CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI

Petition No: 171/MP/2016

Coram:
Shri P.K.Pujari, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
Dr. M.K. Iyer, Member

Date of Order: 22nd June, 2018

In the matter of

Petition under Section 79 (1) (b) and (f) of the Electricity Act, 2003 for adjudication of claims towards Compensation arising out of Change in Law and consequential reliefs as per provisions of the PPA dated 26.2.2014 between KSK Mahanadi Power Company Limited and the distribution licensees in the State of Uttar Pradesh during the operation period.

AND

In the matter of

KSK Mahanadi Power Company Limited
8-2-293/82/A/431/A, Road No.22,
Jubilee Hills, Hyderabad – 500 033,
Andhra Pradesh, India. **…Petitioner**

Vs

1. Madhyanchal Vidyut Vitran Nigam Limited
4A, Gokhale Marg,
Lucknow – 226001

2. Paschimanchal Vidyut Vitran Nigam Limited
Udyog Bhawan, Victoria Park,
Meerut - 250001

3. Purvanchal Vidyut Vitran Nigam Limited
SLW Bhikaripur,
Varanasi – 221004

4. Dakshinanchal Vidyut Vitran Nigam Limited
Urja Bhawan, NH-2
Sikandra, Agra – 282002 **…Respondents**

Parties Present:

Shri Anand K. Ganeshan, Advocate, KSK Mahanadi
Shri A. Sreekanth, KSK Mahanadi

Shri Rajiv Srivastava, Advocate, UPPCL
Ms. Garima Srivastava, Advocate, UPPCL
Ms. Gargi Srivastava, Advocate, UPPCL
Ms. Ranjitha Ramachandran, Advocate, Prayas

ORDER

The Petitioner, KSK Mahanadi Power Company Limited, which was incorporated as a generating company as defined in Section 2 (28) of the Electricity Act, 2003, has undertaken to establish 3600 MW (6 X 600 MW) coal based thermal power project in district Akaltara of Chhattisgarh (hereinafter referred to as "the Project"**).** Two units of the Project are under operation and the balance units are at various stages of the construction and commissioning. The date of commercial operation of the first unit is 13.8.2013 and the Second Unit is 25.8.2014.

2. The Petitioner has entered into PPAs for supply of power from the generating station as follows:

(a) PPA dated 31.7.2012 between the Petitioner and the distribution licensees of the State of Andhra Pradesh.

(b) PPA dated 31.7.2012 between the Petitioner and the distribution licensees of the State of Telengana.

(c) PPA dated 18.10.2013 with the Government of Chhattisgarh for supply of 5% / 7.5% of the net power (gross power generated minus the auxiliary consumption) under the host State obligations

(d) PPA dated 27.11.2013 between the Petitioner and Tamil Nadu Generation and Distribution Corporation (TANGEDCO) in the State of Tamil Nadu for supply of 500 MW. The Petitioner had commenced supply of 281 MW to TANGEDCO with effect from 1.8.2015 and the balance 219 MW with effect from 5.10.2015.

(e) PPA dated 26.2.2014 between the Petitioner and the distribution licensees in the State of Uttar Pradesh ('UP discoms/Procurers') for aggregate supply of 1000 MW of power.

3. The Petitioner has submitted that under the PPA dated 26.2.2014 and after fulfilment of obligations by the Procurers under the PPA, the Petitioner had commenced supply of 180

MW to the UP discoms/Procurers with effect from 15.10.2015 and additional 120 MW from 16.10.2015 and thus achieved supply of 300 MW from 16.10.2015. In the present Petition, the Petitioner has sought adjustment of tariff on account of the events in change in law affecting the Project during the Operating Period and consequential reliefs in terms of the PPA dated 26.2.2014 of the UP discoms. The Petitioner has sought compensation under change in law during the Operation period on account of the following events:

(a) Levy of Clean Energy Cess by the Government of India under the Finance Act, 2010 with effect from 1.4.2010 in terms of Notification No. 03/2010-Clean Energy Cess dated 22.6.2010 issued by Ministry of Finance, Government of India and consequential Notifications by SECL dated 11.7.2014, 28.2.2015 and 29.2.2016.

(b) Imposition of Excise Duty on coal by the Central Government in the Finance Act, 2012 with effect from 1.4.2012 vide Notification dated 28.5.2012 with respect to Section 141 of Finance Act, 2012, SECL Notification dated 8.3.2013 including Royalty and SED and other taxes in assessable value for payment of excise duty and SECL notification 28.2.2015.

(c) Revision of rates of CG Paryavaran tax vide SECL Notification dated 19.8.2015.

(d) Revision of CG Vikas Upkaar cess vide SECL Notification dated 19.8.2015.

(e) Levy and revision of Electricity Duty on Auxiliary consumption vide Notification dated 1.8.2013 and subsequent Retail tariff orders thereto.

(f) Imposition of contribution to National Mineral Exploration Trust and District Mineral Foundation vide SECL Notification dated 14.11.2015.

(g) Revision in rate of service tax vide Finance Bill 2015 dated 28.2.2015 and Swach Bharat Cess, Krishi Kalyan Cess etc by Railway Ministry Notification dated 27.5.2015 and 12.11.2015.

(h) Revision of Business Season Surcharge on coal transportation vide Railways Notification dated 18.9.2013 and 20.7.2015.

(i) Revision in rate of Sizing charges and Surface transportation levies vide CIL Notification dated 13.11.2013 and 14.11.2013.

(j) Increase in Minimum Alternate Tax Rates introduced in the Finance Act, 2012 with effect from 1.4.2012.

(k) Increase in the rate of royalty on coal pursuant to Notification No 349 (E) dated 10.5.2012 issued by the Ministry of Coal, Government of India, Levies of Forest tax on coal vide SECL Notification dated 16.9.2015.

(l) Change in law events impacting water charges

(m) Other levies, taxes, duties, cess, charges that are being made applicable on various components of costs, being levied from time to time.

4. The Petitioner has submitted that the bid deadline was 24.9.2012 and any change in law event after 17.9.2012 (seven days prior to the bid deadline) resulting in additional recurring or non-recurring expenditure incurred by the Petitioner falls within the ambit of change in law. Accordingly, the impact of change in law events for the year 2015-16 was tabulated and submitted by the Petitioner vide affidavit dated 26.7.2016. Thereafter, the Petitioner vide affidavit dated 21.6.2017 has placed on record the financial impact of the Change in law claims for the period 2015-16 and 2016-17 as under:

(in ₹)

Sl. No	Change in Law	As on 17.9.2012	Current Rate	Impact for 2015-16	Impact for 2016-17
1.	Clean Energy Cess on Coal	₹50/Tonne	₹400/Tonne	123075750	463583098
2.	Excise Duty Changes	6.18%	6%	15980713	41413628
3.	Change in Chhattisgarh Infrastructure Development Cess	₹5/Tonne	₹7.5/Tonne	3128594	3311308
4	Change in Chhattisgarh Environment Cess	₹5/Tonne	₹7.5/Tonne	3128594	3311308
5	Electricity Duty on auxiliary Consumption	NIL	15% of Tariff applicable	81775097	133684591
6	Effect on Royalty	-	-	19086983	57460194
7	Effect on Terminal Tax	-	-	297212	868543
6	Introduction of Tax for contribution to be made to the National Mineral Exploration Trust	NIL	2% of Royalty paid	1603307	3522749
7	Introduction of Tax for contribution to be made to the District Mineral Foundation	NIL	30% of Royalty paid	24049598	52841240
8	Levy of Service Tax & Swachh Bharat Cess, Krishi Kalyan Cess on Total Freight by Rail/Road Transport	-	-	1873973	6783308
9	Change in the Busy Season Surcharge on transportation of coal through Railways	10% of Basic freight Rate	15% of Basic freight Rate	2781685	5517193
10	Change in Surface Transportation Cost and Coal sizing	3-10 km- ₹44/Tonne; 10-20 km- ₹77/Tonne + Sizing – ₹61/tonne	3-10 km- ₹57/Tonne; 10-20 km- ₹116/Tonne+ Sizing – ₹79/tonne	21132017	41060217
11	Effect of the above changes on VAT	-	-	17420963	54429013
12	Effect of the above changes on Entry Tax	-	-	3449696	10778022
	Total			**315935381**	**878564413**

***The inclusion of Royalty, stowing excise duty & other components have impacted the increase*

5. The Petitioner has submitted data based on the difference in tariff payable by the Respondents to the Petitioner for each of the months of supply of power from October, 2015 till 31.3.2017. The Petitioner has submitted that the Change in law events have significant financial impact on the costs and revenue of the Petitioner during the Operation period for which the Petitioner is entitled to be compensated in terms of Article 10 of the UP discoms / Procurer PPA. Accordingly, the Petitioner has filed the present Petition with the following prayers:

> *"(a) Hold and declare that the events listed enumerated above constitute change in law impacting revenues and costs for which the Petitioner must be entitled to additional payments under the procurer PPA;*
>
> *(b) Determine the impact of the change in law situation under the procurer PPA and carry out necessary tariff adjustment to give effect to such economic impact; and further issue necessary directions to the Respondents to pay such adjusted tariff in terms of the PPA;*
>
> *(c) Allow the Petitioner to raise supplementary bills on the Respondents for the arrears of amounts finally allowed by this Hon'ble Commission towards change in law from the date of change in law notification till the final disposal of the present Petition;*
>
> *(d) Allow to the Petitioner carrying cost on the recovered amounts of adjusted tariff from the date of change in law notification till the date of actual payment at a rate equivalent to the bank rate;*
>
> *(e) Restore the Petitioner to the same economic condition prior to the occurence of the change in law by permitting the Petition and the amounts as per the computations set out in hereinabove or through a suitable mechanism to compensate the Petitioners as and when the financial impact of the change in law arose; and*
>
> *(f) Pass such other and further order or orders as this Hon'ble Commission deems appropriate under the facts and circumstances of the present case."*

6. The Petition was admitted and notice was issued to the Respondents, UP discoms including M/s Prayas (the Consumer representative) with directions to file their replies in the matter. Pursuant to the hearing of the Petition on 20.12.2017, the Petitioner was directed vide ROP to submit additional information on the following with copy to the Respondent, TANGEDCO with directions to complete pleadings.

> *a) Gazetted notification issued by the Department of Revenue, Ministry of Finance, regarding the issue of clean energy cess, service tax (also including the imposition of krishi kalyan and Swachh Bharat Cess which is a part of the service tax).*
>
> *b) Gazetted notification issued by the Ministry of coal regarding the issue of Royalty on*

coal and contribution made to National Mineral Exploration Trust as well as District Mineral Exploration Trust.

c) Gazetted notification of increase in the Chhattisgarh Environment Cess/Chhattisgarh Environment tax and Chhattisgarh Industrial Development Cess/Chhattisgarh Development tax.

d) Date of Commercial operation of the units.

e) Actual date of supply of power to TANGEDCO, AP Discoms, Telangana and other beneficiaries.

f) Copy of the Fuel supply agreement entered with SECL.

g) Schedule generation/ actual generation as per NLDC/ SRLDC data.

h) Proper documentary evidence, statutory notifications, proof and justification to be produced for the issue entry tax, excise duty and proper documentary evidence/ proof including the State whose VAT is applicable in the instant petition and also other change in law events.

i) Actual demand for coal supply given by generating company and the actual supply made available by the coal company for the period 2015-16 and 2016-17, along with Price and GCV of domestic coal received from linkage and Price and GCV of e-auction/ imported coal used, if any along with GCV considered for the computation of relief along with the calculations duly certified by coal company.

j) Different PPA-wise/ contracted capacity-wise coal requirement received during 2015-16 and 2016-17. Quantum of linkage coal, e-auction coal and imported coal along with the actual shortfall starting from the actual commencement of supply of power to the respondents met through e-auction and imported coal.

k) The claim and the adequate/detailed information regarding the issue of the carrying cost.

l) The calculations of the amount claimed due to various change in law events, including the quantum of domestic coal certified by SECL and the details of the operational parameters such as GCV, Station heat rate, PLF/ Normative availability, Specific oil consumption and the auxiliary consumption as quoted in the bid.

7. The Petitioner vide affidavit dated 13.1.2018 has filed the additional information in terms of the directions of the Commission vide ROP dated 20.12.2017. Reply to the Petition has been filed by the Respondents, UPPCL vide affidavits dated 25.1.2018, 27.2.2018 and the Petitioner has filed its rejoinder to the said replies. M/s Prayas, a Consumer Representative (Prayas) vide affidavit dated 9.10.2017 has filed written submissions and the Petitioner vide affidavit dated 20.3.2018 has filed its response to the same. Thereafter, the matter was heard on 26.4.2018 and the Commission after directing the

parties to file their written submissions, reserved its order in the Petition. Accordingly, the Respondents UP discoms, M/s Prayas and the Petitioner have filed their written submissions on 5.5.2018, 10.5.2018 and 21.5.2018 respectively. Additional submissions have been made by M/s Prayas on 22.5.2018 in response to the Petitioner's submissions dated 21.5.2018.

Maintainability

8. The Petitioner has submitted that it has a 'composite scheme' for generation and sale of power to more than one State and hence the Commission has the jurisdiction to adjudicate the present matter under Section 79(1)(b) read with Section 79(1)(f) of the Electricity Act, 2003 in terms of the Full Bench judgment dated 7.4.2016 of the Appellate Tribunal for Electricity (Tribunal) in Appeal No. 100 of 2013 (UHBVNL & anr V CERC & ors). In response to the directions of the Commission vide ROP of the hearing dated 20.12.2017 to furnish the status of the cases pending before the Hon'ble High Court of Judicature at Hyderabad, the Petitioner vide affidavit dated 12.1.2018 has submitted that it has not filed any writ petition or any other proceedings before the Hon'ble High Court or any other judicial forum on the issue of jurisdiction of the State Commission vis a vis the Central Commission. The Petitioner has further submitted that the issue of jurisdiction primarily arose in case of generators who are located in the erstwhile undivided State of Andhra Pradesh and supplying power to the distribution licensees in the said State. The Petitioner has submitted that its generating station is located in the state of Chhattisgarh and the PPA dated 31.7.2012 for supply of electricity to the distribution licensees of the undivided state of Andhra Pradesh, which pursuant to the bifurcation of the State had been divided to the distribution licensees to the States of Andhra Pradesh and Telangana. The Petitioner has also stated that the PPA dated 31.7.2012 which the Petitioner had with the distribution licensees of the undivided State of Andhra Pradesh (which got bifurcated to new States of Telangana and Andhra Pradesh) had expired on 15.6.2016 and is no longer in existence.

However, the Petitioner is presently supplying the entire power to the discoms of the new State of Andhra Pradesh pursuant to the extension of the PPA and no supply is made to the State of Telangana. The Petitioner has also clarified that it has not filed any Writ Petition or any other proceedings before the Hon'ble High Court for the States of Telangana and Andhra Pradesh in Hyderabad on the issue of jurisdiction of the State Commissions vis a vis the Central Commission and the matter before the Hon'ble High Court is on the issue of jurisdiction qua the generators who were within the then undivided State of Andhra Pradesh and their status under the provisions of the Andhra Pradesh Reorganization Act, 2014 for the State of Andhra Pradesh. Referring to the judgment of the Hon'ble Supreme Court dated 11.4.2017 in Energy Watchdog V CERC & ors, the Petitioner has submitted that the supply of power by the Petitioner from the State of Chhattisgarh to the State of Andhra Pradesh and other States would involve inter-state supply and is within the exclusive jurisdiction of the Commission to adjudicate the dispute in the present Petition.

9. The Respondents 1 to 4, the UP discoms in their written submissions dated 5.5.2018 has submitted that the Petition is not maintainable for the following reasons:

(a) The Petitioner had entered into PPA with the respondents in Lucknow on 26.2.2014 and the same was approved by the UPERC in terms of Section 86(1)(a)(b) & (f) of the 2003 Act. The Petitioner without applying for withdrawal or cancellation of the PPA approved by UPERC has filed the said Petition. The subsisting relationship between the Procurer and the generator is in terms of the PPA dated 26.2.2014 approved by UPERC.

(b) In terms of Article 14.1.1 of the PPA, any legal proceedings in respect of any matters, claims or disputes under the agreement shall be under the jurisdiction of the appropriate Courts in Lucknow. However, this Petition was filed by the Petitioner before this Commission on 26.8.2016 and the Commission has taken cognizance of the petition by issuing notice on 14.9.2017 after the judgment dated 11.4.2017 of the Hon'ble Supreme court in the case of Energy Watchdog V CERC.

(c) As per law settled by the Hon'ble Supreme Court and fundamental procedural law, the Petition as on the date of filing was not maintainable before this Commission. As per the judgment of the Hon'ble Supreme Court in Nadkishore Marwah & ors V

Samundri Devi (1987 4 SCC 382) and various other judgments, the Hon'ble Supreme Court has reiterated that the 'rights and liabilities of the parties are to be determined as per law applicable on the date of institution of the suit. By issuing notice on 14.9.2017 in a Petition filed in August, 2016, this Commission has sought to give retrospective effect to the said law, which is legally impermissible.

(d) The Petitioner was not a party in the proceedings before the Commission in Petition No.155/2012 and before the APTEL in Appeal No.100/2013. Hence, the Commission's order dated 16.10.2012 in the said petition and the full bench judgment of the Tribunal dated 7.4.2016 in the said appeal is applicable inter se between the parties and is therefore *inpersonam*. Moreover, the Hon'ble Supreme Court had set aside the judgment of the Tribunal dated 7.4.2016.

(e) The Hon'ble Supreme Court in Energy Watchdog v CERC has laid down the law on the point of jurisdiction of the Central Commission with regard to the composite scheme for generation and supply of power. The finding of the Court has to be read in harmony with Section 64(5) of the 2003 Act as held therein.

(f) Under the scheme of the 2003 Act, the power to regulate tariff lies with the Commission which has approved or determined the same. The Petition is not maintainable in terms of the Tariff Policy, 2016 since the same cannot be read and interpreted as a statutory provision in terms of the judgment of the Hon'ble Supreme Court in Hindustan Zinc Ltd V RERC & ors (2012 (12) SCC 611).

10. The Petitioner has pointed out that it has a composite scheme for generation and supply of power in more than one state and has submitted that when there is an inter-state supply, the Central Commission will have the jurisdiction under Section 79(1)(f) of the 2003 Act. The Petitioner has further submitted that the date of filing of the Petition is immaterial and that the State Commission shall have jurisdiction under Section 86 of the 2003 Act, only when there is an intra-state supply of power. Accordingly, the Petitioner has submitted that the Central Commission alone has the jurisdiction in the matter and therefore the submissions of the respondents may be rejected.

11. The matter has been examined. The main contention of the Respondents, UP discoms is that as on the date of filing of the present Petition (in August, 2016) the Central Commission did not have the jurisdiction in the matter and only the Courts in Lucknow had

the jurisdiction in respect of any claims or disputes by the parties in terms of Article 14.1.1 of the PPA dated 26.2.2014. The Respondents have submitted that the jurisdiction of the Central Commission with regard to 'composite scheme' for generation and supply of power in more than one State having been crystalized only on 11.4.2017 in terms of the judgment of the Hon'ble Supreme Court in Energy Watchdog case, taking cognizance of the said Petition by the Commission and issuing notice thereafter, amounts to giving retrospective effect to the said law, which is legally impermissible.

12. The question for consideration is whether the present Petition is to be considered on the basis of the law applicable as on the date of filing of the application or as on the date when the application was taken up for consideration. While the Petitioner has submitted that the date of filing is immaterial, the Respondents have contended that the Central Commission has jurisdiction in the matter pursuant to the interpretation of the 'composite scheme' by the Hon'ble Supreme Court in its judgment dated 11.4.2017 in Energy Watchdog case. This question came up for consideration before the Hon'ble Supreme Court in the case of *Howrah Municipal Corporation & ors Vs Ganges Rope Company & ors (2004 (1) SCC 663*, and the Hon'ble Supreme Court held that the Rules as applicable on the date of grant or refusal of sanction would govern the subject matter and not the rules which existed as on the date of application for sanction. The relevant portion of the judgment is extracted hereunder:

> *"Conceding or accepting such a so-called vested right of seeking sanction on the basis of un amended Building Rules, as in force on the date of application for sanction, would militate against the very scheme of the Act contained in Chapter XII and the Building Rules which intend to regulate the building activities in a local area for general public interest and convenience. It may be that the Corporation did not adhere to the time limit fixed by the court for deciding the pending applications of the company but we have no manner of doubt that the Building Rules with prohibition or restrictions on construction activities as applicable on the date of grant or refusal of sanction would govern the subject matter and not the Building Rules as they existed on the date of application for sanction.."*

13. Placing reliance on the above judgment, the Appellate Tribunal for Electricity (the Tribunal), while considering the case of JSPL V CSERC & ors in Appeal Nos. 27/06, 179/05, 188/05 and 16/06, by judgment dated 7.5.2008 held that the pending application for license has to be considered under the Rules in force at the time when the application is taken up for consideration and not under the Rules which were in force when the application was made. The relevant portion of the order is extracted hereunder:

> *"47) The rulings cited by Mr. Shanti Bhushan related to the field of service law and in each of these cases some kind of vested interest has been created when the amended/new provision came into existence. The case of Howrah Municipal Corporation (supra) as also that of Indian Charge Chrome (supra) are actually in the arena of administrative law. Both these judgments have unequivocally ruled that filing of an application before any administrative authority will not create any vested right. These judgments also hold that the authority has to apply the rules and legal provisions as in force on the date on which the applications are considered. Accordingly on the date when the application for licence under section 14 filed by JSPL was under consideration the Commission was required to apply the regulation then in force which included the rule related to minimum area of supply. Hence, the Commission could not have ignored the rule and grant a license in violation thereof..."*

14. In view of the above decisions, the contentions of the Respondent, UP Discoms that the law applicable as on the date of filing of the present petition (in August, 2016) is to be considered deserve no merit for consideration and are therefore rejected. In the present case, the Petitioner, whose Project is located in the State of Chhattisgarh has executed separate PPAs with the discoms of the three States (i.e TANGEDCO, UP discoms and the AP discoms) for supply of power at different points in time and for a different quantum. It is pertinent to mention that in Petition No. 170/MP/2016 (KSKMPCL V TANGEDCO) filed by the Petitioner for compensation under change in law during the Operation period under the TANGEDCO PPA, the Respondent, TANGEDCO had raised the issue of jurisdiction of the Central Commission and the Commission by its order dated 31.5.2018 rejected the submissions placing reliance on the judgment dated 11.4.2017 of the Hon'ble Supreme Court in Civil Appeals titled Energy Watchdog v CERC & ors (2017 (4) SCALE 580). The relevant portion of the order is extracted hereunder:

"10. The Hon'ble Supreme Court vide its judgment dated 11.4.2017 in Civil Appeals titled Energy Watchdog v CERC & ors (2017 (4) SCALE 580) while upholding the jurisdiction of this Commission for regulating the tariff of projects which meet the composite scheme, has explained the term 'composite scheme' as under:

> *22. The scheme that emerges from these Sections is that whenever there is inter-State generation or supply of electricity, it is the Central Government that is involved, and whenever there is intra-State generation or supply of electricity, the State Government or the State Commission is involved. This is the precise scheme of the entire Act, including Sections 79 and 86. It will be seen that Section 79(1) itself in sub-sections (c), (d) and (e) speaks of inter-State transmission and inter-State operations. This is to be contrasted with Section 86 which deals with functions of the State Commission which uses the expression "within the State" in sub-clauses (a), (b), and (d), and "intra-state" in sub-clause(c). This being the case, it is clear that the PPA, which deals with generation and supply of electricity, will either have to be governed by the State Commission or the Central Commission. The State Commission's jurisdiction is only where generation and supply takes place within the State. On the other hand, the moment generation and sale takes place in more than one State, the Central Commission becomes the appropriate Commission under the Act. What is important to remember is that if we were to accept the argument on behalf of the appellant, and we were to hold in the Adani case that there is no composite scheme for generation and sale, as argued by the appellant, it would be clear that neither Commission would have jurisdiction, something which would lead to absurdity. Since generation and sale of electricity is in more than one State obviously Section 86 does not get attracted. This being the case, we are constrained to observe that the expression "composite scheme" does not mean anything more than a scheme for generation and sale of electricity in more than one State."*

15. There can be no doubt that the Petitioner has a 'composite scheme' for generation and sale of electricity in more than one State and in terms of the above decision, the Commission has the jurisdiction to adjudicate the dispute/ claims of the Petitioner under Section 79(1)(b) read with Section 79(1)(f) of the 2003 Act. The Petition is therefore maintainable.

16. The Respondents UP discoms have also contended that in terms of Article 14.1.1 of the PPA, any legal proceedings in respect of any matters, claims or disputes under the PPA shall be under the jurisdiction of the appropriate Courts in Lucknow. It is however noticed that Article 14.3.1 provides for Dispute Resolution by the 'Appropriate Commission'. Article 14.3.1.1(a) provides for the following:

> "Where CERC is the Appropriate Commission, any dispute arising from a claim made by any party for any change in or determination of tariff or any matter related to tariff or claims made by any party which partly or wholly relate to any change in the tariff or determination of any such

claims could result in change in tariff, shall be subjected to adjudication by the Appropriate Commission."

17. As stated earlier, the generating station of the Petitioner has a composite scheme for supply of power in more than one State. Hence, the 'Appropriate Commission' in terms of Article 14.3.1.1(a) will be Central Commission to deal with any of the claims/disputes raised by the Petitioner under the PPA dated 26.2.2014 and the State Commission (UPERC) does not have any jurisdiction in the matter. The submissions of the Respondents, UP discoms are therefore rejected.

18. The Respondents UP discoms have referred to the findings of the Hon'ble Supreme Court in the Energy Watchdog judgment as regards Section 64(5) of the 2003 Act and has contended that the State Commission (UPERC) only has jurisdiction in the matter. Section 64(5) of the 2003 Act provides as under:

> *"64(5) Notwithstanding anything contained in Part X, the tariff for any inter-state supply, transmission or wheeling of electricity, as the case may be, involving the territories of two States may, upon application made to it by the parties intending to undertake such supply, transmission or wheeling, be determined under this section by the State Commission having jurisdiction in respect of the licensee who intends to distribute electricity and make payment therefor".*

19. With regard to Section 64(5), the Hon'ble Supreme Court in its judgment dated 11.4.2017 had observed the following:

> *"Section 64(5) has been relied upon by the Appellant as an indicator that the State Commission has jurisdiction even in cases where tariff for inter-State supply is involved. This provision begins with a non-obstante clause which would indicate that in all cases involving inter- State supply, transmission, or wheeling of electricity, the Central Commission alone has jurisdiction. In fact this further supports the case of the Respondents. Section 64(5) can only apply if, the jurisdiction otherwise being with the Central Commission alone, by application of the parties concerned, jurisdiction is to be given to the State Commission having jurisdiction in respect of the licensee who intends to distribute and make payment for electricity. We, therefore, hold that the Central Commission had the necessary jurisdiction to embark upon the issues raised in the present cases."*

20. In our view, the findings of the Hon'ble Supreme Court on Section 64(5) do not in any manner support the argument of the Respondent that the State Commission (UPERC) will

have jurisdiction in matters relating to inter-state supply of power. In the above quoted para, the Hon'ble Supreme Court has observed that the non-obstante clause in Section 64(5) clearly indicates that in case of inter-State supply, transmission and wheeling, the Central Commission alone has the jurisdiction. Notwithstanding the jurisdiction being with Central Commission, by application of the parties concerned, the jurisdiction can be given under Section 64(5) to the State Commission having jurisdiction in respect of the licensee who intends to distribute and make payment for electricity. "By application of the parties concerned" would mean the parties to the inter-State supply in terms of Section 64(5) of the Act i.e. parties to the inter-State supply involving territories of two States. In the present case, the Petitioner has entered into PPAs for generation and supply of power to three States i.e State of AP, State of UP and State of Tamil Nadu. Accordingly, in respect of the UP discoms PPA dated 26.2.2014, the Respondent, UP discom has invoked the jurisdiction of the State Commission (UPERC) for adoption of tariff in terms of the said PPA. By no stretch of imagination can the said Petition be construed as a joint application by parties under Section 64(5) for invoking the jurisdiction of the State Commission. In our considered view, Section 64(5) has no application in cases of tariff discovered under competitive bidding process and adopted by the Commission under Section 63 of the 2003 Act. In view of this, we find no merit in the submission of the Respondent, UP discoms and accordingly the same is rejected.

Having rejected the objections of the Respondents UP discoms as above and held that the Petition is maintainable, we proceed to examine the issues raised by the Petitioner, on merits.

Issues on merit

21. After consideration of the submissions of the Petitioner, the Respondents, UP discoms and Prayas, the claim of the Petitioner has been dealt with as under:

(a) Whether the provisions of PPA dated 26.2.2014 with regard to notice have been complied with?

(b) What is the scope of change in law in the PPA dated 26.2.2014?

(c) Whether compensation claims are admissible under Change in law in the PPA dated 26.2.2014?

(d) Mechanism for processing and reimbursement of admitted claims under Change in law.

Issue No.1: Whether the provisions of the PPA dated 26.2.2014 with regard to notice has been complied with?

22. The claims of the Petitioner in the present petition pertain to the Change in Law events during the Operating period. Article 10.4 of the PPAs is extracted as under:

> "10.4 Notification of Change in Law
>
> 10.4.1. If the Seller is affected by a Change in Law in accordance with Article 10.1 and the Seller wishes to claim relief for such a Change in Law under this Article 10, it shall give notice to the Procurer of such Change in Law as soon as reasonably practicable after becoming aware of the same or should reasonably have known of the Change in Law.
>
> 10.4.2 Notwithstanding Article 10.4.1, the Seller shall be obliged to serve a notice to the Procurer under this Article 10.4.2, even if it is beneficially affected by a Change in Law. Without prejudice to the factor of materiality or other provisions contained in this Agreement, the obligation to inform the Procurer contained herein shall be material.
>
> Provided that in case the Seller has not provided such notice, the Procurer shall have the right to issue such notice to the Seller.
>
> 10.4.3 Any notice served pursuant to this Article 10.4.2 shall provide, amongst other things, precise details of:
>
> (a) the Change in Law; and
>
> (b) the effects on the Seller.

23. The Petitioner has submitted that Respondents UP discoms, were duly informed about the events of Change in Law in respect of PPA dated 26.2.2014 and their impact vide Notice dated 22.3.2016 vide letter ref: UPPCL,LKN/CSN/2500101/305.

24. Under Article 10.4.2 of the above said PPAs, the Petitioner is required to give notice about occurrence of change in law events as soon as practicable after being aware of such events. The Petitioner has given notices as stated above to the Procurer UP discoms indicating the above change in law events. In the said notices, the Petitioner has appraised

the Procurers about the occurrence of change in law events and the impact of such events on tariff. The Respondents, UP discoms had not furnished any replies with regard to such notices of Change in law by the Petitioner. Thereafter, the Petitioner has filed the present Petition. In our view, the requirements of Article 10.4.2 of the said PPA have been complied with by the Petitioner.

Issue No. 2: Scope of change in law in the PPA

25. The Petitioner has approached this Commission under Article 10 of the PPA read with section 79 of the 2003 Act for adjustment / compensation to offset the financial / commercial impact of change in law during the Operating period.

26. Article 10 of the PPA dated 26.2.2014 deals with the events of Change in law and the same is extracted as under:

> "10.1.1 "Change in Law" means the occurrence of any of the following events after the date, which is seven (7) days prior to the Bid Deadline resulting into any additional recurring/ non-recurring expenditure by the Seller or any income to the Seller:
>
> • 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, Clearances and Permits which was not required earlier;
>
> • change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits; except due to any default of the Seller;
>
> • any change in tax or introduction of any tax made applicable for supply of power by the Seller 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 Seller, or (ii) change in respect of UI Charges or frequency intervals by an Appropriate Commission or (iii) any change on account of regulatory measures by the Appropriate Commission including calculation of Availability.
>
> 10.2 Application and Principles for computing impact of Change in Law

10.2.1 While determining the consequence of Change in Law under this Article 10, the Parties shall have due regard to the principle that the purpose of compensating the Party affected by such Change in Law, is to restore through monthly Tariff Payment, to the extent contemplated in this Article 10, the affected Party to the same economic position as if such Change in Law has not occurred.

10.3 Relief for Change in Law

****

10.3.2 **During Operating Period**:

10.3.2.1 The compensation for any decrease in revenue or increase in expenses to the Seller shall be payable only if the decrease in revenue or increase in expenses of the Seller is in excess of an amount equivalent to 1% of the value of the Letter of Credit in aggregate for the relevant Contract Year.

10.3.3 For any claims made under Article 10.3.1 and 10.3.2 above, the Seller shall provide to the Procurer and the Appropriate Commission documentary proof of such increase /decrease in cost of the Power Station or revenue/expense for establishing the impact of such Change in Law.

10.3.4 The decision of the Appropriate Commission, with regards to the determination of the compensation mentioned above in Articles 10.3.1 and 10.3.2, and the date from which such compensation shall become effective, shall be final and binding on both the Parties subject to right of appeal provided under applicable Law."

27. The term "Law" defined in the said PPA is extracted as under:

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

28. The term "Indian Governmental Instrumentality" has been defined in the PPA dated 26.2.2014 as under:

"Indian Governmental Instrumentality" shall mean the Government of India, Government (s) of State of Uttar Pradesh, Andhra Pradesh and Chhattisgarh 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, but excluding the Seller and the Procurers."

29. A combined reading of the above provisions in the PPA would reveal that the Commission has the jurisdiction to adjudicate upon the disputes between the Petitioner and the Respondents with regard to 'Change in Law' events which occur after the date and

which is seven days prior to the bid deadline. The events broadly covered under 'Change in Law' are as under:

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

(b) Any change in interpretation or application of any Law by an Indian Governmental Instrumentality having the legal power to interpret or apply such Law, or any Cometent court of Law;

(c) Imposition of a requirement for obtaining any consents, clearances and permits which was not required earlier.

(d) Any change in the terms and conditions or inclusion of new terms and conditions prescribed for obtaining any consents, clearances and permits except due any default of the seller.

(e) Any change in the tax or introduction of any tax made applicable for supply of power by the Petitioner as per terms of the Agreement.

(f) Such changes result in additional recurring and non-recurring expenditure by the seller or any income to the seller.

(g) The purpose of compensating the Party affected by such Change in Law is to restore through Monthly Tariff Payments, to the extent contemplated in this Article 10, the affected Party to the same economic position as if such "Change in Law" has not occurred.

(h) The Petitioner shall provide to the Procurer and the Appropriate Commission documentary proof of such increase /decrease in cost of the Power Station or revenue/expense for establishing the impact of such Change in Law;

(i) The decision of the Commission with regard to the determination of Compensation and the date from which such Compensation shall become effective shall be final and binding on both the parties, subject to right of approval provided under Electricity Act,2003.

(j) The compensation shall be payable for any decrease in revenue or increase in expenses to the seller (Petitioner) if the same is in excess of an amount equivalent to 1% of the value of the Standby Letter of Credit in the aggregate for the relevant Contract Year.

Issue No.3: Whether compensation claims are admissible under Change in Law in the PPA dated 26.2.2014?

30. The Bid-deadline and the cut-off date in respect of the said PPA are as under:

	UP discoms PPA dated 26.2.2014
Bid deadline date	24.9.2012
Cut-off date	**17.9.2012**

31. The Petitioner has raised claims under Change in Law in respect of events during the Operating period, namely the Levy of Clean Energy Cess on Coal, Imposition of Excise Duty on computation of Coal, Increase in Chhattisgarh Infrastructure Development Cess & Chhattisgarh Environment Cess, Levy of Electricity Duty on Auxiliary Consumption, Effect on Royalty, Effect of Terminal Tax, Imposition of charges towards National Mineral Exploration Trust (NMET) and District Mineral Foundation (DMF), Levy of Service Tax, Swachh Bharat Cess & Krishi Kalyan Cess on total freight by rail/road transport, Change in Busy Season Surcharge on transportation of coal through Railways, Fly ash Transportation, Increase in MAT. It is noticed that Respondent UP discoms have not filed any reply nor has made any oral submissions with regard to the claims of the Petitioner, on merits, even though copies of Petition and additional information were served on them. In response to the written submissions dated 9.10.2017 of Prayas, the Petitioner vide affidavit dated 20.3.2018 has submitted that the Rejoinder filed in Petition No. 170/MP/2016 (in response to the submissions of Prayas) may be adopted in the present case, as the objections raised by Prayas is similar. The prayer of the Petitioner is accepted and the rejoinder filed by Petitioner in Petition No. 170/MP/2016 is considered. Keeping in view the broad principles as discussed above, we proceed to deal with the above claims of the Petitioner under Change in Law during the Operation Period.

(a) Increase in the rate of Clean Energy Cess on Coal

32. The Petitioner has submitted that as on the cut-off date (17.9.2012) the rate of Clean Energy Cess on lifting and dispatches of coal as per Section 83 read with Schedule 10 of the Finance Act, 2010 was ₹50 per tonne as per Notification No. 03 /2010-Clean Energy Cess, dated 22.6.2010 issued by the Department of Revenue, Ministry of Finance, GoI. However, by Notification dated 28.2.2015 the rate of Clean Energy Cess was increased from ₹50 per tonne to ₹200 per tonne by the Department of Revenue, Ministry of Finance, GoI.

Subsequently, the Clean Energy Cess was further enhanced from ₹200 per tonne to ₹400 per tonne with effect from 1.3.2016, as per Notice No. SEC/ BSP/ S&M/440 dated 29.2.2016 issued by SECL. The claim of the Petitioner on account of increase in levy of Clean Energy Cess on coal for 2015-16 is ₹12.31 crore and ₹46.36 crore for 2016-17. The Petitioner has submitted that the above said notifications of the Ministry of Finance, GoI has enhancing the rate of Clean Energy Cess after the cut-off date, is a Change in Law event as per Article 10.1.1 of the PPA and may be allowed.

33. Prayas has submitted that the taxes/ cess other than tax on supply of power are not covered by Article 10 of the PPA and that the Petitioner has only annexed the notices from SECL. Prayas has further submitted that SECL is not a competent authority to impose any cess and therefore unless the Petitioner can produce the statute or law of a competent Government Authority increasing the rate of cess, the same cannot be allowed as Change in Law.

34. We have considered the submissions of the parties. The Clean Energy cess applicable at different points of time is as under:

From	To	Applicable Clean Energy Cess (₹/tonne)
1.7.2010	10.7.2014	50
11.7.2014	28.2.2015	100
1.3.2015	29.2.2016	200
1.3.2016	30.6.2017	400

35. It is noticed that Clean Energy Cess was introduced by the Government of India through the Finance Act, 2010 which was prior to the cut-off date in case of UP discoms PPA. As on the cut-off date (17.9.2012), Clean Energy Cess was applicable at the rate of ₹50/tonne. It is noticed that Clean Energy Cess was introduced by Government of India and this Cess has undergone various revisions from the year 2014 onwards. The issue of Clean Energy Cess as a Change in Law event has been considered by the Commission in

order dated 30.3.2015 in Petition No. 6/MP/2013. Thereafter, the Commission vide Order dated 1.2.2017 in Petition No. 8/MP/2014 (EMCO Energy Ltd Vs MSEDCL & ors) and Order dated 19.12.2017 in Petition No. 101/MP/2017 (DB Power Ltd Vs PTC India Ltd & ors) had allowed the increase in Clean Energy Cess as Change in law event. Thereafter, the Commission vide its order dated 31.5.2018 in Petition No. 170/MP/2016 (KSKMPCL Vs TANGEDCO) filed by the Petitioner in respect of TANGEDCO PPA dated 27.11.2013 had considered the issue of Clean Energy Cess on coal as a Change in Law event in the light of the earlier orders and had allowed the said claim of the Petitioner. The relevant portion of the order is extracted as under:

> "33……The above decision is applicable in the case of the Petitioner. Therefore, the levy of Clean energy cess on coal is admissible to the Petitioner as a Change in Law event under Article 10 of the TANGEDCO PPA. Accordingly, the Petitioner is entitled to recover Clean energy cess from TANGEDCO as per applicable rate of Clean energy cess in proportion to the coal consumed for generation and supply of electricity to TANGEDCO."

36. The above said decision is applicable in the case of the Petitioner. Therefore, the levy of Clean Energy Cess on coal is admissible to the Petitioner as a Change in Law event under Article 10 of the UP discoms PPA. Accordingly, the Petitioner is entitled to recover Clean Energy Cess from the UP discoms as per applicable rate of Clean Energy cess in proportion to the coal as per the parameters of the applicable Tariff Regulations of the Commission or actually consumed whichever is lower, for generation and supply of electricity to UP discoms. As on the cut-off date, Clean Energy Cess was ₹50/tonne which the Petitioner was expected to factor in the bid. Therefore, the applicable rate of Clean Energy Cess in case of UP discoms PPA shall be ₹50/tonne with effect from 11.7.2014, ₹150/tonne with effect from 1.3.2015 and ₹350/tonne with effect from 1.3.2016 till 30.6.2017. The Petitioner is directed to furnish along with its monthly bill, the proof of payment and computations duly certified by the auditor to UP discoms. The Petitioner and UP discoms are directed to carry out reconciliation on account of these claims annually. It is pertinent to mention that the

Clean Energy Cess has been abolished through Taxation Laws Amendment Act, 2017 with effect from 1.7.2017. Accordingly, the Change in Law in Clean Energy Cess has been allowed upto 30.6.2017. With effect from 1.7.2017, the Petitioner shall be entitled for GST Compensation Cess in terms of the Commission's order dated 14.3.2018 in Petition No. 13/SM/2017.

(b) Computation of Excise Duty on Coal

37. The Petitioner has submitted that before 17.9.2012, the Central Excise Duty of 6.18% was applicable on the components of Coal cost, namely, Basic Coal value, Crushing/ Sizing Charges and Surface Transportation charges. The Petitioner has however stated that after 8.3.2013, SECL directed for inclusion of the components namely 'royalty' and 'stowing excise duty' for imposition of Central Excise Duty, applicable retrospectively from 1.3.2011. The Petitioner has further stated that on 25.3.2013, SECL issued public notice stating that the following components will be considered for assessing the Central Excise Duty:

(a) Basic Coal Value
(b) Crushing & Sizing charges
(c) SILO Charge,
(d) Surface Transportation charges
(e) Royalty
(f) Stowing Excise Duty
(g) Terminal Tax,
(h) Forest Cess,
(i) CG Environment Cess and
(j) CG Development Cess

38. The Petitioner has submitted that on 2.4.2013, SECL further communicated that vide notification dated 2.4.2013, in addition to above components, 'Dumping charge' is also included as component for assessing the Central Excise Duty. The Petitioner has added that Excise duty (ED) can only be charged to the extent authorised by law and any change in the basis of computation by the competent authority will necessarily have to be carried by way

of Change in Law. Accordingly, the Petitioner has stated that the aforesaid change in the manner of computation of excise duty results in 'Change in tax' and consequently a 'Change in law' as per Article 10.1.1 of the PPA and therefore may be allowed under Change in Law.

39. Prayas has submitted that rate of central excise duty on coal has reduced from 6.18% to 6%, which is a change in law in favour of the Procurer. It has further submitted that the reduction in excise duty on coal also results in reduction in entry tax, VAT, Nirayat Kar etc. which has also to be taken into account. Prayas has pointed out that the Petitioner has not claimed any change in rate of Excise Duty but only the change in assessable value and hence the notifications issued by SECL is not a Change in Law or statute. It has also stated that there is no change in Central Excise Act or Rules or Notifications thereto in relation to the assessable value. Prayas has further stated that SECL is not legally empowered to interpret the Excise Act and therefore the interpretation by SECL is not an interpretation under Article 10 of the PPA. Referring to the judgment of the Tribunal dated 4.7.2015 in Appeal No. 32 of 2015 and batch (Talwandi Sabo Power Ltd V PSERC & anr), Prayas has submitted that merely because some projects got the benefit on assessable account on coal does not mean that there is an interpretation of the Excise Act. Accordingly, it has submitted that there is no Change in Law or change in interpretation of law.

40. The Petitioner has clarified that the manner of computation of Excise Duty as on the bid deadline i.e. 17.9.2012 was changed vide SECL Notifications dated 8.3.2013, 25.3.2013, and 28.2.2015. The Petitioner has stated that said notifications were issued after the bid deadline and therefore constitutes a change in law. The Petitioner has further submitted that the Commission in its order dated 8.1.2018 in I.A No. 39 of 2017 in Petition No.112/MP/2015 had allowed 'royalty' and 'stowing Excise Duty' to be considered in the

excisable value of coal, subject to the outcome of the proceedings before the Hon'ble Supreme Court. The Petitioner has submitted that even though the excise duty was reduced vide SECL letter dated 28.2.2015 from 6.18% to 6 %, the same does not give any benefit to the Procurers. Accordingly, it has prayed that the claim may be allowed.

41. We have considered the submissions of the parties. As on the cut-off date, Excise Duty on coal was at the rate of 6.18% on the determined sale price of coal which admittedly formed the basis of the bid submitted by the Petitioner. By Notification dated 28.2.2015, Education Cess and Secondary & Higher Education Cess have been exempted on Excise Duty on coal, thereby leaving a net applicable Central Excise Duty of 6%. Since the change in Excise Duty has been introduced through an Act of Parliament and has impacted the expenditure of the seller, the same is covered under Change in law in terms of Article 10.1.1 of the PPA. Accordingly, the Respondents are entitled to the reimbursement of Excise Duty on coal. The Petitioner has furnished SECL Notice No. SECL/ BSP/S&M/ RS/619 dated 25.3.2013 which considers components like Crushing/ Sizing Charges, Surface Transportation Charge, Royalty, Stowing Excise Duty etc., for assessing the exercisable value of coal for determining Central Excise Duty. Since this letter has been issued by SECL after 25.3.2013 for payment of Excise Duty on coal, based on Notification of Ministry of Finance, GOI, the same shall be considered as Change in law. It is clarified that the Commission has held that crushing and sizing charges, SILO charges, Surface Transportation Charges are not admissible under Change in law. However, these expenditures have been considered for the computation of assessable value of coal for the purpose of Excise Duty. Therefore, the Petitioner cannot claim these charges under change in law. The Commission in its order dated 31.5.2018 in Petition No. 170/MP/2016 (KSKMPCL V TANGEDCO) filed by the Petitioner has considered this issue and had allowed the said claim in line with its

decision in order dated 16.3.2018 in Petition No. 1/MP/2017 (GMRWEL vs MSEDCL & ors) as under:

> "*161. All components indicated by SECL for computation of assessable value of coal such as the value of coal, Stowing Excise Duty, contribution to National Mineral Exploration Trust and District Mineral Foundation, Sizing Charges, Surface Transportation Charge, Niryat Kar, Chhattisgarh Development Tax and Chhattisgarh Environment Tax (except royalty) are in the nature of "Price-cum- duty" and shall be considered as part of the assessable value of coal for the purpose of computation of Excise Duty. The Commission has not allowed the expenditure of Sizing Charges and Surface Transportation Charges under Change in Law. However, these charges have been allowed to be included in the assessable value of coal for the purpose of computation of Excise Duty. It is clarified that allowing these charges for inclusion in the assessable value for computation of Excise Duty shall not be construed that these charges are allowed under Change in Law.*"

42. As regards 'Royalty', it is noted that the issue whether Royalty determined under Section 9/15 (3) of the Mines and Minerals (Development and Regulations) Act, 1957 is in the nature of tax is pending for consideration of a Nine Judges Bench of the Hon'ble Supreme Court on a reference by Five Judges Bench of the Hon'ble Supreme Court in Mineral Area Development Authority of India & ors v/s Steel Authority of India & ors (2011 SCC 450). Therefore, the claim of royalty in the assessable value of coal shall be subject to the decision of the Hon'ble Supreme Court in the concerned case. The Petitioner is directed to furnish along with its monthly bill the proof of payment and computations duly certified by the auditor to UP discoms. For the purpose of computation of impact of Central Excise Duty on coal, the Petitioner and UP discoms are directed to carry out reconciliation on account of these claims annually.

(c) Change in Chhattisgarh Infrastructure Development Cess and Chhatisgarh Environment Cess

43. The Petitioner has submitted that Chhattisgarh Infrastructure Development Cess and Environment Cess as applicable seven days prior to the bid deadline i.e on 17.9.2012 was ₹5/tonne. The Petitioner has submitted that in pursuance of the State Government Notification, SECL vide Notice bearing no. SECL/BSP/S&M/2015/1420 dated 19.8.2015 had

communicated to all concerned that the Environment Cess/ Chhattisgarh Paryavaran Evam Vikas Upkar on dispatches/ lifting of coal has been increased from ₹5/tonne to ₹7.50/tonne with effect from 16.6.2015 in terms of the amendment of Section 4 & Schedule-2 of the Chhattisgarh (Adhosanrachna Vikas Evam Paryavaran) Upkar Adhiniyam, 2005. It has further submitted that the increase in the Environment Cess/ Infrastructure Development Cess on dispatches of coal/ lifting of coal from ₹5/tonne to ₹7.5/tonne as stated above is a Change in law event within the meaning of Article 10.1.1 of the PPA.

44. Prayas vide its affidavit dated 9.10.2017 has submitted that the Petitioner has only annexed the notices from SECL for claiming change in law. It has also stated that SECL is not a competent authority to impose any cess and therefore unless the Petitioner can produce the statute or law of a competent Government Authority increasing the rate of cess, the same cannot be allowed as Change in law.

45. We have considered the submissions of the parties. The Chhattisgarh (Adhosanrachna Vikas Evam Paryavaran) Upkar Adhiniyam, 2005 provides for the levy of cess on land for raising funds to implement infrastructure development projects and environmental improvement projects. The relevant portion of said Act is extracted as under:

"Preamble:

An Act to provide for levy of cess on land for raising funds to implement infrastructure development projects and environment improvement projects.

Whereas it is expedient to provide for additional resources for augmenting the development activities and improvement of environment in the State.

Be it enacted by the Chhattisgarh Legislature in the fifty sixth year of the Republic of India as follows:-

xxx

Section 3-Infrastructure development cess

(1) On and from the date of commencement of this Act, there shall be levied and collected an infrastructure development cess on all lands on which land revenue or rent by whatever name called is levied.

Provided that Infrastructure development cess shall not be levied on land which for the time being is exempt from payment of land revenue or rent, as the case may be.

(2) The Infrastructure development cess shall be levied at the rate specified in Schedule.

Section 4- Environment Cess

(1) On and from the commencement of this Act, there shall be levied and collected an environment cess on all lands on which land revenue or rent, by whatever name called, levied:

Provided that environment cess shall not be levied on land which for the time being is exempt from payment of land revenue or rent, as the case may be.

(2) The environment cess shall be levied at the rate specified in Schedule-II.

Section 7- Assessment and Collection of cess

(1) Cess levied under Section 3 and 4 of the Act shall be assessed in such manner asmay prescribed.

(2) The cess levied under this act shall be collected as an arrear of land revenue and provision of the Chhattisgarh Land Revenue Code, 1959 (No. 20 of 1959) shall apply mutatis mutandis for such collection and recovery.

Section 8- Amendment of Schedules

(1) The State Government may, by a notification to be published in the Official Gazette, amend any Schedule to this Act for revising the rate of any cess;

Provided that the rate of any cess shall not be revised more than once in any consecutive period of three years:

Provided further that the rate of any cess shall not be increased by more than fifty percent of the existing rate by any notification to be issued under this sub-section.

(2) Every notification issued under sub section (1) shall be laid immediately before the Legislature Assembly of the State if it is in session, and if it is not in session, in the session immediately following the date of such notification.

46. Subsequently, State Government of Chhattisgarh, in exercise of the powers conferred under sub-Section (1) of Section 8 of the Chhattisgarh (Adhosanrachna Vikas Evam Paryavaran) Upkar Adhiniyam, 2005 amended the Schedule I and Schedule II imposing the Chhattisgarh Infrastructure Development Cess and Chhattisgarh Environmental Cess vide Notification No. 340 dated 16.6.2015 as under:

Schedule I

Sl No	Classification of Land	Rate of Development Cess
1	On land covered under coal, iron ore, lime stone, bauxite and dolomite mining leases	Rupee 7.50 on each tonne of annual dispatch of mineral

2	On land covered under mining leases other than 1 above	7.50 percent of the amount of royalty payable annually
3	On land other than land covered under (1) and (2) above	7.50 percent of the amount of land revenue or rent, as the case may be, payable annually

Schedule II

Sl No	Classification of Land	Rate of Environment Cess
1	On land covered under coal, iron ore, lime stone, bauxite and dolomite mining leases	Rupee 7.50 on each tonne of annual dispatch of mineral
2	On land covered under mining leases other than 1 above	7.50 percent of the amount of royalty payable annually
3	On land other than land covered under (1) and (2) above	7.50 percent of the amount of land revenue or rent, as the case may be, payable annually

By order and in the name of the Governor of Chhattisgarh
P.Nihalani, Joint Secretary

47. The issue of Chhattisgarh Paryavaran & Vikas Upkar as a Change in law event had been considered in Petition No.101/MP/2017 (DB Power V PTC India Ltd & ors) and the Commission, after examining the provisions of the Chhattisgarh (Adhosanrachna Vikas Evam Paryavaran) Upkar Adhiniyam, 2005 and its amendment thereof, by order dated 19.12.2017 allowed the said claim. The relevant portion of the order dated 19.12.2017 is extracted here under:

"59. It is noted that as on the cut of date, the rate of Infrastructure development cess and environmental cess was Rs.5 on each tonne of annual dispatch of mineral. Government of Chhattisgarh vide its Notification dated 18.9.2015 revised the Infrastructure development cess and Environment Cess from Rs. 5/MT to Rs. 7.50/MT which is applicable for all SECL coal despatches from 16.6.2015 which has an impact on the cost of generation of electricity for supply to Rajasthan Discoms. Since, the Infrastructure development cess and Environment Cess has been imposed by Act of Chhattisgarh State, i.e. Chhattisgarh legislature, it fulfils the conditions of Change in Law event under Article 10 of PPA. Accordingly, the Petitioner is entitled for the expenditure incurred on this account. The Petitioner is directed to furnish a certificate from an Auditor certifying the expenses in this regard to Rajasthan Discoms for claiming the expenditure under Change in Law. It is clarified that the Petitioner shall be entitled to recover on account of Infrastructure development cess and environment cess in proportion to the actual coal consumed corresponding to the scheduled generation of supply of electricity to the procurers. If actual generation is less than the scheduled generation, the coal consumed for actual generation shall be considered for the purpose of computation of impact of Infrastructure development cess and environment cess. The Petitioner and Rajasthan Discoms are directed to carry out reconciliation on account of these claims annually."

48. In line with the above decision, the Commission in its order dated 31.5.2018 in Petition No.170/MP/2016 had allowed the claim of the Petitioner in respect of the TANGEDCO PPA. Accordingly, the above decision is made applicable in the present case of the Petitioner. Therefore, the increase in the rate of Chhattisgarh Paryavaran & Vikas Upkar is admissible to the Petitioner as a change in law event under Article 10 of the PPA. The Petitioner is directed to furnish a certificate from an Auditor certifying the expenses in this regard to the UP discoms for claiming the expenditure under Change in Law. It is clarified that the Petitioner shall be entitled to recover expenditure on account of Infrastructure Development Cess and Environment Cess in proportion to the coal consumed corresponding to the scheduled generation at normative parameters as per the applicable Tariff Regulations of the Commission or actual whichever is lower, for supply of electricity to the procurers. If actual generation is less than the scheduled generation, the relief shall be restricted to the actual generation. The Petitioner and the Respondents, UP discoms are directed to carry out reconciliation on account of these claims annually.

(d) Increase in Chhattisgarh Electricity Duty on Auxiliary Consumption

49. The Petitioner has submitted that under the provisions of M.P Electricity Duty Act, 1949 including amendments thereto, no levy on Auxiliary Consumption was provided for. It has submitted that the Govt. of Chhattisgarh vide Chhattisgarh Electricity Duty (Amendment) Act, 2013 dated 1.8.2013 imposed levy on 'own consumption' at the rate of 15% of the tariff applicable on all the electricity consumed by the generating company, captive generating plant and producer for their auxiliary consumption and for their own consumption. As per retail tariff order for 2012-13, the applicable discom tariff was ₹3.7/unit and for 2015-16, the applicable discom tariff was ₹6.65/unit. The Petitioner has submitted that any change in the discom tariff under any order of the Chhattisgarh State Electricity Regulatory Commission (CSERC) has an immediate effect on the per unit rate of

electricity duty and consequently has a direct financial impact on the cost of supply of electricity by the Petitioner. Accordingly, the Petitioner has submitted that since electricity duty has been increased pursuant to the Chhattisgarh Electricity Duty (Amendment) Act, 2013 read with the tariff order of CSERC it qualifies as a Change in law event in terms of the Article 10.1.1. of the PPA and the Petitioner needs to be compensated for the same.

50. Prayas has submitted that the notifications under the M.P Electricity Duty Act, even prior to the cut-off date provided Electricity Duty on Auxiliary Consumption, which is evident from the tariff orders passed by CSERC. It has also submitted that in 2016, there was amendment to the said Act which had resulted in reduction in the Electricity Duty. Prayas, while pointing out that the Petitioner has not produced the said notification, has submitted that any reduction in Electricity Duty would be to the account of the Procurers. Prayas has further submitted that distribution companies tariff are not applicable to the Petitioner and therefore changes in Distribution Company's tariff are not Change in law.

51. In response to the submissions of Prayas, the Petitioner vide affidavit dated 21.5.2018, the Petitioner has clarified that the Madhya Pradesh Electricity Duty Act, 1949 was amended on 15.5.1995 and was made applicable from 1.4.1995. As per the amendment, the Electricity Duty on Auxiliary Consumption was fixed at 8% on electricity tariff. The Petitioner has stated that the said Act was adopted in the State of Chhattisgarh when the State was created in 2000 and therefore, from the year 2000, the Electricity Duty on Auxiliary Consumption was applicable at 8%. The Petitioner has also submitted that under the Chhattisgarh State Industrial Policy for 2004-09, applicable for the period from 1.11.2004 to 31.10.2009, all mega projects were exempted from payment of Electricity Duty for a period of 15 years from the date of commercial operation, during which period

the Petitioner entered into MoU with the Govt. of Chhattisgarh (15.2.2008) and Implementation Agreement dated 13.8.2009 for setting up of the Project. The Petitioner has further submitted that as per the Industrial Policy 2009-14 applicable for the period from 1.11.2009 to 31.10.2014, (as on cut-off date of the bids) there was exemption from Electricity Duty payment on Auxiliary Consumption eligible for a period of 5 years from COD. Since Units I and II of the petitioner achieved COD on 13.8.2013 and 26.8.2014 respectively and since it fell under the category of 'general industry in economically developing areas', both the units of the generating station of the Petitioner were eligible for exemption from payment of Electricity Duty on Auxiliary Consumption. The Petitioner has added that pursuant to the enactment of the Chhattisgarh Electricity Duty (Amendment) Act, 2013 there was change in categorisation and the 'general industry' could no longer claim exemption from Electricity Duty payment on Auxiliary Consumption. This according to the Petitioner is a change in law entitling the Petitioner to claim relief under the PPA. Prayas vide additional submission dated 22.5.2018 has submitted that changes in law under the PPA are to be considered with reference to the cut-off date as per PPA and not as per MOU between the Petitioner and the Govt. It has also stated that the cut-off date is 17.9.2012 and at that time, the Industrial Policy, 2009-14 was prevalent. Prayas has stated that there was no exemption from payment of Electricity Duty on Auxiliary Consumption since the Petitioner has not stated that the Industrial Policy 2009-14 had such an exemption and has also not furnished the relevant extracts. Prayas has denied that the Chhattisgarh Electricity Duty (Amendment) Act, 2013 changed any categorisation or prevented the industries from claiming any exemption. It has stated that the Act provided for rates of Electricity Duty and there was no withdrawal of exemption. Accordingly, Prayas has submitted that the Petitioner was not entitled to any exemption and therefore there was no withdrawal of exemption.

52. We have examined the submissions of the parties. The Petitioner has claimed increase in Electricity duty on Auxiliary Power Consumption of the Plant. It is observed that the Commission in Petition No.118/MP/2015 had examined Section 3(1) (c) of the Chhattisgarh Electricity Duty (Amendment) Act, 2013 in order to consider whether the increase in Electricity Duty on Auxiliary Consumption by the Govt. of Chhattisgarh qualifies as Change in law. Section 3(1) (c) of the Chhattisgarh Electricity Duty (Amendment) Act, 2013 provides as under:

> "(1) Subject to the exceptions specified in Section 3A,-
>
> (c) Every Captive Generating Plant, Generating Company and Producer shall pay every month to the State Government, in the prescribed time and manner, duty calculated at the rates specified in Part-C of the Schedule on the units of electricity consumed or used as the case may be, by it or auxiliary consumption of the plant or supplied directly to its employees or units of electricity sold or supplied to the consumers during the preceding months."

PART-C
[See Section 3 (1) (c)]

S.No.	Consumer Category	Consumed electricity (In units)	Rate of Duty
19.	For the electricity consumed by the Generating Company, Captive Generating Plant and Producer for their auxiliary consumption and for their own consumption.	On self-consumed units including auxiliary consumption	15 percent of the tariff which would have been applicable if the electricity is supplied by the distribution licensee.

Note: 4. The Electricity Duty shall be calculated on the basis of actual percentage of tariff in a month. As far as fraction of 50 paisa is concerned, 50 paise and above shall be rounded off to the next higher rupee and less than 50 paise shall be ignored."

As per the above provision, the generating company is required to pay Electricity Duty at the rate specified (15%) on the electricity sold or supplied to the consumer within the State of Chhattisgarh or for self-consumption. Accordingly, the Commission in its order dated 30.12.2015 in Petition No. 118/MP/2015 had held as under:

> *"37. The increase in electricity duty and energy development cess on sale of power to Madhya Pradesh shall be payable by the Discoms of Madhya Pradesh in proportion to the share of MP in the scheduled generation. The increase in electricity duty and energy development cess on auxiliary power consumption of station and coal mine shall be payable by all beneficiaries/procurers of the station. Apart from the above, the beneficiaries/procurers will get back or adjust an amount of ₹22 crore annually with effect from 1.8.2014 in proportion to their shares in the contracted capacity*

38. The increase in electricity duty and energy development cess on sale of power to Madhya Pradesh shall be payable by the distribution companies of Madhya Pradesh in proportion to the share of Madhya Pradesh in the scheduled generation. The increase in electricity duty and energy development cess on auxiliary power consumption of the generating station and coal mine shall be payable by all the beneficiaries/procurers of the generation station. In addition, the petitioner shall refund ₹22 crore annually to the beneficiaries with effect from 1.8.2014 in proportion to their share in the contracted capacity or shall adjusted in their bills."

53. Similar issue was considered by the Commission in Petition No. 101/MP/2017 (DB Power Ltd Vs PTC & ors) and the Commission by its order dated 19.12.2017 had allowed the increase in Electricity Duty on Auxiliary Consumption under Change in law in line with its decision in earlier orders. The relevant portion of the order is extracted as under:

"In the light of the decision as quoted above, the claim of the Petitioner for reimbursement on account of increase in electricity duty under Change in law is admissible. It is noted that in the present case, the Petitioner has submitted that as on cut-off date, Electricity Duty was applicable at the rate of 8% on applicable tariff of Rs.3.5/kWh but the Petitioner presumed that it was exempted from payment of the same due to which it has not been accounted for in the PPA. The exact reason of such presumption for exemption has not been submitted by the Petitioner. In this background, we are of the view that 8% of electricity duty was payable on applicable tariff as on the cut-off date. Therefore, the increase in electricity duty on auxiliary consumption from 8% on applicability tariff as on cut-off date is allowed under Change in Law subject to the outcome of the decision of the Hon'ble Chhattisgarh High Court."

54. As per Section 3 of the Chhattisgarh Electricity Duty (Amendment) Act, 1995, the applicable rate of electricity duty was 8% of the prevailing discom tariff on electricity consumed for the power plant auxiliaries. The Government of Chhattisgarh vide Chhattisgarh Electricity Duty (Amendment) Act, 2013 dated 1.8.2013 had increased the Electricity Duty on power consumed by the generating station. Therefore, as per Section 3 (1) of the Chhattisgarh Electricity Duty (Amendment) Act, 2013, the Petitioner is required to pay 15% of the discom tariff on electricity duty for the electricity consumed by it or auxiliary consumption of the plant. The Petitioner has however submitted that the Industrial Policy of Chhattisgarh, 2009-14 was applicable for the period 1.11.2009 to 31.10.2014, during the period when the bids were submitted i.e cut-off date (17.9.2012) and there was exemption from electricity duty payment on auxiliary consumption eligible for a period of 5 years from the date of commercial operation. Accordingly, units were

eligible for exemption from payment of electricity duty on auxiliary consumption since the COD of Unit-I is 13.8.2013 and Unit-II is 26.8.2014. It is however noticed that the Chhattisgarh Industrial Policy, 2009-2014, provides that the benefit of the electricity duty which was provided under the Industrial Policy, 2004 was to be continued to the Projects on the commencement of commercial production and such benefits shall be available only till 31.10.2010. Even otherwise, unless there is a specific exemption from the payment of such electricity duty by the State Government, the Petitioner cannot presume that electricity duty is not payable. In any event, as on the cut-off date of the bid (17.9.2012), there was no exemption from payment of the electricity duty by the Petitioner in relation to the generating station. Hence, the Petitioner was expected to factor the applicable Electricity Duty on auxiliary consumption at the rate of 8% on the applicable discom tariff at the time of submission of the bid. In this background, we are of the view that electricity duty @ 8% of the prevailing discom tariff was payable as on the cut-off date. Also, the increase in Electricity Duty on Auxiliary Consumption from 8% on the prevailing discom tariff as on the cut-off date to 15% of the prevailing discom tariff in terms of the State Government Notification dated 1.8.2013 is admissible under Change in Law, subject to the outcome of the decision of the Hon'ble Chhattisgarh High Court. The Petitioner is directed to furnish the monthly bill along with the proof of payment of Electricity Duty and computations duly certified by the Auditors. For the purpose of assuming auxiliary consumption, the parameters as per the applicable Tariff Regulation of the Commission or actual auxiliary consumption, whichever is lower, shall be considered. If there will be any downward revision of electricity duty below 8% of the applicable tariff of the discom, the benefits thereof shall be passed on to the UP discoms.

(e)Imposition of charges towards National Mineral Exploration Trust (NMET) and District Mineral Foundation (DMF)

55. The Petitioner has submitted that at the time of bidding, there was no tax in respect of contribution to be made to the NMET and DMF. However, after notification of the Mines & Minerals Development and Regulations (Amendment) Act, 2015 which had come into effect from 12.1.2015, the Ministry of Mines, GOI constituted NMET and DMF vide notifications dated 14.8.2015 and 16.9.2015 respectively. The Petitioner has submitted that the Mines & Minerals Development and Regulations (Amendment) Act, 2015 is applicable to all dispatches/ lifting as detailed below:

National Mineral Exploration Trust

(i) An amount of contribution is to be made to the NMET with effect from 14.8.2015 as per notification dated 14.8.2015 of Ministry of Mines. The rate of tax will be 2% of the Royalty paid in terms of the Second Schedule to the said Act.

(ii) That as per Rule 7(3) of the NMET Rules, 2015, the aforementioned amount of 2% towards NMET along with Royalty to the State Govt. is to be remitted immediately.

District Mineral Foundation

(i) An amount of contribution is to be made to the DMF Trust with effect from 12.1.2015 as per notification dated 17.9.2015 of Ministry of Mines, wherein it is indicated as under:

(a) 10% of the Royalty paid in terms of the Second Schedule to the Mines & Minerals (Development and Regulation) Act, 1957 in respect of the mining lease or as the case may be prospecting licence cum mining lease granted on or after 12.1.2015.

(b) 30% of the Royalty paid in terms of the Second Schedule to the Act in respect of mining lease granted before 12.1.2015.

56. In the above backdrop, the Petitioner has enclosed letter of SECL bearing no. SECL/13SP/S&Ivl/1936 dated 13/14 November, 2015 and has submitted that the contribution to be made to DMF and NMET in terms of the Mines & Minerals Development and Regulations (Amendment) Act, 2015 has resulted in Change in law as per Article 10.1.1 of the PPA.

57. Prayas has submitted that levy of NMET and DMF are part of Royalty being paid and is not a tax or levy on supply of power but on coal, and hence not covered under Article 10.1.1 of the PPA. It has also stated that the Petitioner has not annexed the laws but only the SECL Notifications and SECL is not a competent authority to impose any Royalty. Therefore, unless the Petitioner produces the statute of law of a competent government authority imposing the Royalty, the same cannot be allowed as Change in law. Prayas has stated that the quantum to be considered is only the increase due to the imposition of DMF and NMET and not due to any commercial price in coal. It has therefore submitted that increases in base price of coal or other commercial considerations is not a change in law and any consequential increase in royalty is not a change in law. The Petitioner in its rejoinder has stated that the issue had already been decided by the Commission in case of DB Power, GMREL & Sasan Power Ltd. It has also submitted that an amount towards contribution to the NMET & DMF is being levied as percentage on Royalty. The Petitioner has stated that the gazette notification in respect of the said levy have been provided to the Respondent, as directed by the Commission.

58. We have considered the submissions of the parties. On 26.3.2015, the Government of India amended the Mines and Minerals (Development and Regulation) Act, 1957 (MMDR) and enacted the Mines and Minerals (Development and Regulation) Act, 2015 in which Section 9B (Creation of DMF) and Section 9C (Creation of NMET) were introduced. The MMDR Act was deemed to have come into effect from 12.1.2015. By notification dated 14.8.2015, the Ministry of Mines, GOI constituted the NMET. On 16.9.2015, the Ministry of Mines GOI, issued order directing the formation of DMF which also stated that the DMFs will be deemed to have come into existence with effect from 12.1.2015 i.e. the date of which MMDR came into force. Pursuant to MMDR Amendment Act, on 17.9.2015, the Ministry of Mines, GOI issued the Mines and Minerals (Contribution to District Mineral Foundation)

Rules, 2015. On 20.10.2015, the Ministry of Coal, GOI had revised the Mines and Minerals (Contribution to District Mineral Foundation) Rules, 2015 in respect of Coal, lignite and sand for stowing. It also stated that the amount to be paid to DMF will be calculated from the date of notification issued under Section 9(B)(1) of the MMDR Act, by the State Government establishing the DMF or the date of coming into force of the revised rules (20.10.2015). However, the order dated 16.9.2015 directing the State Governments to establish DMFs stated that DMFs will be deemed to have come into force from 12.1.2015. The Petitioner has submitted that SECL issued notice dated 13/14.11.2015, for implementation of the MMDR Act inter alia stating that (a) contributions to NMET be made with effect from 14.8.2015 and (b) contributions to DMF be made with effect from 12.1.2015. Through the Mines and Minerals (Development and Regulation) Amendment Act, 2015, the following provisions have been incorporated in the Mines and Minerals (Development and Regulation) Act, 1957:

"9B. District Mineral Foundation:

(1) In any district affected by mining related operations, the State Government shall, by notification, establish a trust, as a non-profit body, to be called the District Mineral Foundation.

(2)The object of the District Mineral Foundation shall be to work for the interest and benefit of persons, and areas affected by mining related operation in such manner as may be prescribed by the State Government.

(3) The composition and functions of the District Mineral Foundation shall be such as may be prescribed by the State Government.

(4)The State Government while making rules under sub-section (2) and (3) shall be guided by the provisions contained in Article 244 read with Fifth and Sixth Schedules to the Constitution relating to administration of the Scheduled Areas and Tribal Area and the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

(5)The holder of mining lease or a prospecting licence-cum-mining lease granted on or after the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, shall in addition to the royalty, pay to the District Mineral Foundation of the district in which the mining operation are carried on, an amount which is equivalent to such percentage of the royalty paid in terms of the Second Schedule, not exceeding one-third of such royalty, as maybe prescribed by the Central Government.

(6)The holder of mining lease granted before the date of commencement of the Mines and Mineral (Development and Regulation) Amendment Act, 2015, shall, in addition to the royalty,

pay to the District Mineral Foundation of the district in which the mining operations are carried on, an amount not exceeding royalty paid in terms of the Second Schedule in such manner and subject to the categorization of the mining leases and the amounts payable by the various categories of leaseholders, as may be prescribed by the Central Government."

"9C: National Mineral Exploration Trust:

(1) The Central Government shall, by notification, establish a Trust, as a nonprofit body, to be called the National Mineral Exploration Trust.

(2) The object of the Trust shall be to use the funds accrued to the Trust for the purposes of regional and detailed exploration in such manner as may be prescribed by the Central Government.

(3) The composition and function of the Trust shall be such as may be prescribed by the Central Government.

(4) The holder of a mining lease or a prospecting licence-cum-mining lease shall pay to the Trust, a sum equivalent to two percent of the royalty paid in terms of the Second Schedule, in such manner as may be prescribed by the Central Government."

59. The Central Government in exercise of the powers under sub-section 9B of the Mines and Minerals (Development and Regulation) Act, 1957 has notified the Mines and Minerals (Contribution to District Mineral Foundation) Rules, 2015 prescribing the amount of contribution that will be made to the District Mineral Foundation. It is noticed from these provisions that through an amendment to the Act of Parliament, National Mineral Exploration Trust and District Mineral Foundations have been established. National Mineral Exploration Trust shall be established as a non-profit body in the form of trust. The object of the Trust shall be to use the funds accrued to the Trust for the purposes of regional and detailed exploration in such manner as may be prescribed by the Central Government. The District Mineral Foundations shall be established as non-profit body in the form of a trust. The object of the District Mineral Foundation shall be to work for the interest and benefit of persons, and areas affected by mining related operations in such manner as may be prescribed by the State Government. For running these trusts, the Amendment Act provides for payment of amounts in addition to the royalty by the holder of the mine lease or holder of prospective license-cum-mining lease @ 2% of the royalty for National Mineral Exploration Trust and @10% to 30% of the royalty for District Mineral Foundations. These

amounts collected are in the nature of compulsory exactions and therefore, partake the character of tax.

60. It is observed that the charges towards NMET and DMF as claimed by the Petitioners therein in Petition No. 112/MP/2015 (GMRKEL & ANR v BSPHCL & anr) as a Change in law event was considered by the Commission and the Commission after taking into account the provisions of the MMDR Act had allowed the said claim of the Petitioners therein by order dated 7.4.2017. The relevant portion of the said order is extracted hereunder:

"74. We have considered the submissions of the Petitioners and Prayas. There is no denying the fact that these contributions are statutory levies. Under the provisions of the FSA between the Petitioners and Mahanadi Coalfield Limited, the Petitioners are required to pay all statutory taxes, levy, cess or fees in addition to the base price of coal, sizing/crushing charges and transportation charges. Therefore, in terms of the FSA, Mahanadi Coalfield Limited is entitled to pass on these taxes or levies to the purchaser of coal. The question therefore arises whether the liability for taxes and levies shall be borne by the purchaser of coal or shall be passed on to the procurers. It is pertinent to mention that royalty on coal imposed under Section 9 of the Mines and Minerals (Development and Regulation) Act, 1957 are payable by the holders of mining lease to the Government Since the contributions to these funds are to be statutorily paid as a percentage of royalty, in addition to the royalty, they should be accorded the similar treatment. National Exploration Trust and District Mineral Foundations have been created through the Act of the Parliament after the cut-off date and therefore, they fulfill the conditions of Change in Law. Accordingly, the expenditure on this account has been allowed under Change in Law. The Petitioners shall be entitled to recover the same corresponding to the scheduled generation for supply of electricity to BSPHCL. If the actual generation is less than the scheduled generation, the coal consumed for actual generation shall be considered for the purpose of computation of impact of service taxon transportation of coal. The Petitioners are directed to furnish along with its monthly bill, the proof of payment and computations duly certified by the auditor to BSPHCL. The Petitioners and BSPHCL are further directed to carry out reconciliation on account of these claims annually."

61. Similar claim of the Petitioner in respect of TANGEDCO PPA was dealt with by the Commission in Petition No. 170/MP/2016 (KSKMPCL V TANGEDCO) and the Commission, in line with the above decision, had allowed the said claim under Change in law. In accordance with these decisions, the expenditure on this account claimed by the Petitioner has been allowed. In order to take care of the concern of the Procurer/UP discoms, the Petitioner is directed to ensure that payment to these funds does not relieve the Petitioner from any of its existing liability which the Petitioner is either required to meet out of the

bid tariff or any expenditure allowed under Change in Law earlier. The Petitioner is directed to furnish along with its monthly bill, the proof of payment and computations duly certified by the auditor to UP discoms for claiming the expenditure under Change in Law. It is further directed that the reimbursement on account of contribution to NMET and DMF shall be on the basis of actual payments made to appropriate authorities and shall be in proportion to the coal consumed corresponding to scheduled generation at normative parameters as per the applicable Tariff Regulations of the Commission or actual whichever is lower for supply of power to the procurers. If the generation is lower than the scheduled generation, then the relief shall be restricted to actual generation. Needless to say, that the above decision is subject to the final outcome of the appeal pending before the Tribunal.

(f) Levy of Service Tax, Swachh Bharat Cess and Krishi Kalyan Cess on total freight by rail/road

62. The Petitioner has submitted that as on the cut-off date, the applicable Service tax was 12.36% as per Ministry of Railway Notification No. 43/2012-Service Tax dated 2.7.2012. Thereafter the GOI vide notification No. 14/2015- Service tax dated 19.5.2015 increased the Service tax to 14% from 1.6.2015, thereby increasing the Service tax on rail freight to 4.2%. The Petitioner has submitted that the Ministry of Finance, GOI vide its Notification No. 21/2015-Service tax dated 6.11.2015 increased Service tax to 14.50% after inclusion of 0.5% Swachh Bharat Cess. The Petitioner has further submitted that Ministry of Finance, GOI vide Notification dated 26.5.2016 has introduced 0.5% Krishi Kalyan Cess with effect from 1.6.2016 thereby increasing the rate of Service Tax from 14.5% to 15%. The Petitioner has submitted that the said increase in Service Tax squarely falls under Article 10.1.1 of the PPA and qualifies as a Change in law event, for which the Petitioner is entitled to be compensated.

63. Prayas has submitted that the increase in service tax is not pursuant to the Ministry of Railway notifications, but the Ministry of Finance and the Petitioner has not annexed appropriate notifications. It has also submitted that only the impact due to increase in rate of Service tax is to be considered and any increase due to increase in prices cannot be included. In response, the Petitioner in its rejoinder has stated that the claims related to Service tax, Swachh Bharat Cess and Krishi Kalyan Cess stand settled by orders of the Commission in Petition No. 101/MP/2017 and Petition No. 8/MP/2014 wherein, the Commission has admitted these claims under Change in law.

64. We have considered the submissions of the parties. Swachh Bharat Cess and Krishi Kalyan Cess have been imposed by an Act of Parliament on the taxable services at the rate of 0.5%. Section 119 (2) and (3) of the Finance Act, 2015 provides as under:

> "119 (2). There shall be levied and collected in accordance with the provisions of this "Chapter, a cess to be called the Swachh Bharat Cess, as service tax on all or any of the taxable services at the rate of two percent, on the value of such services for the purposes of financing and promoting Swachh Bharat initiative or for any other purpose relating thereto. 119 (3). The Swachh Bharat Cess leviable under sub-section (2) shall be in addition to any cess or service tax leviable to such taxable services under Chapter V of the Finance Act, 1994 or under any other law for the time being in force."

65. Further, Section 161 (2) and (3) of the Finance Act, 2016 provides as under:

> "161 (2). There shall be levied and collected in accordance with the provisions of this Chapter, a cess to be called the Krishi Kalyan Cess, as service tax on all or any of the taxable services at the rate of 0.5 percent, on the value of such services for the purposes of financing and promoting initiatives to improve agriculture or for any other purpose relating thereto.
>
> (3) The Krishi Kalyan Cess leviable under sub-section (2) shall be in addition to any cess or service tax leviable to such taxable service under Chapter V of the Finance Act, 1994, or under any other law for the time being in force."

66. Therefore, Swachh Bharat Cess and Krishi Kalyan Cess are Service Taxes on taxable service and have been introduced through an Act of Parliament and is therefore covered under change in law. The Commission has already allowed Swachh Bharat Cess and Krishi Kalyan Cess as change in law events vide order dated 1.2.2017 in Petition No. 8/MP/2014

(EMCO Energy Limited/GMRWEL V MSEDCL & anr), order dated 6.2.2017 in Petition No. 156/MP/2014 (APL V UHBVNL & anr) and order dated 7.4.2017 in Petition No. 112/MP/2015 (GMRKEL & ANR v BSPHCL & anr).

67. As regards Service tax on transportation of goods by Indian Railways, the Commission in its order dated 1.2.2017 in Petition No. 8/MP/2014 had held that Service tax on transportation of goods by Indian Railways qualifies as Change in Law. Relevant portion of the said order dated 1.2.2017 is extracted as under:

> "89. ... By Finance Act of 2006, though service tax on transportation of goods by rail was introduced, an exception was made in case of Government Railways. By Finance Act of 2009, this restriction was removed by providing that service tax is leviable "to any person by another person, in relation to transport of goods by rail in any manner". Therefore, transport of goods by Indian Railways became subject to service tax by Finance Act of 2009. Actual levy of service tax on transportation of goods by railways was exempted by Notification No. 33 of 2009 dated 1.9.2009. By Notification no. 26 of 2012 dated 20.6.2012, Ministry of Finance issued notification by exempting transport of goods by rail over and above 30% of the service tax chargeable with effect from 1.7.2012. By a Notification No. 43 of 2012 dated 2.7.2012, service tax on transportation of goods by Indian Railways was fully exempted till 30.9.2012. With effect from 1.10.2012, service tax on 30% of the transport of goods by rail is chargeable. Therefore, the basis of the service tax on transport of goods by Indian Railways is traceable to the Finance Act of 2009 which was enacted after the cut-off date in case of MSEDCL PPA. The rate Circular No. 27 of 2012 dated 26.9.2012 issued by Railway Board implemented the provisions of the Finance Act, 2009 at the ground level. In our view, since the imposition of service tax on transport of goods by Indian Railways is on the basis of the Finance Act, 2009 which has come into force after the cut-off date, the expenditure incurred by the Petitioner on payment of service tax on transport of goods by the Indian Railways is covered under change in law and the Petitioner is entitled for compensation in terms of the MSEDCL PPA. As on cut-off date in case of DNH PPA (i.e.1.6.2012), the service tax on transportation of goods by Railways was in existence but was under exemption. Therefore, as on cut-off date in case of DNH PPA, the Petitioner could not have factored service tax on transportation of goods by Indian Railways which was under exemption. With effect from 1.10.2012, service tax on 30% of the transport of goods by rail became chargeable. This date being after the cut-off date in case of DNH PPA, the same shall be admissible under DNH PPA. Subsequent changes in service tax shall be admissible under change in law."

68. By Ministry of Finance Notification No. 43 of 2012 dated 2.7.2012, service tax on transportation of goods by Indian Railways was fully exempted till 30.9.2012. Thus, as on cut-off date in case of UP discoms PPA (i.e.17.9.2012), the service tax on transportation of goods by Railways was under exemption. Accordingly, the Petitioner could not have factored Service Tax on transportation of goods by Indian Railways at the time of

submission of the UP discoms bid. However, with effect from 1.10.2012, Service Tax on 30% of the transport of goods by rail became chargeable. Therefore, the Petitioner has accounted for 30% of 12.36% i.e. 3.708% after the cut-off date and the same shall be admissible under the UP discoms PPA as on 1.10.2012. The Ministry of Finance, Department of Revenue vide its Notification No. 14/2015-Service Tax dated 19.5.2015 has revised the rates of service tax from 12.36% to 14% which was further revised vide Notification No. 21/2015-Service Tax dated 6.11.2015 to 14.5%. Subsequently Ministry of Finance, Department of Revenue vide notification No. 27/2016-Service Tax dated 26.5.2016 revised the rate of service tax from 14.5% to 15%. In view of the above, the Petitioner is entitled for the following relief:

Applicability date	**Rate of Service tax**	**Service tax on transportation of goods @ 30% of Service tax**	**Admissible rate of service tax under Change in law**
17.9.2012 (cut-off date)	12.36%	-	-
1.10.2012	12.36%	3.708%	0%
1.6.2015	14.00%	4.200%	0.492%
15.11.2015	14.50%	4.350%	0.642%
1.6.2016	15.00%	4.500%	0.792%

69. The Petitioner shall be entitled to recover on account of change in Service Tax on transportation of coal through Railways in proportion to the coal consumed corresponding to the scheduled generation at normative parameters as per the applicable Tariff Regulations of this Commission or actual, whichever is lower, for supply of electricity to UP discoms. If actual generation is less than the scheduled generation, then relief shall be restricted to actual generation. The Petitioner is directed to furnish along with its monthly bill, the proof of payment and computations duly certified by the auditor to UP discoms. The Petitioner and UP discoms are further directed to carry out reconciliation on account of these claims annually.

Busy Season Surcharge on transportation of coal

70. The Petitioner has submitted that Ministry of Railway vide Circular No. 38/2011 dated 12.10.2011 had fixed the rate of Busy Season Surcharge at 10% and subsequently under the rate Circular No. 24/2013 dated 18.9.2013, the base freight rate was fixed at 15%. The Petitioner has further submitted that the rate circulars issued by the Railway Board, Ministry of Railways is a charge under Section 30 of the Railways Act, 1989 and is fixed from time to time with the previous approval of the Central Government. The specifications of statutory charges by the Ministry of Railway is a statutory exercise in accordance with the powers conferred under Section 30 of the Railways Act, 1989. Accordingly, the Petitioner has submitted that the increase of Busy Season Surcharge on transportation of coal by rail during the busy season vide rate Circular dated 18.9.2013 is a Change in law event within the meaning of Article 10.1.1 of the PPA.

71. Prayas has submitted that the charges payable to Railways as per the Circular is the cost involved in procuring the inputs and not the statutory taxes, duties and levies thereof. It has also stated that the claim for change in law cannot be made on escalation index. Prayas has pointed out that the Commission in its orders dated 1.2.2017, 6.2.2017 and 7.4.2017 in Petition Nos. 8/MP/2014, 112/MP/2017 and 156/MP/2014 respectively had held that the revision in Busy Season Surcharge are a result of contractual arrangements and not in pursuance to any law. Prayas has stated that the decision of the Commission squarely applies to the present case and accordingly the charges are to be disallowed. The Petitioner in its rejoinder has reiterated the submissions made in the Petition and has pointed out that the Maharashtra State Electricity Regulatory Commission in its order dated 20.4.2015 in M.A No.11/2014 has addressed the issue and had held that the claims fall under Change in law.

72. We have considered the submissions of the parties. The Commission in its order dated 3.2.2016 in Petition No. 8/MP/2014 had examined whether the change in the rate of Busy Season Surcharge and Development Surcharge levied by the Railway Board qualify as Change in law and had rejected the claim of the Petitioner therein. The relevant portion is extracted as under:

"84. The Commission has in the order dated 3.2.2016 in Petition No. 79/MP/2013 has examined whether changes in the rates of busy season surcharge and development surcharge levied by Railway Board qualifies as Change in Law. Relevant para of the said order is extracted as under:

"60. We have considered the submission of the Petitioners. In our view, increase in the railway freight charges on account of development surcharge and busy season surcharge are in the nature of change in rates of freight charges levied by the Railway Board in exercise of its power under sections 30 to 32 of the Railways Act, 1989. The Petitioners were expected to take into account the possible revision in these charges while quoting the bid. As already stated, the Petitioners/PTC were expected in terms of Para 2.7.2.4 of the RfP to include in quoted tariff all costs involved in procuring the inputs. Since freight charges are a cost involved for procuring coal which is an input for generating power for supply to Haryana Discoms under the Haryana PPA, the Petitioners cannot claim any relief under change in law on account of revision in freight charges. Accordingly, the claim of the Petitioner on this account is disallowed."

85. The Commission has taken the view in the above quoted order that increase in the railway freight charges on account of development surcharge and busy season surcharge are in the nature of change in rates of freight charges levied by the Railway Board in exercise of its power under sections 30 to 32 of the Railways Act, 1989 and the Petitioners in that case were expected to factor in these charges in the bid in terms of Clause 2.7.2.4 of the RfP and therefore, these charges are not covered under Change in Law. Section 30 of the Railways Act is extracted as under:

"30. Power to fix rates.-

(1) The Central Government may, from time to time, by general or special order fix, for the carriage of passengers and goods, rates for the whole or any part of the railway and different rates may be fixed for different classes of goods and specify in such order the conditions subject to which such rates shall apply.

(2) The Central Government may, be a like order, fix the rates of any other charges incidental to or connected with such carriage including demurrage and wharfage for the whole or any part of the railway and specify in the order the conditions subject to which such rates shall apply."

The above provisions enable the Railway Board to fix different charges for carriage of passengers and goods and any other charges incidental to or connected with such carriage. These provisions were existing before the cut-off date and the Petitioner was aware that the various charges levied by the Railway Board are subject to revision from time to time.

86. Further, Para 2.6.1 of the Request for Proposal issued by MSEDCL as well as DNH provided as under:

"2.6.1 The Bidder shall make independent inquiry and satisfy itself with respect to all the required information, inputs, conditions and circumstances and factors that may have any effect on its Bid. Once the Bidder has submitted the Bid, the Bidder shall be deemed to have examined the laws and regulations in force in India, the grid conditions, and fixed its price taking into account all such relevant conditions and also the risks, contingencies and other circumstances which may influence or affect the supply of power. Accordingly, the Bidder acknowledges that, on being selected as Successful Bidder, it shall not be relieved from any of its obligations under the RFP documents nor shall be entitled to any extension of time for commencement of supply or financial compensation for any reason whatsoever."

The freight charges are a cost involved for procuring coal which is an input for generating power for supply to MSEDCL and DNH under their respective PPAs and therefore, the Petitioner was expected to take into account the possible revisions in these charges while quoting the bid. Therefore, the change in the rates of busy season surcharge and development surcharge are not admissible under Change in Law. The Commission is of the view that non admissibility of busy season surcharge and development surcharge under change in law has been correctly decided in GMR case and in the light of the said decision and the reasons recorded above, the Petitioner cannot be granted relief under Change in Law on account of revision in the busy season surcharge and development surcharge by Railway Board."

73. Similar claim of the Petitioner for change in law in respect of TANGEDCO PPA was considered by the Commission in Petition No. 170/MP/2016 (KSKMPCL v TANGEDCO) and the Commission vide it order dated 31.5.2018 had disallowed the said claim of the Petitioner in line with its decision in earlier orders. In the light of the above, the Petitioner cannot be granted relief under Change in Law on account of the revision in the rates of Busy Season Surcharge by the Railway Board.

(g) Coal Sizing Charges and Surface Transportation Charges

74. The Petitioner has submitted that Coal Mines were nationalized and brought under State control by the Coal Mines Nationalization Act, 1973 and accordingly the GOI has the supervening control over all activities relating to coal mining, development and distribution. The Petitioner has also submitted that the distribution of coal is completely under the control of the Central Government which exercises control over the Coal India Ltd through Ministry of Coal. The Petitioner has also submitted that Coal India Limited is an Indian Government Instrumentality as defined under the Procurer PPA and is under the direct control of Ministry of Coal which holds 70% (approx.) of shares of CIL. It has stated

that Coal distribution and its price fixation are completely under the control of Ministry of Coal and CIL issues notifications from time to time to specify the Coal sizing charges. Referring to the judgments of the Hon'ble SC in Sri Sitaram Sugar Company V UOI (1990) 3 SCC 223 and Jayantilal A L Shodan V F.N.Rana & Co (AIR 1964 SC 648), the Petitioner has submitted that the fixation of coal sizing charges /surface transportation charges by CIL is a legislative function and the notifications so issued, constitute 'law' within the meaning of the provisions of the PPA and any change in such charges is covered under Change in Law.

75. The Petitioner has submitted that the prevailing Coal sizing charges as on the cut-off date (17.9.2012), where the top size of coal was limited to 100 mm as per CIL Notification No CIL:S&M:GM (F):Pricing:1965 dated 31.1.2012 was ₹61/tonne (excluding impact of taxes and duties). Subsequently, this was revised by CIL to ₹79/MT (excluding impact of taxes and duties) as per CIL Notification no CIL: S&M:GM(F):Pricing:2784 dated 16.12.2013. The Petitioner has further submitted that the Surface transportation charges as on the cut-off date, as per CIL Notification no CIL:S&M:GM(F):Pricing:1907 dated 26.12.2011 (for distance between 3 to 10 km from mine to loading point was ₹44/tonne) was subsequently revised (to ₹57/tonne) vide CIL Notification no CIL:S&M:GM(F):Pricing:2340 dated 13.11.2013. Accordingly, the Petitioner has submitted that the change in coal sizing charges and Surface transportation charges subsequent to the cut-off date constitute a Change in the applicable law by the Government instrumentality and therefore falls within the ambit of 'change in law' as defined in Article 10.1.1 of the PPA.

76. Prayas has mainly submitted that the above said charges are payable to the coal company in view of the contractual arrangements and is the commercial consideration for procurement of coal. Hence, the same is not covered under Change in Law. It has also submitted that the Commission in its orders dated 1.2.2017, 6.2.2017 and 7.4.2017 in

Petition Nos. 8/MP/2014, 156/MP/2014 and 112/MP/2017 respectively had rejected the claims under this head and the same conclusion applies to the present case. In view of the above, the charges are to be disallowed.

77. We have examined the matter. The Petitioner has submitted that Coal India Limited which is a body corporate under Ministry of Coal, Government of India is an Indian Government Instrumentality and the notifications issued by Coal India Limited with regard to Coal sizing charges / surface transportation charges is covered under the definition of law and any change in such charges is covered under Change in Law. It is observed that this issue had been considered by the Commission in Petition No. 156/MP/2014 (Adani Power Limited v/s UHBVNL & ors), wherein the Commission vide order dated 6.2.2017 held as under:

> "62. The Petitioner has submitted that Coal India Limited which is a body corporate under Ministry of Coal, Government of India is an Indian Government Instrumentality and the notifications issued by Coal India Limited with regard to sizing charges is covered under the definition of law and any change in such charges is covered under Change in Law. Indian Government Instrumentality has been defined in the PPAs as under:
>
> > "Indian Governmental Instrumentality means the Government of India (GOI), Government of Haryana and any ministry, department, body corporate, Board, agency or other authority of GOI or Government of the State where the Project is located and includes the Appropriate Commission."
>
> Law has been defined in the PPAs to 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 all applicable rules, regulations, orders, notifications by an Indian Governmental Instrumentality pursuant to or under any of them and shall include all rules, regulations, decisions and orders of the Appropriate Commission". As per the definition of "Indian Governmental Instrumentality", a body corporate under Government of India is an Indian Government Instrumentality. Coal India Limited which is a body corporate under the Government of India is a Governmental Instrumentality. However, all circulars or notifications issued by Coal India Limited shall not be included under Change in Law. As per the definition of the term "law", the notifications by the Indian Governmental Instrumentality shall be pursuant to any statute, ordinance, regulation, notification or code. In the present case, the increase in price of sizing charges issued by Coal India Limited is not pursuant to any statute or ordinance issued by the Parliament or any regulation, notification or code issued by the Government of India pursuant to such statute or ordinance. The notifications issued by Coal India Limited is pursuant to the terms of the FSA which enables CIL/seller to notify the sizing/crushing charges from time to time and is governed by commercial considerations. The Petitioner

having agreed to pay such charges in terms of the FSA, which is a commercial arrangement between the Petitioner and Mahanadi Coalfield Limited, cannot seek reimbursement of the same under Change in Law."

78. As regards the claim for increase in Coal Sizing charges and increase in Surface transportation charges, it is observed that this issue had also come up for consideration in Petition No. 8/MP/2014 (EMCO Energy Limited/GMR Warora Energy Limited v/s MSEDCL & ors) and the Commission after considering the submissions of the parties therein, by order dated 1.2.2017 decided as under:

"93.We have considered the submissions of the Petitioner and the respondents and perused the notifications issued by Coal India Ltd. with regard to Sizing Charges of coal and surface transportation charges The Petitioner has not placed on record any document to prove that these notifications have been issued pursuant to any Act of the Parliament. On the other hand, a perusal of the Fuel Supply Agreement dated 22.2.2013 between the Petitioner and SECL shows that under Para 9.0, the delivery price of coal for coal supply pursuant to the Fuel Supply Agreement has been shown as the sum of basic price, other charges and statutory charges as applicable at the time of delivery of coal. Base price has been defined in relation to a declared grade of coal produced by the seller, the pit head price notified from time to time by CIL. Under Para 9.2 of the FSA, other charges include transportation charges, Sizing/crushing charges, rapid loading charges and any other charges as notified by CIL from time to time. Sizing/crushing charges and transportation charges have been defined as under:-

"9.2.1 Transportation Charges: Where the coal is transported by the seller beyond the distance of 3(three) kms from Pithead to the Delivery Point, the Purchaser shall pay the transportation charges as notified by CIL/seller from time to time.

9.2.2 Sizing/Crushing Charges Where coal is crushed/sized for limiting the top-size to 250 mm or any other lower size, the purchaser shall pay sizing/crushing charges, as applicable and notified by CIL/seller from time to time."

Therefore, the revision in sizing charges of coal and transportation charges by Coal India Limited from time to time is the result of contractual arrangement between the Petitioner and SECL in terms of the FSA dated 22.2.2013 and is not pursuant to any law as defined in the PPAs and therefore cannot be covered under Change in Law."

79. Similar claim of the Petitioner for change in law in respect of TANGEDCO PPA was considered by the Commission in Petition No. 170/MP/2016 (KSKMPCL v TANGEDCO) and the Commission vide it order dated 31.5.2018 had disallowed the said claim of the Petitioner in line with its decision in earlier orders. Accordingly, in line with above decisions of the Commission, the claim of the Petitioner for relief under Change in Law in respect of Coal Sizing charges and Surface Transportation Charges are not allowed.

(h) Fly Ash transportation

80. The Petitioner has submitted that the Ministry of Environment and Forests (MOE&F) Govt. of India vide its Notification dated 3.11.2009 had issued directions regarding utilization of fly ash under the Environment (Protection) Act, 1986. The MOE&F vide Notification No. S.O.254 (E) dated 25.1.2016 had amended the Environment (Protection) Rules, 1986 and has imposed additional cost towards fly ash transportation. The Petitioner has submitted that the above will have significant effect on the Operation and Maintenance (O&M) costs in respect of fly ash disposal. The Petitioner has submitted that since the notification issues recently has an impact on the cost of the Petitioner, it may be permitted to file additional submissions in regard to cost implications under the present PPA with the respondent.

81. Prayas has submitted that for change in law, the law as prevailing on the cut-off date as well as the obligations already existing for the Petitioner is to be considered. If the obligation already existed and the further condition imposed is mere crystallization or quantification of the obligation, the same is not a change in law. Prayas has pointed out that under the pre-existing obligations, the thermal power plants were required to ensure the utilization of ash generated in various activities. Prayas has further stated that there were existing targets for achievement of fly ash utilization and it was therefore incumbent on the bidders to have factored the cost in the bid. It has also stated that the Environment Clearance and Consents may also provide for obligations on fly ash utilisation and the Petitioner was required to obtain these clearances and consents. As such, the conditions therein also constitute an existing obligation of Petitioner and hence the Petitioner's claim regarding Change in law is not valid. Prayas while pointing out that the Petitioner has not furnished any MOE&F Notifications prior to the cut-off date, including the MOE&F Notification dated 25.1.2016, has submitted that the Petitioner has not claimed any impact

and is seeking to file additional submissions. Hence such hypothetical claims may not be entertained. In response, the Petitioner in its rejoinder has submitted that the additional cost towards fly ash transportation is covered under Change in law as decided by the Commission in the case of DB Power. The Petitioner has further submitted that it only wanted a declaration in the present case and reserves the right to approach the Commission for computation of costs incurred and consequential additional recoveries to be made from the procurers under the PPA.

82. We have examined the submissions of the parties. The Ministry of Environment and Forests, Govt. of India vide its Notification dated 3.11.2009 had issued directions regarding utilization of fly ash under the Environment (Protection) Act, 1986. The Ministry of Environment and Forests, Govt. of India vide Notification No. S.O.254 (E) dated 25.1.2016 has amended the Environment (Protection) Rules, 1986 and has imposed additional cost towards fly ash transportation. Relevant portion of said Rules is extracted as under:

> "(10) The cost of transportation of ash for road construction or for manufacturing of ash based products or use as soil conditioner in agriculture activity within a radius of hundred kilometers from a coal or lignite based power plant shall be borne by such coal or lignite based thermal power plant and cost of transportation beyond the radius of hundred kilometers and up to three hundred kilometers shall be shared between the user and the coal or lignite based thermal power plant equally."

83. The Petitioner has not furnished the copy of the above said MOE&F Notifications in support of its claim for compensation under Change in law. It is, however, evident from the submissions that the Petitioner has not incurred any expenditure on account of transportation of fly ash and is only seeking in-principle approval of the said claim. The question of levy of charges for transportation of fly ash as a 'Change in Law' event had come up for consideration before the Commission in Petition No. 101/MP/2017 (DB Power Ltd v/s PTC India Ltd & ors) in terms of the MOE&F amendment dated 25.1.2016 and the Commission by order dated 19.12.2017 disposed of the same as under:

"106. As per Article 10.1.1 of the PPA, any enactment, bringing into effect, adoption, promulgation, amendment, modification or repeal, of any law is covered under Change in law if this results in additional recurring/ non-recurring expenditure by the seller or any income to the seller. Since, the additional cost towards fly ash transportation is on account of amendment to the Notification dated 25.1.2016 issued by the Ministry of Environment and Forests, Govt. of India, the expenditure is admissible under the Change in law in principle. However, the admissibility of this claim is subject to the following conditions:

a) Award of fly ash transportation contract through a transparent competitive bidding procedure so that a reasonable and competitive price for transportation of ash/ Metric tonne is discovered;

b) Any revenue generated/ accumulated from fly ash sales, if CoD of units/ station was declared before the MoEF notification dated 25.01.2016, shall also be adjusted from the relief so granted;

c) Revenue generated from fly ash sales must be maintained in a separate account as per the MoEF notification; and

d) Actual expenditure incurred as claimed should be duly certified by auditors and the same should be kept in possession so that it can be produced to the beneficiaries on demand.

The Petitioner is granted liberty to approach the Commission with above documents to analyse the case for determination of compensation."

84. Similar decision was taken by the Commission in respect of the claim towards fly ash transportation charges in order dated 16.3.2018 in Petition No. 1/MP/2017 and Order dated 31.5.2018 in Petition No. 31.5.2018. In line with the above decisions, the claim by the Petitioner is in-principle admissible under the Change in law and the admissibility of the said claim is subject to the compliance of the conditions indicated in the said order *(as quoted above)*. The Petitioner is granted liberty to approach the Commission with the above documents including additional information on the following, in order to examine the case for determination of compensation.

i. Details of fly ash generation corresponding to energy supplied to all the long term beneficiaries separately for the claim period till 31.3.2017, along with quantum of ash transported up to 100 km distance and beyond 100 Km (up to 300 Km) and rate of ash transportation cost.

ii. Whether the Petitioner has awarded the contract for transportation of ash through competitive bidding or through negotiation route. If the contract has been awarded through competitive bidding, then copy of agreement must be furnished along with the rate of transportation cost and if the contract has been awarded through negotiation route, then justify the price considered was competitive, along with a copy of agreement.

iii. Actual fly ash transportation cost paid for transportation of fly ash beyond 100 Km (up to 300 Km) as per MoEF notification duly certified by Auditor for the claim period till 31.3.2017.

iv. Under which head of account, transportation expenditure is booked and whether cost of such transportation was being recovered in tariff.

v. Whether the Petitioner is maintaining a separate account for revenue earned from sale of ash as per the notification of MOEF. If yes, the total revenue accumulated and the expenditure incurred from the same account till date. If not, the reason for not maintaining such separate account."

(i) Change in Emission norms

85. The Petitioner has submitted that the Ministry of Environment, Forest and Climate Change (MOEFCC) GOI vide Notification dated 7.12.2015 has revised the emission norms to be maintained by the Power plants. It has also submitted that these revised norms will have to be implemented within two years from the date of publication of the said notification by the operating power plants like the Petitioner and very large investments will have to be made by the Petitioner in order to meet these standards. The Petitioner has submitted that the above results into 'change in law' as per Article 10.1.1 of the PPA and the Petitioner may be permitted to file additional submissions in regard to cost implications under the present PPA with the Respondent.

86. Prayas has submitted that the Petitioner has merely stated the claims without any submissions and has accordingly requested that such academic claims of the Petitioner may not be entertained. It has also stated that it reserves its right to make additional submissions. In response, the Petitioner in its rejoinder has objected to the above submission and has stated that a declaration that change in emission norms is a change in law has to be made by the Commission and the Petitioner may be granted liberty to approach the Commission with appropriate computations.

87. The matter has been examined. It is observed that MOEFCC, Government of India, vide Notification no. S.O.3305 (E) dated 07.12.2015 has notified the Environment (Protection) Amendment Rules, 2015 (Amendment Rules, 2015) amending/ introducing the standards for emission of environmental pollutants to be followed by the thermal power plants. By the said Amendment Rules, all the existing thermal power plants, including that of the Petitioner, are required to meet the modified / new norms within a period of two (2) years from the date of the notification. By the said amendment, MoEFC has:

a) Directed all thermal power plants with Once Through Cooling ("OTC') to install Cooling Tower ("CT");

b) Directed all existing CT based plants to reduce water consumption up to the limit prescribed therein;

c) Revised emission parameters of Particulate Matter ("PM"); and

d) Introduced new parameters qua Sulphur dioxide (SO2), Oxides of Nitrogen (NOx) and Mercury (Hg).

88. It is observed that MoEFCC through Notification dated 7.12.2015 has made it mandatory for all the thermal power plants to comply and operate within the specified emission limits. It is pertinent to mention that the issues regarding the implementation of revised environmental norms and allowing such cost under Change in law have been raised by CGPL (in Petition No 77/MP/2016), Sasan Power Ltd (in Petition No.133/MP/2016) and NTPC (in Petition No. 98/MP/2017) and these Petitions are pending for consideration of the Commission. The present case of the Petitioner shall be decided in accordance with the decision in the above Petition.

(j) Minimum Alternate Tax

89. The Petitioner has submitted that Minimum Alternate Tax (MAT) rate seven days prior to the bid deadline was 18.5%. It has also submitted that the applicable surcharge was to the tune of 5%, Education cess at 2% and Secondary and Higher Education cess at 1% and thereby the applicable MAT rate was 20.00775%. It has further submitted that the surcharge has been increased from 10% to 12% and thereby the MAT liability has been

increased to 21.342%. Accordingly, the Petitioner has submitted that the above has resulted in change in law as per Article 10.1.1 of the PPA and the Petitioner shall approach the Commission at the appropriate time for relief under this head. It has stated that the Petitioner has not paid any MAT as MAT is payable on book profits as on March, 2016 and the Petitioner does not have any book profits. However, the same might be paid in future.

90. Prayas has pointed out that the claim of MAT under Change in law had already been disallowed by the Commission. It has also submitted that the Tribunal vide its judgment dated 19.4.2017 in Appeal No.161/2015 (SPL V CERC & ors) has held that MAT cannot be considered as Change in law. The Petitioner in its rejoinder has submitted that MERC in its order dated 25.3.2015 in Case No. 173 of 2013 had allowed MAT as a Change in Law placing reliance on the judgment of the Tribunal in Jaiprakash Hydro Power Ltd V HPERC &ors in Appeal No. 39/2010 (2011 ELR APTEL 1639), wherein it was held that introduction of MAT rates amounts to change in law. It has also placed reliance on the judgment of the Tribunal in Appeal No. 330/2013 (BESCOM V TPDDL& ors), Appeal No. 113/2012 (APCC V APERC & ors) in support of its contention that MAT may be allowed as change in law.

91. We have examined the matter. Though the Petitioner has not sought any relief under this head, it has however placed reliance on the judgments of the Tribunal and has reserved its rights to claim the same in future under change in law in terms of Article 10.1 of the PPA. It is observed that in Petition No. 8/MP/2014 (GMRWEL V MSEDCL & anr) the claim for change in effective MAT in respect of MSEDCL and DNH PPA was considered by the Commission and by order dated 1.2.2017, the Commission had disallowed the said claim. The relevant portion of the order is extracted as under:

> "65. We have considered the submission of the Petitioner. The similar issue has been considered by the Commission in its order dated 30.3.2015 in Petition No. 6/MP/2013 where in the Commission has not considered MAT under change in law. The relevant portion of the said order is extracted as under:

"46. We have considered the submission of the Petitioner and the respondents. The question for consideration is whether the Finance Act, 2012 changing the rate of income tax and minimum alternate tax are covered under Article 13.1.1(i) of the PPA. The income tax rates are changed from time to time through various Finance Acts and therefore, therefore they will be considered as amendment of the existing laws on income tax. However, all amendments of law will not be covered under "Change in Law" under Article 13.1.1(i) unless it is shown that such amendments result in change in the cost of or revenue from the business of selling electricity by the seller to the procurers under the terms of the agreement…… Accordingly, any increase or decrease in the tax on income or minimum alternate tax cannot be construed as "Change in Law" for the purpose of Article 13.1 of the PPA. In the case of tariff determination based on capital cost under Section 62 of the Electricity Act, 2003, one of the components specifically allowed as tariff is tax on income. The pass through of minimum alternate tax or income tax in case of tariff determination under section 62 is by virtue of the specific provision in the Tariff Regulations which require the beneficiaries to bear the tax on the income at the hand of the generating company from the core business of generation and supply of electricity. Such a provision is distinctly absent in case of tariff discovered through competitive bidding where the bidder is required to quote an all-inclusive tariff including the statutory taxes and cesses. Thus, the change in rate of income tax or minimum alternate tax cannot be construed as "Change in Law" for the purpose of Article 13.1 of the PPA."

92. It is further noticed that the order of the Commission dated 30.3.2015 (Sasan Power Ltd v MPPMCL & ors) disallowing the claim of change in Income Tax rate from 33.99% to 32.45% and MAT rate from 11.33% to 20.01% based on the Finance Act, 2012 as a 'change in law' event under the provisions of Article 13.1.1 of the PPA was examined by the Tribunal in Appeal No. 161/2015 (Sasan case) and the Tribunal by its judgment dated 19.4.2017 had upheld the order of the Central Commission. The relevant portion of the judgment is extracted as under:

"28. Thus, when a tax on income is paid by the company, it cannot be said that a part of the income of the company was received for and on behalf of the Revenue. The Income Tax is charged upon the profits; the thing which is taxed is the profit that is made. Profit has to be ascertained first and Income Tax being a part of profits – namely, such part as the Revenue is entitled to take, is to be deducted from profits. When the net gains of the business determined after making all permissible deductions, are taxed, the deduction to meet such taxes cannot be deducted. Income Tax is not allowed as a deduction in making assessment of income. Income Tax or MAT are not part of the expenses of the company incurred for the purpose of carrying on the business and earning profits. Income Tax and MAT are post profit. Income Tax and MAT are the application of the profits when made. Income Tax and MAT are not an expenditure laid out for the purpose of the business of the company.

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"40……..In view of the above, the CERC's finding that changes in Income Tax or increase in MAT are not Changes in Law must be confirmed and is accordingly confirmed."

93. Also, the claim of the Petitioner in respect of TANGEDCO PPA was considered by the Commission in Petition No. 170/MP/2016 and the Commission, in line with its decision in earlier orders, had disallowed the claim of the Petitioner towards increase in MAT as a change in law event. In light of the above, the claim of the petitioner on account of increase in MAT as a Change in law event is not allowed.

(k) Carrying cost

94. The Petitioner in the Petition has submitted that it will be entitled to carrying cost/interest on all additional amounts incurred/paid till date on account of Change in law in terms of the judgment dated 12.9.2014 of the Tribunal in Appeal No. 288/2013 (M/s Wardha Power Co Ltd v Reliance Infrastructure Ltd & anr) and has submitted that relief under Article 10 of the PPA necessarily includes carrying cost. It has also submitted that Article 10 stipulates that the affected party is to be restored to the same economic position as if such change in law had not occurred. According to the Petitioner, the restoration of the Petitioner to the same economic position would necessarily mean that the liability of the procurers with regard to Change in law gets crystallized simultaneously with the Petitioners' liability with effect from the occurrence of change in law event/payment by the Petitioner in relation to the same. It has added that carrying cost is in the nature of compensation of time value of funds deployed on account of change in law events and in case carrying cost is not awarded, the affected party would not be restored to the same economic position.

95. Prayas has submitted that carrying cost or interest is admissible only after the crystallization of the amount payable after the decision of the Commission and not before the amount becomes due. It has further submitted that the Commission has to decide on the change in law, the quantum and whether it has crossed 1% of letter of credit (operation period), the applicable date etc., It has further stated that only after the

determination by the Commission, the Petitioner may raise Supplementary bill in accordance with Article 10.5.2 and there is no delayed payment surcharge for any amount until such bill is raised and only thereafter any surcharge is payable as per Article 8 of the PPA. Prayas has further submitted that the judgment of the Tribunal in Wardha case does not deal with carrying cost and the Commission has also rejected the carrying cost for changes in law in the case of Sasan Power Ltd. Prayas has also stated that restoration to the economic position is only to the extent contemplated in this Article 10 and not *de hors* the Article 10. Accordingly, it has submitted that if Article 10 does not provide for interest or carrying cost, the same cannot be granted.

96. The matter has been examined. It is observed that the Tribunal in its judgment dated 13.4.2018 in Appeal No. 210/2017 (APL v CERC & ors) has allowed the carrying cost on the claim under change in law. The Petitioner is granted liberty to file a separate petition for carrying cost in the light of the judgment of the Tribunal which shall be considered in accordance with law.

Issue No. 4: Mechanism for compensation on account of Change in Law during the Operating period

97. The Petitioner is entitled to compensation on account of Change in Law during the Operating Period as per the mechanism provided in the PPA and no separate mechanism is required to be prescribed. It is clarified that the Petitioner shall be entitled to claim compensation with all relevant documents like taxes and duties paid supported by Auditor Certificate after the expenditures allowed under Change in Law during the operating period (including the reliefs allowed for operating period earlier) exceeds 1% of the value of Letter of Credit in aggregate.

98. As stated, Articles 10.3.2 and 10.3.4 of the PPA provide for the principle for computing the impact of Change in law during the operating period. These provisions enjoin upon the

Commission to decide the effective date from which the compensation for increase/decrease of revenue or cost shall be admissible to the Petitioner. Moreover, the compensation shall be payable only if the increase/ decrease in revenue or cost to the seller is in excess of an amount equivalent to 1% of the letter of credit in aggregate for contract year. In our view, the effect of change in law as approved in this order shall come into force from the date of commercial operation of the concerned unit/units of the generating stations. We have specified a mechanism considering the fact that compensation of change in law shall be paid in subsequent contract years also. Accordingly, the following mechanism prescribed to be adopted for payment of compensation due to Change in Law events allowed as per Article 10.2.1 of the PPA in the subsequent years of the contracted period:

(a) Monthly change in law compensation payment shall be effective from the date of commencement of supply of electricity to the respondent or from the date of Change in Law, whichever is later.

(b) Levy of Swachh Bharat Cess, clean energy cess, service tax on transportation of coal, CG Environment cess, CG Industrial Development cess, and Change in Central Excise Duty on the assessable value of coal shall be computed based on coal consumed corresponding to scheduled generation at normative parameters as per the applicable tariff Regulations of the Commission or actual whichever is lower and shall be payable by the beneficiaries on pro-rata based on their respective share in the scheduled generation. If the actual generation is less than scheduled generation, it will be restricted to actual generation.

(c) At the end of the year, the Petitioner shall reconcile the actual payment made towards change in law with the books of accounts duly audited and certified by statutory auditor and adjustment shall be made based on the energy scheduled by procurers during the year. The reconciliation statement duly certified by the Auditor shall be kept in possession by the Petitioner so that same could be produced on demand from Procurers/ beneficiaries.

(d) For Change in Law items related to the operating period, the year-wise compensation henceforth shall be payable only if such increase in revenue or cost to the Petitioner is in excess of an amount equivalent to 1% of LC in aggregate for a contract year as per provision under 10.3.2 of the PPA.

(e) Approaching the Commission every year for allowance of compensation for such Change in Law is a time consuming process which results in time lag between the amount paid by Seller and actual reimbursement by the Procurers which may result in payment of carrying cost for the amount actually paid by the Petitioner. Accordingly, the mechanism prescribed above is to be adopted for payment of compensation due to Change in Law events allowed as per Article 10.3.2 of the PPA for the subsequent period as well.

(f) We are not going to compute the threshold value for eligibility of getting compensation due to Change in Law during Operation period. However, the Petitioner shall be eligible to receive compensation if the impact due to Change in Law exceeds the threshold value as per Article 10.3.2 during Operation period. Accordingly, the compensation amount allowed shall be shared by the procurers based on the scheduled energy. Year-wise compensation henceforth shall be payable only if such increase in revenue or cost to the Petitioner is in excess of an amount equivalent to 1% of LC in aggregate for a contract year as per provision under Article 10.3.2 of the PPA.

Other submissions

99. Prayas has submitted that with effect from 1.7.2017, Goods and Services Tax (GST) has been introduced and the impact of GST leading to increase or decrease on account of Change in law needs to be worked out. It has also pointed out that the Government has abolished various cesses including Clean Energy Cess, Swachh Bharat Cess and Krishi Kalyan Cess, which may also be considered. Accordingly, it has prayed that the Petitioner may be directed to submit information in regard to claims under this head with supporting documents. With regard to the mechanism for Change in Law, Prayas has submitted that most of the taxes and cess are subsumed in GST with effect from 1.7.2017. Therefore, the Petitioner may be directed to submit the information regarding the actual expenditure on account of taxes until 30.6.2017 and the Commission may calculate the actual impact. In response, the Petitioner has submitted that the claims in the present Petition relate to a period prior to 1.7.2017.

100. The Commission in order to facilitate the settlement of the dues arising on account of the introduction of GST and GST Compensation Cess has initiated a suo motu Petition 13/SM/2017 to hear the generating companies and the Procurers and to decide the issues. Accordingly, after hearing the parties, the Commission by order dated 14.3.2018 decided the following:

"32. At the same time GST and IGST were also introduced from 01.07.2017 and some of the taxes, duties and levies were abolished or subsumed therein. The Commission through the instant petition tried to ascertain the impact of the same on the generators and discoms/beneficiary States by seeking detailed submissions from all concerned.

33. It has been observed that some of the generators and discoms have submitted the calculations of impact of change in law. These calculations show varying impact of such changes on different generators and discoms on various dates. The impact worked out by the discoms was different from that submitted by the generators. Further, the generators have also not submitted a clear declaration as called for that there are no other taxes, duties, cess etc., which have been reduced or abolished or subsumed. From the forgoing, the Commission feels that due to varied nature of such taxes, duties and cess etc. that have been subsumed/ reduced, it is not possible to quantify in a generic manner, the impact of change in law for all the generators.

34. Hence, we are of the opinion that introduction of GST and subsuming/ abolition of such taxes, duties and levies has resulted in some savings for the generators having generation based on domestic coal and the same needs to be passed to the discoms/ beneficiary States. Since, these are change in law events beneficial to the procurers, the same needs to be passed on to the procurers by the generators.

35. Accordingly, we direct the beneficiaries/ procurers to pay the GST compensation cess @ Rs 400/ MT to the generating companies w.e.f 01.07.2017 on the basis of the auditors certificate regarding the actual coal consumed for supply of power to the beneficiaries on basis of Para 28 and 31. In order to balance the interests of the generators as well as discoms/beneficiary States, the introduction of GST and subsuming/abolition of specific taxes, duties, cess etc. in the GST is in the nature of change in law events. We direct that the details thereof should be worked out between generators and discoms/beneficiary States. The generators should furnish the requisite details backed by auditor certificate and relevant documents to the discoms/ beneficiary States in this regard and refund the amount which is payable to the Discoms/ Beneficiaries as a result of subsuming of various indirect taxes in the Central and State GST. In case of any dispute on any of the taxes, duties and cess, the respondents have liberty to approach this Commission."

101. Accordingly, the decision of the Commission as above shall be made applicable in the present case of the Petitioner.

Summary

102. Based on the above analysis and decisions, the summary of our decision under 'Change in Law' events during the Operation period (after the cut-off date of the UP discoms PPA) are as under:

UP discoms PPA	
Clean Energy Cess	Allowed till 30.6.2017
Excise Duty computation on coal	Allowed
Chhattisgarh Environmental Cess and Chhattisgarh Development Cess	Allowed
Chhattisgarh Electricity Duty on Auxiliary Consumption	Allowed
Charges towards NMET and DMF	Allowed
Service Tax, Swachh Bharat Cess and Krishi Kalyan Cess	Allowed
Busy Season Surcharge on transportation of coal	Not allowed

Coal Sizing charges & Surface Transportation charges	Not allowed
Fly Ash transportation	Allowed. Liberty granted to approach with details
Change in Emission norms	Liberty granted as per para 88 above
Minimum Alternate Tax	Not allowed
Carrying Cost	Liberty granted to approach with a separate petition

103. With the above, the Petition is disposed of.

Sd/-	***Sd/-***	***Sd/-***	***Sd/-***
(Dr. M.K. Iyer)	**(A. S. Bakshi)**	**(A.K. Singhal)**	**(P.K.Pujari)**
Member	**Member**	**Member**	**Chairperson**