



नई दिल्ली
NEW DELHI

याचिका संख्या./ Petition No. 189/MP/2024

कोरम/ Coram:

श्री जिष्णु बरुआ, अध्यक्ष/Shri Jishnu Barua, Chairperson
श्री रमेश बाबू वी., सदस्य/Shri Ramesh Babu V., Member
श्री हरीश दुदानी, सदस्य/Shri Harish Dudani, Member

आदेश दिनांक/ Date of Order: 29th of January, 2025

IN THE MATTER OF:

Petition under section 79(1)(b) & (f) of the Electricity Act, 2003 read with Chapter IV of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 2023 and Article 17 of the power purchase agreements dated 25.11.2021 seeking an appropriate adjustment/compensation to offset financial/ commercial impact of change in law events on account of increase in the rate of goods and services tax from 5% to 12% / 18% by way of notification no. 8/2021- Central tax (rate) dated 30.09.2021 and grant of consequential relief thereto along with affidavit.

AND IN THE MATTER OF:

M/s Beempow Energy Private Limited,
8th Floor, DLF Square, Jacaranda Marg 138,
DLF Phase II, Gurgaon,
Haryana - 122 002

.... **Petitioner**

Versus

1. Madhya Pradesh Power Management Company Limited
Shakti Bhawan, Rampur,
Jabalpur, Madhya Pradesh – 482 008

2. West Central Railway

3rd Floor, Indira Market,
Jabalpur, Madhya Pradesh - 482 001

3. Rewa Ultra Mega Solar Limited,

Urja Bhawan, Link Road No. 2,
Shivaji Nagar, Bhopal,
Madhya Pradesh – 462 016

...**Respondents**

Parties Present:

Ms. Mannat Waraich, Advocate, BEPL
Shri Sujit Ghosh, Sr. Advocate, BEPL
Ms. Ananya Goswami, Advocate, BEPL

आदेश/ ORDER

The Petitioner, M/s Beempow Energy Private Limited (BEPL), is engaged in the business of development, building, owning, operating, and maintaining utility-scale grid-connected Solar Power Projects for the generation of solar power. The Government of Madhya Pradesh and the Government of India have set up various solar parks, including the Agar Solar Park in the State of Madhya Pradesh. Rewa Ultra Mega Solar Limited (RUMSL) is designated as the solar park project developer for the Agar Solar Park in the State of Madhya Pradesh by the Ministry of New and Renewable Energy (MNRE). The 550 MW capacity of the Agar Solar Park is split into 2 (two) units of ground-mounted grid-connected solar photovoltaic power plants to be developed on a pre-identified land parcel inside the Agar Solar Park, with the unit capacity of 200 MW (Unit 1) and 350 MW (Unit 2) respectively. RUMSL carried out the bid process to select suitable solar power generators. The SPDs, including the Petitioner, for the 2 (two) units had entered into separate power purchase agreement(s) (PPAs) with the procurers, namely, MPPMCL and Indian Railways (acting through WCR) (collectively, the Procurers) and RUMSL. RUMSL issued RfP No. RUMSL/2019-20/719/335 dated 26.01.2020. The Petitioner submitted its bid on 21.06.2021. The e-Reverse Auction was held on 12.07.2021, and the Petitioner was declared as a successful bidder for the development and establishment of a 350 MW capacity Solar Power Project in the Agar Solar Park (Unit 2). RUMSL issued a Letter of Award dated 01.09.2021 (LoA). Pursuant to the LoA, on 25.11.2021, the Petitioner entered into two Tripartite Power Purchase Agreements (PPAs) with MPPMCL and Railways with RUMSL for supply of 350 MW solar power from its Project. The tariff of Rs. 2.444/kWh was adopted by the Commission vide Tariff Adoption Order dated

07.04.2022 in 278/AT/2021. The Petitioner has filed the present petition seeking an appropriate adjustment/compensation to offset the financial/commercial impact of Change in Law events on account of an increase in the rate of goods and services tax from 5% to 12%/18% by way of Notification No. 8/2021- Central Tax (Rate) and Notification No. 8/2021- Integrated Tax (Rate) dated 30.09.2021 as a Change in Law Event.

2. Respondent No. 1, Madhya Pradesh Power Management Company Limited (MPPMCL), is a company created with the principal object of engaging in the business of distribution and supply of electricity and is the holding company of all the three Discoms in the State of Madhya Pradesh. Along with 3 (three) distribution licensees to procure power on behalf of retail supply to consumers, MPPMCL has proposed to procure power from the Agar Solar Park.
3. Respondent No. 2, Indian Railways, under the Ministry of Railways, Government of India, has started to procure power directly from the power generators and proposed to procure electricity from the Agar Solar Park. Further, the Railways Energy Management Company Limited (REMCL) (a joint venture company of Indian Railways and Rail India Technical and Economic Service Limited) is responsible for facilitating the procurement of power for the Indian Railways from the Agar Solar Park.
4. Respondent No. 3, i.e., RUMSL, is a joint venture company between Solar Energy Corporation of India (SECI) and Madhya Pradesh Urja Vikas Nigam Limited (MPUVNL). RUMSL facilitates large-scale solar power projects in the State of Madhya Pradesh, including the Agar Solar Park. RUMSL has also been entrusted with the responsibility to carry out the Bid Process to select suitable solar power generators to develop, operate and maintain the 2 (two) units. The Petitioner has entered into two Tripartite PPAs with MPPMCL and Railways with RUMSL for the supply of 350 MW solar power from its Project.
5. The Petitioner has made the following prayers:
 - (a) *Admit the present Petition;*
 - (b) *Declare the increased rate of CGST and SGST/IGST on renewable energy devices and parts for their manufacture imposed vide Notification No. 8/2021-Central Tax (Rate) and Notification No. 8/2021- Integrated Tax (Rate) dated September 30, 2021 (effective October 1, 2021) as Change in Law in terms of the PPAs which have led to an increase in the expenditure for the respective Projects.;*

- (c) Evolve a suitable mechanism to compensate the Petitioner for the increase in expenditure incurred by the Petitioner on account of Change in Law;
- (d) Direct Respondent to compensate the Petitioner towards CGST and SGST/IGST, as a one-time lump sum amount or mechanism devised by this commission in prayer (c) above;
- (e) Grant carrying cost along with interest on carrying cost from the date of incurring of the cost by the Petitioner occurrence of Change in Law event i.e., increase in the rates of CGST and SGST/IGST till the date on which the full and final payment is made to the Petitioner, thereby, restoring the Petitioner to the same economic position as before the occurrence of the Change in Law event(s);
- (f) Allow legal and administrative costs incurred by the Petitioner in pursuing the instant petition; and
- (g) Pass any such other and further reliefs as this Hon'ble Commission deems just and proper in the nature and circumstances of the present case.

Factual Matrix:

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

Location	Agar Solar Park, Madhya Pradesh
Scheme	Scheme for Development of Ultra Mega Renewable Energy Power Parks (UMREPP)
Nodal agency	RUMSL
Tariff	Rs.2.444/kWh
Capacity (MW)	Unit-2- 350 MW (Out of 550 MW)
Power	Ground-mounted solar photo voltaic Projects
Date of Notification No.1/2017-Central Tax (Rate) (2017 GST Notification)	01.07.2017
RfS issued on	26.01.2020
Bid submitted on	21.06.2021
E-Reverse auction held on	12.07.2021
LOA issued on	01.09.2021
Date of Notification of 8/2021- Central Tax (Rate) (2021 GST Notification)	30.09.2021
Two Tripartite PPAs with MPPMCL and Railways with RUMSL for supply of 350 MW solar power from its Project executed on	25.11.2021
Adoption of Tariff by the Commission through Petition No. 278/AT/2021	07.04.2022

Unit SCoD of the project as per PPAs (<i>As per Article 4.1(b) of the PPAs, Nineteen months from the date of execution of PPA</i>)	24.06.2023
Long stop date (<i>As per Article 4.5(a) of the PPAs, Six months from Unit SCoD</i>)	24.12.2023
COD of the project	15.04.2024

7. The present petition was filed on 29.04.2024. The petition was listed for hearing on 19.09.2024, wherein the Commission, after hearing the submissions of the Petitioner, admitted the Petition. During the hearing conducted on 28.10.2024, the Petitioner submitted that as per the Record of Proceedings dated 19.09.2024, a notice was issued to the Respondents, permitting them to file their reply, if any, within two weeks. However, none of the Respondents have filed any reply and if the Commission deemed fit, a final opportunity may be accorded to the Respondents to file their reply, if any. The Commission noted that none was present on behalf of the Respondents despite the notice. The Commission granted a final opportunity to the Respondents to file their reply within two weeks and the matter was reserved for orders.
8. We note that despite notices, the Respondents have not filed any reply till date.

Analysis and Decision:

9. We have heard the learned counsels for the Petitioner and have carefully perused the records and considered the submissions of the parties.
10. On the basis of the submissions of the Petitioner, the following issues arise for adjudication.

Issue No. I: Whether the introduction of Notification No. 8/2021-Central Tax (Rate) and Notification No. 8/2021- Integrated Tax (Rate) dated September 30, 2021 (effective October 1, 2021) amounts to Change in Law in terms of the PPAs dated 25. 11. 2021? AND Whether the Petitioner is entitled to compensation towards additional expenditure on account of the Change in Law event in terms of Article 17 of the PPAs?

Issue No. II: What should be the discount rate for the calculation of Annuity for payment of compensation (if any) on account of Change in Law?

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

11. Before proceeding to the main issues, we feel it is imperative to mention here that relevant Articles of the PPAs dated 25.11.2021 stipulate as under:

4. CONSTRUCTION PERIOD

4.1 Commencement and Duration

(a) Notwithstanding RUMSL's fulfilment of its obligation set out in Article 2.4, the SPD fulfils its conditions subsequent set out in Article 2.1 (b)(i). The construction period for the Unit shall continue until the Unit COD is achieved (**Construction Period**).

(b) Subject to Article 2.2(b) and Article 2.4(c), the SPD shall achieve the Unit COD, within **19 (nineteen) Months from the Execution Date, except upon occurrence of any event set out in Article 11.1 (Unit SCOD)**. Notwithstanding anything to the contrary contained in this Agreement, any extension(s) to the Unit SCOD in accordance with the provisions of this Agreement shall not go beyond the Unit COD as specified under Article 4.4(f).

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4.5 Delay Liquidated Damages

(a) If the SPD fails to achieve the Unit COD by the Unit SCOD for reasons other than those set out in Article 11.1, then the Procurer shall have the right to encash the Performance Bank Guarantee for an amount equivalent to INR 3,467 (Indian Rupees Three Thousand Four Hundred Sixty Seven Only) per MW per Day for the capacity not commissioned, for each Day of delay from the Unit SCOD, **until the expiry of 6 (six) Months from the Unit SCOD (Long Stop Date)** subject to the overall liability set out in accordance with Article 11.3 (**Delay Liquidated Damages**).

In the instant petition, the PPAs were executed on 25.11.2021, and as per Article 4.1(b) of the PPAs, the Unit SCoD of the project is nineteen (19) months from the date of execution of PPAs, i.e., 24.06.2023. As per Article 4.5(a) of the PPA, the Long stop date is defined as six (6) months from Unit SCoD, i.e., 24.12.2023. However, the project was commissioned on 15.04.2024. We note that vide letter No. F/RUM/2024/REP/05-61/1366 dated 15.04.2024, RUMSL issued Commissioning Certificate and has certified that *In accordance with Article 4.1 (b) of the Coordination Agreement signed between SPD, RUMSL, MPPMCL and West Central Railway, RUMSL is hereby issuing Commissioning Certificate for 350MW Unit 2 of Agar Solar Park. As per Article 4.4(f) of the Power Purchase Agreements signed between SPD, RUMSL, MPPMCL and West Central Railway (Procurers) the Unit COD is 15-04-2024.* We further note that neither of the contracting parties has prayed before the Commission to take cognizance of Article 4.5(a). Nevertheless, the instant order of the Commission shall be applicable for the mutually agreed or further agreed project capacity under PPA, which is valid.

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

Re: Issue No. I

Whether the introduction of Notification No. 8/2021-Central Tax (Rate) and Notification No. 8/2021- Integrated Tax (Rate) dated September 30, 2021 (effective October 1, 2021) amounts to Change in Law in terms of the PPAs dated 25. 11. 2021? AND Whether the Petitioner is entitled to compensation towards additional expenditure on account of the Change in Law event in terms of Article 17 of the PPAs?

13. Briefly, the Petitioner has submitted as under:

- a) In terms of Article 17 (Change in Law) of the PPAs, in the event of the occurrence of any 'Change in Law' event, as provided therein, after the bid submission date, the Petitioner is required to approach the 'Appropriate Commission,' which is this Commission in the present case, to seek approval of such 'Change in Law.'

Re. Introduction of Notification No. 8/2021- Central Tax (Rate) and Notification No. 8/2021- Integrated Tax (Rate) dated 30.09.2021, which has increased the rate of GST from 5% to 12%/18% on renewable energy devices and parts for their manufacture

- b) Vide Notification No. 1/2017 - Central Tax (Rate) and Notification No. 1/2017 - Integrated Tax (Rate) dated 28.06.2017, the Central Government notified the rate of tax applicable on various items which *inter alia* included applicable tax rate on renewable energy devices & parts for their manufacture. As per the said Notifications, under Entry 234 of Schedule I, the rate of tax applicable to solar power generating systems and solar modules was 2.5 % (2.5% CGST and 2.5% SGST/IGST, thereby making the effective rate 5%).
- c) Thereafter, the Central Government vide Notification No. 8/2021- Central Tax (Rate) and Notification No. 8/2021-Integrated Tax (Rate) dated 30.09.2021 (effective October 1, 2021) amended the rate of CGST/IGST for renewable energy devices and their parts. As per the said Notification, Entry 234 and the entries related thereto (with effective CGST and SGCT/IGST rate of 5%) were omitted from Schedule I, and Entry 201A has been inserted into Schedule II, wherein the rate of CGST and SGST /IGST is 6% (effective 12%). Basis the said entry, renewable energy devices, i.e., photovoltaic cells, whether or not assembled into modules or made up into panels and solar power generators and parts for their manufacture will be leviable to CGST and SGST/IGST at 12%/18%, instead of 5%, thereby leading to an incremental CGST and SGST/IGST of 7%.
- d) The change in rate from 5-12% or 5-18% is predicated on the difference in the entries, i.e., Entry 234 of Schedule I (levying GST at 5%) and Entry 201A of Schedule II (levying GST at 12%).
- e) Thus, with effect from 01.10.2021, the supply of all renewable energy devices and parts for their manufacture, including Photo voltaic cells, whether or not assembled in modules or

made up into panels and solar power generators would be leviable at 12%/18% GST *vis-à-vis* the earlier lower rate of 5% GST.

- f) The increase in the rate of GST, pursuant to Notification No. 8/2021- Central Tax (Rate) dated 30.09.2021, would qualify as a Change in Law event in terms of the PPAs in as much as such increase in the rate of GST by virtue of the recent Notification would be covered by the phrase any statutory change in tax structure, i.e. change in rates of taxes, duties and cess, or introduction of any new tax made applicable for setting up of Solar Power Project and supply of power from the Project by the SPD and has direct effect on the Project, shall be treated as per the terms of the PPAs.
- g) Thus, the increase in the rate of GST would qualify as a change in law event under Article 17.1(a)(iv) of the PPAs, respectively. Alternatively, it is submitted that the increase in the rate of GST, pursuant to Notification No. 8/2021- Central Tax (Rate) dated 30.09.2021, has led to an increase in the taxes, which in consequence has led to an increase in the cost of the project. Thus, the increase in the rate of GST vide Notification No. 8/2021- Central Tax (Rate) dated 30.09.2021 would also qualify as a change in law event under Article 17 of the PPAs.

Re. Relief available to the Petitioner under Article 17 of the PPAs

- h) The Petitioner is entitled to relief under Article 17.1 (c) to (e) of the PPAs. Article 17.1(c) provides that the aggrieved party shall be required to approach the Appropriate Commission.

Re. Petitioner is entitled to carrying costs on account of an increase in Capital Expenditure, which has thereby led to an increase in the Debt and Equity Requirement of the Petitioner

- i) The increase in costs due to change in law events have a direct bearing on debt and equity required for setting up of the Project. These components are integral to the all-inclusive tariff bid. At the time of the submission of the bid, the Petitioner had factored in 'interest on working capital' and return on equity based on the costs prevalent at the time of the bid. With the increase in the costs due to the change in law events explained above, the working capital requirement, and consequently, the interest on working capital has also increased as compared to the requirement and rate prevalent at the time of bid. Thus, the Petitioner is entitled to interest on incremental working capital as per actuals, along with interest on carrying cost to put the Petitioner in the same economic position as if a change in law had not occurred.

Re. Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 (CIL Rules) do not apply to present Petition

- j) The CIL Rules do not apply to the present Petition. APTEL vide its order dated 05.04.2021 in Original Petition No.1 of 2022 & batch has held that CIL Rules will apply to Change in Law events that occur on or after 22.10.2021. Since the Petitioner is claiming compensation for the Change in Law event that occurred on 30.09.2021, which is prior in time to 22.10.2021, the CIL Rules are wholly inapplicable in the present case, and the claims of the Petitioner ought to be dealt with in accordance with the laws and rules prevalent before the notification of the CIL Rules.

14. We observe that relevant Articles of the PPAs stipulate as under:

‘Applicable Law’ means the Constitution of India and all laws, promulgated or brought into force and effect by the Gol, the GoMP, any Government Authority or any local government having jurisdiction over the Parties, Agar Solar Park or the Unit, including rules, regulations, guidelines and notifications made/issued thereunder, and/or judgments, decrees, injunctions, writs and orders of any court of record, statutory or regulatory authority, tribunal, board or stock exchange in any jurisdiction as may be applicable to the execution of this Agreement and the performance of the respective rights and obligations of the Parties, as may be in force and effect during the subsistence of this Agreement.

GoI means the Government of India

GoMP means the Government of Madhya Pradesh

Government Authority(ies) means 1 (one) or more of the GoI, the GoMP, any local government or any other ministry, governmental department, commission, board, body, bureau, agency, authority, instrumentality, inspectorate, statutory corporation or body corporate over which the Gol or the GoMP exercises control, court or other judicial or administrative body or official or Person, having jurisdiction over the SPD, the Unit or any portion thereof and the performance of obligations and exercise of rights of the Parties in accordance with the terms of this Agreement.

17. Change in Law

17.1 Consequences of Change in Law

- (a) *If a Change in Law occurs or is shortly to occur, then a Party shall notify the other Parties expressing its opinion on its likely effects and giving details of its opinion of whether:*
- (i) *any changes are required to the scope of work to be performed by the SPD under this Agreement,*
 - (ii) *any changes are required to the terms of this Agreement to deal with such Change in Law;*
 - (iii) *relief from compliance with any obligations is required, including the obligation of the SPD to achieve the Unit SCOD;*

- (iv) *any increase or decrease in costs (other than incurring additional capital expenditure), or any increase or decrease in Taxes or delay is likely to result from the Change in Law; and*
 - (v) *any capital expenditure is required or no longer required as a result of such Change in Law.*
- (b) *As soon as practicable but no later than 15 (fifteen) Business Days after receipt of any notice from a Party under Article 17.1(a), the Parties shall discuss the issues referred to therein and any ways in which the Parties can mitigate the effect of the Change in Law, including:*
 - (i) *demonstrating through evidence that the SPD has used reasonable endeavours (including, where practicable, the use of competitive quotes) to minimise any increase in costs and maximise any reduction in costs;*
 - (ii) *demonstrating through evidence how any capital expenditure to be incurred or avoided is being measured in a cost-effective manner, including showing that when such expenditure is incurred or would have been incurred, foreseeable Changes in Law at that time have been taken into account by the SPD;*
 - (iii) *demonstrating through evidence as to how the Change in Law has affected prices charged by similar businesses to the Unit, including similar businesses in which the shareholders or their associates carry on business;*
 - (iv) *demonstrating through evidence to the Procurer that the Change in Law is the direct cause of the increase or decrease in costs and/or loss or gain of revenue or delay and the estimated increase or decrease in costs or loss or gain in net profits after Tax could not reasonably be expected to be mitigated or recovered by the SPD acting in accordance with Good Industry Practice; and*
 - (v) *demonstrating through evidence that any expenditure, which was to be incurred to replace or maintain assets that have been affected by Change in Law, has been taken into account in the amount stated in its opinion presented under Article 17.1(a).*
- (c) *If the Parties have complied with Article 17.1(b) or upon elapse of the time specified in the Article 17.1 (b) and if the Parties agree that the SPD shall be required to incur additional costs, including additional capital expenditure due to a Change in Law the aggregate financial effect of which, over the remainder Term of this Agreement, is up to IN 20,000,000 (Indian Rupees Twenty Million) (Threshold Limit), then the SPD shall obtain funding for such additional costs, including capital expenditure, at its cost and expense. The SPD shall bear all additional capital expenditure and/or interest and additional costs incurred to obtain any funding to the extent of the Threshold Limit. For the avoidance of doubt, it is clarified that the Threshold Limit shall apply to each event constituting a Change in Law and shall not be applied on a cumulative basis. If the additional capital expenditure, interest and/or associated costs that the SPD may incur as a result of the Change in Law exceeds the Threshold Limit, then the Parties shall approach the Appropriate Commission for determining the quantum and mechanism of relief to which SPD would be entitled in accordance with the provisions of this Agreement. The Parties agree and confirm that the decision of the Appropriate Commission applicable to the SPD and MPPMCL for such Change in Law event under the MPPMCL PPA, shall be applicable on the Procurer and the SPD, under this Agreement. The SPD shall immediately forthwith inform the Procurer of the decision of the Appropriate Commission or the appellate authority, as the case may be.*
- (d) *If the Parties have complied with Article 17.1(b) or upon elapse of the time specified in the Article 17.1(b) and if as a result of the Change in Law, there is a decrease in costs, or decrease in Taxes and/or gain in revenue or net profits after Tax, the aggregate*

financial effect of which, over the remainder Term of this Agreement, is up to INR 20,000,000 (Indian Rupees Twenty Million), then any financial benefit accruing to the SPD on account of such decrease in costs, or decrease in Taxes and/or gain in revenue or net profits after Tax shall be passed through to the Procurer.

- (e) The Parties agree and acknowledge that in case of occurrence of a Change in Law event, the Parties shall be put in the same economic condition as if the Change in Law event has not occurred.
- (f) The Procurer and the SPD agree and acknowledge that any under-recovery/over-recovery of the compensation amount for a particular Contract Year shall be reconciled as part of the annual reconciliation to be conducted in accordance with Article 10.8.
- (g) Notwithstanding anything to the contrary, the SPD shall not be entitled to any relief for any increase in capital expenditure or other additional costs during construction phase incurred due to a Change of Law event and liability for such an increase shall be to the SPD's, if such an increase becomes applicable directly or indirectly on account of a delay by the SPD in achieving the Unit COD by the Unit SCOD for reasons directly attributable to the SPD."

15. Section 9 of the CGST Act stipulates as under:

“Section 9. Levy and collection. -

(1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.”

16. The extract of the 2021 GST Notification is as under:

(b) in Schedule II – 12%, -

...

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

201 A	84, 85 or 94	<p><i>Following renewable energy devices & parts for their manufacture:</i></p> <p>-</p> <p><i>(a) Bio-gas plant</i></p> <p><i>(b) Solar power-based devices</i></p> <p><i>(c) Solar power generating system</i></p> <p><i>(d) Wind mills, Wind Operated Electricity Generator (WOEG)</i></p> <p><i>(e) Waste to energy plants / devices</i></p> <p><i>(f) Solar lantern / solar lamp</i></p> <p><i>(g) Ocean waves/tidal waves energy devices/plants</i></p> <p><i>(h) Photo voltaic cells, whether or not assembled in modules or made up into panels.</i></p> <p><i>Explanation: - If the goods specified in this entry are supplied, by a supplier, along with supplies of other goods and services, one of which being a taxable service specified in the entry at S. No. 38 of the Table mentioned in the notification No. 11/2017-Central Tax (Rate), dated 28th June, 2017 [G.S.R. 690(E)], the value of supply of goods for the purposes of this entry shall be</i></p>
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		<i>deemed as seventy per cent. of the gross consideration charged for all such supplies, and the remaining thirty per cent. of the gross consideration charged shall be deemed as value of the said taxable service.”</i>
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17. We observe that in terms of Section 9 of the CGST Act, 2017, the power to levy GST vests with the Central Government. Section 9 of the CGST Act provides that there shall be levied a tax called the GST on all intra-State supplies of goods or services or both at such rates as may be notified by the Government. In exercise of the powers conferred *inter alia* under Section 9 of the CGST Act, the Central Government issued Notification No. 8/2021- Central Tax (Rate) and Notification No. 8/2021-Integrated Tax (Rate) dated 30.09.2021 which has increased the rate of GST from 5% to 12%/18% on renewable energy devices and parts of their manufacture. Entry 234 and the entries relating thereto have also been inserted into Schedule II, wherein the rate of CGST and SGST /IGST is 6% (effective 12%). Accordingly, as per the *2021 GST Notification*, there is an increase in applicable GST rate from 5% to 12% on components of solar power generators falling under Chapters 84, 85, and 94, and the applicability of concessional GST rate of 12% only on those components which constitutes as “solar power generator”. For the remaining components, which were parts of the erstwhile “solar power generating system” but not “solar power generator”, the generic rate, i.e., 12%/18% as per the GST tariff, is applicable. Article 17.1(a)(iv) of the PPAs stipulates that *any increase or decrease in costs (other than incurring additional capital expenditure), or any increase or decrease in Taxes or delay is likely to result from the Change in Law*. Since pursuant to the *2021 GST Notification* has led to an increase in the taxes, which in consequence has led to an increase in the cost of the project, the *2021 GST Notification* qualifies as a change in law event under Article 17.1(a)(iv) of the PPAs respectively. The bid was submitted on 21.06.2021, and the Notification No. 8/2021 was issued on 30.09.2021, i.e., after the bid submission date. The change in rate of Goods and Services Tax from 5% to 12% w.e.f. 01.10.2021 has resulted in a change in the cost of the inputs required for generation, and the same is considered a ‘Change in Law.’ Hence, we hold that the impugned *2021 GST notification* viz. Notification No. 8/2021-Central Tax (Rate) dated 30.09.2021 is a Change in Law event as per Article 17 of the PPAs dated 25.11.2021. It is pertinent to mention here that the view taken herein is consistent with similar orders issued by the Commission, viz. *order dated 03.01.2025 in Petition No. 204/MP/2023; order dated 19.05.2024 in Petition No. 138/MP/2023; order dated 14.03.2024 in Petition No. 65/MP/2023; order dated 16.01.2024 in Petition No. 308/MP/2022 order dated 05.04.2023 in Petition No. 268/MP/2021; order dated 05.04.2023 in Petition No. 216/MP/2022 and order dated 21.04.2023 in*

Petition No. 219/MP/2022; order dated 17.05.2023 in Petition No. 174/MP/2022; order dated 20.07.2023 in Petition No. 273/MP/2021.

18. In the instant petition, the bid was submitted by the Petitioner on 21.06.2021. The PPAs were executed between the Petitioner and the Respondents on 25.11.2021, and the Unit SCoD of the project was 24.06.2023. The project was commissioned on 15.04.2024. We observe that the GST rates were amended vide *2021 GST Notification*. As such, we find that the Petitioner's project was affected by the impugned *2021 GST Notification*. Therefore, the Petitioner is entitled to compensation on account of a Change in Law as per the terms of Article 17 of the PPA due to the impugned *2021 GST Notification*, viz. Notification No. 8/2021- Central Tax (Rate) dated 30.09.2021 w.e.f. 01.10.2021.

19. We observe that Article 17.1(c) of the PPAs stipulates as under:

17. Change in Law

17.1 Consequences of Change in Law

...
...

(c) If the Parties have complied with Article 17.1(b) or upon elapse of the time specified in the Article 17.1 (b) and if the Parties agree that the SPD shall be required to incur additional costs, including additional capital expenditure due to a Change in Law the aggregate financial effect of which, over the remainder Term of this Agreement, is up to IN 20,000,000 (Indian Rupees Twenty Million) (Threshold Limit), then the SPD shall obtain funding for such additional costs, including capital expenditure, at its cost and expense. The SPD shall bear all additional capital expenditure and/or interest and additional costs incurred to obtain any funding to the extent of the Threshold Limit.

For the avoidance of doubt, it is clarified that the Threshold Limit shall apply to each event constituting a Change in Law and shall not be applied on a cumulative basis. If the additional capital expenditure, interest and/or associated costs that the SPD may incur as a result of the Change in Law exceeds the Threshold Limit, then the Parties shall approach the Appropriate Commission for determining the quantum and mechanism of relief to which SPD would be entitled in accordance with the provisions of this Agreement. The Parties agree and confirm that the decision of the Appropriate Commission applicable to the SPD and MPPMCL for such Change in Law event under the MPPMCL PPA, shall be applicable on the Procurer and the SPD, under this Agreement. The SPD shall immediately forthwith inform the Procurer of the decision of the Appropriate Commission or the appellate authority, as the case may be.

(d) If the Parties have complied with Article 17.1(b) or upon elapse of the time specified in the Article 17.1(b) and if as a result of the Change in Law, there is a decrease in costs, or decrease in Taxes and/or gain in revenue or net profits after Tax, the aggregate financial effect of which, over the remainder Term of this Agreement, is up to INR 20,000,000 (Indian Rupees Twenty Million), then any financial benefit

accruing to the SPD on account of such decrease in costs, or decrease in Taxes and/or gain in revenue or net profits after Tax shall be passed through to the Procurer.

- (e) The Parties agree and acknowledge that in case of occurrence of a Change in Law event, the Parties shall be put in the same economic condition as if the Change in Law event has not occurred.*
- (f) The Procurer and the SPD agree and acknowledge that any under-recovery/over-recovery of the compensation amount for a particular Contract Year shall be reconciled as part of the annual reconciliation to be conducted in accordance with Article 10.8.*
- (g) Notwithstanding anything to the contrary, the SPD shall not be entitled to any relief for any increase in capital expenditure or other additional costs during construction phase incurred due to a Change of Law event and liability for such an increase shall be to the SPD's, if such an increase becomes applicable directly or indirectly on account of a delay by the SPD in achieving the Unit COD by the Unit SCOD for reasons directly attributable to the SPD."*

20. From the above, we observe that Article 17.1 (c) stipulates that (i) if the Parties agree that the SPD shall be required to incur additional costs, including additional capital expenditure due to a Change in Law, the aggregate financial effect which is up to Rs. 20,000,000 (Indian Rupees Twenty Million) (Threshold Limit), the SPD shall obtain funding for such additional costs, including capital expenditure, at its cost and expense. (ii) The SPD shall bear all additional capital expenditure and/or interest and additional costs incurred to obtain any funding to the extent of the Threshold Limit. (iii) If the additional capital expenditure, interest, and/or associated costs that the SPD may incur as a result of the Change in Law exceeds the Threshold Limit, then the Parties shall approach the Commission to determine the quantum and mechanism of relief. (iv) If, as a result of the Change in Law, there is a decrease in costs or decrease in Taxes and/or gain in revenue or net profits after Tax, then any financial benefit accruing to the SPD shall be passed through to the Procurer. (v) The Parties shall be put in the same economic condition as if the Change in Law event has not occurred. (vi) The SPD shall not be entitled to any relief for any increase in capital expenditure or other additional costs during the construction phase incurred due to a Change of Law event, and liability for such an increase shall be to the SPD's if such an increase becomes applicable directly or indirectly on account of a delay by the SPD. It is pertinent to mention here that the Petitioner has not mentioned the impact of Change in Law in financial terms.

21. Accordingly, the Commission directs the contracting parties to carry out reconciliation of additional expenditure strictly as per Article 17.1 (c) of the PPAs, strictly keeping in mind the threshold limit of Rs. 20,000,000 (Indian Rupees Twenty Million), by exhibiting clear and one-to-one correlation with the projects and the invoices raised supported with auditor certificate corresponding to the mutually agreed or further agreed project capacity under PPAs, which is valid, between the

Petitioner and the Respondents on account of *2021 GST Notification* in terms of PPAs dated 25.11.2021.

22. The issue is decided accordingly.

Re: Issue No.II

What should be the discount rate for the calculation of Annuity for payment of compensation (if any) on account of a Change in Law?

23. The Petitioner submitted that the cut-off date for payment of change in law compensation shall be CoD of the Project. Since the PPAs do not provide any methodology for computing the impact of change in law, Petitioner has calculated the impact of change in law as per the Electricity (*Timely Recovery of Costs due to Change in Law*) Rules, 2021. The Petitioner has taken an annuity period of 15 Years as per the aforesaid rule. The annual rate of interest on loan component (in %) has been taken as 9.12%.

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

“65. We find that in Petition No. 536/MP/2020, SECI and the Respondents (SPDs as well as the Discoms) are on the same page in so far as the rate of interest on loan is considered. This is evident from the computation of the weighted average cost of capital advanced by the contending parties. Majority of the parties have used 10.41% (as mentioned in the CERC RE Tariff Order dated 19.03.2019) as the reference rate of interest for building their arguments for the rate of annuity payment. In other words, the parties have accepted this rate as the appropriate normative rate of interest for any debt that they might have taken. Given the fact that it is not possible in case of competitive bidding projects to ascertain either the capital structuring (extent of debt and equity) of the projects, or the actual rate of interest of the debt component or the expected rate of return on equity, we consider it appropriate to use the normative rate of 10.41% as reference for the purpose of annuity payment. As the actual deployment of capital by way of debt or equity and their cost in terms of rate of interest or return, respectively, is unknown, the rate 10.41% can be taken as the uniform rate of compensation for the entire expenditure incurred on account of GST Laws or Safeguard Duty. The Commission is of the view that the compensation for change in law cannot be a source for earning profit, and therefore, there cannot be any higher rate of return than the prevailing normative cost of debt. Accordingly, we hold that 10.41% shall be the discount rate of annuity payments towards the expenditure incurred on GST or Safeguard Duty (as the case may be) by the Respondent SPDs on account of ‘Change in Law’.

Commencement of ‘Monthly Annuity Payments’ and ‘Late Payment Surcharge’

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

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

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

Tenure of 'Annuity Period'

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

"14. Loan and Finance Charges

Loan Tenure

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

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

25. The Commission has taken the view that in the case of competitive bidding projects, it is not possible to ascertain either the capital structuring (*extent of debt and equity*) of the projects or the actual rate of interest of the debt component or the expected rate of return on equity. As the actual deployment of capital by way of debt or equity and their cost in terms of rate of interest or return, respectively, is unknown, the rate can be taken as the uniform rate of compensation for the entire expenditure incurred on account of Change in Law. The compensation for change in law cannot be a source for

earning profit, and therefore, there cannot be any higher rate of return than the prevailing normative cost of debt.

26. We note that the *Central Electricity Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2020* (RE Tariff Regulations, 2020) which were applicable for the period 01.07.2020 to 31.03.2023 were extended up to 30.06.2024 vide Notification No. RA-14026(11)/4/2020-CERC dated 28.03.2024.
27. The Commission has notified the *CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2020*, and the *RE Tariff Order dated 07.11.2022*. In the said regulations read with the RE tariff Order, we have considered the interest rate of 9.12% for FY-22-23 and the term of the Loan repayment as 15 years. The Commission vide order dated 08.09.2023 in 10/SM/2023 extended the applicability of the order dated 07.11.2022 in Petition No. 14/SM/2022 until further Orders.
28. We note that the Petitioner's project was commissioned on 15.04.2024 which is during FY 2024-25. The Commission notified the RE Tariff Order dated 31.03.2021 for FY 2021-22 and the RE Tariff Order dated 07.11.2022 for FY-2022-2023. The Commission vide order dated 27.03.2023 stated that the Order dated 07.11.2022 in Petition No. 14/SM/2022 shall continue to be in force until further orders. In the RE tariff Order dated 07.11.2022 issued in pursuance of the *CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2020*, the Commission considered the interest rate of 9.12% and the term of the loan repayment as 15 years. In view of the above, since the interest rate (9.12%) has remained constant for FY 2024-2025 (covering the period of commissioning of the project) and the compensation has to be commensurate with the prevailing normative cost of debt, we hold that for Change in Law events of *Notification No.8/2021- GST dated 30.09.2021 issued by the Ministry of Finance, Government of India*, the *discount rate of 9.12% and annuity payment of 15 years* as the appropriate methodology towards change in law compensation.
29. Further, the Commission holds that the liability of RUMSL/Procurers for 'Monthly Annuity Payment' starts from the 60th (sixtieth) day from the date of this order or from the date of submission of claims by the Petitioner, whichever is later. The provision of late payment surcharge in the respective PPA/PSA shall kick in if the monthly annuity payment is not made by the Respondents within the due date.

30. The issue is decided accordingly.

Re: Issue No. III

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

31. The Petitioner has submitted that in addition to the compensation for the increase in the capital cost, it is entitled to Carrying Cost. Further, the Petitioner has submitted that it has already incurred additional costs on account of the increase in GST, and accordingly, it is also entitled to the carrying cost from the date of actual payment of additional GST till the approval of 'Change in Law' by this Commission to put the Petitioner in the same economic position as if 'Change in Law' had not occurred. The provision for change in law is incorporated in the long term contracts as a risk allocation measure to protect parties from the adverse impact of any changes in law which may occur after the cut-off date. Therefore, irrespective of how the change in law provision is worded, in spirit, it essentially seeks to restore the affected party to the same position as if the change in law had not occurred. The Petitioner has placed its reliance on APTEL judgement dated 15.09.2022 in A. No. 256 of 2019, titled ***Parampujaya Solar Energy Limited v. CERC & Ors.*** The claim of Carrying Costs is squarely covered in the decision rendered by APTEL in A.No.256 of 2019 & Batch in the matter of ***Parampujaya Solar Energy Pvt.Ltd v. CERC & Ors (Parampujaya Judgement)***.

32. We observe that Article 17.1(c) of the PPAs stipulates as under:

17. Change in Law

17.1 Consequences of Change in Law

...
...

(c) If the Parties have complied with Article 17.1(b) or upon elapse of the time specified in the Article 17.1 (b) and if the Parties agree that the SPD shall be required to incur additional costs, including additional capital expenditure due to a Change in Law the aggregate financial effect of which, over the remainder Term of this Agreement, is up to IN 20,000,000 (Indian Rupees Twenty Million) (Threshold Limit), then the SPD shall obtain funding for such additional costs, including capital expenditure, at its cost and expense. The SPD shall bear all additional capital expenditure and/or interest and additional costs incurred to obtain any funding to the extent of the Threshold Limit.

For the avoidance of doubt, it is clarified that the Threshold Limit shall apply to each event constituting a Change in Law and shall not be applied on a cumulative basis.

If the additional capital expenditure, interest and/or associated costs that the SPD may incur as a result of the Change in Law exceeds the Threshold Limit, then the Parties shall approach the Appropriate Commission for determining the quantum and mechanism of relief to which SPD would be entitled in accordance with the provisions of this Agreement. The Parties agree and confirm that the decision of the Appropriate

Commission applicable to the SPD and MPPMCL for such Change in Law event under the MPPMCL PPA, shall be applicable on the Procurer and the SPD, under this Agreement. The SPD shall immediately forthwith inform the Procurer of the decision of the Appropriate Commission or the appellate authority, as the case may be.

- (d) If the Parties have complied with Article 17.1(b) or upon elapse of the time specified in the Article 17.1(b) and if as a result of the Change in Law, there is a decrease in costs, or decrease in Taxes and/or gain in revenue or net profits after Tax, the aggregate financial effect of which, over the remainder Term of this Agreement, is up to INR 20,000,000 (Indian Rupees Twenty Million), then any financial benefit accruing to the SPD on account of such decrease in costs, or decrease in Taxes and/or gain in revenue or net profits after Tax shall be passed through to the Procurer.*
- (e) **The Parties agree and acknowledge that in case of occurrence of a Change in Law event, the Parties shall be put in the same economic condition as if the Change in Law event has not occurred.***
- (f) The Procurer and the SPD agree and acknowledge that any under-recovery/over-recovery of the compensation amount for a particular Contract Year shall be reconciled as part of the annual reconciliation to be conducted in accordance with Article 10.8.*
- (g) Notwithstanding anything to the contrary, the SPD shall not be entitled to any relief for any increase in capital expenditure or other additional costs during construction phase incurred due to a Change of Law event and liability for such an increase shall be to the SPD's, if such an increase becomes applicable directly or indirectly on account of a delay by the SPD in achieving the Unit COD by the Unit SCOD for reasons directly attributable to the SPD.”*

33. We observe that the Hon'ble Supreme Court vide *Uttar Haryana Bijli Vitran Nigam Ltd. Vs. Adani Power Ltd. (2019) 5 SCC 325 (Uttar Haryana judgement)* dated 25.02.2019. has held as under:

*Article 13.2 is an in-built restitutionary principle which compensates the party affected by such change in law and which must restore, through monthly tariff payments, the affected party to the same economic position as if such change in law has not occurred. **This would mean that by this clause a fiction is created, and the party has to be put in the same economic position as if such change in law has not occurred, i.e., the party must be given the benefit of restitution as understood in civil law** 13. A reading of Article 13 as a whole, therefore, leads to the position that subject to restitutionary principles contained in Article 13.2, the adjustment in monthly tariff payment, in the facts of the present case, has to be from the date of the withdrawal of exemption which was done by administrative orders dated 06.04.2015 and 16.02.2016. The present case, therefore, falls within Article 13.4.1(i). This being the case, it is clear that the adjustment in monthly tariff payment has to be effected from the date on which the exemptions given were withdrawn. This being the case, monthly invoices to be raised by the seller after such change in tariff are to appropriately reflect the changed tariff. On the facts of the present case, it is clear that the respondents were entitled to adjustment in their monthly tariff payment from the date on which the exemption notifications became effective. **This being the case, the restitutionary principle contained in Article 13.2 would kick in for the simple reason that it is only after the order dated 04.05.2017 that the CERC held that the respondents were entitled to claim added costs on account of change in law w.e.f. 01.04.2015. This being the case, it would be fallacious to say that the respondents would be claiming this restitutionary amount on some general principle of equity outside the PPA. Since it is clear that this amount of carrying cost is only relatable to Article 13 of the PPA, we find no reason to interfere with the judgment of the Appellate Tribunal.***

34. From the above, we observe that Article 17.1 of the PPAs dated 25.11.2020 specifically stipulates that in the event a Change in Law results in any adverse financial loss/ gain to the Solar Power Generator, in order to ensure that the Solar Power Generator is placed in the same financial position as it would have been had it not been for the occurrence of the Change in Law, the Solar Power Generator/ Procurer shall be entitled to compensation. We further observe that the Hon'ble Supreme Court vide the *Uttar Haryana judgement* dated 25.02.2019 has 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 change in law had not occurred, i.e., the party must be given the benefit of restitution as understood in civil law.
35. The Petitioner, in the instant petition, shall be eligible for carrying costs starting from the date when the actual payments were made to the authorities until the date of issuance of this Order at the actual rate of interest paid by the Petitioner for arranging funds (supported by Auditor's Certificate) or the rate of interest on working capital as per the applicable RE Tariff Regulations prevailing at that time or the late payment surcharge rate as per the PPAs, whichever is the lowest. Once a supplementary bill is raised by the Petitioner in terms of this order, the provision of Late Payment Surcharge in the PPAs would kick in if the payment is not made by the Respondents within the due date.
36. The Commission further directs that the Procurers are liable to pay to RUMSL all the above-reconciled claims that RUMSL has to pay to the Petitioner. However, payment to the Petitioner by RUMSL is not conditional upon the payment to be made by the Procurers to RUMSL.
37. APTEL, vide judgment dated 15.09.2022 in A.No. 256 of 2019 & Batch titled as *Parampujya Solar Energy Private Limited &Ors. vs. CERC & Ors.* held as under:

.....

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

& Maintenance (O&M) expenses, along with carrying cost subject, however, to necessary prudence check.”

38. The Hon’ble Supreme Court, in its Order dated 12.12.2022, in Civil Appeal no. 8880/2022 in the case of “*Telangana Northern Power Distribution Co. Limited & Anr. Vs. Parampujya Solar Energy Pvt. Limited & Ors.*” (and in similar Orders dated 03.01.2023 and 23.01.2023) has held as under:

“Pending further orders, the Central Electricity Regulatory Commission (CERC) shall comply with the directions issued in paragraph 109 of the impugned order dated 15 September 2022 of the Appellate Tribunal for Electricity. However, the final order of the CERC shall not be enforced pending further orders.”

39. Therefore, given the restitution clause in the PPAs, the directions issued in this Order, so far as they relate to additional compensation for the period pre-COD (including carrying cost) claims only shall be enforced. However, in view of the Hon’ble Supreme Court Order dated 12.12.2022, as quoted above, the directions issued in this Order so far as they relate to additional compensation (including carrying cost) for the period post-Commercial Operation Date of the projects shall not be enforced and shall be subject to further orders of the Hon’ble Supreme Court in Civil Appeal No. 8880/2022 in *Telangana Northern Power Distribution Company Limited & Anr. V. Parampujya Solar Energy Pvt. Limited & Ors, and connected matters*. It is pertinent to mention that the view taken is consistent with the views taken in *Order dated 19.05.2024 in Petition No. 136/MP/2023; Order dated 02.06.2023 in Petition No. 168/MP/2021; Order dated 30.11.2023 in Petition No. 214/MP/2021; Order dated 19.12.2023 in Petition No. 171/MP/2021; Order dated 26.12.2023 in Petition No. 209/MP/2022; Order dated 07.01.2024 in Petition No. 206/MP/2021; Order dated 16.01.2024 in Petition No. 308/MP/2022 and Order dated 31.01.2024 in Petition No. 226/MP/2021 & 227/MP/2021.*

40. The issue is decided accordingly.

41. The summary of our findings is as follows:

- a) The *Notification No. 8/2021- Central Tax (Rate) dated 30.09.2021 by the Ministry of Finance, Government of India*, is a Change in Law event in terms of Article 17 of the PPAs dated 25.11.2021.
- b) The Petitioner is entitled to compensation on account of a Change in Law corresponding to the mutually agreed project capacity under PPAs, which is valid, as per the terms of Article 17 of the PPAs due to *Notification No. 8/2021- Central Tax (Rate) dated 30.09.2021*.
- c) The contracting parties to carry out reconciliation of additional expenditure strictly as per

Article 17.1 (c) of the PPAs, strictly keeping in mind the threshold limit of Rs. 20,000,000 (Indian Rupees Twenty Million), by exhibiting clear and one-to-one correlation with the projects and the invoices raised supported with auditor certificate on account of *2021 GST Notification* in terms of PPAs dated 25.11.2021.

- d) Compensation is to be paid at the discount rate of 9.12% and an annuity period of 15 years. The liability of RUMSL/Procurers for 'Monthly Annuity Payment' starts from the 60th (sixtieth) day from the date of this order or from the date of submission of claims by the Petitioner, whichever is later. The provision of late payment surcharge in the respective PPA/PSA shall kick in if the monthly annuity payment is not made by the Respondents within the due date.
- e) The Petitioner shall also be eligible for carrying cost starting from the date when the actual payments were made to the Authorities till the date of issuance of this Order, at the actual rate of interest paid by the Petitioner for arranging funds (supported by Auditor's Certificate) or the rate of interest on working capital as per applicable RE Tariff Regulations prevailing at that time or the late payment surcharge rate as per the PPA, whichever is the lowest. Once a supplementary bill is raised by the Petitioner in terms of this order, the provision of a Late Payment Surcharge in the PPA if the payment is not made by the Respondents within the due date.
- f) Given the restitution clause in the PPAs, the directions issued in this Order, so far as they relate to additional compensation for the period pre-COD (including carrying cost) claims only shall be enforced. However, in view of the Hon'ble Supreme Court Order dated 12.12.2022, as quoted above, the directions issued in this Order so far as they relate to additional compensation (including carrying cost) for the period post-Commercial Operation Date of the projects shall not be enforced and shall be subject to further orders of the Hon'ble Supreme Court in Civil Appeal No. 8880/2022 in *Telangana Northern Power Distribution Company Limited & Anr. V. Parampujya Solar Energy Pvt. Limited & Ors, and connected matters.*

42. The Petition No. 189/MP/2024 is disposed of in terms of the above.

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