



नई दिल्ली
NEW DELHI

याचिका संख्या./ Petition No. 314/MP/2022

कोरम/ Coram:

श्री जिशनु बरुआ, अध्यक्ष/Shri Jishnu Barua, Chairperson
श्री रमेश बाबू वी., सदस्य/Shri Ramesh Babu V., Member
श्री हरीश दुदानी, सदस्य/Shri Harish Dudani, Member
श्री रविंदर सिंह ढिल्लों, सदस्य/Shri Ravinder Singh Dhillon, Member

आदेश दिनांक/ Date of Order: 24th of March, 2026

IN THE MATTER OF:

Petition under Section 79 of the Electricity Act, 2003 for (i) approval of "Change in Law"; and (ii) consequential relief to offset the financial/ commercial impact of the "Change in Law" event i.e., increase in the rate of Goods and Services Tax from 5% to 12% by way of Notification No. 8/2021- Central Tax (Rate) dated 30.09.2021 issued by Ministry of Finance, Government of India, in terms of Article 12 of the Power Purchase Agreement dated 21.01.2019 between Netra Wind Private Limited and Solar Energy Corporation of India Limited.

AND IN THE MATTER OF:

Netra Wind Private Limited,
15th Floor, Building No -5,
Block - B, DLF Cyber City,
Phase - III, Gurugram- 122002,
Haryana

...Petitioner

Versus

1. Solar Energy Corporation of India Limited

1st Floor, D-3, A Wing, Religare Building,
District Centre, Saket,
New Delhi, Delhi 110017

2. **Haryana Power Purchase Centre**

Shakti Bhawan, Sector-6,
Panchkula, Haryana – 131409

...Respondents

Parties Present: Ms. Mazag Andrabi, Advocate, NWPL
Shri Syed Tajali, Advocate, NWPL
Shri Ravindra Shekhawat, Advocate, NWPL
Shri Aditya Singh, Advocate, HPPC
Ms. Anushree Bardhan, Advocate, SECI
Ms. Ritika Singh, Advocate, SECI
Ms. Somya Sahni, Advocate, SECI

आदेश/ ORDER

The Petitioner, Netra Wind Private Limited, has set up a 300 MW Wind Project at the village Laxmipar Netra, Nakhatrana Taluka, Kutch District, in the State of Gujarat. The Ministry of Power issued '*Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Wind Power Projects*' dated 08.12.2017, under Section 63 of the Electricity Act (Bidding Guidelines). In accordance with the bidding guidelines, SECI invited proposals for setting up ISTS-connected Wind Power Projects with an aggregate capacity of 1200 MW on a Build Own Operate (BOO) basis by way of Request for Selection No. SECI/C&P/WPD/1200MW/T5/RfS/062018 (RfS) dated 30.06.2018. On 29.08.2018, M/s Alfanar Company KSA (Alfanar), the Petitioner's Parent Company, submitted its bid, and an e-Reverse Auction was held on 25.09.2018. Alfanar emerged as a successful bidder for a quantum of 300 MW at a tariff of Rs. 2.77/kWh. On 24.10.2018, SECI issued a Letter of Award (LoA) bearing Reference No. SECI/C&PMIPD/T5/LOA/AC /P1/26697 to Alfanar for the development of a 300 MW ISTS-connected wind power project in the State of Gujarat. Alfanar formed a project company, M/s Netra Wind Private Limited (the Petitioner), in accordance with the provisions of the RfS for the development of a Wind Power Project, generation and sale of wind power. On 21.01.2019, SECI executed the Power Purchase Agreement (PPA) with the Petitioner for the procurement of 300 MW power from the Wind

Project; and also executed a back-to-back Power Sale Agreement (PSA) with Haryana Power Purchase Centre for onward supply of power procured from the Wind Project. Under the PPA, the Scheduled Commercial Operation Date (SCoD) of the Wind Project was 22.07.2020. The Petitioner had also executed three contracts for supply and services. The details of the contracts are as under:

- (i) On 28.06.2019, the Petitioner executed a **Supply Contract** with *M/s Alfancar Power Private Limited* for the supply of ninety-two (92) wind turbine generators (WTGs) of SG-122. The said Supply Contract was subsequently amended on 18.03.2021, 16.09.2021 and 10.03.2022.
- (ii) On 28.06.2019, the Petitioner executed a **Supply and Services Contract** with *M/s Alfancar Power Services Private Limited* for the supply of BoP equipment and allied services of erection, installation and commissioning service in relation to ninety-two (92) WTGs of SG-122. The said Supply and Services Contract was subsequently amended on 18.03.2021, 16.09.2021 and 09.11.2021.
- (iii) On 05.03.2021, the Petitioner executed a **Supply Contract** with *M/s Alfancar Power Private Limited* for the supply of twenty-two (22) WTGs of Senvion M-120 and eighteen (18) WTGs of Senvion M-130. The said Supply Contract was subsequently amended on 31.03.2022.

The SCOD was subsequently extended by SECI from time to time, as under:

- (i) From 22.07.2020 to 28.02.2021, on account of the delay in operationalisation of Long-Term Open Access, by letter dated 10.12.2019.
- (ii) From 28.02.2021 to 28.07.2021, on account of disruptions caused by the Covid-19 pandemic, by letter dated 07.10.2020.
- (iii) From 28.07.2021 to 28.02.2022, on account of changes in the land policy of the State of Gujarat, by letter dated 15.03.2021.
- (iv) From 28.02.2022 to 19.08.2022, on account of the delay in the issuance of the requisite Developer Permission by Gujarat Energy Development Agency (GEDA), by letter dated 15.09.2021.
- (v) From 19.08.2022 to 19.11.2022, on account of disruptions caused by the Covid-19 pandemic, by letter dated 08.07.2022.

Thereafter, while retaining the SCOD as 19.11.2022, SECI extended the expiry date/ Long stop date of commissioning of the Wind Project (Long Stop Date) from time to time, as under:

- (i) From 17.08.2023 to 24.08.2023, on account of disruptions caused by Cyclone ‘Biparjoy’, by letter dated 17.08.2023.
- (ii) From 24.08.2023 to 08.09.2023, owing to disruptions caused by Cyclone ‘Biparjoy’, by letter dated 24.08.2023.
- (iii) From 08.09.2023 to 31.03.2024, owing to disruptions caused by Cyclone ‘Biparjoy’, by letter dated 13.12.2023.
- (iv) From 31.03.2024 to 31.05.2024, owing to disruptions caused by Cyclone ‘Biparjoy’, as per a letter dated 08.03.2024.

The Petitioner commissioned a net cumulative capacity of 206.5 MW against the awarded capacity of 300 MW as under:

- (i) 55 MW (25 WTGs of 2.2 MW each) on 10.04.2023;
- (ii) 39.6 MW (18 WTGs of 2.2 MW each) on 13.07.2023;
- (iii) 24.7 MW (6 WTGs of 2.2 MW each and 5 WTGs of 2.3 MW each) on 03.08.2023;
- (iv) 17.6 MW (8 WTGs of 2.2 MW each) on 08.03.2024;
- (v) 24.2 MW (11 WTGs of 2.2 MW each) on 28.03.2024; and
- (vi) 25.4 MW (6 WTGs of 2.2 MW each and 14 WTGs of 2.3 MW each) on 25.04.2024.

On 30.09.2021, the Central Government issued Notification No. 8/2021- Central Tax (Rate) (*2021 GST Notification*), amending the Goods and Services Tax (GST) rate for renewable energy devices and parts used for their manufacture. By way of GST Notification No. 8, entry 234 and the entries related thereto (renewable energy devices and parts for their manufacture) were omitted from Schedule I (which stipulates levy of GST at the rate of 5%) and entry 201A (renewable energy devices and parts for their manufacture) was inserted in Schedule II (which stipulates levy of GST at the rate of 12%). Consequently, renewable energy devices, specifically windmills, wind-operated electricity generators, etc., are now subject to a GST of 12% as against the rate of 5%, prevailing at the time of bid submission by Alfanar. The Petitioner has filed the petition seeking the declaration of the *2021 GST Notification* as ‘Change in Law’ in terms of Article 12 of the PPA 21.01.2019, along with consequential reliefs.

2. Respondent No. 1, Solar Energy Corporation of India Limited (SECI), has been set-up under the administrative control of the Ministry of New and Renewable Energy (MNRE) and has been designated as the nodal agency for the implementation of MNRE schemes for developing grid-connected solar power capacity in India.
3. Respondent No. 2, Haryana Power Purchase Centre (HPPC), is an organisation created and owned by the Distribution Companies of the State of Haryana, namely, Uttar Haryana Bijli Vitran Nigam Limited and Dakshin Haryana Bijli Vitran Nigam Limited (collectively, *Haryana Discoms*), for the procurement of power for the Haryana Discoms. HPPC has executed the Power Sale Agreement dated 21.01.2019 with SECI for the procurement of inter alia 300 MW wind power from the Petitioner's wind power project on a long term basis.
4. The Petitioner has made the following prayers:
 - a) *Declare that issuance of Notification No. 8/2021- Central Tax (Rate) dated 30.09.2021 qualifies as 'Change in Law' in terms of Article 12 of the Power Purchase Agreement dated 21.01.2019 executed between the Petitioner and Respondent No. 1;*
 - b) *Direct Respondent No. 1 to compensate the Petitioner in terms of Article 12 of the PPA for the additional non-recurring/ recurring expenditure incurred/ to be incurred by it amounting to INR 964,496,267/- (Rupees Ninety-Six Crore Forty-Four Lakh Ninety-Six Thousand Two Hundred and Sixty-Seven Only) on account of issuance of Notification No. 8/2021- Central Tax (Rate) dated 30.09.2021 by way of upfront lumpsum payment/ adjustment in the quoted tariff along with the carrying cost @10.5%;*
 - c) *Pursuant to grant of prayer (a) and (b) above, approve the necessary consequential amendments to the PPA and LoA;*
 - d) *Grant such order, further relief(s) in the facts and circumstances of the case as this Ld. Commission may deem just and equitable in favour of the Applicant.*

Factual Matrix:

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

Location	Kutch District, in the State of Gujarat
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Scheme:	Setting up ISTS-connected Wind Power Projects of aggregate capacity of 1200 MW on Build Own Operate (BOO) basis
Project:	206.5 MW wind power project
RfS issued on	30.06.2018
Nodal Agency	SECI
Bid submitted on	29.08.2018
eReverse auction held on	25.09.2018
LoA issued on	24.10.2018
PSA dated	21.01.2019
PPA dated	21.01.2019
Effective date of the PPA	22.01.2019
Tariff	Rs.2.77/kWh
Supply Contract (with Alfanar Power Private Limited for supply of ninety-two (92) WTGs) dated	28.06.2019 <i>Contract was subsequently amended on 18.03.2021, 16.09.2021 and 10.03.2022.</i>
Supply & Service Contract (with Alfanar Power Services Private Limited for supply of BoP equipment and allied services for ninety-two (92) WTGs) dated	28.06.2019 <i>Contract was subsequently amended on 18.03.2021, 16.09.2021 and 09.11.2021</i>
SCoD	22.07.2020
Supply Contract (with Alfanar Power Private Limited for supply of twenty-two (22) WTGs) dated	05.03.2021 <i>Contract was subsequently amended on 31.03.2022.</i>
Extended of SCoD	(i) From 22.07.2020 to 28.02.2021, on account of the delay in operationalisation of Long-Term Open Access, by letter dated 10.12.2019. (ii) From 28.02.2021 to 28.07.2021, on account of disruptions caused by the Covid-19 pandemic, by letter dated 07.10.2020. (iii) From 28.07.2021 to 28.02.2022, on account of changes in the land policy of the State of Gujarat, by letter dated 15.03.2021. (iv) From 28.02.2022 to 19.08.2022, on account of the delay in the issuance of the requisite Developer Permission by Gujarat Energy Development Agency (GEDA), by letter dated 15.09.2021.

	(v) From 19.08.2022 to 19.11.2022, on account of disruptions caused by the Covid-19 pandemic, by letter dated 08.07.2022.
Extended Long Stop Date:	(i) From 17.08.2023 to 24.08.2023, on account of disruptions caused by Cyclone ‘Biparjoy’, by letter dated 17.08.2023. (ii) From 24.08.2023 to 08.09.2023, owing to disruptions caused by Cyclone ‘Biparjoy’, by letter dated 24.08.2023. (iii) From 08.09.2023 to 31.03.2024, owing to disruptions caused by Cyclone ‘Biparjoy’, by letter dated 13.12.2023. (iv) From 31.03.2024 to 31.05.2024, owing to disruptions caused by Cyclone ‘Biparjoy’, as per a letter dated 08.03.2024.
Notification No. 8/2021-Central Tax (Rate) (2021 GST Notification)	30.09.2021
Commercial Operation Date (COD) a net cumulative capacity of 206.5 MW against the awarded capacity of 300 MW:	(i) 55 MW (25 WTGs of 2.2 MW each) on 10.04.2023; (ii) 39.6 MW (18 WTGs of 2.2 MW each) on 13.07.2023; (iii) 24.7 MW (6 WTGs of 2.2 MW each and 5 WTGs of 2.3 MW each) on 03.08.2023; (iv) 17.6 MW (8 WTGs of 2.2 MW each) on 08.03.2024; (v) 24.2 MW (11 WTGs of 2.2 MW each) on 28.03.2024; and (vi) 25.4 MW (6 WTGs of 2.2 MW each and 14 WTGs of 2.3 MW each) on 25.04.2024.

6. The present petition was filed on 04.11.2022. The hearing was conducted on 24.04.2023, wherein the Commission, after hearing the Petitioner, admitted the Petition. The petition was listed on 14.07.2023, and the time allowed for filing replies and rejoinders was 13.09.2023 and 10.11.2023. On 24.01.2024, this Commission permitted the Petitioner to file its rejoinder(s), and on 24.01.2024, this Commission adjourned the matter on the request of HPPC. During the course of the hearing on 02.07.2025, the Petitioner submitted that after the filing of the Petition, the PPA dated 21.01.2019, entered into with SECI, for the 300 MW stands reduced to 206.5 MW, and SECI has also proceeded to invoke the Bank Guarantee towards the balance commissioned capacity. Accordingly, the Petitioner may be required to sign an amended PPA with SECI, and it may also be permitted to file its rejoinder. Whereas SECI submitted that the Petitioner had not yet achieved the Scheduled Commissioning Date of the Project, and inter alia also raised a plea of the present Petition being premature. Accordingly, the Commission permitted the Petitioner to file its rejoinder within three weeks.

The Petitioner was also directed to clearly indicate the details of the commissioning of its Wind Power Project in the said rejoinder. During the hearing held on 30.09.2025, the Petitioner and the Respondents made detailed submissions and concluded their respective arguments. SECI has submitted that the Petitioner has commissioned a net cumulative capacity of 206.5 MW out of the awarded capacity of 300 MW. SECI further stated that, since the contracted capacity under the PPA now stands reduced to 206.5 MW, the scope of Change in Law relief needs to be limited to that capacity. The Commission permitted the parties to file their written submissions, and the matter was reserved for Order on 10.11.2025.

7. It is pertinent to mention that the contracting parties have preferred not to file any written statement in the matter.

Submissions of the Petitioner:

8. Briefly, the Petitioner has submitted as under:
 - a) On 30.09.2021, the Central Government issued Notification No. 8/2021- Central Tax (Rate) whereby it amended the rate of Goods & Services Tax (GST) for renewable energy devices and parts for their manufacture. By way of Notification No. 8/2021- Central Tax (Rate) dated 30.09.2021 (*2021 GST Notification*), entry 234 and the entries related thereto (renewable energy devices and parts for their manufacture) were omitted from Schedule I (which stipulates levy of GST at the rate of 5%) and entry 201A (renewable energy devices and parts for their manufacture) was inserted in Schedule II (which stipulates levy of GST at the rate of 12%). Consequently, renewable energy devices, specifically windmills, wind-operated electricity generators, etc., are now subject to a GST of 12% as opposed to the 5% rate prevailing at the time of Alfano's bid submission.
 - b) The increase in GST pursuant to the *2021 GST Notification* has affected the parameters upon which Alfano had submitted its bid. The change in GST has adversely affected the capital cost of the Wind Project as the rate of taxation on the equipment, i.e., the windmills, generators, transformers, etc., required for setting up the Wind Project has increased substantially, resulting in an escalation in the capital cost of the Wind Project to the extent of impact of increase in GST on such equipment. A steep increase of 7% in GST has increased the capital cost of the Petitioner significantly, making the tariff discovered through the Reverse Auction unviable.

- c) On 03.10.2021, the Petitioner *inter alia* notified SECI that the *2021 GST Notification*, which increases the GST on ‘specified renewable energy devices and parts’ from 5% to 12%, qualifies as a ‘Change in Law’ event under Article 12 of the PPA, having occurred after the last date of bid submission.
- d) On 22.10.2021, the Government of India notified *the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 (2021 CIL Rules)*, which set out the process to be followed by an affected party for the adjustment/ recovery of the cost and the formula for determination of impact on tariff or charges due to ‘Change in Law’.
- e) On 28.10.2021, the Petitioner issued ‘Notice of Change in Law’ to SECI under Article 12 of the PPA and Rule 3(2) of the *2021 CIL Rules*. By way of the CIL Notice, the Petitioner, *inter alia*, informed SECI that the Change in Law Event had resulted in a significant increase in the Wind Project's capital expenditure.
- f) On 21.02.2022, the Ministry of Power, Government of India by way of *2021 CIL Rules*, clarified that the *2021 CIL Rules* shall only apply to ‘Change in Law’ events occurring on or after the date of notification of the *2021 CIL Rules* i.e., 22.10.2021 and the ‘Change in Law’ events that occurred prior to the notification of the *2021 CIL Rules* shall be dealt with in terms of the relevant Power Purchase Agreement.
- g) On 08.07.2022, SECI extended the SCOD of the Wind Project from 19.08.2022 to 19.11.2022 on account of disruptions caused by the Covid-19 pandemic.
- h) The Petitioner had evaluated and considered the Applicable Laws, including but not limited to the extant tax laws which provided for levy of GST at the rate of 5% on ‘specified renewable energy devices and parts’ and accordingly, arrived at the competitive tariff of Rs. 2.77/kWh. However, the *2021 GST Notification* has now increased the rate of GST levied on ‘renewable energy devices and parts for their manufacture’ to 12%. Consequently, the burden of GST has increased substantially and is being borne by the Petitioner. This has led to a significant increase of approximately INR 964, 496,267/- (Rupees Ninety-Six Crore Forty-Four Lakh Ninety-Six Thousand Two Hundred and Sixty-Seven Only) in the tax incidence and therefore, the capital cost of the Wind Project.
- i) The impact of the Change in Law Event is detailed below:

A. Pre-Change in Law Event GST Tax Incidence on Basic Value of relevant Contracts

Name of contractor	Date of Contract	Nature of Contract	Basic Value of WTGS (INR)	GST (INR)
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Alfanar Power Private Limited	28.06.2019	Supply of Wind Turbines (92 WTGs of SG -122)	9,287,194,012.00	464,359,700.60
Alfanar Power Services Private Limited	28.06.2019	Supply and Services (92 WTGs of SG -122)	551,685,176.00	49,099,980.66
Alfanar Power Private Limited	05.03.2021	Supply of Wind Turbines (22 WTGs of Senvion M-120)	2,120,649,059.05	106,032,452.95
Alfanar Power Private Limited	28.06.2019	Supply of Wind Turbines 18 WTGs of Senvion M-130)	1,984,495,405.71	99,224,770.29
Total Contract Price			13,944,023,652.76	718,716,904.50

B. Post-Change in Law Event GST Tax Incidence on Basic Value of relevant Contracts:

Name of contractor	Date of Amended Contract	Nature of Contract	Basic Value of WTGS (INR)	GST (INR)
Alfanar Power Private Limited	10.03.2022	Supply of Wind Turbines (92 WTGs of SG -122)	9,287,194,012.00	1,114,463,281.44
Alfanar Power Services Private Limited	31.03.2022	Supply and Services (92 WTGs of SG -122)	551,685,176.00	76,132,554.29
Alfanar Power Private Limited	31.03.2022	Supply of Wind Turbines (22 WTGs of Senvion M-120)	2,120,649,059.05	254,477,887.09
Alfanar Power Private Limited	31.03.2022	Supply of Wind Turbines 18 WTGs of Senvion M-130)	1,984,495,405.71	238,139,448.69
Total Contract Price			13,944,023,652.76	1,683,213,171.50

j) In addition to compensation for the increase in capital cost, it is also entitled to carrying cost @10.5% on the additional cost incurred by it on account of issuance of GST Notification No. 8, and the same will have to be paid for the following two periods:

- Period 1 - from when the Petitioner incurred the additional cost on account of issuance of GST Notification No. 8 till the approval of 'Change in Law' by this Commission; and
- Period 2 - from the date of approval of 'Change in Law' over the period of amortisation.

Submissions of SECI:

9. Briefly, SECI has submitted as under:

- a) In order to qualify for any relief under Article 12 of the PPA dealing with Change in Law, the claim raised by the Petitioner should fall within the scope and ambit of the said

provision. The Commission may be pleased to decide on the admissibility of the *2021 GST Notification* as an event of Change in Law within the scope of Article 12 of the PPA, read with the provisions of the PSA.

- b) If there is a supply of services in addition to the supply of goods, namely renewable energy devices, in terms of the explanation, the Rajasthan Appellate Authority for Advance Ruling vide decision dated 11.01.2022 in the case of *M/s. Utsav Corporation* has clarified that if the supply Contract entered into by the Petitioner involves the supply of Solar power-based devices, including the erection, installation, and commissioning of such a system, it will fall under a composite works contract. In such a case,
 - a) The value of goods is to be taken as 70% of the gross consideration
 - b) The value of services is to be taken as 30% of the gross consideration.The tax incidence on goods is 12%, and on services, 18%. Accordingly, 12% will be applicable only to 70% of the gross consideration charged and 18% to the remaining 30% of the gross consideration.
- c) The above Explanation (contained in the Table with reference to Serial No. 201 A), providing for 12% on 70% and 18% for 30%, will apply only if it is a composite works contract and not otherwise. If, however, there are two separate contracts, one for the supply of goods and one for erection for services, etc., the supply of goods will attract GST of 12% and the supply of services will attract GST of 18%.
- d) In case of composite works contract, subject to admissibility of Notification dated 30.09.2021 as Change in Law, any increase in rate of GST which the Petitioner can claim as per *2021 GST Notification* is only for the increase of GST from 5% to 12% on goods (which constitutes 70% of the gross consideration) there being no increase in tax on service part of 30% as per the said Notification.
- e) In view of the above, subject to the admissibility of the *2021 GST Notification* as a Change in Law, as per the *2021 GST Notification*:
 - a. The applicable rate of GST on the Contract for supply of goods has increased from 5% to 12%; and
 - b. 70% of the gross consideration of the contract value under the Contract for Supply and Services (Composite Supply Works Contract) will be taxed at 12% in terms of entry 201 A, read with the Explanation provided in Notification dated 30.09.2021, being the GST rate applicable on the supply of renewable energy devices and parts for their manufacture as specified therein. 30% of the gross consideration of the

contract value under the contract for supply and services will be taxed at 18% (i.e. the GST rate applicable to the supply of construction, engineering, installation, commissioning or other technical services in relation to renewable energy devices).

The effective increase in GST in the above case is from 8.9% to 13.8%.

- f) The extent to which relief admissible to the Petitioner on account of the *2021 GST Notification* of GST (if any) is subject to examination and verification of documents by SECI (and HPPC) to be submitted by the Petitioner.
- g) If the *2021 GST Notification* is considered as Change in Law, and upon the Petitioner commissioning and declaring commercial operation of the project, the Petitioner be directed to furnish the relevant details including date of delivery of goods, invoices, date on which invoices were raised, Statutory Auditor's Certificate etc. to substantiate the impact of the change in rate of GST in terms of the above Notification on the specified renewable energy devices and parts for their manufacture.
- h) The Petitioner is to establish the one-to-one correlation between the project, the supply of goods against which the change in law is claimed, the invoices, and other relevant documents for proof of the payment of the claimed amount on account of the change in law.
- i) The Scheduled Commissioning Date of the project was extended as under:
 - i. The Scheduled Commissioning Date was revised to 28.02.2021 or the actual commercial operation date, whichever is earlier, on account of the delay in the operationalisation of LTA, vide letter dated 10.12.2019 of SECI.
 - ii. The Scheduled Commissioning Date was further revised to 28.07.2021, in terms of Office Memorandum dated 13.08.2020 of the Ministry of New and Renewable Energy dealing with Covid-19, vide letter dated 07.10.2020 of SECI.
 - iii. SECI vide its letter dated 15.03.2021 extended the Scheduled Commissioning Date till 28.02.2022,
 - iv. The Scheduled Commissioning Date of the project was further extended to 19.08.2022 vide letter dated 15.09.2021 from SECI to the Petitioner on account of the delay in the issuance of necessary Developer Permission by Gujarat Energy Development Agency.
 - v. As per the letter dated 08.07.2022 of SECI, the Scheduled Commissioning Date was further extended to 19.11.2022.

- j) The commercial supply of power from the power project under the PPAs is from the Commercial Operation Date of the power plant. In such a case, the extent to which the impact of the change in law is to be considered is only on the equipment that is duly installed and commissioned by the date of commercial operation of the power plant. Equipment installed after the project's commercial operation date is not to be considered for the impact of a change in Law.
- k) If the Commission declares the event claimed by the Petitioner as a Change in Law, the reconciled claim is to be paid on a Monthly Annuity basis unless the Distribution Licensees/Buying Entities specifically agree to make a lump-sum payment and further duly make such payment in discharge of their obligation.
- l) By communication dated 12.03.2020, MNRE, Government of India with regard to the aspect of Change in Law payment ordered by the Commission on account of imposition of GST vide notification dated, 2017 and Safeguard Duty (imposed vide Notification dated 30.07.2018) inter-alia stated that impact of GST/Safeguard Duty shall be recovered on annuity basis, the rates for this shall be worked out by SECI and that the rates of recovery shall be as per the norms of this Commission.
- m) There is a clear rationale for annuity payment methodology. The increased costs have been claimed to have been incurred for the purpose of supplying power; thus, the costs should be recovered only if the Petitioner continues to maintain the supply of power. If the Petitioner does not supply the requisite power, it should not be entitled to recover the cost proportionate to such non-supply, similar to any other capital cost. If the Petitioner is allowed to recover the Change in Law impact in a lump sum, then SECI (and consequently HPPC) would have paid for the capital cost even without an actual supply of power in the future. If, for any reason, the Petitioner abandons the project and discontinues the supply of power, there is no methodology for adjustments of the lump sum payments already made.
- n) The decision dated 20.08.2021 of the Commission approving the discounting factor at 10.41% was based on the interest rate specified in the Renewable Tariff Regulations, 2017, read with RE Tariff Order dated 19.03.2019, notified by the Commission at the relevant time when the said annuity methodology was considered by the MNRE and implemented by SECI.
- o) Subsequently, there has been a fall in the interest rate of loans, and the Commission has notified the Central Electricity Regulatory Commission's 'Renewable Tariff Regulations

2020’ and passed the RE Tariff Order dated 07.11.2022 in Petition No.14/SM/2022 for the FY 2022-2023. The Commission vide Order dated 27.03.2023 in 3/SM/2023 inter alia stated that *‘Therefore, Order dated 07.11.2022 in Petition No. 14/SM/2022 shall also continue to be in force until further Orders’*. In the above regulations read with the RE tariff Orders, the Commission has considered an interest rate of 9.12% and a term of 15 years for the Loan repayment.

- p) Accordingly, the following parameters for making payment on an annuity basis may be considered by the Commission, if the event claimed by the Petitioner is held as a Change in Law in terms of Article 12 of PPA:
- a) The change in law claims up to the cut-off date (date of commercial operation/commencement of power supply), as may be decided by the Commission in its order, will be evaluated by SECI;
 - b) The annuity rate may be considered as 9.12% which is the rate of interest for the loan component of the capital cost as provided in the Commission’s RE Tariff order dated 07.11.2022 read with order dated 23.03.2023 (Para F.11 in Annexure 1 of the Order) read with Regulation 14 (2) (b) of Renewable Tariff Regulations, 2020; or such rate as per the regulation and RE tariff Order notified by Central Commission which may be applicable;
 - c) The period for payment of the claim amount on account of a change in Law on an annuity basis may be considered as 15 years from the date of the Commercial Operation Date. The same is consistent with Regulation 14 (1) of the RE Tariff Regulations 2020, providing that *“For the determination of generic tariff and project specific tariff, loan tenure of 15 years shall be considered”*;
 - d) In cases where the project of the Power Developer has already achieved COD, the amount of the monthly annuity payment for the number of months elapsed since the COD till the date of payment may be paid on a lump-sum basis; and
 - e) The remaining amount of the change in law reconciled amount (Total change in law claims payable minus change in law claims paid on an upfront basis) may be payable to the SPD with the monthly annuity rate.
- q) If the event claimed by the Petitioner is considered as Change in Law and the impact is allowed to the Petitioner, the Commission may be pleased to issue directions to HPPC (i.e. the power procurer under the PSA), to make payment towards the evaluated change

in law claims payable by SECI to Petitioner, on a back-to-back basis under the PSA in a time bound manner.

- r) The Petitioner's claim for carrying cost is to be considered after the decision of the Commission on the admissibility of *the 2021 GST Notification as a change in Law* within the scope of Article 12 of PPA and PSA.
- s) The PPA in the present case does not have any provision dealing with restitutionary principles of restoration to the same economic position. Therefore, the Petitioner is not entitled to claim relief of carrying costs.

Submission of the HPPC:

10. Briefly, Haryana Power Purchase Centre (HPPC) has submitted as under:

- a) Solar Energy Corporation of India Limited has agreed to purchase power from the Petitioner under the Power Purchase Agreement as an intermediary procurer for resale of the power to the HPPC under the back-to-back Power Sale Agreement dated 21.01.2019. As such, the impact of the change in Law is to be considered in terms of Article 12 of the PPA dated 21.01.2019 entered into between the Petitioner and SECI, read with Article 8 of the PSA dated 21.01.2019 entered into between SECI and HPPC.
- b) The SCoD as per Article 1 of the PPA was 22.07.2020. The SCoD was thereafter extended/revised on subsequent occasions, i.e., firstly to 28.02.2021, then to 28.07.2021, then to 19.08.2022, and thereafter to 19.11.2022.
- c) If there is a supply of services in addition to the supply of goods, namely renewable energy devices, in terms of the explanation, the Rajasthan Appellate Authority for Advance Ruling vide decision dated 11.01.2022 in the case ***of M/s. Utsav Corporation*** has clarified that if the Supply Contract entered into by the Petitioner involves the supply of Solar power-based devices, including their erection, installation, and commissioning, it will fall under a composite works contract. In such a case,
 - a) The value of goods is to be taken as 70% of the gross consideration
 - b) The value of services is to be taken as 30% of the gross consideration.The tax incidence on goods is at 12%, and the tax on services is at 18%. Accordingly, 12% will be applicable only to 70% of the gross consideration charged and 18% to the remaining 30% of the gross consideration.
- d) The above explanation (contained in the Table with reference to Serial No.201A), providing for 12% on 70% and 18% for 30%, will apply only if it is a composite works

contract and not otherwise. If, however, there are two separate contracts, one for the supply of goods and one for the erection of services, etc the supply of goods will attract GST of 12% and the supply of services will attract GST of 18%. In case of composite works contract, subject to admissibility of Notification dated 30.09.2021 as Change in Law, any increase in rate of GST which the Petitioner can claim as per Notification dated 30.09.2021 is only for the increase of GST from 5% to 12% on goods (which constitutes 70% of the gross consideration) there being no increase in tax on service part of 30% as per the said Notification.

- e) In view of the above, subject to the admissibility of the notification dated 30.09.2021 as a Change in Law, as per the Notification dated 30.09.2021:
 - a. The applicable rate of GST on the Contract for supply of goods has increased from 5% to 12%; and
 - b. 70% of the gross consideration of the contract value under the Contract for Supply and Services (Composite Supply Works Contract) will be taxed at 12% in terms of entry 201A, read with the Explanation provided in Notification dated 30.09.2021, being the GST rate applicable on the supply of renewable energy devices and parts for their manufacture as specified therein. 30% of the gross consideration of the contract value under the contract for supply and services will be taxed at 18% (i.e. the GST rate applicable to the supply of construction, engineering, installation, commissioning, or other technical services in relation to renewable energy devices). The effective increase in GST in the above case is from 8.9% to 13.8%.
- f) The extent to which relief admissible to the Petitioner on account of the *2021 GST Notification* is subject to examination and verification of documents by HPPC (and SECI) to be submitted by the Petitioner.
- g) If the *2021 GST Notification* is considered a Change in Law, and upon the Petitioner commissioning and declaring commercial operation of the project, the Petitioner be directed to furnish the relevant details including date of delivery of goods, invoices, date on which invoices were raised, Statutory Auditor's Certificate etc. to substantiate the impact of the change in rate of GST in terms of the above Notification on the specified renewable energy devices and parts for their manufacture.
- h) The contracts being relied upon by the Petitioner detailed above have been executed by the Petitioner- Netra Wind Private Limited (subsidiary company) with its parent company- Alfanar Power Private Limited, as such, mere reference to the contracts would

not suffice without the proof of actual deposit of GST, especially when the Petitioner has failed to place on record the copies of the contract or its audited statement of accounts. The Petitioner has merely relied upon a certificate issued by the Chartered Accountant wherein it has been stated- “... *the project cost may be impacted to increase by Rs 964,496,267.00 (Indian Rupees Ninety Six Crore Forty Four Lakh Ninety Six Thousand Two Hundred Sixty Seven Only)*).

- i) The extent of relief admissible to the Petitioner on account of the 2021 GST Notification (if any) is subject to examination and verification of documents to be submitted by the Petitioner. The Petitioner's claim is not supported by all the invoices. Further, the claim of the Petitioner is also devoid of the following details-
- a. Date of Purchase Order;
 - b. Date of raising of Invoice by the Supplier;
 - c. Date of handing over of the goods to the common carrier/delivery date;
 - d. Date at which Goods were installed at the site;
 - e. Date of Bill of Lading in case of imported goods;
 - f. Date of Customs clearance in case of imported goods;
 - g. Date of arrival of the goods at the project site;
 - h. Date of rendering of the actual services;
 - i. The GST/Tax Invoice raised.
 - j. Supporting document in the rest of the above documents.
- j) It is a trite law that mere filing of invoices is not sufficient, and the content of the same needs to be proved. Under the GST Law regime, any registered person can avail a 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. ITC is a mechanism to avoid cascading taxes. Cascading of taxes, in simple language, is ‘tax on tax’. Under the earlier system of taxation, the credit of taxes levied by the Central Government was not available as a set-off against taxes levied by State Governments, and vice versa. One of the most important features of the GST system is that the entire supply chain would be subject to GST, levied concurrently by the Central and State Governments. As the tax charged by the Central or State Governments would be part of the same tax regime, credit of tax paid at every stage would be available as a set-off against tax payable at every subsequent stage. However, the Petitioner has failed to

provide any details whatsoever of the ITC claimed or to be claimed and used as set-off against the total liability.

- k) The Petitioner is to establish the one-to-one correlation between the project, the supply of goods against which a change in law is claimed, the invoices, and other relevant documents for proof of the payment of the claimed amount on account of the change in law.
- l) The commercial supply of power from the power project under the PPAs is from the Commercial Operation Date of the power plant. In such a case, the extent to which the impact of the change in law is to be considered is only on the equipment that is duly installed and commissioned by the date of commercial operation of the power plant. Equipment installed after the project's commercial operation date is not to be considered for the impact of a change in Law.
- m) If the Commission declares the event claimed by the Petitioner as a Change in Law, then this Commission may be pleased to take into consideration that the reconciled claim is to be paid on a Monthly Annuity basis.
- n) In the proceedings before the Commission in Petition No.536/MP/2020 filed by SECI, the annuity scheme had been approved for making payment of reconciled claim amount on account of Change in Law events. On 20.08.2021, the Commission passed the order in Petition No. 536/MP/2020 approving the annuity methodology for making payments in respect of the change in law claim,
- o) The decision dated 20.08.2021 of the Commission approving the discounting factor at 10.41% was based on the interest rate specified in the Renewable Tariff Regulations, 2017 read with RE Tariff Order dated 19.03.2019 notified by the Commission at the relevant time when the said annuity methodology was considered by the MNRE and implemented by SECI.
- p) Subsequently, there has been a fall in the interest rate of loan and the Commission has notified the Central Electricity Regulatory Commission (Terms and Conditions for Tariff Determination from Renewable Energy Sources) Regulations, 2020 (hereinafter 'Renewable Tariff Regulations 2020') and passed the RE Tariff Order dated 07.11.2022 in Petition No. 14/SM/2022 for the FY 2022-2023. The Commission vide Order dated 27.03.2023 in 3/SM/2023 inter alia stated that *'Therefore, Order dated 07.11.2022 in Petition No. 14/SM/2022 shall also continue to be in force until further Orders'*. In the

above regulations read with the RE tariff Orders, the Commission has considered an interest rate of 9.12% and a term of 15 years for Loan repayment.

- q) Accordingly, for the present case, the following parameters for making payment on an annuity basis may be considered by the Commission, if the event claimed by the Petitioner is held as a Change in Law in terms of Article 12 of PPA:
- a. The change in law claims up to the cut-off date (date of commercial operation/commencement of power supply);
 - b. The annuity rate may be considered as 9.12% which is the rate of interest for the loan component of the capital cost as provided in the Commission's RE Tariff order dated 07.11.2022 read with Order dated 23.03.2023 (Para F.11 in Annexure 1 of the Order) read with Regulation 14 (2) (b) of Renewable Tariff Regulations, 2020; or such rate as per the regulation and RE tariff Order notified by Central Commission which may be applicable;
 - c. The period for payment of the claim amount on account of a Change in Law on an annuity basis may be considered as 15 years from the date of the Commercial Operation Date. The same is consistent with Regulation 14 (1) of the RE Tariff Regulations 2020, providing that "*For the determination of generic tariff and project specific tariff, loan tenure of 15 years shall be considered*".
- r) The Petitioner's claim for carrying cost is to be considered after the decision of the Commission on the admissibility of the *2021 GST Notification* as a Change in Law within the scope of Article 12 of PPA and PSA.
- s) 11. On the admissibility of carrying cost claimed by the Petitioner, the submissions of HPPC are as under:
- i. The PPA and the PSA in the present case do not have any provision dealing with restitutionary principles of restoration to the same economic position of the WPD. Therefore, the Petitioner is not entitled to claim relief of carrying costs.
 - ii. In regard to the above, the Appellate Tribunal in the Judgment dated 13.04.2018 in Appeal No.210 of 2017 in *Adani Power Limited Vs. Central Electricity Regulatory Commission and Ors.*, have considered two scenarios under the provisions the two PPAs, namely, dated 02.02.2007 (Gujarat Bid-02 PPA) and 06.02.2007 (Gujarat Bid-01 PPA), both entered into between Adani Power and Gujarat Urja Vikas Nigam Limited ('GUVNL'). In the case of the Gujarat Bid-

02 PPA, the Hon'ble Appellate Tribunal, while referring to the specific provisions of restitution contained in the PPA, decided that the carrying cost is admissible. However, while referring to the Gujarat Bid-01 PPA, which did not contain the restitution clause, the Hon'ble Appellate Tribunal held that no carrying cost shall be admissible in terms of the same.

- iii. As in the case of Gujarat Bid-01 PPA, in the present matter, also, the PPA does not contain a restitutionary provision. Adani Power Limited did not challenge the Judgment dated 13.04.2018 of the Appellate Tribunal, on the aspect of disallowance of Carrying Cost with respect to Gujarat Bid-01 PPA. Accordingly, the Judgment dated 13.04.2018 of the Hon'ble Tribunal on the above aspect has attained finality.
- t) The Appellate Tribunal in its decision dated 15.09.2022, passed in Appeal No.256 of 2019 and connected Appeals in the case of Parampujya Solar Energy Pvt. Ltd. Vs. Central Electricity Regulatory Commission, has dealt with the aspects of impact of Change in Law beyond Commercial Operation Date of the project and Carrying Cost.
- u) The Hon'ble Supreme Court, vide its order dated 12.12.2022, passed in Civil Appeal No.8880 of 2022 filed by Telangana Discoms, challenging the above judgement dated 15.09.2022 of the Hon'ble Tribunal in Parampujya Case, directed as under:
- v) *"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"*. The Judgment dated 15.09.2022 of the Tribunal in Parampujya Case has been challenged by SECI before the Hon'ble Supreme Court in Civil Appeal No. 505-510 of 2023.
- w) In terms of the Orders dated 12.12.2022 and 23.01.2022 of the Hon'ble Supreme Court, the enforceability of the Commission's order to be passed in pursuance of Tribunal's decision dated 15.09.2022 in Parampujya Case has been stayed with regard to the issues of carrying cost, compensation on account of impact of Change in Law for the period post Commercial Operation Date of the projects and towards O&M expenses.

Rejoinder of the Petitioner dated 27.09.2025:

11. Briefly, the Petitioner has submitted as under:

- a) On 10.03.2025, CTUIL revoked the grant of Connectivity and deemed GNA for the balance capacity (93.5 MW out of 300MW) granted to the Petitioner in accordance with Regulation 24.6 of the Central Electricity Regulatory Commission (Connectivity and General Network Access to the inter-State transmission System) Regulations, 2022. Pursuant thereto, in lieu of invoking the relevant Bank Guarantees, CTUIL accepted a payment of INR 6.07 Crore from the Petitioner on 18.03.2025.
- b) On 26.03.2025, the Petitioner, while apprising SECI of CTUIL's revocation of the grant of Connectivity and deemed GNA for 93.5 MW out of the total 300 MW, requested SECI to short-close the PPA by reducing the contracted capacity from 300 MW to 206.5 MW. The Petitioner further requested that the PPA be amended accordingly. Pursuant thereto, SECI has invoked the Bank Guarantee furnished by the Petitioner, amounting to INR 49,47,54,661.33.
- c) All WTGs were duly installed and commissioned before the SCoD, i.e., 30.05.2024, and it is seeking relief only in respect of the commissioned capacity of 206.5 MW, out of the total contracted capacity of 300 MW under the PPA.
- d) Accordingly, the imposition of additional GST at the rate of 7% on the purchase of renewable energy parts under the *2021 GST Notification* amounts to an amendment of the 2017 GST Notification, thereby constituting a *Change in Law* event under Article 12 of the PPA. In terms of Article 12.2 of the PPA, the Petitioner is entitled to compensation so as to be restored to the same financial position as it would have been, had the *Change in Law* event not occurred.
- e) The Petitioner claims reimbursement only of the actual additional GST paid, duly supported by the Auditor's Certificate dated 24.09.2025.
- f) The issue of a 'cut-off date' in relation to its claim for *Change in Law* on account of the issuance of the *2021 GST Notification* is misplaced. The Petitioner's claim is confined to the period prior to the Commercial Operation Date (COD) of the last part-commissioned capacity of the Wind Project, i.e., the period preceding 26.04.2024.
- g) This position is corroborated by the last Commissioning-cum-COD Certificate dated 25.04.2024 issued by SECI. It is therefore evident that the supply of goods and services forming the basis of the Petitioner's GST claim necessarily occurred prior to the COD of the last part-commissioned capacity of the Wind Project. Further, Article 12 of the PPA does not impose any restriction on the grant of compensation for additional expenditure incurred on account of a *Change in Law* event, whether before or after COD. Applying

this principle to the facts of the present case, it is respectfully submitted that no restriction can be read into Article 12. The Petitioner is not, in the present proceedings, seeking any relief for expenditure incurred after COD.

- h) The expenditure incurred by the Petitioner on account of the Change in Law Event ought to be reimbursed through a lump sum payment along with carrying costs, inasmuch as the Petitioner has suffered the entire expenditure upfront and hence annuity payments would not lead to a situation where the Petitioner would be restored to the same financial position.
- i) As per SECI, the discounting factor needs to be considered as 9.12% due to the reason that this Commission has notified the CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2020 (RE Tariff Regulations, 2020) and the RE Tariff Order dated 07.11.2022 r/w order dated 23.03.2021, whereby this Commission has considered the interest rate of 9.12% and the term of the Loan repayment at 15 years.
- j) The discounting rate of 10.41% which is equivalent to the rate of interest on loans (as provided under the CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2017 (RE Tariff Regulations, 2017)) as proposed by the Respondent and affirmed by this Commission in 536/MP/2020 is insufficient, inappropriate and unsustainable. Accordingly, the suggestion to consider a discounting factor as 9% and monthly instalments continuing for a period of 15 years in terms of RE Tariff Regulations, 2020 may also be considered insufficient, inappropriate, and unsustainable.
- k) It is extremely relevant to highlight that while SECI chooses to rely on the discounting factor solely for the rate of interest on loan/debt component based on CERC Tariff Order for Renewable Projects dated 31.03.2021, however, it conveniently ignores that the very same Order also explicitly states that the Debt:Equity Ratio is to be considered as 70:30. Therefore, the cost of debt (for 70% of the Project cost) shall be considered as average of the one-year Marginal Cost of Funds-based Lending Rate (MCLR) as declared by the State Bank of India for the previous year plus 200 basis point, while cost of equity shall be 14% post tax (18.71% pre-tax when grossed up with Corporate tax which is 25.17%) (for 30% of the Project cost) i.e. as per CERC RE Tariff Order dated 31.03.2021 based on RE Regulations 2020. Accordingly, the annuity rate calculated is 13.14% $[(10.75\% \times 70\%) + (18.71\% \times 30\%) = 13.14\%]$ per annum.

- l) Accordingly, while both parties essentially appear to agree to rely upon the RE Tariff Regulations, 2020, the only discord appears to be in relation to selective reliance as proposed by SECI on the debt aspect.

Analysis and Decision:

12. We have heard the learned counsels for the Petitioner and the Respondents and have carefully perused the records.
13. The main issues that arise for consideration before the Commission in the present matter are as under:

Issue No. I: *Whether the imposition of an increased rate of goods & services tax vide the Notification No. 8/2021- GST issued by the Ministry of Finance, Government of India, amounts to a Change in Law event under Article 12 of the Power Purchase Agreement dated 21.01.2019? AND Whether the Petitioner is entitled to compensation in terms of Article 12 of the Power Purchase Agreement dated 21.01.2019 towards additional expenditure on account of the Change in Law events?*

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

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

14. We now take issues one by one for discussion.

Re. Issue No. I:

Whether the imposition of an increased rate of goods & services tax vide the Notification No. 8/2021- GST issued by the Ministry of Finance, Government of India, amounts to a Change in Law event under Article 12 of the Power Purchase Agreement dated 21.01.2019? AND Whether the Petitioner is entitled to compensation in terms of Article 12 of the Power Purchase Agreement dated 21.01.2019 towards additional expenditure on account of the Change in Law events?

15. The Petitioner has submitted that on account of the 2021 GST Notification, it has incurred additional expenditure of Rs. 964,496,267/-. On 28.10.2021, the Petitioner issued a letter/notice to SECI, intimating about the occurrence of the CIL event (2021 GST

Notification). *Per contra*, SECI & HPPC have submitted that subject to admissibility of the notification dated 30.09.2021 as Change in Law, as per Notification dated 30.09.2021: (i) The applicable rate of GST to the Contract for supply of goods has increased from 5% to 12%; and (ii) 70% of the gross consideration of the contract value under the Contract for Supply and Services (Composite Supply Works Contract) will be taxed at 12% in terms of entry 201A read with Explanation provided in Notification dated 30.09.2021 being the GST rate applicable on the supply of renewable energy devices and parts for their manufacture as specified therein. Further, 30% of the gross consideration of the contract value under the contract for supply and services will be taxed at 18% (i.e. the GST rate applicable to the supply of construction, engineering, installation, commissioning, or other technical services in relation to renewable energy devices). The effective increase in GST in the above case is from 8.9% to 13.8%. The extent to which relief admissible to the Petitioner on account of the 2021 GST Notification is subject to examination and verification of documents by SECI & HPPC.

16. We observe that relevant provisions of the PPA dated 21.01.2019 are 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 Commissions;

“Indian Governmental Instrumentality shall mean the Government of India, Governments of state(s) of Haryana, Gujarat and NCT of Delhi and any ministry, department, board, authority, agency, corporation, commission under the direct or indirect control of Government of India or any of the above state Government(s) or both, any political sub-division of any of them including any court or Appropriate Commission(s) or tribunal or judicial or quasi-judicial body in India;”

12. ARTICLE 12: CHANGE IN LAW

12.1 Definitions

In this Article 12, the following terms shall have the following meanings:

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

- the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law;*
- a change in the interpretation or application of any Law by any Indian*

Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of Law;

- *the imposition of a requirement for obtaining any Consents, Licenses or Permits which was not required earlier;*
- *a change in the terms and conditions prescribed for obtaining any Consents, Licenses or Permits or the inclusion of any new terms or conditions for obtaining such Consents, Licenses and Permits; except due to any default of the WPD;*
- *any statutory change in tax structure or introduction of any new tax made applicable for setting up of Wind Power Project and supply of power from the Project by the WPD and has direct effect on the Project, shall be treated as per the terms of this Agreement.*

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

12.2 Relief for Change in Law

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

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

Notifications regarding rates qua Goods:

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

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

Schedule I - 2.5%

Sr. No.	Chapter/ Heading/ /Sub-heading/ Tariff-item	Description of Goods
234	84 or 85	<u>Following renewable energy devices & parts for their manufacture:</u> (a) Bio-gas plant; (b) Solar power-based devices; (c) <u>Solar power generating system;</u> (d) Wind mills, Wind Operated Electricity Generator (WOEG); (e) Waste to energy plants / devices; (f) Solar lantern / solar lamp; (g) Ocean waves/tidal waves energy devices/plants;

(The 2017 SGST Notification has a similar provision. Same is not reiterated here.)

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

(b) in Schedule II – 6%, -

...

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

201 A	84, 85 or 94	Following renewable energy devices & parts for their manufacture: - (a) Bio-gas plant (b) Solar power-based devices (c) Solar power generating system (d) Wind mills, Wind Operated Electricity Generator (WOEG) (e) Waste to energy plants/ devices (f) Solar lantern/ solar lamp (g) Ocean waves/ tidal waves energy devices/plants (h) Photo voltaic cells, whether or not assembled in modules or made up into panels. [Explanation: If the goods specified in this entry are supplied, by a supplier, along with supplies of other goods and services, one of which being a taxable service specified in the entry at S. No. 38 of the Table mentioned in the notification No. 11/2017-Central Tax (Rate), dated 28th June, 2017 [G.S.R. 690(E)], the value of supply of goods for the purposes of this entry shall be deemed as seventy per cent. of the gross consideration charged for all such supplies, and the remaining thirty per cent. of the gross consideration charged shall be deemed as value of the said taxable service.
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(The Notification No. [F.12(1) FD/Tax/2021-60] has a similar provision. Same is not being reiterated here.)

Notifications regarding rates qua Services:

18. We note that relevant notifications are as under:

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

S. No.	Chapter, Section or Heading	Description of Service	Rate (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
....				
3	Heading 9954 (Construction	(i) Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or	9	-

	services)	partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. (Provisions of paragraph 2 of this notification shall apply for valuation of this service.)		
		(ii) composite supply of works contract as defined in clause 119 of section 2 of Central Goods and Services Tax Act, 2017.	9	-
		(iii) construction services other than (i) and (ii) above.	9	-

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

“....

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

c) Notification No. 27/2018:

(1)	(2)	(3)	(4)	(5)
“38.	9954 or 9983 or 9987	Service by way of construction or engineering or installation or other technical services, provided in relation of setting up of following, - (a) Bio-gas plant (b) Solar power based devices (c) Solar power generating system (d) Wind mills, Wind Operated Electricity Generator (WOEG) (e) Waste to energy plants / devices (f) Ocean waves/tidal waves energy devices/plants <u>Explanation:- This entry shall be read in conjunction with serial number 234 of Schedule I</u>	9	-”;

		of the notification No. 1/2017- Central Tax (Rate), published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) dated 28th June, 2017 vide GSR number 673(E) dated 28th June, 2017.		
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d) Notification No. 24/2018:

“

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

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

In drawing our conclusions as above, we have based our findings upon the ruling dated 15.05.2019 given by the Rajasthan Appellate Authority for Advance Ruling in the case of Kailash Chandra (Proprietor of Mali Construction) involving similar situation. The Advance Ruling Authority in the instant case had held that the instant supply comprising supply of goods in the form of solar energy based bore well water pumping system along with installation and commissioning of such Water pumping system is a composite supply of works contract attracting GST @ 18% in terms of entry Sl. No. 3 of Notification No. 11/2017-Central Tax (Rate), dated 28.06.2017. However, the ruling that the composite supply .of goods and services in the instant case deserves to be classified as works contract service is not supported by legal position which has been correctly interpreted by the Authority for Advance Ruling for the State of Uttarakhand in the case of M/s Premier Solar Systems Pvt. Limited as reported at 2019-T10L-79-AAR-GST by holding that the supply of solar irrigation water pumping system along with design, erection, commissioning and installation would constitute a composite supply attracting GST @ 5% on goods portion and GST @ 18% on services portion as prescribed in the relevant entry of the notification.

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

(a) 5% on value of goods where the value of goods is to be taken as 70% of the gross consideration and

(b) 18% on the value of services where the value of services is to be taken as 30% of the gross consideration.

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

19. The Commission notes from the Petitioner's submissions that it had executed the following contracts:

- i. On 28.06.2019, the Petitioner executed a **Supply Contract** with *M/s Alfanar Power Private Limited* for the supply of ninety-two (92) wind turbine generators (WTGs) of SG-122. The said Supply Contract was subsequently amended on 18.03.2021, 16.09.2021 and 10.03.2022.
- ii. On 28.06.2019, the Petitioner executed a **Supply and Services Contract** with *M/s Alfanar Power Services Private Limited* for the supply of BoP equipment and allied services of erection, installation and commissioning service in relation to ninety-two (92) WTGs of SG-122. The said Supply and Services Contract was subsequently amended on 18.03.2021, 16.09.2021 and 09.11.2021.
- iii. On 05.03.2021, the Petitioner executed a **Supply Contract** with *M/s Alfanar Power Private Limited* for the supply of twenty-two (22) WTGs of Senvion M-120 and eighteen (18) WTGs of Senvion M-130. The said Supply Contract was subsequently amended on 31.03.2022.

20. Consequently, the GST @70% was to be factored in for the supply portion, and for the service portion, the GST was to be computed @30%. The Petitioner has sought compensation accordingly. SECI has submitted that 12% will be applicable only to 70% of the gross consideration charged, and 18% on the remaining 30% of the gross consideration.

21. We observe that Clause (5) of Article 12 of the PPA dated 24.08.2023, in seriatim, stipulates explicitly that *any statutory change in tax structure or introduction of any new tax made applicable for setting up of Wind Power Project and supply of power from the Project by the WPD and has direct effect on the Project, shall be treated as per the terms of this Agreement.* A change in the rate of any taxes includes a change in rates of taxes, duties & cess as a Change

in Law event. *The Notification No. 8/2021- Central Tax (Rate) dated 30.09.2021* has been issued by the Ministry of Finance, Government of India. The change in the 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 notifications, viz. *Notification No. 8/2021- Central Tax (Rate) dated 30.09.2021* is a Change in Law event as per Article 12 of the PPA dated 21.01.2019. It is pertinent to mention here that the view taken is consistent with similar orders issued by the Commission, viz. *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.*

22. In the instant petition, the bid was submitted by the Petitioner on 29.08.2018. The e-Reverse auction was conducted on 25.09.2018. PPA was executed between the Petitioner and SECI on 21.01.2019, and the SCoD of the project was on 22.07.2020. The Petitioner commissioned the 206.5 MW (out of 300 MW) of its project on 25.04.2024, whereas the *2021 GST Notification* was notified on 30.09.2021. As such, the Petitioner's project was affected by the impugned *2021 GST Notification* and is entitled to relief under the GST Laws as per the terms of Article 12 of the PPA dated 21.01.2019. In view of the above discussion, we hold that the Petitioner is entitled to compensation for additional expenditure incurred on account of the 2021 GST Notification, as per Article 12 of the PPA dated 21.01.2019. Accordingly, the Commission hereby directs the contracting parties to carry out the reconciliation of additional expenditure by exhibiting a clear, one-to-one correlation with the projects and the invoices raised, supported with an auditor certificate corresponding to the mutually agreed project capacity under PPA dated 24.08.2023, which is valid.

23. The issue is decided accordingly.

Re. Issue No. II:

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

24. It was placed before us that this Commission, in its earlier order dated 20.08.2021 in Petition No. 536/MP/2020, had decided the methodology of compensation due to a Change in Law in the following manner. The extract is as under-

65.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. This Commission had decided 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 costs in terms of the rate of interest or return, respectively, are unknown, the rate can be taken as a uniform rate of compensation for the entire expenditure incurred on account of the Change in Law. The compensation for a 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. The Central Electricity Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2020 (RE Tariff Regulations, 2020), which were applicable to the period 01.07.2020 to 31.03.2023, were extended to 30.06.2024 vide Notification No. RA-14026(11)/4/2020-CERC dated 28.03.2024.
27. We note that the Petitioner’s projects achieved actual commercial operation of a net cumulative capacity of 206.5 MW against the awarded capacity of 300 MW on 25.04.2024. The Petitioner has achieved actual commercial operation as under:
- FY-2023-24**
- (i) 55 MW (25 WTGs of 2.2 MW each) on 10.04.2023;
 - (ii) 39.6 MW (18 WTGs of 2.2 MW each) on 13.07.2023;
 - (iii) 24.7 MW (6 WTGs of 2.2 MW each and 5 WTGs of 2.3 MW each) on 03.08.2023;
 - (iv) 17.6 MW (8 WTGs of 2.2 MW each) on 08.03.2024;
 - (v) 24.2 MW (11 WTGs of 2.2 MW each) on 28.03.2024; and
- FY-2024-25**
- (vi) 25.4 MW (6 WTGs of 2.2 MW each and 14 WTGs of 2.3 MW each) on 25.04.2024.

28. The Commission notified the RE Tariff Order dated 08.09.2023 in Petition 10/SM/2023 for FY 2023-24 in pursuance of the *CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2020*, wherein the Commission considered an interest rate of 9.12% and a loan repayment term of 15 years. The said order dated 08.09.2023 was valid till 30.06.2024. Thus, we hold that, for Change in Law events, the 9.12% *discount rate* and a 15-year annuity are the appropriate methodologies for change in law compensation.
29. Further, the Commission holds that the liability of the Respondents 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 for a 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 issues are decided accordingly.

Re. Issue No. III:

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

31. The Petitioner has submitted that it is entitled to carrying cost as the same is in accordance with the principle of restitution and the same has to be duly passed on. In terms of the law settled by the Hon’ble Supreme Court, the purpose of carrying cost is to finance the gap in cash flow whenever recovery of cost is deferred. Accordingly, the Petitioner is entitled to compensation for the carrying costs for the payments made by it. Per contra, SECI has submitted that PPA in the present case does not have any provision dealing with restitutionary principles of restoration to the same economic position. Therefore, the Petitioner is not entitled to claim relief of carrying costs. Also, HPPC has submitted that the Appellate Tribunal in the decision dated 15.09.2022, passed in Appeal No.256 of 2019 and connected Appeals in the case of *Parampujya Solar Energy Pvt. Ltd. Vs. Central Electricity Regulatory Commission* has dealt with the aspects of the impact of Change in Law beyond Commercial Operation Date of the project and Carrying Cost. However, the Hon’ble Supreme Court, vide its order dated

12.12.2022, passed in Civil Appeal No. 8880 of 2022 filed by Telangana Discoms stayed the *Parampujya judgment* dated 15.09.2022 of the Hon'ble Tribunal.

32. In terms of the Orders dated 12.12.2022 and 23.01.2022 of the Hon'ble Supreme Court, the enforceability of the Commission's order to be passed in pursuance of Tribunal's decision dated 15.09.2022 in Parampujya Case has been stayed with regard to the issues of carrying cost, compensation on account of impact of Change in Law for the period post Commercial Operation Date of the projects and towards O&M expenses.

33. We observe that Article 12 of the PPA dated 21.01.2019 stipulates as under:

12. ARTICLE 12: CHANGE IN LAW

12.1 Definitions

In this Article 12, the following terms shall have the following meanings:

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

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

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

12.2 Relief for Change in Law

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

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

34. From the above, we observe that the PPA dated 21.01.2019 does not contain the restitution clause. However, we also note that the APTEL, vide judgment dated 15.09.2022 in A.No. 256 of 2019 & Batch titled *Parampujya Solar Energy Private Limited &Ors. vs. CERC & Ors.* held as under:

78. The use of the word “relief” in the context of adjudicatory process, simply means the remedy which the adjudicatory forum may afford “in regard to some actual or apprehended wrong or injury” or something which a party may claim as of right, or making the affected party “feel like easing out of ... hardship”. [Sarsuti v. Kunj Behari Lal, 1883 SCC OnLine All 85; Santhamma v. Kerala State 2019 SCC OnLine Ker 1265; Commissioner of Income-Tax v. R.B. Jodhamal Kuthiala, 1963 SCC OnLinePunj 403; Dipti Aggarwal v. Ashish Chandra, 2017 SCC OnLine Cal 8835; Mewar Sugar Mills Ltd. v. Chairman Central Board of Direct Taxes and Ors. (09.10.1998 - DELHC)]. In *Kavita Trehen v. Balsara Hygiene Products Ltd* AIR (1995) SC 441, it was held by the Supreme court that jurisdiction to make restitution is inherent in every court and can be exercised whenever justice of the case demands.

79. While construing the contract, purposive interpretation of its terms is requisite [Nabha Power Limited vs. Punjab State Power Corporation Limited & Anr. (2018) 11 SCC 508]. ***This principle must be borne in mind while comprehending the scope and width of expression “provide relief” used in Article 12.2.2 in the PPA. For this, the statutory framework, as indeed the contractual clauses, will have to be kept in consideration.***

80. The Central Commission is the sector regulator vested with wide powers to act in furtherance of the objectives enshrined in the Electricity Act, 2003. Section 61 of the said enactment guides its functions expecting the authorities established by this legislation to follow “commercial principles”, act so as to ensure optimum returns on the investments, promote generation from renewable sources of energy and, most importantly, strike a balance between consumers’ interest and recovery of cost of electricity in a reasonable manner. The Tariff Policy 2016 lays emphasis on the recovery of returns by stipulating, inter alia, thus:

“8. DISTRIBUTION

8.2 Framework for revenue requirements and costs

8.2.1 The following aspects would need to be considered in determining tariffs:

8.2.2 The facility of a regulatory asset has been adopted by some Regulatory Commissions in the past to limit tariff impact in a particular year. This should be done only as a very rare exception in case of natural calamity or force majeure conditions and subject to the following:

a. Under business as usual conditions, no creation of Regulatory Assets shall be allowed;

b. Recovery of outstanding Regulatory Assets along with carrying cost of Regulatory Assets should be time bound and within a period not exceeding seven years. The State Commission may specify the trajectory for the same”

[Emphasis supplied]

81. *It is in this light that Hon'ble Supreme Court in the case of Energy Watchdog (supra) ruled, albeit in the context of Section 63, that **the Regulatory Commission must exercise its functions in accordance with law and guidelines and in situations where no such guidelines exist, it may avail of its "general regulatory powers" under Section 79(1)(b).***

82. *We have already noted that the PPAs which were subject matter of decisions in the case of Adani Power Ltd (supra) and GMR Warora Ltd (supra) contained change in law clauses structured differently from the shape in which they occur in the present PPAs, the words "provide relief" not having been used in the former. The judgment dated 13.04.2018 of this tribunal in Adani Power Ltd.(supra) did not even consider the question as to whether the principle of time value of money would apply in examining the impact of change in law once change in law had been approved. The said decision for present purpose is, thus, sub silentio. When the judgment in the said case was carried in appeal to the Hon'ble Supreme Court leading to decision reported as Uttar Haryana Bijli Vitran Nigam Ltd (UHBVNL) (supra), the challenge was not in relation to what had been denied by this tribunal as the first appellate forum and, therefore, it is not correct to say that the issue stands settled by the said judgment. We are, at the same time, conscious of the fact that while upholding the relief to the extent granted in the case of Adani Power Ltd (supra), the Supreme Court by judgment reported as UHBVNL (supra) had observed that it would be fallacious to say that the claim of restitution was being put forward "on some general principle of equity", the amount of carrying cost in that case being "relatable to Article 13 of the PPA" (the change in law clause).*

83. *In the present cases, the claim for compensation of SPPDs is primarily founded not on principles of equity but on the contractual clause stating that the affected party is entitled to approach the Commission which shall "provide relief" in relation to the impact of the change in law event if it has resulted in "any additional recurring /non-recurring expenditure". The purpose of the change in law clause in the PPAs is to relieve the SPPDs of the additional burden. Since the impact of the new tax (GST or Safeguard Duty on Imports, as the case may be) would come from the date of enforcement of the new laws, the relief intended to be afforded under the contracts cannot be complete unless the said burden is allowed to be given a pass through from the date of imposition of the levy. Unlike the PPA in UHBVNL (supra) wherein the phraseology of change-in-law provision was exhaustive, the words "provide relief" in present PPAs are open ended, not qualified in any manner so as to be given a restrictive meaning in order to treat the date of adjudication of the claim by the regulatory authority as the effective date or to justify denial of carrying cost burden for the period anterior thereto. In our reading, the expression "provide relief" is of widest amplitude and cannot be read to limit its scope the way the contesting respondents seek to propagate or the way the Central Commission has determined.*

84. *It is in the above context that we accept that the regulatory powers of the Central Commission ought to have been properly exercised to do complete justice to the claims for compensation it having been denied by depriving the SPPDs of their legitimate*

expectation of relief vis-à-vis the burden of carrying cost as well, rendering the dispensation partially unfair.

...

CLAIM OF COMPENSATION FOR PERIOD POST-COD

95. The appellant SPPDs had also claimed compensation (on account of change in law events) for the consequent additional expenditure incurred or invoices raised after the Commercial Operation Date (COD) of the SPPs. The Central Commission, by the impugned decisions, has held that liability towards additional expenditure is to be borne by the respondent beneficiaries only till the date of corresponding COD of the project. The Commission has articulated its views on the subject as under (quoted from Order dated 27.03.2020 which is subject matter of appeal no. 131 of 2022):

“103. The Commission notes that commissioning of the projects as defined in Article 1 read with Article 5 [along with Schedule 6 Petition No. 388/MP/2018] of the PPAs implies that all the equipment as per rated project capacity has been installed and energy has flown into the grid. Further, the liability of the Respondents for payment of purchase of the power from the Petitioner starts from the Commercial Operation Date (COD). As per definition of Commercial Operation Date (COD) provided in Article 1 of the PPAs, COD will be the date 30 days subsequent to the actual date of commissioning of full capacity. Accordingly, the Commission holds that the liability of payment on account of impact of GST on procurement of Solar PV panels and associated equipment by the Petitioners shall lie with the Respondents till the Commercial Operation Date (COD) only. The Commission is also of the view that there has to be a clear and one to one correlation between the projects, the supply of goods or services and the invoices raised by the supplier of goods and services.”

96. The contesting respondents defend the above view taken by the Central Commission submitting that it is not correct to contend that the PPAs do not bar the SPPDs for such expenditure after the COD of the projects.

97. It bears repetition to note that change-in-law clauses in the PPAs (Article 12) assure relief to be provided in relation to **“any additional recurring/non-recurring expenditure” arising out change-in-law.** There is no restriction in the contracts as to application of this clause for period prior to the COD. **The activities of generation of electricity and its supply, post COD, are bound to include non-recurring expenditure, O&M expenses being one such area. In fact, the use of the word “any” in relation to the consequent “recurring or non-recurring expenditure” signifies the wide ambit of the contractual clause, no exclusion of such nature as understood by the Commission deserving to be read there into. The extraneous qualification that such expenditure must relate to period prior to COD cannot be approved of.**

...

CONCLUSION

...

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.”

35. In view of the above, even in the absence of a specific restitution clause in the PPA, this Commission holds that the Petitioner, in the instant petition, shall be eligible for carrying costs starting from the date when the actual payments were made to the authorities until the date of issuance of this Order, at the actual rate of interest paid by the Petitioner for arranging funds (supported by Auditor’s Certificate) or the rate of interest on working capital as per the applicable RE Tariff Regulations prevailing at that time or the late payment surcharge rate as per the PPA, whichever is the lowest. Once a supplementary bill is raised by the Petitioner in accordance with this order, the provision for Late Payment Surcharge in the PPA would kick in if the payment is not made by the Respondents within the due date.
36. Accordingly, the Commission hereby directs the contracting parties to carry out the reconciliation of additional expenditure along with carrying cost by exhibiting a clear and one-to-one correlation with the projects and the invoices raised, supported with an auditor certificate. The Commission further directs that the Respondents are liable to pay the Petitioner all the above-reconciled claims.
37. 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.”

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

39. The issue is decided accordingly.

40. The summary of our findings is as follows:

- a) The *2021 GST Notification* is a Change in Law event in terms of Article 12 of the PPA dated 21.01.2019.
- b) The Petitioner is entitled to compensation on account of a Change in Law as per the terms of Article 12 of the PPA dated 21.01.2019, due to the *2021 GST Notification*. The contracting parties are to carry out reconciliation on account of additional expenditure as per Article 12 of the PPA dated 21.01.2019 by exhibiting a clear and one-to-one correlation with the projects and the invoices raised, supported by an auditor's certificate on account of the *2021 GST Notification*.
- c) Compensation is to be paid at the discount rate of 9.12% and an annuity period of 15 years. The liability of the Respondents 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 for a 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.
- d) The Petitioner shall also be eligible for carrying cost starting from the date when the actual payments were made to the Authorities till the date of issuance of this Order, at the actual rate of interest paid by the Petitioner for arranging funds (supported by Auditor's Certificate) or the rate of interest on working capital as per applicable RE Tariff Regulations prevailing at that time or the late payment surcharge rate as per the PPA, whichever is the lowest. Once a supplementary bill is raised by the Petitioner in terms of this order, the provision of a Late Payment Surcharge in the PPA would kick in if the payment is not made by the Respondents within the due date.

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

41. The Petition no. 314/MP/2022 is disposed of in terms of the above.

Sd/-
रविंदर सिंह ढिल्लों
सदस्य

Sd/-
हरीश दुदानी
सदस्य

Sd/-
रमेश बाबू वी.
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जिश्नु बरुआ
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