

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 17/MP/2023

Coram:

**Shri Jishnu Barua, Chairperson
Shri Ramesh Babu V., Member
Shri Harish Dudani, Member**

Date of Order: 22nd January, 2025

IN THE MATTER OF:

Petition under Section 79(1)(b) and Section 79(1)(f) of the Electricity Act, 2003 read with Article 13 and Article 17 of the Power Purchase Agreement dated 7.8.2008 (as amended vide amendment agreements dated 17.9.2008 and 27.5.2022) executed between the Petitioner and Uttar Haryana Bijli Vitran Nigam Limited & Dakshin Haryana Bijli Vitran Nigam Limited; as well as Article 13 and Article 17 of the Power Purchase Agreement dated 20.1.2009 (as amended vide amendment agreement dated 21.10.2010) between the Petitioner and Tata Power Trading Company Limited inter alia seeking approval of Change in Law event, i.e., enactment of the Integrated Goods and Services Tax Act, 2017, the Central Goods and Services Tax Act, 2017, the State Goods And Services Tax Act, 2017, and the Union Territory Goods and Services Tax Act 2017; and compensation for additional expenses incurred by the Petitioner with respect to operation and maintenance of the Project on account of the same along with carrying cost.

AND

IN THE MATTER OF:

Jhajjar Power Limited,
Village Khanpur, Tehsil Matenhail,
District Jhajjar, Haryana – 124142

..... **Petitioner**

Versus

1. **Uttar Haryana Bijli Vitran Nigam Limited,**
Through their joint forum:
Haryana Power Purchase Centre (HPPC)
Shakti Bhawan, Sector-6,
Panchkula, Haryana – 134109

2. **Dakshin Haryana Bijli Vitran Nigam Limited,**
Through their joint forum:
Haryana Power Purchase Centre (HPPC)
Shakti Bhawan, Sector-6,



Panchkula, Haryana – 134109

3. **Tata Power Trading Company Limited,**
Shatabdi Bhawan, 2nd Floor,
B-12,13, Sector-4
Noida, Uttar Pradesh-201301
4. **Tata Power Delhi Distribution Limited,**
NDPL House, Hudson Lines, Kingsway Camp,
Delhi-110009

...Respondents

Parties present:

Shri Aniket Prasoon, Advocate, JPL
Ms. Archita Kashyap, Advocate, JPL
Shri Md. Aman Sheikh, Advocate, JPL
Shri Joginder Behra, JPL
Ms. Sonia Madan, Advocate, Haryana Discoms
Shri Venkatesh, Advocate, TPTCL
Shri Anant Singh Ubeja, Advocate, TPTCL
Shri Nitish Gupta, Advocate, TPDDL
Shri Nimesh Jha, Advocate, TPDDL

ORDER

The Petitioner, Jhajjar Power Limited ('JPL'), has filed the present Petition under Sections 79(1)(b), 79(1)(f), and 79(1)(k) of the Electricity Act, 2003 (the 'Act'), read with Articles 13 and 17 of the Power Purchase Agreements ('PPAs') executed with Uttar Haryana Bijli Vitran Nigam Limited ('Respondent No. 1/ UHBVNL') & Dakshin Haryana Bijli Vitran Nigam Limited ('Respondent No. 2/ DHBVNL') on 7.8.2008 and with Tata Power Trading Company Ltd. ('Respondent No. 3/ TPTCL') on 20.1.2009 seeking approval of Change in Law event, *i.e.*, enactment of the Integrated Goods and Services Tax Act, 2017, the Central Goods and Services Tax Act, 2017, the State Goods And Services Tax Act, 2017, and the Union Territory Goods and Services Tax Act 2017 ('GST Laws'); and compensation for the additional expenses incurred by the Petitioner with respect to operation and maintenance of the Project on account of the same along with carrying cost.



2. The Petitioner has made the following prayers:

“(a) Hold and declare that enactment of GST Laws resulting into increase in O&M expenses incurred by the Petitioner constitutes Change in Law Event in terms of Article 13 of the PPAs;

(b) Consequently, direct the Respondents to compensate the Petitioner an amount of Rs. 30,49,40,775/- (i.e., Rs. 27,44,46,698/- by Respondent Nos. 1 & 2 and Rs. 3,04,94,078/- by Respondent No. 3) towards additional expenses incurred by it on account of occurrence of Change in Law Event from FY 2017-18 up to FY 2021-22 along with carrying cost/interest/late payment surcharge as per the provisions of the PPAs;

(c) Consequently, direct the Respondents to compensate the Petitioner towards additional expenditure incurred/to be incurred by the Petitioner on account of the aforesaid Change in Law Event, from FY 2022-23 till end of the term of the PPAs in the ratio of power supplied along with carrying cost as per the provisions of the PPAs;

(d) Pass an ad-interim order directing the Respondents to release payment of 75% of the GST impact already incurred by the Petitioner i.e., Rs.20,58,35,023/- by Respondent Nos. 1 & 2 and Rs. 2,28,70,558 by Respondent No. 3 against the claims raised by Petitioner; and

(e) Pass such other or further order(s) as this Commission may just and equitable in favour of the Petitioner, in the facts of the case.”

Factual matrix:

2. Brief facts necessary to appreciate the issues in the present case, as noted in the Petition, are as under:

(a) The Petitioner/JPL, a wholly owned subsidiary of Apraava Energy Private Limited (formerly known as CLP India Private Limited/ CLP India), is a generating company that owns and operates a coal-based thermal generating station of 1320 MW capacity comprising two units of 660 MW each at Village Khanpur, Tehsil Matenhail, District Jhajjar, Haryana ('the Project'). The Project



supplies power to the State of Haryana and the National Capital Territory of Delhi.

(b) The Respondent Nos. 1 and 2, namely UHBVNL and DHBVNL, respectively, are the distribution licensees in the State of Haryana (hereinafter, collectively referred to as 'the Haryana Discoms'). Respondent No. 3/ TPTCL is a trading licensee having a back-to-back arrangement for the sale of power from the Petitioner/JPL to Respondent No. 4/ Tata Power Delhi Distribution Limited ('TPDDL').

(c) Haryana Power Generation Corporation Limited ('HPGCL'), on behalf of the Haryana Discoms, initiated a Tariff Based Competitive Bid ('TBCB') Process for procurement of power on a long-term basis from the Project as per the terms and conditions of the Request for Proposal ('RFP') issued by HPGCL on 10.7.2007. The last date of submission of the bid was 10.3.2008. CLP India submitted its bid on 10.3.2008 and was subsequently declared as a successful bidder. On 23.7.2008, HPGCL issued a Letter of Intent ('LOI').

(d) Thereafter, two Power Purchase Agreements ('PPAs') were executed by the Petitioner; one with Haryana Discoms dated 7.8.2008 for supply of 90% of the total Project capacity of 1320 MW from the Project ('Haryana PPA') and the other one dated 20.1.2009 with TPTCL for the supply of remaining 10% of the total Project capacity ('TPTCL PPA'). On the basis of the said PPA, TPTCL further entered into a back-to-back arrangement for the sale of power to Tata Power Delhi Distribution Company Limited ('TPDDL') by entering into the Power Sale Agreement ('Tata PSA') dated 20.1.2009.

(e) Subsequently, i.e., on 8.8.2016, a Constitutional Amendment Bill was passed by the Parliament of India for the introduction of Goods and Services Tax (GST), which received Presidential assent on 8.9.2016. On 12.4.2017, the Government of India promulgated the GST Laws, and on 1.7.2017, the GST Laws for levy and collection of tax on inter-State supply of goods or services or both by the Central Government were enacted.

(f) The Change in Law event, i.e., enactment/promulgation of GST Laws, resulted in a significant increase in the O&M Expenses, including due to the increased tax outgo on services required for operation and maintenance of the Plant, purchase of material required for operation and maintenance of the Plant, as well as insurance for the Project. Accordingly, the Petitioner is entitled to appropriate compensation to offset the financial/ commercial impact of Change in Law events in the context of the PPA(s) executed by JPL with Haryana Discoms as well as with TPTCL on account of the GST laws.

3. The Petitioner, JPL, has sought appropriate compensation to offset the financial/commercial impact of the Change in Law event in the context of the PPA(s) executed by JPL with Haryana Discoms as well as with TPTCL on account of the GST Laws. The brief contentions of the Petitioner are as follows:

(a) From a bare perusal of the definition of 'Law' under the PPAs, it is abundantly clear that the GST Laws, as promulgated by the Government of India and published in the Gazette of India on 12.4.2017 and implemented with effect from 1.7.2017, are 'Law' as defined under Article 1.1 of the PPAs.

(b) Article 13 of the Haryana PPA defines Change in Law as an event that occurs after 7 days prior to the Bid Deadline, i.e., 3.3.2008, being 7 days prior to 10.3.2008. Similarly, Article 13 of the TPTCL PPA defines Change in Law as an event that occurs after the effective date, i.e., the date of signing of the TPTCL PPA, which is 20.1.2009. In the present case, GST Laws have been enacted/promulgated /brought into effect much after the cut-off date, i.e., 3.3.2008, and the effective date, i.e., 20.1.2009.

(c) Further, in order for an event to qualify as a Change in Law under Article 13 of the respective PPAs, the same ought to result in a change in any cost of or revenue from the business of selling electricity by the Petitioner to the Procurer under the terms of the respective PPAs. In the present case, as a result of the promulgation of GST Laws, the Petitioner has had to incur a significant increase in the O&M expenses for the Plant as there has been an overall increase in the indirect taxes payable by the Petitioner on the various services, materials, and insurances that are procured for the successful operation and maintenance of the Plant.

(d) Therefore, the promulgation/enactment/bringing into effect of GST Laws has resulted in a change in costs of the Petitioner from the business of selling electricity to the Procurer under the terms of the respective PPAs. Thus, the promulgation/enactment/bringing into effect of GST Laws is a Change in Law Event in terms of Article 13.1 of the respective PPAs.

(e) The Petitioner's total impact of the Change in Law Event due to the promulgation of GST Laws from FY 2017-18 up to FY 2021-22 is Rs. 30,49,40,775 /-. Also, the Petitioner's claim amount, even as on the date, is in excess of the letter of credit amounts for each financial year. As such, the Petitioner clearly satisfies the threshold limit of 1% of the Letter of Credit as prescribed under Articles 13.2(b) of the PPAs.

(f) The Petitioner, vide its letter dated 16.1.2017, provided an advance notice triggering the 'Change in Law' provisions under Article 13 of the Haryana PPA to Haryana Discoms, anticipating an increase in O&M Expenses for running the Plant due to the passage of the GST Bill by the Parliament of India. In furtherance, the Petitioner had also sent reminders to the Haryana Discoms regarding the Change in Law event and the need for compensation vide its letter dated 15.3.2021 and

email dated 18.7.2021. Additionally, the Petitioner, vide its letter dated 25.8.2020, also provided notice to TPTCL of the occurrence of a Change in Law and requested compensation thereof on account of the additional costs incurred for the running of the Plant under Article 13 of TPTCL PPA. Thus, the Petitioner has satisfied the requirement of notifying the Respondents of the occurrence of the Change in Law, as prescribed under Article 13.3 of the PPAs, vide its letters dated 16.1.2017, 20.8.2020, 25.8.2020 and 15.3.2021 and email dated 18.7.2021.

(g) In support of its Change in Law claim, the Petitioner also relies upon the judgment of the Appellate Tribunal for Electricity (APTEL) dated 27.4.2021 in Appeal No. 172 of 2017 titled Coastal Gujarat Power Ltd. v. Central Electricity Regulatory Commission and Ors., [reported as 2021 SCC Online APTEL 10]. ('Coastal Gujarat Judgment'). Further, views of the APTEL in the said judgment has also been upheld in the context of increase in O&M expenses on account of enactment/promulgation of the GST Laws in the APTEL's subsequent judgments viz. (i) judgment in Azure Power Eris Private Limited v. Bihar Electricity Regulatory Commission & Ors., [reported as 2022 SCC OnLine APTEL 8], (ii) judgment in Azure Solar Private Limited v. Central Electricity Regulatory Commission & Ors., [reported as 2022 SCC OnLine APTEL 24], and (iii) judgment dated 15.9.2022 in Appeal No. 256 of 2019 and batch matters titled Parampujya Solar Energy Private Limited v. Central Electricity Regulatory Commission & Ors. ('Parampujya Judgment').

(h) In terms of Article 13 of the respective PPAs, the Petitioner is also entitled to be restored to the same economic position as it was prior to the occurrence of the Change in Law event by way of compensation towards the additional cost incurred on account of increase in O&M expenses along with carrying cost associated therewith. In support of the above, the reliance has been placed on the judgment of the APTEL dated 13.4.2018 in Appeal No. 210 of 2017 in the matter of Adani Power Limited v. Central Electricity Regulatory Commission & Ors. and the judgment of the Hon'ble Supreme Court dated 25.2.2019 in Civil Appeal No.5865 of 2018 with Civil Appeal No. 6190 of 2018 in the matter of Uttar Haryana Bijli Vitran Nigam Limited & Anr. v. Adani Power Ltd. & Ors.

(i) The Petition has been filed within the prescribed period of limitation as the dispute with respect to the pass-through of the impact of GST Laws arose on 16.9.2020 and 28.3.2022, when TPTCL and Haryana Discoms, respectively, called upon the Petitioner to approach this Commission to decide upon the claim for any GST related impact in terms of Article 13 of the respective PPAs. In any case, since the enactment of GST Laws has resulted in the Petitioner incurring recurring expenditure, the cause of action for filing the present Petition is continuing, and for this reason, too, the present Petition has been filed within the prescribed period of limitation.

(j) This Commission has the jurisdiction to decide the instant dispute under Section 79(1)(b), 79(1)(f), and 79(1)(k) of the Electricity Act read with Article 13 and Article 17 of the PPAs.

Proceedings before the Commission

Hearing dated 16.5.2023

4. During the course of the hearing, in response to a specific query on the aspect of limitation, learned counsel for the Petitioner submitted that the Change in Law claims as sought in the Petition are not barred by limitation. The Petitioner was also in a continuous exchange of correspondences with Haryana Discoms. Relying on the order of the Hon'ble Supreme Court dated 10.1.2022 in Suo Motu Writ Petition No. 3 of 2020, learned counsel for the Petitioner submitted that the period from 15.3.2020 till 28.2.2020 should be excluded from the purpose of the limitation period. Also, the Change in Law event has a recurring impact. Therefore, each contract year gives a fresh cause of action to the Petitioner for claiming relief under Change in Law.

5. The Commission admitted the Petition on 16.5.2023 after notice to the Respondents. The Respondents and the Petitioner were directed to file their respective replies and rejoinder. In compliance with such directions, the Haryana Discoms and TPDDL filed their replies on 9.6.2023 and 14.7.2023, respectively.



Thereafter, the Petitioner had also filed its Rejoinders to the same on 2.8.2023. Subsequently, on 12.10.2023, TPTCL also filed its written submissions to the Petition. In response to the same, the Petitioner filed its rejoinder to the response filed by TPTCL on 3.11.2023.

Submissions of Respondent No. 1 ('UHBVNL') & Respondent No. 2 ('DHBVNL')

6. On behalf of Respondent Nos. 1 & 2, the Haryana Power Purchase Centre ('HPPC') submitted as under:

(a) The Petitioner has based its time barred claim on the continuous correspondence which were exchanged between the parties. In this context, it is submitted that the mere writing of letters seeking a refund of the amount does not extend the limitation period.

(b) As per Article 13.3.1 of Haryana PPA, JPL was required to give notice to the Haryana Discoms 'as soon as reasonably practicable,' such, the one-time, non-recurring cause of action arose in favour of the Petitioner on the date the GST Laws were enacted, i.e., on 1.7.2017. However, post the enactment of GST Laws, the Change in Law notice was received by the Haryana Discoms only on 20.8.2020, i.e., after a delay of about 3 years from the date of enactment of GST Laws.

(c) JPL has not filed any application seeking condonation of delay.

(d) The argument of the Petitioner that a Change in Law event has a recurring impact and each contract year gives a separate/fresh cause of action to the Petitioner is completely fallacious. If such an argument is accepted, then the clarification issued by the Ministry of Power dated 21.2.2022 with respect to the application of the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 ('CIL Rules') would be rendered redundant.

(e) The Petitioner has filed another Petition pending adjudication before the Commission bearing No. 102/MP/2023 relying on the CIL Rules. However, any reliance/reference to the CIL Rules has been specifically omitted by the Petitioner from the present Petition.

(f) The instant Petition is liable to be dismissed as being incomplete, un-supported, baseless, and inadmissible in the present form. The Petitioner has relied solely upon the Independent Auditors report dated 8.12.2022. The Certificate of Chartered Accountant, without the necessary particulars and relevant documents, is not enough to sustain the petition. The claim of the Petitioner is not supported by all the complete invoices.

(g) JPL has also not placed before the Commission in a transparent manner, the taxes, duties, and levies which stand withdrawn and are no longer payable by reason of the introduction of the GST Laws.

(h) JPL has failed to provide any details whatsoever of the ITC claimed and used as set-off against the total liability. Under the GST Law regime, any registered person can avail of credit of tax paid on the inward supply of goods or services or both which is used or intended to be used in the course or furtherance of business. In fact, an uninterrupted and seamless chain of Input Tax Credit ('ITC') is one of the key features of Goods and Services Tax. As the tax charged by the Central or the State Governments would be part of the same tax regime, credit of tax paid at every stage would be available as a set-off for payment of tax at every subsequent stage.

(i) JPL could have arranged its affairs in a manner to mitigate the effect of the increase in costs on account of the enactment of the GST Laws.

(j) GST towards O&M Expenses cannot automatically be granted until some checks and balances are adopted. In the present case, the complete services agreements have been appended without any bifurcation. Further, detailed reasoning as to why the firms were chosen, details of the actual payment made in addition to the invoice, etc., are liable to be provided.

(k) There is no provision in the PPA regarding carrying cost or interest for the period till the determination of the relief amount on account of 'Change in Law.'

Rejoinder of the Petitioner/JPL to the Submissions of Respondent No. 1 & 2

7. *Per contra*, the Petitioner *vide* its response has submitted as under:

(a) GST Bill received Presidential assent on 8.9.2016, and thereafter, on 12.4.2017, the Government of India promulgated the GST Laws replacing multiple taxes levied by the Central and State Governments. JPL, *vide* its letter dated

16.1.2017, gave advance notice of the occurrence of Change in Law. On 1.7.2017, the GST Laws for levy and collection of tax on inter-State supply of goods or services or both became effective.

(b) In terms of Article 13.1.1 of the PPAs, enactment of GST Laws is a Change in Law event. COD for the first unit of the Project was 29.3.2012, and for the entire Project was 19.7.2012. Accordingly, the Change in Law event in the present case, *i.e.*, enactment of GST Laws, occurred on 1.7.2017, which is within the Operation Period of the Project.

(c) Further, Article 13.2 (b) of the Haryana PPA provides for relief during the operation period. As per Article 13.2 (b), a claim towards Change in Law during Operation Period can only be raised if it has been ascertained that the impact of such Change in Law event in aggregate for a contract year is more than 1% of the Letter of Credit.

(d) Article 113 of the Limitation of Act provides that the period of limitation begins to run when the right to sue accrues. In the present case, the right to sue accrues only once the quantum of a claim for compensation for a Change in Law in the Contract Year gets crystallised and crosses the threshold of 1% of the Letter of Credit. In the present case, the right to sue accrued on 16.8.2018 when the Board of the Petitioner prepared financial statements for FY 2017-18.

(e) Further, the Hon'ble Supreme Court *vide* its order dated 10.1.2022 in *Suo Motu Writ Petition (Civil) No. 03 of 2020* directed that the period starting from 15.3.2020 to 28.2.2022 be excluded for the purposes of computation of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

(f) The period of limitation for filing the present Petition was to expire on 2.8.2023, and the Petition was filed on 20.12.2022. Accordingly, the limitation period is normally to be reckoned from 21.12.2019, *i.e.*, 3 years prior to the filing of the present Petition on 20.12.2022. However, in terms of the Hon'ble Supreme Court Order dated 10.1.2022, the limitation period for filing the present Petition stood extended for a period of approximately 17 months in terms of paragraph 5 (iii) of the Hon'ble Supreme Court Order dated 10.1.2022. Therefore, for the present Petition as well, the limitation period ought to be reckoned from 5.1.2018, *i.e.*, 3 years prior to the

filing of the present Petition on 21.12.2022 after excluding the period from 15.3.2020 to 28.2.2022.

(g) Impact of GST is a recurring expenditure with respect to each Contract Year and thus can be entertained if the claim relates to a period of three years preceding the date of filing the instant petition. Accordingly, the claims arising before 5.1.2018 shall be time-barred, whereas claims arising on or after 5.1.2018 shall be within the period of limitation. In the present case, the Petitioner's earliest claim pertains to the Financial Year 2017-18, which ended on 31.3.2018, i.e., after 5.1.2018.

(h) Haryana DISCOMs' reliance upon the clarification dated 21.2.2022 issued by the Ministry of Power with respect to the CIL Rules is completely untenable as the applicability of CIL Rules is to be considered vis-à-vis the date of occurrence of Change in Law event. The Change in Law event on account of GST Laws did occur on 1.7.2017; however, the cause of action arose on 16.8.2018.

(i) With respect to the contention of the Haryana Discoms that JPL has not submitted complete documents, in response to HPPC's email dated 26.7.2021, JPL *vide* its email dated 11.2.2022 *inter alia* provided requisite documents to Haryana DISCOMs. In fact, JPL, by way of the instant Petition, only placed on record certain purchase orders and invoices for demonstrating the impact and undertook to submit the complete invoices at a later stage.

(j) Enactment of GST Laws by the Government of India throughout India, levying tax on the goods and services procured by JPL for the operation of the Project, could not have been mitigated by JPL.

(k) JPL being a project specific Special Purpose Vehicle, all the services being availed/outsourced by the Petitioner are for the sole objective of generating power for supply to the Haryana DISCOMs under Haryana PPA.

(l) JPL is entitled to carrying cost in addition to the compensation for the Change in Law event *viz.* GST Laws. Even Article 13.2 of the Haryana PPA provides that the affected party has to be put in the same economic position as if such a Change in Law event has not occurred.

Submissions of Respondent No. 3 ('TPTCL')

8. The Respondent No. 3/ TPTCL *vide* its response dated 12.10.2023 has submitted as follows:

(a) The submissions raised by TPTCL are limited to the issue of maintainability of the Petition. The role of the TPTCL in the present case is that of an intermediary procurer/electricity trader in terms of the relevant provisions of the Act and has a back-to-back arrangement with the Petitioner and the ultimate beneficiary, i.e., TPDDL.

(b) The cause of action for the Change in Law claim arose when the GST Laws were introduced in India, i.e., from 1.7.2017.

(c) Change in Law Notice under Article 13.3 of the PPA was sent to TPTCL only on 25.8.2020, *i.e.*, after the delay of about 3 years from the date of enactment of GST Laws and further, it is a matter of record that JPL had approached this Commission only in the year 2022, i.e., after a further delay of 2 years. A delay of a total of 5 years from the date of notification of the GST Laws can in no manner be justified, and the same is barred by limitation.

(d) TPTCL has nowhere, through any correspondence, acknowledged the Change in Law claim raised by Petitioner and has always maintained its continuous stance that such claim is to be adjudicated and decided by the Commission. Therefore, any subsequent correspondences/letters exchanged between the parties do not automatically extend the cause of action, thereby extending the period of limitation.

(e) Reliance of the Petitioner on the judgement passed by the Hon'ble Supreme Court in *Suo Moto Writ Petition (Civil) No. 3 of 2020* does not fit with the facts and circumstances of the present case.

(f) There is no proper explanation given by JPL or any application filed by JPL for condonation of delay. JPL has failed to provide any adequate reasoning explaining the delay in filing the present Petition.

(g) Introduction of GST Laws is not a Change in Law event as per the PPAs because the project was awarded to JPL through Tariff Based Competitive Bidding process under Section 63 of the Act. Henceforth, JPL cannot be allowed to claim compensation based on additional O&M by alleging to claim the same as a Change in Law.

(h) Further, in support of additional O&M costs incurred by it due to the enactment of GST laws has not placed any supporting documents/evidence in regard to the actual additional costs incurred by it.

(i) Reliance on the judgement passed by the APTEL in Appeal No. 256 of 2019 in the case titled ‘Parampujya Solar Energy Private Limited vs. Central Electricity Regulatory Commission and Ors,’ wherein the APTEL has declared the introduction of GST Laws as a Change in Law event for claiming the additional O&M cost is in a challenge by way of Civil Appeal No. 8880 of 2022, before the Hon’ble Supreme Court and *vide* its interim order dated 12.12.2022, the Hon’ble Supreme Court, has stayed the order passed by the APTEL till the pendency of the dispute.

Rejoinder of Petitioner/JPL to the Submissions of Respondent No. 3

9. *Per contra*, the Petitioner *vide* its submission 3.11.2023 has submitted as follows:

(a) The terms and conditions of the arrangement qua supply of power from the Petitioner to TPDDL through TPTCL is envisaged under the TPTCL PPA and the Power Sale Agreement executed between the Petitioner and TPDDL. The Recitals of the TPTCL PPA unambiguously clarify that TPTCL will purchase the power from the Petitioner and will further sell the same to TPDDL at the same rate as specified in the Haryana PPA plus the trading margin. Additionally, in terms of Article 11.2.1 of TPTCL PPA, the Petitioner is required to issue monthly bills (towards the supply of power from the Project). Further, Article 11.3.1 requires TPTCL to pay the amount payable under the monthly bill on the Due Date, failing which TPTCL is required to bear a late payment surcharge as per Article 11.3.4 of TPTCL PPA. Furthermore, in terms of Article 14.2 of TPTCL PPA, the failure of TPTCL to honour the monthly bills within the timeframe stipulated therein amounts to default on the part of TPTCL.

(b) The obligation of TPTCL to pay to the Petitioner is not contingent upon payment by TPDDL to TPTCL. Hence, they cannot evade their responsibilities under the TPTCL PPA by highlighting their role as an intermediary.

(c) In terms of Article 13.1.1 of the PPAs, enactment of GST Laws is a Change in Law event. COD for the first unit of the Project was 29.3.2012, and for the entire

Project was 19.7.2012. Accordingly, the Change in Law event in the present case, i.e., enactment of GST Laws, occurred on 1.7.2017, which is within the Operation Period of the Project.

(d) Section 113 of the Limitation Act provides that the period of limitation begins to run when the right to sue accrues. In the present case, the right to sue accrues only once the quantum of a claim for compensation for a Change in Law in the Contract Year gets crystallised and crosses the threshold of 1% of the Letter of Credit. In the present case, the right to sue accrued on 16.8.2018 when the Board of the Petitioner prepared financial statements for FY 2017-18.

(e) Further, the Hon'ble Supreme Court *vide* its order dated 10.1.2022 in *Suo Motu Writ Petition (Civil) No. 03 of 2020* directed that the period starting from 15.3.2020 to 28.2.2022 be excluded for the purposes of computation of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

(f) The period of limitation for filing the present Petition was to expire on 2.8.2023, and the Petition was filed on 20.12.2022. Accordingly, the limitation period is normally to be reckoned from 21.12.2019, i.e., 3 years prior to the filing of the present Petition on 20.12.2022. However, in terms of the Hon'ble Supreme Court Order dated 10.1.2022, the limitation period for filing the present petition stood extended for a period of approximately 17 months in terms of paragraph 5 (iii) of the Hon'ble Supreme Court Order dated 10.1.2022. Therefore, for the present Petition as well, the limitation period ought to be reckoned from 5.1.2018, i.e., 3 years prior to the filing of the present Petition on 21.12.2022 after excluding the period from 15.3.2020 to 28.2.2022. Thus, there is no requirement for the Petitioner to file any application seeking condonation of delay in filing the present Petition.

(g) The impact of GST is a recurring expenditure with respect to each Contract Year and thus can be entertained if the claim relates to a period of three years preceding the date of filing the instant Petition. Accordingly, the claims arising before 5.1.2018 shall be time-barred, whereas claims arising on or after 5.1.2018 shall be within the period of limitation. In the present case, the Petitioner's earliest claim pertains to the Financial Year 2017-18, which ended on 31.3.2018, i.e., after 5.1.2018.

(h) The Change in Law event on account of the GST Laws did occur on 1.7.2017, however, the cause of action arose on 16.8.2018.

(i) The Petitioner is entitled to carrying cost in addition to the compensation for the Change in Law event *viz.* GST Laws.

(j) With respect to the contention of the TPTCL that the Petitioner has not submitted complete documents, the Petitioner's email dated 11.2.2022 *inter alia* included the requisite documents substantiating its claim. In fact, the Petitioner, by way of the instant Petition only placed on record certain purchase orders and invoices for demonstrating the impact and undertook to submit the complete invoices at a later stage.

(k) The Petitioner has also filed an additional affidavit on 14.9.2023 *inter alia* bringing on record the certain sample invoices, which tends to show that GST Laws (which is a Change in Law) has imposed additional tax liability on the Petitioner, and thus the Petitioner is entitled to compensation in terms of Article 13 of the TPTCL PPA.

Submissions of Respondent No. 4 ('TPDDL')

10. The Respondent, TPDDL, vide its affidavit dated 14.7.2023, has made the following submissions:

(a) The cause of action for the Change in Law claim arose when the GST Laws were introduced in India, i.e., 1.7.2017, and the instant Petition, which was filed by the Petitioner on 20.12.2022, is barred by limitation. The cut-off date for computing the period of limitation shall also be the date when GST Laws were introduced (i.e., 01.7.2017), and no further event or any notice sent by the Petitioner for claiming any Change in Law can lead to any fresh cause of action or any fresh period of limitation.

(b) The Petitioner issued a Change in Law notice after a lapse of 3 years, which cannot be construed as reasonable, and the Petitioner cannot take reliance on the said correspondence to argue that the period of limitation was extended as the said notice was issued on 25.8.2020.

(c) Subsequent correspondences/letters exchanged between the parties do not extend the period of limitation, and the same is to be considered from the date on which the cause of action arose.

(d) TPTCL has not acknowledged the claim raised by the Petitioner and has simply, through its communication dated 16.9.2020, informed that as per the PPA / PSA, the claim of Change in Law is to be decided and adjudicated by the Commission.

(e) The order of the Hon'ble Supreme Court in Suo Motu Writ Petition (Civil) No. 3 of 2020 has no bearing on the present dispute as the said order was passed owing to the outbreak of Covid-19 in March 2020 and the Change in Law event as claimed by the Petitioner occurred much before on 1.7.2017.

(f) The Change in Law event occurred on 1.7.2017, and as per the Limitation Act of 1963, the period of limitation expired on 1.7.2020. Therefore, as of 15.3.2020, the Petitioner had a total of 3 months and 15 days as the balance period of limitation. Even otherwise, if the order of the Hon'ble Supreme Court is taken into consideration, then also the period of limitation in the Petitioner's case was till 15.6.2022. However, the instant Petition was filed on 20.12.2022.

(g) Regarding the reliance placed by the Petitioner on the Parampujaya order of APTEL, the said order has been challenged before the Hon'ble Supreme Court, wherein the Hon'ble Supreme Court vide its order dated 12.12.2022 in Civil Appeal No. 8880 of 2022 has passed an interim order holding that till the time the matter is pending before Hon'ble Supreme Court, the order passed by APTEL shall not be enforced. Thus, no claim as raised by the Petitioner in the instant Petition could be allowed.

(h) The Project in dispute was awarded to the Petitioner through the Competitive Bidding mechanism under Section 63 of the Act. Therefore, the Petitioner cannot be allowed to claim such charges, which are in the nature of operational expenses from TPDDL, by alleging to claim the same as a Change in Law event.

(i) The Petitioner, while claiming Change in Law, has not submitted any supporting documents/evidence in regard to the actual cost incurred by it.

(j) The Petitioner is not entitled to claim any carrying cost for the reason that it delayed in approaching the Commission in December 2022 for its Change in Law claim which arrived on 1.7.2017.

Rejoinder of the Petitioner to the Submissions of Respondent No.4

11. The Petitioner, vide its rejoinder dated 4.8.2023 negating the contentions of the Respondent, has mainly as under:

(a) The GST Bill received Presidential assent on 8.9.2016 and thereafter, on 12.4.2017, the Government of India promulgated the GST Laws replacing multiple taxes levied by the Central and State Governments. The Petitioner, vide its letter dated 16.1.2017 gave advance notice of the occurrence of Change in Law. On 1.7.2017, the GST Laws for levy and collection of tax on inter-State supply of goods or services or both became effective.

(b) In terms of Article 13.1.1 of the PPAs, enactment of GST Laws is a Change in Law event. COD for the first unit of the Project was 29.3.2012, and for the entire Project was 19.7.2012. Accordingly, the Change in Law event in the present case, i.e., enactment of GST Laws, occurred on 1.7.2017, which is within the Operation Period of the Project.

(c) Article 113 of the Limitation of Act provides that the period of limitation begins to run when the right to sue accrues. In the present case, the right to sue accrues only once the quantum of a claim for compensation for a Change in Law in the Contract Year gets crystallised and crosses the threshold of 1% of the Letter of Credit. In the present case, the right to sue accrued on 16.8.2018 when the Board of the Petitioner prepared financial statements for FY 2017-18.

(d) Further, the Hon'ble Supreme Court vide its order dated 10.1.2022 in *Suo Motu Writ Petition (Civil) No. 03 of 2020* directed that the period starting from 15.3.2020 to 28.2.2022 be excluded for the purposes of computation of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

(e) The period of limitation for filing the present Petition was to expire on 2.8.2023, and the Petition was filed on 20.12.2022. Accordingly, the limitation period is normally to be reckoned from 21.12.2019, i.e., 3 years prior to the filing of the present Petition on 20.12.2022. However, in terms of the Hon'ble Supreme Court Order dated 10.1.2022, the limitation period for filing the present Petition stood extended for a period of approximately 17 months in terms of paragraph 5 (iii) of the Hon'ble Supreme Court Order dated 10.1.2022. Therefore, for the present Petition as well,

the limitation period ought to be reckoned from 5.1.2018, i.e., 3 years prior to the filing of the present Petition on 21.12.2022 after excluding the period from 15.3.2020 to 28.2.2022. Thus, there is no requirement for the Petitioner to file any application seeking condonation of delay in filing the present Petition.

(f) Impact of GST is a recurring expenditure with respect to each Contract Year and thus can be entertained if the claim relates to a period of three years preceding the date of filing the instant petition. Accordingly, the claims arising before 5.1.2018 shall be time-barred, whereas claims arising on or after 5.1.2018 shall be within the period of limitation. In the present case, the Petitioner's earliest claim pertains to the Financial Year 2017-18, which ended on 31.3.2018, i.e., after 5.1.2018.

(g) The TPTCL PPA clearly envisages provisions pertaining to Change in Law wherein the affected party, due to a Change in Law event, is entitled to claim compensation towards such Change in Law event.

(h) Moreover, the said PPA also provides that the affected party is required to be restored to the same economic position as if the Change in Law event has not occurred. Even the Guidelines for the determination of tariff by the bidding process for Procurement of Power by Distribution Licensees dated 19.1.2005 issued by the Ministry of Power recognises any Change in Law impacting cost or revenue from the business of selling electricity to the procurer shall be adjusted separately.

(i) The invocation of the GST Laws in 2017, which is five years post-commissioning of the Project, could not have been factored in at the time of participating in the bid, which was 10.3.2008.

(j) With respect to the contention of the TPDDL that the Petitioner has not submitted complete documents, it is clarified that the Petitioner only placed on record certain purchase orders and invoices for demonstrating the impact and undertook to submit the complete invoices at a later stage.

(k) In terms of the Hon'ble Supreme Court's judgment dated 25.02.2019 in Civil Appeal No.5865 of 2018 in the matter of *Uttar Haryana Bijli Vitran Nigam Limited & Anr. Vs. Adani Power Ltd. & Ors.*, if Change in Law provisions under the PPA provide for restitution of the affected party to the same economic position, then carrying cost/interest ought to be paid over and above the compensation.

(l) Moreover, Article 13.2 of the TPTCL PPA provides that the affected party has to be put in the same economic position as if such Change in Law event has not occurred, which is a restitutionary provision, the Petitioner is entitled to carrying cost in addition to the compensation for the Change in Law.

(m) Even in case of a stay ordered by the Hon`ble Supreme Court on the operation of the Parampujya judgment, it continues to exist in law.

Hearing dated 29.8.2024

12. During the course of the hearing, the learned counsels for the Petitioner made detailed submissions and concluded their respective arguments in the matter. Based on the request of the parties, the Commission permitted the parties to file their respective written submissions post-hearing within four weeks with a copy to the other side. Subject to this, the Commission reserved the matter for order.

13. Pursuant to the liberty granted by the Commission vide Record of Proceedings dated 29.8.2024, the Petitioner, Haryana Discoms, and TPDDL have also filed their respective written submissions.

Analysis and Decision

14. After going through the pleadings on the record and the submissions advanced by the learned counsels for the parties during the hearing, we note that the following issues arise for our consideration:

Issue No. 1: Whether the claims of the Petitioner are barred by limitation?

Issue No. 2: Whether the provisions of the Haryana PPA, as well as the TPTCL PPA with regard to notice been complied with?

Issue No. 3: Whether the enactment of GST Laws constitutes a Change in Law under Article 13 of Haryana PPA as well as TPTCL PPA?

Issue No. 4: Whether 'Carrying Cost' can be granted to the Petitioner towards compensation for Change in Law?

The aforementioned issues have been dealt with in the succeeding paragraphs.



Issue No. 1: Whether the claims of the Petitioner are barred by limitation?

15. On the issue of limitation, the learned counsel for TPTCL and TPDDL, while relying on Article 58 of the Schedule to the Limitation Act, has contended that the limitation period for instituting any suit sought for obtaining the declaration is three years from the date when the right to sue first accrues. The right to sue accrued for the first time when the event being claimed as a Change in Law had taken place. The Change in Law event took place on 1.7.2017 when the GST laws came into force. Relying on Lanco Kondapalli judgment of the Hon'ble Supreme Court, it was further contended by the learned counsel that the Commission could not entertain time-barred claims as the time periods for limitation provided under the Limitation Act, 1963 apply to Petitions filed under the Act. It has been further submitted that in case the Commission decides to consider any Change in Law claims of JPL, only those claims that fall within the period of three years prior to the filing of the present Petition should be considered for adjudication. Similar contentions were also raised by the Haryana Discoms that the claims of the Petitioner are time-barred and thus liable to be rejected.

16. *Per contra*, the Petitioner has submitted that the present Petition filed on 20.12.2022 is not barred by limitation. Reliance was placed on Article 113 of the Schedule to the Limitation Act which states that the period of limitation begins to run when the right to sue accrues. In the present case, the right to sue accrued when the quantum of the claim for compensation for Change in Law in the contract year crystallized and crossed the threshold of 1% of the Letter of Credit, *i.e.*, on 16.8.2018. Accordingly, the period of limitation prescribed under Article 113 of the Limitation Act began to run from 16.8.2018 and expired on 16.8.2021. However, in light of Covid-19, the Hon'ble Supreme Court *vide* its order dated 10.1.2022 in Suo Motu Writ Petition (Civil) No. 03 of 2020 has relaxed the limitation period and directed that the period



starting from 15.3.2020 to 28.2.2022 will be excluded for the purposes of computation of limitation. Therefore, the period of limitation for filing the present petition stood extended for a period of approximately 17 months, *i.e.*, till 2.8.2023.

17. We have considered the submissions made by the Petitioner and the Respondents. The Hon'ble Supreme Court, in its judgment in the case of Andhra Pradesh Power Coordination Committee v. Lanco Kondapalli Power Limited [(2016) 3 SCC 468], has held that the Limitation Act is applicable to the case proceedings before the Regulatory Commissions, particularly, in respect of proceedings being held in the exercise of its adjudicatory power. Relevant portions of the judgment are extracted as under:

*“29. The only other weighty contention of Mr Giri that there is nothing in the Electricity Act, 2003 to create a right in a suitor before the Commission to seek claims which are barred by law of limitation, merits a serious consideration. There is no possibility of any difference of opinion in accepting that on account of the judgment of this Court in Gujarat Urja [Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd., (2008) 4 SCC 755] the Commission has been elevated to the status of a substitute for the civil court in respect of all disputes between the licensees and generating companies. Such dispute need not arise from the exercise of powers under the Electricity Act. Even claims or disputes arising purely out of contract like in the present case have to be either adjudicated by the Commission or the Commission itself has the discretion to refer the dispute for arbitration after exercising its power to nominate the arbitrator.
.....*

30. In such a situation it falls for consideration whether the principle of law enunciated in State of Kerala v. V.R. Kalliyankutty [State of Kerala v. V.R. Kalliyankutty, (1999) 3 SCC 657] and in New Delhi Municipal Committee v. Kalu Ram [New Delhi Municipal Committee v. Kalu Ram, (1976) 3 SCC 407] is attracted so as to bar entertainment of claims which are legally not recoverable in a suit or other legal proceeding on account of bar created by the Limitation Act. On behalf of the respondents those judgments were explained by pointing out that in the first case the peculiar words in the statute—“amount due” and in the second case “arrears of rent payable” fell for interpretation in the context of powers of the tribunal concerned and on account of the aforesaid particular words of the statute this Court held that the duty cast upon the authority to determine what is recoverable or payable implies a duty to determine such claims in accordance with law. In our considered view, a statutory authority like the Commission is also required to determine or decide a claim or dispute either by itself or by referring it to arbitration only in accordance with law and thus Sections 174 and 175 of the Electricity Act assume relevance. Since no separate limitation has been prescribed for exercise of power under Section 86(1)(f) nor this adjudicatory power of the Commission has been enlarged to entertain even the time-barred claims, there is no conflict between the provisions of the Electricity Act and the



*Limitation Act to attract the provisions of Section 174 of the Electricity Act. In such a situation, on account of the provisions in Section 175 of the Electricity Act or even otherwise, the power of adjudication and determination or even the power of deciding whether a case requires reference to arbitration must be exercised in a fair manner and in accordance with law. **In the absence of any provision in the Electricity Act creating a new right upon a claimant to claim even monies barred by law of limitation, or taking away a right of the other side to take a lawful defence of limitation, we are persuaded to hold that in the light of nature of judicial power conferred on the Commission, claims coming for adjudication before it cannot be entertained or allowed if it is found legally not recoverable in a regular suit or any other regular proceeding such as arbitration, on account of law of limitation.** We have taken this view not only because it appears to be more just but also because unlike labour laws and the Industrial Disputes Act, the Electricity Act has no peculiar philosophy or inherent underlying reasons requiring adherence to a contrary view.”*

18. The instant Petition has been filed invoking the jurisdiction of the Commission under Section 79(1)(b) read with Section 79(1)(f) of the Act. Also, Article 13.2 of the PPAs provides for Change in Law during the Construction period as well as Operation Period. In the present case, the Petitioner’s claims are for the Operation Period, which is covered under Article 13.2(ii) of the PPAs. Article 17.3.1 of the Haryana PPA provides for adjudication of disputes by the Commission, which is extracted as under:

“Article 17.3.1 - Where any Dispute arises from a claim made by any Party for any change in or determination of the Tariff or any matter related to Tariff or claims made by any Party which partly or wholly relate to any change in the Tariff or determination of any of such claims could result in change in the Tariff or (ii) relates to any matter agreed to be referred to the Appropriate Commission under Articles 4.7.1, 13.2, 18.1 or clause 10.1.3 of Schedule 17 hereof, such Dispute shall be submitted to adjudication by the Appropriate Commission. Appeal against the decisions of the Appropriate Commission shall be made only as per the provisions of the Electricity Act, 2003, as amended from time to time. The obligations of the Procurers under this Agreement towards the Seller shall not be affected in any manner by reason of inter se disputes among the Procurers.”

19. Similarly, Article 17.3.1 of the TPTCL PPA provides for adjudication of disputes by the Commission, which is extracted as under:

“Article 17.3.1 - Where any Dispute arises from a claim made by any Party for any change in or determination of the Tariff or any matter related to Tariff or claims made by any Party which partly or wholly relate to any change in the Tariff or determination of any of such claims could result in change in the Tariff or (ii) relates to any matter agreed to be referred to the Appropriate Commission under Articles, 13.2, 18.1 hereof, such Dispute shall be submitted to adjudication by the Appropriate Commission. Appeal against the decisions of the Appropriate Commission shall be made only as per the provisions of the Electricity Act, 2003, as amended from time to time.”



20. The above quoted Articles of both the PPAs that, where any dispute relates to Article 13.2 of the PPAs, it shall be submitted for adjudication by the Appropriate Commission. Since the Petitioner has approached the Central Commission for relief under Article 13.2, the dispute involves adjudication under Article 17.3.1. Since the dispute raised in the Petition is of an adjudicatory nature, the Limitation Act will be applicable for examining the claims in terms of the judgment in the Lanco Kondapalli case.

21. Now, coming to the issue of limitation in respect of Change in Law claims, a similar issue fell for the consideration of the Commission in Petition No. 513/MP/2020 in the matter of *Adani Power (Mundra) Limited v. Uttar Haryana Bijli Vitran Nigam Limited and Ors.* wherein by its order dated 23.6.2023, the Commission has held as under:

“15. We have considered the submissions made by the Petitioner and the Respondents. Hon’ble Supreme Court in a number of judgements has held that Limitation Act is not applicable in case of Tribunals and quasi-judicial bodies since they are not courts in strict sense of the term. However, in Andhra Pradesh Power Coordination Committee Vs. Lanco Kondapalli Power Limited [(2016) 3SCC 468], Hon’ble Supreme Court extended the applicability of law of limitations in case of proceedings before Regulatory Commissions, particularly, in respect of proceedings being held in exercise of its adjudicatory power. Relevant portions of the judgement are extracted as under:

.....
16. APMuL has submitted that the petition has been filed under Section 79(1)(b) of the Act for determination of the impact of Change in Law during the operation period and therefore, its claims are not subject to the limitation under the Limitation Act in terms of the judgement in Lanco Kondapalli case which is applicable in case of adjudicatory petitions only. We have examined the provisions of the PPA. Article 13.2 of the PPA provides for Change in Law during construction period as well as operation period. In the present case, the Petitioner’s claims are for the operation period which is covered under Article 13.2(ii) of the PPA. Article 17.3.1 of the PPA provides for adjudication of disputes by the Commission which is extracted as under:

.....
It is provided in the above quoted Article that if the claims relate to Article 13.2 of the PPA, it shall be submitted for adjudication of the Commission. Since APMuL has approached the Commission for relief under Article 13.2(ii), the dispute involves adjudication under Article 17.3.1. The dispute raised in the Petition being adjudicatory in nature, Limitation Act will be applicable for examining the claims in terms of the judgement in Lanco Kondapalli case.

17. Schedule to the Limitation Act lays down various types of suits for the purpose of limitation. However, Change in Law claims under the PPA is not specifically provided for in the Limitation Act. In that case, Article 113 of the Schedule is relevant which is extracted as under:

Description of application	Period of limitation	Time from which period begins to run
113. Any suit for which no period of limitation is provided elsewhere in the schedule	Three years	When the right to sue accrues

Thus, the period of limitation for filing petitions in adjudicatory cases involving Change in Law claims before the Commission shall be governed under Article 113 of the Limitation Act which is three years from the time when the right to sue accrues.

.....
 23. We have already observed in para 19 that limitation in the present case will be governed by Article 113 of the Schedule of the Limitation Act which provides for a period of three years from the date when the right to sue accrues. It is pertinent to mention in this connection that all the Change in Law claims in the present petition are recurring in nature. In other words, the Change in Law claims in the form of tax and cess will arise every time when the coal is supplied. In this connection, Section 22 of the Limitation Act is relevant which is extracted as under:

“22. Continuing breaches or tort- In the case of a continuing breach of contract or in the case of continuing tort, a fresh period of limitation begins to run at every moment of the time during which the breach or the tort, as the case may be, continues.”

24. In this connection, the following observations of the APTEL in its judgment dated 2.11.2020 in batch of Appeals led by Appeal No. 10 of 2020 (Power Company of Karnataka Limited vs UPCL & Ors) are relevant:

“171. There can be no quarrel with the broad proposition that under the general application of the Limitation Act, a claim with respect to non-payment of money payable on a monthly / periodic basis brought before an adjudicatory forum cannot be sustained with respect to recovery of money for a period of more than three years prior to the date of institution of the proceedings.”

25. Thus, in case of non-payment of money payable on periodic or monthly basis brought before an adjudicatory forum, even though the right to sue has accrued earlier, the claims for recovery of money cannot be sustained for a period of more than three years prior to the date of institution of proceedings. In other words, the claims of APMuL for compensation towards impact of Change in Law can be entertained if the claim relates to a period of three years preceding the date of filing of the petition before the Commission i.e. three years prior to 16.5.2020 which works out to 17.5.2017. The Respondents have submitted that even if any Change in Law claims are to be considered, only the claims which fall within three years prior to the filing of the present petition would be admissible for adjudication. Therefore, Limitation period shall be reckoned from 17.5.2017 i.e. 3 years prior to the filing of the present petition on 16.5.2020. The claims arising before 17.5.2017 shall be time barred whereas claims arising on or after 17.5.2017 shall be within the period of limitation.”

In the above-quoted order, the Commission has held that the period of limitation for filing the Petitions in adjudicatory cases involving Change in Law claims shall be governed under Article 113 of the Limitation Act, which provides the limitation period

as three years from the time when the right to sue accrues. Further, after examining the question as to when the right to sue accrues in the favour of a generator to bring the Petition before the Commission, the Commission also took note of the Change in Law claims involved therein (similar to present case) being recurring in nature and thus, proceeded to hold that the claim of the generator for compensation towards impact of Change in Law can be entertained if such claims relate to a period of three years preceding the date of filing of the Petition before the Commission.

22. The Respondent, TPDDL, however, argued that Article 58 of Schedule to the Limitation Act applies to the present case and not Article 113. Article 58 prescribes the limitation period for obtaining any 'other declaration' as three years when the right to sue first accrues. TPDDL has submitted that in the present case, the right to sue first accrued on 1.7.2017 with the promulgation of the GST Laws, and as such, the limitation shall be computed from 1.7.2017. It has also been submitted that the above order dated 23.6.2023 of the Commission in Petition No. 513/MP/2020 is *per incuriam* insofar as the relevant provisions of the law, i.e., Article 58 of the Limitation Act, were not brought to the Commission's notice. *Per contra*, the Petitioner has contested the applicability of Article 58 of the Limitation Act in the present case. It has been submitted that as per Section 34 of the Specific Relief Act, 1963, no court can make any declaration where the plaintiff who can seek further relief or remedy fails to do so, and therefore, JPL could not have claimed only a declaratory relief till 16.8.2018, i.e., the date of which the impact of Change in Law claims was ascertained.

23. We have considered the submissions made by the parties. TPDDL's averment that the present case is governed by Article 58 of the Limitation Act is premised on the presumption that Change in Law relief under the PPA is essentially a declaratory relief and the grant of compensation to the affected party is merely a consequential relief(s).

However, as the definition of Change in Law in Article 13 of the PPAs (as referred to in the later part of this order) would reveal the right to sue/cause of action in respect of Change in Law accrues not merely upon the occurrence of an event but also when such event results in any change in the cost of or revenue from the business of selling of electricity by the Seller to the Procurers. In other words, both the occurrence of an event as well as its impact in the form of an increase/decrease in the revenues or cost to the Seller are necessary for invoking the Change in Law relief under the PPAs. Although in certain cases, the Commission has proceeded to give recognition of Change in Law event at the first instance followed by the determination of impact at a later stage, this, does not take away the fact the impact in the form of an increase/decrease in the revenues or cost to the Seller is necessary for invoking the said Change in Law clause. Similarly, the relief available to the affected party under the PPAs is not merely a declaratory relief (i.e., recognizing an event as a Change in Law) but also a compensatory relief for restoring the affected party to the same economic position as if the Change in Law had not occurred. The relief of an economic restoration of an affected party is ingrained in the Change in Law relief available under the PPAs and is not merely a consequential relief to the declaratory relief as averred by TPDDL. Hence, we are unable to agree with the contention of TPDDL that the Change in Law relief under the PPAs is essentially a declaratory relief alone, thereby attracting the Article 58 of the Limitation Act.

24. On the other hand, the Petitioner has vehemently argued that the right to sue accrues only once the quantum of the claim for compensation for Change in Law in a contract year gets crystallised and crosses the threshold of 1 % of LC as specified in the proviso to Article 13.2(b) of the PPAs, which in its case, took place on 16.8.2018 i.e. the date on which JPL's financial statement was approved by its Board of Directors

under the provisions of the Companies Act, 2013. However, we find the above submission of the Petitioner completely misplaced. Firstly, nowhere does the PPA provide that any impact on the Seller's revenue or cost can only be ascertained after its Board approves the annual financial statement. Such an argument appears to be nothing but a feeble attempt to escape the clutches of limitation. Secondly, the *proviso* to Article 13.2(b) operates in a completely different context. It prescribes the threshold for the payment of Change in Law compensation pursuant to the determination of its claim under Article 13.2(b). It does not restrict the affected party to approach the Commission for determination of the compensation under Article 13.2(b) of the PPAs, but merely prescribes that such compensation shall be '*payable*' only if and for increase/decrease in revenues or costs to Seller is in excess of an amount equivalent to 1% of LC in aggregate for a Contract Year. Thus, the said *proviso* puts the restriction only on the payment of compensation and not on the determination of the compensation and, hence, cannot be of any reference for reckoning the commencement of the limitation period for a Change in Law claim.

25. The Petitioner has contended that in light of Covid-19, the Hon'ble Supreme Court *vide* its order dated 10.1.2022 in Suo Motu Writ Petition (Civil) No. 03 of 2020 has relaxed the limitation period and directed that the period starting from 15.3.2020 to 28.2.2022 will be excluded for the purposes of computation of limitation. Therefore, the period of limitation for filing the present petition stood extended for a period of approximately 17 months, *i.e.*, till 2.8.2023.

26. It is noticed that the Hon'ble Supreme Court, in its order dated 10.1.2022, had directed that the period from 15.3.2020 till 28.2.2022 shall stand excluded for the purposes of limitation. Further, the Hon'ble Supreme allowed 90 days from 1.3.2022 for filing the Petition in case the period of limitation expired during the period

15.03.2020 to 28.02.2022. The Relevant portions of the said order dated 10.1.2022 are extracted as under:

“iii. In cases where the limitation would have expired during the period between 15.03.2020 till 28.2.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 1.3.2022. In the event the actual balance period of limitation remaining, with effect from 1.3.2022 is greater than 90 days, that longer period shall apply.”

27. As per the above order, the Hon`ble Supreme Court granted a further 90 days limitation period. However, the Petitioner filed the instant Petition on 20.12.2022. In view of the above and keeping in view the findings of the Commission in its order dated 23.6.2023, we hold that in the present case also, JPL's claim for compensation towards the impact of Change in Law can be entertained only insofar such claims relate to a period of three years preceding the date of filing of the Petition before the Commission. Since the instant Petition has been filed on 20.12.2022, the claims arising before 21.12.2019 shall be time-barred, whereas the claims arising on or after 21.12.2019 shall be within the period of limitation.

28. The issue is decided accordingly.

Issue No. 2: Whether the provisions of the Haryana PPA, as well as the TPTCL PPA with regard to notice been complied with?

29. We now proceed to examine whether the Petitioner has notified the Respondents of events pertaining to the Change in Law for claiming the reliefs as a Change in Law event in light of the concerned PPAs.

30. In the present matter, the Petitioner/ JPL, in light of Article 13 of both Haryana PPA and TPTCL PPA, has sought approval of the introduction/enactment of GST laws as a Change in Law event, which has resulted in additional expenditure incurred by JPL with respect to Operations and Maintenance (O&M) expenses and also sought

compensation/ restitution on account of such Change in Law event along with carrying cost.

31. Article 13.3 of both the PPAs provides for Notification of the Change in Law. The relevant extract of the said Article of both Haryana PPA and TPTCL PPA is as follows:

Article 13.3 of Haryana PPA

“13.3 NOTIFICATION OF CHANGE IN LAW

13.3.1 If the Seller is affected by a Change in Law in accordance with Article 13.2 and wishes to claim a Change in Law under this Article, it shall give notice to the Procurers of such Change in Law as soon as reasonably practicable after becoming aware of the same or should reasonably have known of the Change in Law.

13.3.2 Notwithstanding Article 13.3.1, the Seller shall be obliged to serve a notice to all the Procurers under this Article 13.3.2 if it is beneficially affected by a Change in Law. Without prejudice to the factor of materiality or other provisions contained in this Agreement, the obligation to inform the Procurers contained herein shall be material. Provided that in case the Seller has not provided such notice, the Procurers shall jointly have the right to issue such notice to the Seller.

13.3.3 Any notice served pursuant to this Article 13.3.2 shall provide, amongst other things, precise details of:

- (a) the Change in Law; and*
- (b) the effects on the Seller of the matters referred to in Article 13.2”.*

Article 13.3 of TPTCL PPA

“13.3 NOTIFICATION OF CHANGE IN LAW

13.3.1 If JPL is affected by a Change in Law in accordance with Article 13.2 and wishes to claim a Change in Law under this Article, it shall give notice to TPTCL of such Change in Law as soon as reasonably practicable after becoming aware of the same or should reasonably have known of the Change in Law.

13.3.2 Notwithstanding Article 13.3.1, JPL shall also serve a notice to TPTCL under this Article 13.3.2 if it is beneficially affected by a Change in Law. Without prejudice to the factor of materiality or other provisions contained in this Agreement, the obligation to inform TPTCL contained herein shall be material. Provided that in case JPL has not provided such notice, TPTCL shall have the right to issue such notice to JPL.

13.3.3 Any notice served pursuant to this Article 13.3.2 shall provide, amongst other things, precise details of:



- (a) *the Change in Law; and*
(b) *the effects on JPL of the matters referred to in Article 13.2”.*

32. A perusal of Article 13.3 of both the Haryana PPA and TPTCL PPA would reveal that JPL was required to issue notices to the Haryana Discoms and TPTCL containing the particular details of Change in Law and its effects as soon as practicable after being aware of such events.

33. It is the case of the Petitioner that an advance notice dated 16.1.2017 was issued to Haryana Discoms, triggering a Change in Law provisions of the Haryana PPA. Thereafter, the Petitioner *vide* its letters to Haryana Discoms dated 20.8.2020 and TPTCL dated 25.8.2020, requested to pay Rs. 14,06,67,729/- and 1,56,29,748/-, respectively, towards Change in Law, as per Article 13.2(b) of the respective PPAs, for FY 2017-18 till FY 2019-2020. In response to the letter dated 25.8.2020, TPDDL on 16.9.2020 communicated that as per Article 13(b) of the TPTCL PPA, the claim towards Change in Law needs to be adjudicated by the Commission. Similarly, Haryana Discoms *vide* letter dated 26.7.2021 requested the Petitioner to provide the details in a specified manner along with substantiating documents, including proof of payment certified by an Auditor. To this, JPL provided the details as sought by the Haryana Discoms on 11.2.2022. Thereafter, *vide* its letter dated 28.3.2022, Haryana Discoms advised the Petitioner to approach the Commission for the adjudication of Change in Law claims on account of the introduction of GST laws. Thus, in the absence of any mutual understanding between the Petitioner/JPL and Respondents, JPL approached the Commission for necessary intervention.

34. Perusal of the above communications as exchanged between the parties reveals that the Petitioner has indeed issued the notice(s) invoking Article 13.3 of the

PPAs in respect of its Change in Law claim, i.e., implementation of GST Laws. However, since such notices had been issued only after substantial delays, the Respondents have strongly opposed considering them to be in compliance with the requirements of Article 13.3 of the PPAs. Pertinently, the aspect of delay in issuance of Change in Law notice and its impact on the Change in Law claims has also been considered by the Commission in its order dated 23.6.2023 (supra), and the relevant extract of the said order reads as under:

“22. We have considered the submissions made by the parties. There is no denial of the fact that APMuL has issued formal notices for certain events of Change in Law events after a lapse of more than 3 years after signing of the FSA when it came to be affected by Change in Law. The issue is whether such delay in giving notice would result in denial of compensation for the expenditure incurred by APMuL in respect of these events of the Change in Law. It is pertinent to note that Article 13.3.1 of the PPA provides that if the Seller is affected by a Change in Law in accordance with Article 13.2 and wishes to claim a change in law, it shall give notice of such event as soon as reasonably practicable after becoming aware of the same or should reasonably have known of the Change in Law event. As per Article 13.3.3, the notice shall provide among other things the precise details of the Change in Law and effects on the Seller of the matters referred to in Article 13.2 (for construction period as well as operation period). Thus, the purpose of notice is to inform the Procurer about the details of Change in Law and its impact on the Seller. Further, PPA does not provide for any adverse consequences including denial of compensation for the actual expenditure incurred on account of Change in Law where delay has occurred in issuing the Change in Law notices. Therefore, in the absence of any specific timeline for giving notice about the occurrence of Change in Law event, delay in giving notice will not adversely affect or obliterate the claims of APMuL except to the extent the claims are barred by limitation.”

In line with the above findings, we hold that in the absence of any specific timelines for giving notice about the occurrence of a Change in law event, the delay in giving notice will not adversely affect or obliterate the claims of the Petitioner except to the extent of claims barred by limitation.

Issue No. 3: Whether the enactment of GST Laws constitutes a Change in Law in terms of both the Haryana PPA as well as the TPTCL PPA?

35. The Petitioner has approached the Commission under Article 13 of both Haryana PPA as well as TPTCL PPA, read with Section 79 of the Act, for adjustment/



compensation to offset the financial/ commercial impact of the Change in Law, i.e., enactment of GST Laws during the Operating Period along with the carrying cost.

36. Article 13 of the Haryana PPA dealing with the events of Change in law is extracted as under:

“13.1.1 ‘Change in Law’ means the occurrence of any of the following after the date, which is seven (7) days prior to the Bid Deadline:

i) the enactment, bringing into effect, adoption, promulgation, amendment, modification or repeal, of any Law or (ii) a change in interpretation of any Law by a Competent Court of Law, tribunal or Indian Governmental Instrumentality provided such Court of Law, tribunal or Indian Governmental Instrumentality is final authority under Law for such interpretation or (iii) change in any consents, approvals or licenses available or obtained for the Project, otherwise than for default of the Seller, which results in any change in any cost of or revenue from the business of selling electricity by the Seller to the Procurers under the terms of this Agreement, or (iv) any change in the (a) Declared Price of Land for the Project or (b) the cost of implementation of the resettlement and rehabilitation package of the land for the Project mentioned in the RFP or (c) the cost of implementing Environmental Management Plan for the Power Station mentioned in the RFP;

but shall not include (i) any change in any withholding tax on income or dividends distributed to the shareholders of the Seller, or (ii) change in respect of UI Charges or frequency intervals by an Appropriate Commission.

Provided that if Government of India does not extend the income tax holiday for power generation projects under Section 80 IA of the Income Tax Act, upto the Scheduled Commercial Operation Date of the Power Station, such non-extension shall be deemed to be a Change in Law.

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 principle 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.

.....

b) Operation Period:

As a result of Change in Law, the compensation for any increase/decrease in revenues or cost to the Seller shall be determined and effective from such date, as decided by the Central Electricity Regulatory Commission whose decision shall be final and binding on both the Parties, subject to rights of appeal provided under applicable Law.

Provided that the above-mentioned compensation shall be payable only if and for increase/ decrease in revenues or cost to the Seller is in excess of an amount equivalent to one percent (1%) of Letter of Credit in aggregate for a Contract Year.

13.4 TARIFF ADJUSTMENT PAYMENT ON ACCOUNT OF CHANGE IN LAW

13.4.1 Subject to Article 13.2, the adjustment in Monthly Tariff Payment shall be effective from:

(a) the date of adoption, promulgation, amendment, re-enactment or repeal of Law or Change in Law; or

(b) the date of order/judgment of the Competent Court or tribunal or Indian Governmental Instrumentality, if the Change in Law is on account of a change in interpretation of Law.

13.4.2 The payment for Changes in Law shall be through Supplementary Bill as mentioned in Article 11.8. However, in case of any change in Tariff by reason of Change in Law, as determined in accordance with this Agreement, the Monthly Invoice to be raised by the Seller after such change in Tariff shall appropriately reflect the changed Tariff.”

37. Similarly, Article 13 of the TPTCL PPA is extracted as under:

“13.1.1 ‘Change in Law’ means the occurrence of any of the following after the date, which is seven (7) days prior to the Bid Deadline:

i) the enactment, bringing into effect, adoption, promulgation, amendment, modification or repeal, of any Law or

(ii) a change in interpretation of any Law by a Competent Court of Law, tribunal or Indian Governmental Instrumentality provided such Court of Law, tribunal or Indian Governmental Instrumentality is final authority under Law for such interpretation or

(iii) change in any consents, approvals or licenses available or obtained for the Project, otherwise than for default of JPL, which results in any change in any cost of or revenue from the business of selling electricity by JPL to TPTCL under the terms of this Agreement, or

(iv) any change in the (a) Declared Price of Land for the Project or (b) the cost of implementation of the resettlement and rehabilitation package of the land for the Project mentioned in the RFP or (c) the cost of implementing Environmental Management Plan for the Power Station mentioned in the RFP;

but shall not include (i) any change in any withholding tax on income or dividends distributed to the shareholders of JPL, or (ii) change in respect of UI Charges or frequency intervals by an Appropriate Commission.

Provided that if Government of India does not extend the income tax holiday for power generation projects under Section 80 IA of the Income Tax Act, upto the Scheduled Commercial Operation Date of the Power Station, such non-extension shall be deemed to be a Change in Law.



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 principle 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.

.....
b) Operation Period

As a result of Change in Law, the compensation for any increase/decrease in revenues or cost to JPL shall be determined and effective from such date, as decided by the CERC whose decision shall be final and binding on both the Parties, subject to rights of appeal provided under applicable Law.

Provided that the above-mentioned compensation shall be payable only if and for increase/ decrease in revenues or cost to JPL is in excess of an amount equivalent to one percent (1%) of Letter of Credit in aggregate for a Contract Year.

13.4 TARIFF ADJUSTMENT PAYMENT ON ACCOUNT OF CHANGE IN LAW

13.4.1 Subject to Article 13.2, the adjustment in Monthly Tariff Payment shall be effective from:

- (a) the date of adoption, promulgation, amendment, re-enactment or repeal of Law or Change in Law; or
- (b) the date of order/judgment of the Competent Court or tribunal or Indian Governmental Instrumentality, if the Change in Law is on account of a change in interpretation of Law.

13.4.2 The payment for Changes in Law shall be through Supplementary Bill as mentioned in Article 11.8. However, in case of any change in Tariff by reason of Change in Law, as determined in accordance with this Agreement, the Monthly Invoice to be raised by JPL after such change in Tariff shall appropriately reflect the changed Tariff.”

38. The term “Law” has been defined under Article 1.1 of both the Haryana PPA and TPCTL PPA as under:

“Law” shall mean in relation to this Agreement, all laws including Electricity Laws in force in India and any statute, ordinance, regulation, notification or code, rule, or any interpretation of any of them by an Indian Governmental Instrumentality and having force of law and shall further include without limitation all applicable rules, regulations, orders, notifications by an Indian Governmental Instrumentality pursuant to or under any of them and shall include without limitation all rules, regulations, decisions and orders of the Appropriate Commission.”

39. The events broadly covered under ‘Change in Law’ are as under:

- a) Any enactment, bringing into effect, adoption, promulgation, amendment, modification, or repeal of any law, or



- b) Any change in interpretation of any Law by a Competent Court of law, Tribunal, or Indian Governmental Instrumentality acting as the final authority under law for such interpretation, or
- c) Any change in any consents, approvals or licenses available or obtained for the Project, otherwise than for default of JPL
- d) The purpose of compensating the Party affected by such Change in Law is to restore through monthly tariff payments, to the extent contemplated in Article 13, the affected party to the same economic position as if such "Change in Law" has not occurred.
- e) The adjustment in monthly tariff payment shall be effective from the date of adoption, promulgation, amendment, re-enactment, or repeal of Law or Change in Law or the date of order/judgment of the Competent Court or tribunal or Indian Governmental Instrumentality if the Change in Law is on account of a change in interpretation of Law.
- f) The decision of the Commission with regard to the determination of compensation and the date from which such compensation shall become effective shall be final and binding on both parties, subject to rights of appeal provided under the Act.
- g) The compensation shall be payable for any decrease in revenue or increase in expenses to the seller (JPL) in excess of an amount equivalent to 1% of the value of standby Letter of Credit in aggregate for the relevant Contract Year.

40. Having taken note of the scope of the Change in Law provisions in the PPAs, we now proceed to examine the Petitioner's Change in Law claim, i.e., enactment of GST Laws, which led to the additional expenditure in respect of Operation & Maintenance of the Project during the Operation Period.

41. In the present case, the cut-off date for reckoning the Change in Law event for the Haryana PPA and TPTCL PPA was 3.3.2008 and 20.1.2009, respectively. Indubitably, the GST Laws as promulgated by the Govt. of India w.e.f. 1.7.2017

qualifies as the Change in Law under sub-clause (i) of Article 13.1.1 of the PPAs. The Commission has also, in a plethora of its orders recognized the enactment/promulgation of GST Laws and the subsuming/abolition of specific taxes, duties, cess, etc., in the GST as a Change in Law event(s). In the present case, the impact of GST Laws has been claimed in respect of various O&M activities of the Project during the Operation Period. The Petitioner has categorised the Change in Law impact on its O & M activities under three broad categories, namely, Materials, Services, and Insurance, and has indicated the GST impact for the period FY 2017-18 to FY 2021-22 as under:

Financial Year	Impact on Material (increase)	Impact on Service (increase)	Impact on Insurance (increase)	Total Impact (increase)
2017-18	68,21,628	1,99,90,406	-	2,68,12,034
2018-19	1,65,36,247	3,88,97,087	29,66,400	5,83,99,734
2019-20	2,50,43,477	3,90,27,154	70,15,078	7,10,85,709
2020-21	2,71,42,070	3,98,92,280	65,32,611	7,35,66,961
2021-22	3,18,30,204	3,69,72,259	62,73,876	7,50,76,338

42. In Parampujya Judgment, the APTEL, while allowing the Change in Law compensation on account of GST Laws towards Operation & Maintenance expenses/activities, has held as under:

“.....103. The Central Commission by the impugned orders, has kept out the expenditure additionally arising on account of increase in tax liability attributable to Operation & Maintenance (“O&M”) contracts from the relief granted on the basis that outsourcing of O&M activity was purely a commercial decision taken by the SPPDs, it not being the requirement under the PPA. The reasoning is set out in the impugned orders on the following lines (quoted from Order dated 27.03.2020 which is subject matter of appeal no. 131 of 2022);

“The Commission is of the view that the recurring expenses referred to in Article 12 of the PPAs includes activities like salary, tax expenses, estimated maintenance costs, and monthly income from leases etc. The Commission notes, based on the records submitted in the context of the petitions, that outsourcing of ‘Operation and Maintenance’ services is not the requirement of the PPAs/ bidding documents. The concept of outsourcing is neither included expressly in the PPAs nor is it included implicitly in Article 12 of the PPAs. The Commission is of the view that in the Competitive Bidding Scenario, the SPDs bid levelled tariff without disclosing the details of the calculations of the project cost. It has already been held by the

Commission in its earlier Orders that it is a pure commercial decision of the Petitioners taken for its own advantage. In the event the Petitioners choose to employ the services of other agencies, it cannot increase the liability for the Respondents. Therefore, the Commission holds that claim of the Petitioners on account of additional tax burden on operation and maintenance expenses (if any), is not maintainable. This view is in consonance with the view taken by the Commission in Order dated 09.10.2018 in Petition No. 188/MP/2017 & Ors. case titled Acme Bhiwadi Solar Power Private Limited –v- Solar Energy Corporation of India and Ors. The Commission does not find merit in the argument of the Petitioners that compensation on O&M expenses should be allowed on lines of the Central Electricity Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2012. The present Petition relates to section 63 of the Electricity Act, 2003 and as such drawing reference to cost plus tariff fixation principles, is misplaced.”

104. There can be no two views as to the fact that O&M expenses form part of the recurring expenditure within the meaning of change in law clause contained in Article 12. Concededly, the appellant SPPDs have availed of O&M services by outsourcing them, statedly following standard industry practice.

105. Questions as to the correctness, propriety and legality of similar view taken by the Central Commission in another matter had come up before this tribunal, decided by judgment dated 27.04.2021 reported as Coastal Gujarat Power Limited v. CERC & Ors. 2021 SCC Online APTEL 10. We had held in the said case as under:

“67. It is argued that the operation and maintenance of the plant is the responsibility of the appellant and if the appellant seeks to employ services of other agencies, the same cannot increase the liability of the Procurers; this was a commercial decision and choice of the appellant; and that if the appellant had not employed services of outside agencies, there would have been no impact of the alleged changes of tax rates.

68. We find no substance in the above submissions. The work contractors are engaged by the appellant within its discretion and there is no inhibition in PPA in such regard. In fact, it is pointed out by the appellant, and rightly so, that Article 7 of the Model PPA which was a part of the RFQ documents had envisaged that the generator (Seller) alone shall be liable to operate and maintain the power station at its own cost but, in the final PPA that was executed between the parties, the clause to such effect was removed, this clearly indicative of the common understanding of the parties that the generator (CGPL) would not be solely responsible for O&M, the definition of 'Project Documents' read with 'O&M contracts' contemplating that a third-party O&M contractor might be appointed by it (CGPL).

69. It is wrong to argue that because the appellant stands in the capacity of the Principal in relation to the work contractors engaged by it, it is responsible for the action (or inaction) on their part in such matters as have financial implication for the Procurers because the option exercised by the contractor is not a change in law but part of the commercial and business decision and has to be dealt inter se the former two. ...

91. It is not disputed that the appellant (CGPL) is a project specific Special Purpose Vehicle (SPV) set up solely for the purpose of generating and supplying electricity exclusively to the Procurers in accordance with the PPA. It engages in no other business undertaking. All services availed by CGPL are undoubtedly used for its sole objective of generating electricity for supply to the Procurers under the PPA.



The increased cost towards Krishi Kalyan Cess and Swachh Bharat Cess affects the cost of the business of the appellant for generation and sale of electricity. The twenty services left out by CERC also are connected to the commercial activities of the appellant adding to its cost of production and supply. In this view, there was no justification for disallowance of the claim for additional financial burden on other services covered under Swachh Bharat Cess and Krishi Kalyan Cess contrary to Article 13 of the PPA.

92. We agree with the submission that CERC erred to introduce an extraneous qualification or filter which is not borne out from the PPA. The qualifying factor under Article 13 of the PPA is whether or not a CIL event has an impact on the cost of, or revenue from, the business of generation and sale of electricity by the seller (CGPL). In this view, the test applied by CERC that taxable service should have a "direct relation to the input cost of generation" is extraneous to the provisions of the PPA and must be rejected. It is trite that explicit terms of a contract (PPA) bind and it is not open for the adjudicating forums to substitute their own view on the presumed understanding of the commercial terms by the parties [Nabha Power Limited v. PSPCL & Anr. (2018) 11 SCC 508]. Once it is established that levy of a tax on services availed by CGPL has an impact on the cost of or revenue from business of generation and sale of electricity whether directly or indirectly compensation must follow."

106. The above view has been followed by this tribunal in at least two subsequent decisions reported as Azure Solar Private Limited v. CERC & Ors. 2022 SCC OnLine APTEL 24 and Azure Power Eris Private Limited v. BERC & Ors. 2022 SCC OnLine APTEL 8.

107. The above decision applies on all fours. We adopt the view taken in case of Costal Gujarat Power Limited (supra) and disapprove the decision of the Central Commission on the subject as quoted above and hold that the appellant SPPDs are entitled to compensation for additional expenditure (recurring /non-recurring) towards O&M activities as well, notwithstanding the fact that they were outsourced.

CONCLUSION

108. For the foregoing reasons, Appeal no. 35 of 2022 (Chhattisgarh State Power Distribution Company Ltd. v. Central Electricity Regulatory Commission & Ors.) must fail. It is accordingly dismissed.

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."



43. Pertinently, the above judgement passed by the APTEL in Appeal No. 256 of 2019 in the case titled 'Parampujya Solar Energy Private Limited vs. Central Electricity Regulatory Commission and Ors', is under challenge by way of Civil Appeal No. 8880 of 2022, before the Hon'ble Supreme Court and *vide* its interim order dated 12.12.2022, the Hon'ble Supreme Court, has stayed the order passed by the APTEL till the pendency of the dispute.

44. In view of the above APTEL judgement, we hold that the additional expenditure incurred toward the O&M expenses/activities on account of GST Laws is Change in Law. This is, however, subject to final judgement of Hon'ble Supreme court.

45. Further, from a list of goods and services in respect of which the Petitioner has claimed the GST impact, Haryana Discoms have also pointed out that such services include 'construction of residential blocks,' Delhi Office Facility Management,' Basketball coach services,' Mobile health services for CSR,' Indirect Tax Litigation Services,' 'Guesthouse Manpower Services,' Leadership Programme,' "Parking and toll tax,' hiring of cars,' food expenses,' stage, pandal & light expenses,' banner and advertising expenses', and 'canteen,' etc., which are completely unrelated to the power generation in the Plant. It has been further submitted that the intent of compensation under Clause 13.2 is to compensate for the cost directly related to the input and sale of electricity. Also, in competitive bid projects, the variable component of the tariff is not based on actual expenditure, and it is for the bidder to undertake ancillary services related to running the Project as per the quoted tariff. Therefore, a Change in Law compensation for such services cannot be permitted. It has been further submitted that the reliance on APTEL's CGPL judgment is misplaced inasmuch as the said judgment does not deal with the services claimed in the present

case, and the operative part of the said judgment also holds that activities to be considered are those required to be undertaken by a generating company for the purpose of generation and supply of electricity to the Procurers.

46. *Per contra*, the Petitioner has submitted that in the Coastal Gujarat Judgment, the APTEL has allowed all the claims raised by the appellant CGPL therein and has held that once a generator has availed the services and that has an impact on the cost of revenue from the business, the compensation for the same ought to be granted to such generator. Further, all the services availed by the appellant therein are used for the objective of generating electricity for supply to the Procurers. The compensation envisaged cannot be restricted to the activity of generating electricity. The entire gamut of activities connected with the generation, wheeling, etc., of electricity will have to be treated as the “business of supply of electricity.”

47. Although it is apparent that in the Coastal Gujarat Judgment, the APTEL has rejected the test of “direct relation to the input cost of generation” as employed by this Commission in its order dated 21.2.2018 and proceeded to hold that the expression “Supply of electricity” has to be interpreted to mean all activities that are required to be undertaken by a generating company for the purpose of generation and supply of electricity to the Procurers, it also has to be bear in mind that said findings were rendered by having regard to the list of activities involved in the CGPL’s case and cannot be blanketly applied to in all the cases irrespective of the nature of activities undertaken by the generator. In the present case, a perusal of the list of services/goods in respect of which the net GST impact has been claimed as Change in Law reveals the inclusion of services such as Behavioural Programmes on Competencies, Background verifications, Leadership Programme, Stage, Pandal,

Light & Sound Arrangements, design of building & toilet CSR, Defensive Driving Training, Horticulture, New Year Celebrations, Construction of Beauty Parlour & Boutique, AMC for Swimming Pool, Interpreter Expert Services, Printing of JPL magazines, etc. which do not have any nexus – either directly or indirectly – with the business of selling electricity by JPL to its Procurers and hence, even the GST impact on such activities, in our view, cannot be considered for awarding a Change in Law compensation from the Procurers and ultimately, the consumers at large. It is noticed that the Petitioner has also submitted that for the purpose of convenience, its Change in Law claims pertaining to Material and Services can be further sub-categorized into technical and support functions. The technical sub-category of Material includes the cost associated with the technical operation of the Project, i.e., operation of the Ash Handling Plant, Coal Handling Plant, C&I Deptt., Chemistry Deptt., Electrical Deptt., Fire & Safety Deptt., Mechanical Deptt., Environment, Overhauling Cost, Production Deptt., Technical Support, Performance & Efficiency Deptt., etc. Whereas, the support sub-category *inter alia* includes costs pertaining to various activities incurred by the Support Deptts. such as Administration Deptt, Civil Deptt., Commercial Deptt., Corp. Deptt., Finance Deptt., Human Resource Deptt., IT Deptt., National Occupational Safety Association, Safety Health & Environment Deptt. and other miscellaneous expenses. Similarly, the technical sub-category of Material includes raw materials required for the operation of the Project, and the supporting sub-category of Material includes miscellaneous materials required in the Plant, which includes necessary equipment for the IT dept. and Civil works of the Plant, etc. However, as such, the Petitioner has not furnished the bifurcation of its total claims under the categories of Material and Services into the sub-categories of Material - technical & Material – support and Services - technical & Services - support, only the claims under the sub-categories, Material - technical and Services - technical, in our view, can be

considered to have a reasonable nexus with the business of selling electricity by JPL to its Procurers. Accordingly, the Petitioner shall be entitled to Change in Law relief only in respect of its claims under Material – technical and Service – technical, and for the purpose of their reimbursement, the Petitioner shall furnish a detailed statement bifurcating the claims under Material - technical & supporting and Services – technical & support, which shall be endorsed by Senior Management of JPL and supported by an auditor certificate.

48. However, it would be relevant to note that the Coastal Gujarat Judgment, as well as the consequent remand order passed by the Commission dated 20.12.2021, have been challenged before the Hon'ble Supreme Court in Civil Appeal Nos. 2295-2296 of 2021, titled Uttar Haryana Bijli Vitran Nigam Ltd. and Anr. v The Tata Power Company Limited and Ors. and the Hon'ble Supreme Court, by way of its order dated 14.10.2022, has stayed the above orders on a condition that the procurers have to deposit the balance amount due and payable under the impugned orders with the Registry of the Hon'ble Supreme Court and on such deposit, the contesting Respondent/ CGPL is permitted to withdraw the amount by furnishing the bank guarantee to the satisfaction of the Registry and the withdrawal of such amount shall be subject to the outcomes of appeals. The relevant extract of the said order is as under:

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

49. Similarly, the APTEL's Parampujya judgment has also been challenged before the Hon'ble Supreme Court in Civil Appeal No. 8880/2022 titled as *Telangana*



Northern Power Distribution Company Limited & Anr. v. Parampujya Solar Energy Pvt. Ltd. and Ors. and connected matters, wherein the Hon'ble Supreme Court vide its order dated 12.12.2022 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."

50. Keeping in view that the issue/Change in Law claim involved in the present case is similar to that considered by the APTEL in the Parampujya judgment, we are inclined to adopt the same measure as adopted by the Commission in the subsequent cases in light of the above order dated 12.12.2022 of the Hon'ble Supreme Court. Therefore, the direction issued in this order allowing the Change in Law compensation towards the GST impact on the O&M activities/expenses shall not be enforced and shall be subject to the further orders of the Hon'ble Supreme Court in Civil Appeal No. 8880/2022 and other connected matters.

51. The Respondents, Haryana Discoms have also submitted that as per the proviso to the Article 13.2 of the PPAs, the 1% of the aggregate annual LC amount has to be deducted from the claimed amount for the award of any compensation under the instant Petition. The Respondents have submitted that perusal of the said proviso reveals that it can be broken up into two parts: (a) the entitlement to compensation for Change in Law can only be established 'if' claimed amount exceeds 1% of LC amount in a year –it is qualified by the expression 'if,' and (b) the entitled amount is over and above the 1% of LC amount in a year – it is qualified by the expression 'for'.

52. *Per contra*, the Petitioner has submitted that the Commission, in its various orders, has already held that the threshold amount beyond which the compensation

for a Change in Law can be claimed is 1% of the aggregate LC amount for a contract year and the contrary averments of Haryana Discoms have no basis in law or contract.

53. We have considered the submissions made by the parties. As per the Respondents, Haryana Discoms, by virtue of the qualification added by the expression 'for' in the *proviso* to Article 13.2, the Petitioner is entitled to a Change in Law compensation only after the deduction of an amount equivalent to 1% of LC from its Change in Law claims. However, we are unable to agree with such contention. The qualification added by the expression 'for' in the said proviso, i.e., compensation shall be payable *for* the increase/decrease in revenues or cost to the Seller is in excess of an amount equivalent to 1% of LC in aggregate for a Contract Year, it does not lead to an inference that an amount equivalent to 1% of LC is required to be deducted from the Change in Law compensation to be paid to the Seller. It merely emphasizes the threshold for payment of the Change in Law compensation under Article 13.2(b) and does not require the deduction/adjustment of an amount equivalent to 1% of LC from the Change in Law compensation payable once the increase /decrease in revenues or costs to Seller is in excess of 1% of such LC amount.

54. The Respondents have also sought to contest the claims of the Petitioner on the grounds of they being un-supported by sufficient documents, incomplete calculations inasmuch as it has failed to provide the effects of taxes subsumed, relevant invoices with proof of GST payments, details of input tax credit availed, and mitigating steps taken, etc. In response, the Petitioner has submitted that it has placed on record certain purchase orders and invoices demonstrating the Change in Law impact and the Petitioner has already undertaken to file additional documents in support of its claim, if required, at a later stage. The Petitioner has also submitted that

the parties can verify the claims of the Petitioner at the time of reconciliation once the Commission upholds the claim made by JPL. Also, along with its additional affidavit dated 14.9.2023, the Petitioner has furnished an Auditor Certificate dated 1.9.2023, which explicitly certifies that the effect of taxes subsumed has been considered by the Petitioner whilst ascertaining its Change in Law claim and it has not availed the benefit of Input Tax Credit.

55. We have considered the submissions made by the parties. The Petitioner has furnished an auditor certificate dated 8.12.2022 in support of its Change in Law claim arising out of the GST implication on the O&M activities/expenses. Moreover, the Petitioner has also furnished an auditory certificate dated 1.9.2023 certifying that the effect of taxes subsumed has been considered by the Petitioner while arriving at its Change in Law claims and that it has not availed of the benefit of Input Tax Credit. The Petitioner has also submitted that it has placed certain purchase orders and invoices to demonstrate the actual impact and that it has already undertaken to furnish the additional documents in support of its claim if required at a later stage. Further, by relying upon the previous orders of this Commission, the Petitioner has submitted that the review of supporting documents can be undertaken between the parties at a later stage, i.e., during the exercise of reconciliation. Keeping in view the above and the approach adopted by the Commission in its previous orders, we hold that while claiming the Change in Law compensation as allowed under this order, the Petitioner will make available to the Procurers all the relevant documents, exhibiting clear and one-to-one correlation between the Project and supply of goods or services, duly supported by the relevant invoices and Auditor Certificate.

56. The issue is decided accordingly.



Issue No. 4: Whether 'Carrying Cost' can be granted to the Petitioner towards compensation for Change in Law?

57. As per the Petitioner, it is entitled to Carrying Costs for (i) from the date which the Petitioner incurred the additional cost on account of the enactment and promulgation of the GST Laws till the approval of Change in Law Event by the Commission, and (ii) From the date of order of the Commission approving Change in Law till the actual payment is received in entirety by the Petitioner. It is the Petitioner's contention that Article 13 of both the PPAs encapsulate the principle of restoration/restitution as it clearly mentions that the affected party has to be restored to the same economic position as it was prior to the occurrence of the Change in Law Event. As per the Petitioner, it is entitled to its claim viz. increase in operating cost due to promulgation of GST Laws to the tune of Rs. 30,49,40,775/- (Rs. 27,44,46,698/- from Haryana DISCOMs and Rs. 3,04,94,078/- from TPTCL) (for FY-2017-18 till FY 2021-22) along with carrying cost/interest/late payment surcharge as per the terms of the respective PPAs and applicable laws. Additionally, JPL is also entitled to the additional expenditure incurred/to be incurred by it due to the GST Laws from FY 2022-23 till the end of the term of the PPAs in the ratio of power supplied along with carrying cost as per the provisions of the PPAs.

58. Contrary to this, Haryana Discoms have contended that there is no provision in the PPA regarding carrying cost or interest for the period till the determination of the relief amount on account of 'Change in Law.' Whereas, TPDDL has contended that JPL is not entitled to claim any carrying cost for the reason that it delayed in approaching the Commission in December 2022 for its Change in Law claim which arrived on 1.7.2017.

59. It is a settled principle of law that carrying cost is payable as per the provisions of the PPA to compensate the affected party for the time value of money deployed on account of change in law events. If the PPAs contain any restitutionary clause then the party is allowed to be restored to the same economic position as the Change in Law events have not occurred. This is in line with the Hon'ble Supreme Court judgement in *Uttar Haryana Bijli Vitran Nigam Ltd. & Anr. v. Adani Power Ltd. & Ors* dated 25.2.2019, wherein it was held that in case there is an in-built restitutionary principle in the PPA, the affected party has to be put in the same economic position as if such a change in law had not occurred, i.e., the party must be given the benefit of restitution as understood in civil law. Since, in the present matter, both the PPAs have inbuilt restitutionary principles, the Petitioner is entitled to carrying cost on the additional expenditure incurred due to the Change in Law event.

60. As regards the contention of Respondents that the Petitioner has delayed in approaching the Commission and thus, no carrying cost is payable, a similar issue has already been considered by the Commission in its order dated 23.6.2023 in Petition No.513/MP/2020, wherein the Commission has held as under:

"59. As per the settled principle of law, APMuL is entitled for carrying cost on its claims for change in law events. However, the Respondents have submitted that APMuL has filed the present Petition only in 2020 whereas a number of the events claimed as 'Change in Law' by APMuL date back to 2015 and therefore, APMuL cannot claim carrying cost for those events where there has been delays and laches on the part of the APMuL to approach the Commission. The principle that the delays in filing Petition/information would result in denial of carrying cost has been settled by APTEL vide its judgement dated 19.9.2007 in Appeal No 70 of 2007 in the case of matter of Maharashtra State Electricity Distribution Co. Ltd v. Maharashtra Electricity Regulatory Commission, judgment dated 30.5.2014 in Appeal Nos. 147, 148 and 150 of 2013 in the case of Torrent Power Ltd v. Gujarat Electricity Regulatory Commission and judgment dated 4.12.2014 in Appeal No 45 of 2014 in Paschim Gujarat Vij Company Ltd and Ors v. Gujarat Electricity Regulatory Commission.

60. We have considered the submission of Respondents. APTEL in its judgement dated 30.5.2014 in Appeal Nos.147, 148 and 150 of 2013 has referred to the Judgement dated 28.11.2013 in Appeal No. Appeal No.190 of 2011 & 162 and 163 of

2012 wherein the following principles have been laid down with regard to carrying cost claimed by distribution companies for revenue gap:

61. This judgement allows carrying cost on revenue gap where the deferment is on account of reasons other than attributable to the distribution licensee. Conversely, if the deferment is attributable to distribution licensee, then carrying cost can be legitimately denied. Extrapolating the same principle in case of delay in filing the petition for Change in Law claims by a generating company, it can be held that the carrying cost would not be admissible if the claims are not brought before the Commission as soon as possible after becoming aware of the Change in Law events. We consider a maximum gap of six month as reasonable between the occurrence of Change in Law event and filing of the petition. Accordingly, we hold that where there is a lapse of six months or more between the occurrence of Change in Law affecting the Seller and filing of the petition, no carrying cost shall be admissible for the period prior to filing of the petition. In case, the Order in Petition No. 167/MP/2021 petition is filed within six months, carrying cost shall be admissible from the date the seller is affected by change in law till the date of the Order provided the seller is eligible as per Article 13.2(b) of the PPA.”

61. Therefore, in line with the previous order of the Commission and since the present case also, there is a lapse of more than six months between the occurrence of the Change in Law event affecting the Petitioner and the filing of the Petition on 20.12.2022 in respect of the Change in Law event pleaded in the Petition, we hold that the Petitioner shall be entitled to the carrying cost incurred towards Change in Law event allowed under this Order only from the date of filing of the Petition i.e. 20.12.2022 till the date of issuance of the order.

62. Insofar as the rate of carrying cost is concerned, as considered by the Commission in its various orders, including the order dated 17.9.2018 in Petition No. 235/MP/2015 [AP(M)L vs UHBVNL & Ors.], the Petitioner shall be eligible for the carrying cost at the actual interest rate paid by the Petitioner for arranging the funds (supported by the Auditor’s Certificate) or the rate of Interest on Working Capital as per the applicable CERC Tariff Regulations or the Late Payment Surcharge Rate as per the PPAs, whichever is the lower. Once the supplementary bill is raised by the Petitioner in terms of this order, the provisions of the Late Payment Surcharge in the PPAs will kick in if the payment is not made by the Procurers.

63. The Respondents, Haryana Discoms, in their written submissions, have also urged that the payment of compensation granted, if any, in the present case may be allowed on annuity payment at carrying cost which is lower than the actual interest rate, normative interest rate or LPS. However, keeping in view that the quantum of Change in Law claims for the past period as allowed under this Order, as well as having regard to the fact that the impact of such Change in Law will be on a recurring basis (monthly basis), we are not inclined to consider the payment of Change in Law compensation on an annuity basis.

64. Also, since the impact of the above Change in Law event will subsist over the tenure of the PPAs, the Petitioner shall be entitled to the Change in Law compensation due to the GST impact on the O & M expenses/activities for the corresponding period, which shall be raised by the Petitioner by way of the supplementary invoices along with all the requisite document/details and an auditor certificate. Such compensation, for the past as well as for future periods, shall be shared by the Procurers in proportion to their scheduled energy. Needless to add, both the TPTCL PPA and Tata PSA being back-to-back, TPDDL shall be liable to make Change in Law compensation to TPTCL as paid by it to the Petitioner under the TPTCL PPA.

65. The Commission has not computed the threshold value for the Change in Law compensation becoming payable during the Operation Period as per *proviso* to Article 13.2(b) of the PPAs. The Change in Law compensation as allowed under this Order shall become payable only if the impact due them exceeds the threshold value as provided in the aforesaid article.

66. This issue is answered accordingly.



67. In view of the above discussions and findings, Petition No. 17/MP/2023 is disposed of.

Sd/-
(Harish Dudani)
Member

sd/-
(Ramesh V. Babu)
Member

sd/-
(Jishnu Barua)
Chairperson