Petitioner is entitled to the said change in law claim and payable by the Procurers.

Carrying Cost

26. In respect of the Petitioner's claim for Carrying cost, the Commission rejected the same vide its order dated 31.8.2017. Against the said order, the APTEL, vide its judgment dated 25.10.2024 (as extracted in para 22 above), allowed the carrying cost on the amounts to be recovered by the Petitioner under a change in law. It is, therefore, clear that APTEL, vide its judgement dated 25.10.2024, has allowed the Carrying Cost claim of the Petitioner over and above its claim for a change in law. The Petitioner, in its Petition, had claimed the carrying cost of Rs. 190.62 crores (calculated till October 2024), considering the actual rate of interest paid to the lenders, as tabulated below:

Sl. No.	Period	Audited rate of actual interests paid to the lenders (%)
1	FY13	12.66%
2	FY14	12.60%
3	FY15	12.74%
4	FY16	11.91%
5	FY17	10.05%
6	FY18	9.63%
7	FY19	9.30%
8	FY20	9.54%
9	FY21	9.50%
10	FY22	9.13%
11	FY23	9.01%
12	FY24	8.97%
13	FY25 (till 30.9.2024)	8.25%

27. In justification of the above rates, the Petitioner has submitted the Statutory Auditor certificate dated 15.11.2024. However, the Respondents have objected to the said claim on the following grounds:



(i) The Petitioner had claimed the amount even prior to the COD of the first unit even though the impact of change in law is an increase in tariff is applicable only from the date of the COD or when the amount exceeds Rs. 50 crores, whichever is later. The Petitioner is required to indicate the date on which the expenditure crossed each Rs. 50 crores slab (if at all) as the impact under Article 13.2 (a) is only with effect from such date. As the Petitioner has not given full information, it cannot claim the carrying cost.

(ii) The Petitioner has not provided any calculation for computing the carrying cost and has also not provided as to how the interest rate is taken.

Analysis

28. The Petitioner has submitted that the Hon'ble Supreme Court, in its judgment *Energy Watchdog v. CERC & Ors.*, (2017) 14 SCC 80; and *Uttar Haryana Bijli Vitran Nigam Ltd. & Anr. v. Adani Power (Mundra) Ltd. & Anr.* (2019) 5 SCC 325 interpreted Article 13 of the PPA and held that if the agreement provides for restitution, then in the event of change in law, such party is to be restituted fully i.e., it is put back to the same economic position by allowing carrying cost. Accordingly, it has submitted that APTEL, in its judgment dated 25.10.2024, allowed the Petitioner to claim the carrying cost over and above its claim for a change in law. Even though the change in law events claimed by the Petitioner are for the construction period, the monetary claim in the form of enhanced capacity charges starts from the COD of the units/project in terms of Article 13.2(a) of the PPA. The contention of the Respondents is that the capacity charge enhancement shall only be allowed corresponding to the increase in capital cost by each Rs. 50 crores, has been considered in this order, in terms of Article 13.2 (a) of the PPA. Calculation of the carrying cost is only mathematical, as the interest rate to be allowed for such calculation needs to be finalized as per provisions of PPA/prevaling regulatory practices/precedence accepted by the industry. We note that in the present case, APTEL has not specified the rate of interest to be considered for carrying costs. Also, the PPA does not specify any such rate for the calculation of the



carrying cost. In view of this, we have placed reliance on the Commission's order dated 20.12.2021 in Petition No. 157/MP/2015 (*Petition for change in law claimed by the Petitioner in respect of the Project, during the operating period for the period 2011-14*), wherein, the Commission had adopted a methodology of considering the least interest rate, out of following three interest rates for the purpose of calculation of the carrying cost: viz., (a) the actual interest rate (b) the LPS rate as per the PPA and (c) the working capital interest rate as per the Tariff Regulations notified by this Commission. Evidently, in the present case, the actual interest rates incurred and claimed by the Petitioner are the least of the other two interest rates (as noted above). In this background, we allow the auditor-certified actual interest rates for the purpose of calculation of the carrying cost.

Quantification of the amount payable by the Procurers

29. The Petitioner's entitlement to the total claim towards 'Land' by way of capacity charges, in terms of Article 13.2(a) of the PPA and in the light of the Commission's order dated 31.8.2017 read with the APTEL judgment dated 25.10.2024 is Rs. 134.24 Crores, as tabulated below:

Sl. No.	Land Type	Area (Hectares-Acres-Square mtrs)	Amount (Rs in crores)
1	Government Land	909-61-56	48.30
2	Outfall Channel Land	268-01-75	80.52
3	Private Land	51-62-81	11.03
4	Forest Land	130-00-00	15.04
5	Total value of the payment made for intake channel	41-00-00	13.37
6	Amount considered at the time of bid	-	(-) 29.8
7	Cost disallowed as per APTEL judgment read with the Commission's order	-	(-) 4.22
8	Total amount	-	134.24

30. In addition to the above claim, the Petitioner is entitled to an amount of Rs. 21,21,87,233/- (Rs. 21.22 crore towards Service tax on Works contract and Rs. 24.60 crores



towards one-time capital cost for the CSR activities on account of the additional conditions imposed by the MOEF&CC, as discussed in paras 24 and 25 above.

31. It is pertinent to mention that the Commission, in its order dated 31.8.2017, also decided the following:

- (i) Amount of Rs. 7.48 crore was allowed to be claimed by the Petitioner as a change in law event due to an increase in the rate of Gujarat VAT during the construction period.
- (ii) Amount of Rs. 2.09 crore is payable to the Procurers (through adjustment in tariff proportionate to their contracted capacity) due to reduction in the applicable excise duty on LDO and HFO from 16% to 14% (through notification 1.3.2008) and from 14% to 12% (through notification dated 17.3.2012) and imposition of additional cess of 1% for Secondary and Higher Education (with effect from 1.4.2007).
- (iii) Amount of Rs. 35.80 crore is payable to the Procurers (through adjustment in tariff proportionate to their contracted capacity) due to a reduction in central sales tax rates from 4% to 2%.

32. Based on the above discussions, the total principal claim allowed towards capacity charges, on account of a change in law under Article 13.2(a) of the PPA for the construction period, as reckoned from 2007-08 to 2012-13, after taking into account, the amount of Rs.3.54 crore (towards Increase in Service Tax on Works Contract construction period paid during 2013-14 and 2014-15 as per auditor certificate) is tabulated below:

Change in Law events	Total amount allowed towards Capacity charges (Rs in crores)
Increase in Declared Price of Land	Rs. 134.24 [§]
Increase in Service Tax on Works Contract	(+) Rs. 21.22 [*]
Additional CSR conditions imposed by MOEF&CC	(+) Rs. 24.60 [@]
Increase Gujarat VAT Rates	(+) Rs. 7.48 [§]
Decrease in LDO & HFO and imposition of Cess towards Secondary and Higher Education	(-) Rs. 2.09 ⁺
Decrease in Central Sales Tax rates	(-) Rs. 35.80 [#]
Total	149.64^{**}

Rs. 128.91 crore as on 31.3.2012 and Rs. 134.24 crore as on 31.3.2013

**Rs. 13.66 crore as on 31.3.2012, Rs. 17.68 crore as on 31.3.2013 and Rs. 21.22 crore on 31.3.2015.*

@ Rs. 17.02 crore as on 31.3.2012 and Rs. 24.60 crore as on 31.3.2013

§ Rs. 7.06 crore as on 31.3.2012 and Rs. 7.48 crore as on 31.3.2013

+Rs. 2.08 crore as on 31.3.2012 and Rs. 2.09 crore as on 31.3.2013

(-) Rs. 31.95 crore as on 31.3.2012 and Rs. 35.05 crore as on 31.3.2013

*** Rs. 132.62 crore as on 31.3.2012, Rs. 146.11 crore as on 31.3.2013 and Rs. 149.64 crore as on 31.3.2015*



33. In terms of the PPA, the compensation for the change in law impact is payable through capacity charges as per the formula mentioned in Article 13.2 of the PPA, which is extracted below:

"13.2 Application and Principles for computing impact of Change in Law

While determining the consequence of Change in Law under this Article 13, the Parties shall have due regard to the principles that the purpose of compensating the Party affected by such Change in Law, is to restore through Monthly Tariff Payments, to the extent contemplated in this Article 13, the affected Party to the same economic position as if such Change in Law has not occurred. ...

(a) Construction Period

As a result of any Change in Law, the impact of increase/decrease of Capital Cost of the Project in the Tariff shall be governed by the formula given below:

For every cumulative increase/decrease of each Rupees Fifty crores (Rs. 50 crores) in the Capital Cost over the term of this Agreement, the increase/decrease in Non Escalable Capacity Charges shall be an amount equal to zero point two six seven (0.267%) of the Non Escalable Capacity Charges. Provided that the Seller provides to the Procurers documentary proof of such increase/ decrease in Capital Cost for establishing the impact of such Change in Law. In case of Dispute, Article 17 shall apply.

It is clarified that the above-mentioned compensation shall be payable to either party, only with effect from the date on which the total increase/decrease exceeds amount of Rs. fifty (50) crores.

xxx"

34. We agree with the submissions of the Respondents/Procurers that in terms of Article 13.2(a) of the PPA, the calculation of tariff for any increase/decrease as per the change in law claims is to be taken for the block of Rs. 50 crores. The PPA explicitly requires that the change in law compensation to be recovered through the capacity charges, is applicable for every cumulative increase/decrease of Rs. 50 crores, i.e., the increase in capital cost during the construction period to be considered for upward revision of capacity charges can only be in multiples of Rs 50 crores. Accordingly, in the present case, only 100 crores can be considered for upward revision of the capacity charges. As such, considering the fact that the Principal amount allowed till 31.3.2012 (year ending of COD of first unit) and 31.3.2013 (year ending of last unit of project) as well as 31.3.2015, is between Rs.100



crore and Rs.150 crore, the multiplication factor considered for enhancing the capacity charges in terms of Article 13.2(a) of the PPA shall be 2 (100/50) right from COD of Unit-I, i.e., from 7.3.2012 (year 2011-12) for the electricity scheduled. Accordingly, the non-escalable capacity charges shall be increased by 0.534% (2 x 0.267%) for each month, starting from 7.3.2012, for calculating the impact of the change in law, recoverable by the Petitioner till September 2024.

35. In light of the above discussions, the compensation towards change in law, payable by the Respondents/Procurers to the Petitioner, in the form of capacity charges, in terms of Article 13.2(a) of the PPA is tabulated below:

Sl. No.	Particulars	Amount
1.	Total Principal amount allowed towards Capacity charges	149.64 crores, restricted to Rs.100 crores
2.	Above said amount converted to additional capacity charges in terms of the formula under Article 13(2) at a multiplying factor of 2, calculated till September 2024	133.51 crores

36. The additional capacity charges for Rs.133.51 crore, as calculated above, is based on the basic information furnished by the Petitioner in excel sheet (obtained from the Petitioner corresponding to its claim as submitted in PDF format) , including the details of the (i) contracted capacity for the billing period (kWh), (ii) Actual Availability (kWh), (iii) DC for the month (%),(iv) Cumulative Contracted Capacity (kWh), (v) Cumulative Actual Availability DC (kWh), (vi) Capacity Charges Rate including the non-escalable capacity charges (before and after consideration of the change in law impact), (vii) Normative DC (KWH @ 80%), (viii) Cumulative Normative DC (KWH @80%), (ix) Cumulative Capacity Charges on Normative basis including the non-escalable capacity charges (before and after consideration of the change in law impact (Rs.)), (x) Cumulative Capacity Charges on actual availability (Rs.), (xi) Receivable Capacity Charge including the non-escalable



capacity charges (before and after consideration of the change in law impact) (Rs.). It is observed that the Petitioner in its original claim has claimed enhancement of the non-escalable capacity charges by adopting a multiplying factor of 4.8054 (240.27/50) and accordingly claimed that the non-escalable capacity charges for each month of the period under consideration, may be increased by 1.283% (0.267% x 4.8054). However, based on the explicit provision of Article 13.2(a) of PPA, the Commission, as explained earlier, has considered the enhancement of the non-escalable capacity charges by 0.534% (2 x 0.267%) only for arriving at the change in law impact of Rs.133.51 crore for the period from 2011-12 till 30.9.2024, as per the information furnished by the Petitioner.

Quantification of the carrying cost

37. Based on the interest rates allowed for carrying cost in paragraph 28 above and taking into consideration the documents/information, including the computation furnished by the Petitioner, the amount of carrying cost (till 25.10.2024) for the additional capacity charges of Rs. 133.51 crores (from 2011-12 till 30.9.2024) works out to Rs. 79.27 crores. As decided in paragraph 19 (ii) above, an amount of Rs. 76.50 crore (2013-24) allowed towards annual fees paid by the Petitioner to the MPSEZL / APSEZL is also entitled to carrying cost. Accordingly, for the purpose of determining the carrying cost corresponding to the amount of Rs. 76.50 crores, we have relied on the auditor's certificate furnished by the Petitioner certifying the year-wise amount of annual fees paid to MPSEZL / APSEZL as well as terms and conditions of payment of annual fees as per agreement dated on 22.10.2010 executed with MPSEZL / APSEZL. Further, the methodology adopted for determining the carrying cost corresponding to the additional capacity charges (Rs 133.51 crore above) has been adopted for determining the carrying cost corresponding to Rs. 76.50 crore, and the same works out to Rs. 32.58 crore till 25.10.2024.



38. Out of the Principal amount of Rs. 149.64 crores, only Rs. 45.82 crores is in respect of the aforesaid two claims [Service Tax on Works Contract and Additional conditions imposed by MOEF&CC above]. Therefore, in terms of the directions of APTEL, the pro-rata impact in the capacity charges in respect of these two claims works out to Rs.40.88 crores ($133.51 \times 45.82 / 149.64$). In addition, the carrying cost of Rs. 79.27 crore and Rs.32.58 crore towards the additional capacity charges of Rs.133.51 crore (including Rs.40.88 crore) and Rs.76.50 crore towards the intake channel has been worked out and allowed as above.

39. Further, a balance sum of Rs. 92.63 crores (i.e., Rs. 133.51 crores *minus* Rs. 40.88 crores) towards the additional capacity charges is payable by the Procurers to the Petitioner, directly within two months from the date of this order.

Summary

40. Accordingly, the Petitioner's entitlement to compensation on prudence check. in the light of the APTEL judgment dated 25.10.2024 is summarized below:

(A) A total amount of Rs.152.73 crore (Rs 40.88+79.27+32.58), as stated in para 38, is to be payable to the Petitioner. Accordingly, in terms of the APTEL judgment dated 25.10.2024, the said total amount shall be deposited to this Commission by the Respondents / Procurers within 2 weeks from the date of this order, and the same shall be withdrawn by the Petitioner, by furnishing a Bank Guarantee to the satisfaction of the Commission. Such withdrawal is subject to the decision of the Hon'ble Supreme Court in the pending civil appeals (Civil Appeal Nos. 2284 & 2285 of 2021 and batch.

(B) A balance sum of Rs. 92.63 crores (i.e., Rs. 133.51 crores *minus* Rs. 40.88 crores) towards the additional capacity charges are payable by the Respondents/Procurers to the Petitioner directly within two months from the date of this order. Also, the future cost towards the additional capacity charges starting from October 2024 shall be recovered by the Petitioner, based on the multiplying factor of 2 and an overall percentage increase in the non-escalable capacity charges by 0.534%.

(C) An amount of Rs. 76.50 crores for the cost towards Water intake channel for the period from 2013-14 to 2023-24 is payable by the Respondents/Procurers to the Petitioner directly, within two months from the date of this order. For the future cost



towards the water intake channel, starting from 1.4.2024, the Petitioner shall raise the supplementary invoice on the Procurers along with the proof of payment and the Procurers shall release the invoiced claim (as per terms of the PPA applicable to supplement invoice), subject to the condition that the combined annual change in law compensation during the operation exceeds the limit mentioned in the PPA, i.e., 1% of LC in aggregate for each contract year.

41. With the above, the directions contained in the APTEL judgment dated 25.10.2024 against the Commission's order dated 31.8.2017 in Petition No.141/MP/2016, along with IA, stands implemented.

**Sd/-
(Harish Dudani)
Member**

**Sd/-
(Jishnu Barua)
Chairperson**

