CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI

Petition No: 156/MP/2014

Coram:

Shri P.K. Pujari, Chairperson
Shri I.S. Jha, Member
Shri Arun Goyal, Member
Shri P.K. Singh, Member

Date of Order: 24th October, 2021

In the matter of

Petition under Section 79 of the Electricity Act, 2003 read with Article 13 of the Power Purchase Agreement dated 7.8.2008 (PPA) executed between Uttar Haryana Bijili Vitan Nigam Limited/ Dakshin Haryana Bijili Vitran Nigam Limited and Adani Power Limited.

And
In the matter of

Adani Power (Mundra) Limited,
"Adani House", Near Mithakhali Six Roads, Navarangpura,
Ahmedabad-380009 **…Petitioner**

Vs

1. Uttar Haryana Bijli Vitran Nigam Limited,
Having its Registered Office at Shakti Bhawan,
Sector 6, Panchkula,
Haryana– 134 109

2. Dakshin Haryana Bijli Vitran Nigam Limited,
Having its Registered Office at Vidyut Sadan,
Vidyut Nagar, Hisar,
Haryana-125005 **…Respondents**

Parties Present:

Shri Amit Kapur, Advocate, APMuL
Shri Akshat Jain, Advocate, APMuL
Shri Raghav Malhotra, Advocate, APMuL
Shri M. G. Ramachandran, Sr. Advocate, Haryana Discoms
Ms. Poorva Saigal, Advocate, Haryana Discoms
Shri Shubham Arya, Advocate, Haryana Discoms
Shri Vikas Kadian, Haryana Discoms

ORDER

The Petitioner, Adani Power (Mundra) Limited ("APMuL") has set up a 4620 MW thermal power plant within Special Economic Zone, Gujarat (Mundra TPP) consisting of four Units of 330 MW in Phase I and Phase II, two Units of 660 MW in Phase III and three Units of 660 MW in Phase IV. All 9 Units of the Power Plant have been commissioned. The Petitioner has entered into two separate long term PPAs of 712 MW each with Uttar Haryana Bijli Vitran Nigam Limited (UHBVNL) and Dakshin Haryana Bijli Vitran Nigam Limited (DHBVNL) (hereinafter referred to as 'Haryana Discoms') on 7.8.2008 for supply of power from Phase IV of Mundra TPP.

2. The Petitioner had filed Petition No. 156/MP/2014 before the Commission under Section 79 of the Electricity Act, 2003 (hereinafter referred to as 'the Act') read with Article 13 of the PPAs dated 7.8.2008 seeking directions to the Haryana Discoms to pay compensation on account of occurrence of the events of change in law affecting the Petitioner during the construction and operating period and for restoration of the Petitioner to the same economic position as if these events had not occurred. The Commission, after hearing the parties, vide its order dated 6.2.2017, decided the change in law events as under:

Sr. No.	Change in law events	Decision
1	Change in Rate of Royalty on coal	Allowed
2	Levy of Central Excise Duty	Allowed
3	Levy of Clean Energy Cess	Allowed
4	Levy of Custom Duty	Allowed
5	Levy of Service Tax on Transportation of Coal	Allowed
6	Imposition of Swachh Bharat Cess	Allowed
7	Payment of National Mineral Exploration Trust	Allowed
8	Payment of District Mineral Foundation	Allowed
9	Levy of Minimum Alternate Tax on plants situated in SEZ	Not Allowed
10	Installation of FGD	Not decided but liberty granted
11	Increase in Busy Season Surcharge on transportation of coal	Not allowed

Sr. No.	Change in law events	Decision
12	Increase in Development Charge on transportation of coal	Not allowed
13	Increase in Sizing charges on coal	Not allowed
14	Increase in Surface Transportation	Not allowed
15	Change in Pricing of coal from UHV to GCV	Not allowed
16	Change in class from 140 to 150 for Railway freight for coal for train load movement	Not allowed
17	Linking railway tariff revision with movement in cost of fuel	Not allowed
18	Levy of Green Energy Cess in Gujarat	Liberty granted
19	Carrying Cost	Not allowed

3. Aggrieved by the findings in the aforesaid order dated 6.2.2017, the Petitioner filed Appeal No. 158 of 2017 before the Appellate Tribunal for Electricity ('the APTEL') against the following change in law events disallowed by the Commission:

(a) Increase in Busy Season Surcharge and Development Charge on transportation of coal;

(b) Increase in Surface Transportation and Sizing Charges of coal;

(c) Change in pricing of coal from UHV to GCV;

(d) Levy of Minimum Alternate Tax on power plants situated in SEZ;

(e) Carrying cost.

4. The Respondents, Haryana Utilities had also filed cross Appeal before the APTEL, being Appeal No. 316 of 2017, against the change in law event, namely, levy of Custom Duty, allowed by the Commission.

5. The said appeals came to be decided by the APTEL in judgment dated 7.6.2021. In the said judgment, the APTEL dismissed Appeal No. 316 of 2017 filed by the Respondents. In Appeal No. 158 of 2017 filed by the Petitioner, the APTEL allowed the claims regarding levy of Busy Season Surcharge and Development

Charge on transportation of coal and carrying cost. Relevant portion of the judgment dated 7.6.2021 of the APTEL is extracted as under:

> "*76. In the light of the above discussion and reasoning, we are of the opinion that Appeal No. 158 of 2017 deserves to be partly allowed allowing* ***the claim of Busy Season Surcharge and Development Surcharge on transportation of coal and so also carrying cost****. We reject the claim of the Appellant Generator pertaining to increase in Surface Transportation charges so also Sizing charges on coal.*
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> *77. Appeal No. 316 is dismissed.*
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> *78. Accordingly, we direct the 1st Respondent Commission to make computation of compensation in respect of change in law events and so also carrying cost on deferring payments in terms of our directions in the above judgments."*

6. The Petitioner vide its submission dated 14.6.2021 has submitted that the Busy Season Surcharge ('BSS') was increased from 5% to 12% pursuant to Ministry of Railways circular dated 27.9.2012. Subsequently, BSS was further increased to 15% by Circular No. 24 of 2013 dated 18.9.2013. Similarly, the Developmental Charge ('DC') was increased from 2% to 5% pursuant to Circular dated 12.10.2011 of Ministry of Railways. Accordingly, the Petitioner had computed the compensation payable by the Respondents to the Petitioner towards increase in BSS and DC on transportation of coal as under:

Financial year	**Compensation (Rs. in crore) towards**		**Total claims (Rs. in crore)**
	Busy Season Surcharge (A)	**Development Charge (B)**	
2012-13	4.10	2.39	6.49
2013-14	5.82	3.06	8.88
2014-15	11.76	5.33	17.10
2015-16	16.98	7.74	24.72
2016-17	18.91	7.95	26.85
2017-18 (up to December 2017)	17.52	8.43	25.95
Total	**75.09**	**34.90**	**109.99**

7. With regards to the above compensation, the Petitioner has clarified that the linkage coal for the period up to April 2015 was transported through Railways to either Dhamra or Paradeep ports and thereafter to Mundra power plant via sea

route. Therefore, the compensation for BSS and DC has been computed considering the actual basic freight payable for transportation of coal from respective coal mines to Dhamra or Paradeep ports, as applicable. Further, the Busy Season Surcharge and Developmental Charge corresponding to inter-plant transfer (IPT) of coal has been computed considering deemed transportation up to Dhamra port in terms of the order of the Commission dated 8.7.2019 in Petition No. 269/MP/2018.

8. With regard to carrying cost, the Petitioner has submitted that the APTEL has allowed carrying cost on all the events approved under change in law. The Petitioner has submitted that it is required to make advance payment to coal companies on or before 1st, 11th and 21st of the respective month in which the coal is required to be procured in terms of the provisions of the Fuel Supply Agreements entered into with subsidiaries of Coal India Limited. Hence, coal invoice date is considered as expense date for the purpose of computation of carrying cost, though coal invoices are issued much later than advance payment made by the Petitioner. As regards change in law event i.e. levy of Customs Duty on energy removed from SEZ to Domestic Tariff Area ('DTA'), the Petitioner has submitted that in compliance with the provisions of the Custom Act, 1962, the Petitioner had paid custom duty to the authorities before actual entry or transfer of electricity in DTA. Therefore, carrying cost on custom duty is claimed considering middle of the month as date of expense. Further, the interest rate for computing carrying cost is considered based on the principle adopted by the Commission in its order dated 17.9.2018 in Petition No. 235/MP/2015, wherein, the Commission has allowed lower of actual interest rate paid by the Petitioner, working capital interest rate as per CERC Regulations and Late Payment Surcharge (LPS) rate as per the PPA. It has been submitted that the Petitioner has adopted the same rates that have been approved by the Commission

in order dated 17.9.2018 in Petition No. 235/MP/2015 for the years 2015-16, 2016-17 and 2017-18. Since the actual interest rates paid by the Petitioner for the years 2012-13, 2013-14 and 2014-15 are lower than the applicable rate for interest on working capital as per Tariff Regulations (SBI Base Rate+ 350 basis points) and the LPS as per the PPAs (SBAR +2%), the Petitioner has claimed the actual interest rate paid by it for the years 2012-13, 2013-14 and 2014-15.

9. In view of the above, the Petitioner has submitted the following claims for carrying cost on BSS and DC on transportation of coal:

(Rs. in crore)

Financial Year	Carrying cost on Busy Season Surcharge	Carrying cost on Development Charge	Rate of interest	Total
2012-13	5.28	3.11	9.87%	8.39
2013-14	7.41	3.98	11.00%	11.38
2014-15	15.96	7.31	13.10%	23.26
2015-16	13.79	6.34	10.68%	20.13
2016-17	12.12	5.14	10.95%	17.26
2017-18	8.93	4.30	10.97%	13.23
Total	**63.474**	**30.18**		**93.66**

10. The claim on account of carrying cost submitted by the Petitioner on the change in law events allowed by the Commission vide order dated 6.2.2017, namely, change in rate of Royalty on coal, levy of Central Excise Duty, levy of Clean Energy Cess, levy of Custom Duty on energy removed from Special Economic Zone to Domestic Tariff Area, National Mineral Exploration Trust and District Mineral Foundation, is as under:

(Rs. in crore)

Financial Year	Principal claim	Carrying cost till 6.2.2017	Interest on carrying cost	Rate of interest	Total claim
2012-13	29.05	14.53	7.72	9.87%	22.25
2013-14	60.40	26.43	16.05	11.00%	42.48
2014-15	99.98	34.42	26.12	13.10%	60.54
2015-16	182.51	26.95	15.78	10.68%	42.73
2016-17	177.77	7.49	4.52	10.95%	12.01
Total	**549.70**	**109.82**	**70.19**		**180.01**

Hearing dated 30.7.2021 and 27.9.2021

11. The matter was heard on 30.7.2021 through video conferencing. During the course of hearing, the learned senior counsel for the Respondents submitted that they have received voluminous data and the computations furnished by the Petitioner very recently and accordingly, requested for time to file their response thereon. The Commission directed the parties to mutually reconcile the claims of the Petitioner within four weeks and to bring to the notice of the Commission un-reconciled issues, if any, during the next course of hearing. After the completion of reconciliation exercise, the parties were further directed to file their respective response within one week thereafter.

12. Pursuant to the direction of the Commission, the Petitioner, vide its affidavit dated 24.9.2021, has placed on record the outcome of reconciliation exercise undertaken by the Petitioner and the Respondents and mainly submitted as under:

(a) On 2.8.2021, the Petitioner issued Supplementary Bill to Haryana Discoms for the compensation towards allowed change in law events viz. Busy Season Surcharge and Development Charge and carrying cost applicable on all approved change in law events along with detailed calculations and supporting documents.

(b) Subsequently, reconciliation exercise was undertaken by the Petitioner and the Respondents on 24.8.2021, 1.9.2021, 13.9.2021, 14.9.2021 and 15.9.2021.

(c) For computation of claims, the Petitioner has considered railway freight from coal mines to Dhamra Port for claiming BSS and DC on IPT coal. However, the Respondents were not willing to accept the same and instead considered railway freight from coal mines to Paradeep Port, which is at a shorter distance than Dhamra Port. The Petitioner agreed to the request of the Respondents to consider BSS and DC on railway freight till Paradeep Port.

Accordingly, the revised reconciled amount for BSS and DC and carrying cost on change in law events worked out to Rs. 358.94 crore instead of Rs. 390.13 crore claimed by the Petitioner.

(d) Consensus has been arrived at between the parties in respect of Busy Season Surcharge (BSS) and Developmental Charge (DC) for the period up to 14.1.2018.

(e) However, the Petitioner and Haryana Discoms have divergent views on (i) treatment of BSS and DC w.e.f. 15.1.2018 along with carrying cost; and (ii) methodology for computation of carrying cost – whether simple interest or compound interest basis is to be followed.

13. The Petitioner and the Respondents have made detailed submissions on the issues in their respective responses/ affidavits, which have been discussed in the subsequent paragraphs. The matter was heard on 27.9.2021. During the course of hearing, the learned counsel for the Petitioner and learned senior counsel for the Respondents circulated their note of arguments and made detailed submissions. The learned senior counsel for the Respondents concurred with the submissions made by the Petitioner that post the reconciliation carried out by the parties, the issues that need to be decided by the Commission pertains only to treatment of BSS and DC w.e.f. 15.1.2018 and methodology for computation of carrying cost.

14. In light of the above, we take on record that there is no dispute with regards to BSS and DC to be paid up to 14.1.2018 since the claims in this regard have been reconciled. Therefore, on consideration of the facts on record and arguments during the hearing of the Petition, the following issues remain for our consideration:

(i) Treatment of BSS and DC w.e.f. 15.1.2018;

(ii) Methodology for computation of carrying cost – whether simple interest or compound interest basis is to be followed.

15. As regards the dispute on the issue of treatment of BSS and DC w.e.f. 15.1.2018, the Petitioner has mainly submitted as under:

(a) The contention of Haryana Discoms that since BSS and DC are not being charged separately by Indian Railways w.e.f. 15.1.2018, the Petitioner must refund the same along with applicable carrying cost to Haryana Discoms, is not correct. BSS and DC were being levied by Railways over basic freight till 14.1.2018. Subsequently, Ministry of Railways vide its Notification No. TCR/1078/2015/07 dated 9.1.2018 has included the said amount (equivalent to BSS and DC) in the basic freight w.e.f. 15.1.2018. Therefore, BSS and DC, which were being levied separately, have now been subsumed in the basic freight w.e.f. 15.1.2018. Consequently, there has been no change in the cost incurred by the Petitioner w.e.f. 15.1.2018. Therefore, the question of refund does not arise and the Petitioner has not claimed the impact of BSS and DC w.e.f. 15.1.2018. In this regard, reliance has been placed on the order of the Commission dated 15.11.2018 in Petition No. 88/MP/2018.

(b) Since the Respondents never raised any such contention either before the Commission or the APTEL, any such new contention ought not to be considered in the present remand proceedings.

(c) The Haryana Discoms have further contended that for computation of BSS and DC (i.e. negative impact of change in law towards BSS and DC w.e.f. 15.1.2018), the coal actually required corresponding to 100% scheduled generation (based on the actual parameters achieved by the Petitioner) has to be considered, instead of considering the actual receipt of domestic coal. In this regard, without prejudice to the above, in terms of the various orders passed by the Commission in context of the same PPA, change in law has to be computed for actual linkage coal supplied by subsidiaries of Coal India Limited, which involves railway transportation. Even if it is assumed that Haryana Discoms are entitled to refund w.e.f. 15.1.2018, though the same is not admitted by the Petitioner, such refund has to be corresponding to linkage coal supplied by subsidiaries of Coal India Limited.

(d) The principle of restitution mandates that the actual linkage coal supplied needs to be considered instead of coal requirement based on 100% scheduled energy as erroneously contended by Haryana Discoms. Any compensation on account of change in law, either positive or negative, has to be computed based on the actual coal quantity supplied and two different approached cannot be followed.

16. The Respondents, Haryana Discoms, in their reply have mainly submitted as under as regards BSS and DC:

(a) As per Article 13 of the PPAs, any change in BSS and DC, whether increase or decrease has to be treated equally i.e., if an increase is change in law, decrease is also change in law. The decision to not levy BSS and DC having the result of such charges being reduced to zero from the charges then prevalent as on cut-off date is also equally a change in law in favour of Haryana Discoms under the provisions of the PPA. Therefore, the contention of the Petitioner that the effect of change in law of withdrawal of BSS and DC effective 15.1.2018 cannot be considered in the present proceedings is misconceived and contrary to basic principles of the proceedings to comprehensively deciding all matters arising out of the same set of events.

(b) Apart from considering the increase of BSS from 5% up to 15% and DC from 2% to 5%, the total remission to NIL effective 15.1.2018 have to be considered in a cumulative manner till date of order to be passed by this Commission and, thereafter, there has to be reduction in quoted tariff equivalent to 5% BSS and 2% BSS and DC which was prevalent on the cut-off date provided in Article 13.1.1.

(c) The contention of the Petitioner that remission of BSS and DC is NIL effective 15.1.2018 and these have been subsumed in the basic freight charges of Railways, is erroneous. The increase or the decrease in basic freight charges are commercial decision of Railways as held by the Commission in order dated 27.4.2018 in Petition No 126/MP/2016 and by the

APTEL vide judgment dated 21.12.2018 in Appeal No 193 of 2017 (*GMR Kamalanga Energy Limited -v- Central Electricity Regulatory Commission*).

(d) Reliance of the Petitioner on order dated 15.11.2018 in Petition No 88/MP/2018 (*GMR Warora Energy Limited vs Maharashtra State Electricity Distribution Company Limited*) is misplaced. In the said order dated 15.11.2018, the Commission was considering the impact of Service Tax/GST being applicable to the quantum of the basic freight charges as a change in law event. In that background, the Commission has held that with effect from 15.1.2018, GST shall be applicable on the freight charges as BSS and DC have been subsumed. The basis of the finding is that once the above charges are withdrawn as taxes and levies, effective 15.1.2018, there is an increase in GST on the increased amount on which GST is levied. The above finding of the Commission cannot be interpreted to contend that the remission of BSS and DC amounts to maintaining the levy as a change in law event and the effect thereof is not required to be given to as there is no decrease in taxes. This is different from the position in the present case and is distinguishable.

(e) Accordingly, any increase or decrease of basic freight cannot be considered directly or indirectly as change in law event for the Petitioner to give effect to the impact of the remission to NIL of BSS and DC effective 15.1.2018.

(f) Further, BSS and DC as applicable on the cut-off date have been factored in the tariff quoted by the Petitioner which has been duly paid by the Haryana Discoms corresponding to electricity scheduled to Haryana Discoms. This has resulted into savings to the Petitioner post abolishment of above two charges w.e.f. 15.1.2018. For the purpose of computation of the above two charges to be remitted to Haryana Discoms by the Petitioner, post abolishment of the above two charges w.e.f. 15.1.2018, the coal actually required corresponding to scheduled generation based on the actual parameters achieved by the Petitioner subject to the ceiling of the applicable Tariff Regulations has to be considered.

Analysis and Decision

17. We have considered the submissions made by the Petitioner and the Respondents. The Commission in its order dated 6.2.2017 had rejected the claim of the Petitioner in respect of Busy Season Surcharge and Development Charge levied by the Railways as change in law in terms of the PPA.

18. Aggrieved by the decision of the Commission, the Petitioner approached the APTEL through Appeal No. 158 of 2017. Vide judgment dated 7.6.2021, the APTEL has set aside the aforesaid findings of the Commission and relying upon its earlier judgments whereby it was held that levy of BSS and DC are change in law events, has held that the Petitioner is entitled to compensation in this regard. Relevant portion of the judgment of APTEL is extracted as under:

> *"46. The next question is whether the change in law event deserved to be compensated despite the bidder having quoted all inclusive tariff, since denial of compensation will result in change in law clause purposeless or redundant. This Tribunal in the Judgment dated 19.04.2017 in Appeal No. 161 of 2015 titled as Sasan Power Ltd. V. CERC and Ors. at Para 41 dealt with the said issue and held as under:*
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> *47. Similarly, Hon'ble Supreme Court of India in Energy Watchdog v. CERC &Ors. [(2017) 14 SCC 80], it was held that policy documents such as the Tariff Policy dated 28.01.2016 issued under Section 3 of the Electricity Act and the letter dated 31.07.2013 issued by Ministry of Power are statutory documents having force of law and any change / amendment introduced by way of such document amounts to Change in Law.*
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> *48. The counsel arguing for the Appellant Generator contends that the Central Commission has erroneously held that increase in Busy Season Surcharge and Developmental Surcharge do not fall within the ambit of change in law event. Coming to the said issue, it is seen that the increase in Developmental Surcharge was in pursuance of a Circular dated 12.10.2011 from 2% to 5% as indicated by Ministry of Railways. The Circular came into effect after the cut-off date 19.11.2007. The Circular as stated above is issued by Railways which is an Indian Governmental Instrumentality as defined under the PPA. The increase of 3% in the Developmental Surcharge amounts to additional recurring expenditure for the Appellant Generator.*
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> *49. The Busy Season Surcharge was increased from 5% to 12% pursuant to a Circular issued by Ministry of Railways dated 27.09.2012 which is also subsequent to cut-off date. This Busy Season Surcharge was again increased to 15% from 12% by Circular No. 24 of 2013 dated 18.09.2013. The Circulars were issued by the Ministry of Railways, as stated above, which is an Indian Governmental Instrumentality and they are apparently after cut-off dates. According to Appellant Generator's counsel, the*

Busy Season Surcharge led to an increase in landed cost of coal, which in turn results in increase in the cost of generation and supply of power to Haryana Discoms.

50. In the impugned order, the above said change in law was rejected on the ground that the provisions relating to Railway Board's power to fix charges were existing prior to the cut-off date and further that the generating company was required to take into account the possible revision while quoting the bid. Learned counsel for the Respondent Discoms opposed the claim of the Appellant Generator by contending that this opinion of the Respondent Commission is just and proper. So far as the generating company is required to take into account possible revisions while quoting the bid, as already stated above in Sasan Power's Judgment at Para 41 and Para 44, the Tribunal has rejected such arguments put up by the Discoms.

51. Over and above these facts, it is relevant to point out that the levy of Busy Season Surcharge and Developmental Surcharge on transportation of coal whether amounting to change in law events, this Tribunal and the Central Commission in the following Judgments have held that such levy amounts to change in law events:

(a) Appeal No. 119/2016, 277/2016: Adani Power Rajasthan Ltd. vs. RERC (Judgment dated 14.08.2018).

(b) Appeal No. 111/2017: GMR Warora Energy Ltd. vs. CERC (Judgment dated 14.08.2018). (c) Appeal No. 193/2017: GMR Kamalanga Energy Ltd. vs. CERC & Ors.(Judgment dated 21.12.2018)

(d) Petition No. 72/MP/2018: GMR Kamalanga Energy Limited vs. Dakshin Haryana Bijli Vitran Nigam Limited (Order dated 02.04.2019)

(e) Petition No. 17/MP/2019: Adhunik Power and Natural Resources Limited vs. Tamil Nadu Generation and Distribution Corporation Ltd.(Order dated 19.08.2019)

(f) Petition No. 327/MP/2018: Dhariwal Infrastructure Limited vs. Tamil Nadu Generation and Distribution Corporation Limited (Order dated 29.03.2020).

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54. No doubt, the Judgment of this Tribunal in the above matters are under challenge before the Hon'ble Supreme Court. However, till date there is no stay of the operation of that Judgment and as on date, there is no modification or setting aside the opinion expressed by this Tribunal in the above Judgment. Therefore, the contention of the Respondent's counsel that the opinion expressed by the Tribunal in the Judgment in the above three Appeals may not be of any assistance to the Appellant Generator cannot be sustained.

55. We are of the opinion that the issue of Busy Season Surcharge and Developmental Surcharge as it stands today are already answered by this Tribunal as change in law event and the generator needs to be compensated if such change in law occurs subsequent to the cut-off date. As already stated above, the change in law event has occurred subsequent to the cut-off date and therefore, the Appellant Generator is entitled for change in law compensation in respect of Busy Season Surcharge and Developmental Surcharge on transportation of coal."

(i) *Treatment of BSS and DC w.e.f. 15.1.2018*

19. The Haryana Discoms have contended that BSS and DC have been abolished with effect from 15.1.2018 by the Railways. Consequently, BSS at the rate

of 5% and DC at the rate of 2% factored in the bid by the Petitioner became NIL. It has been contended that the same has resulted into savings to the Petitioner which must be passed on the Haryana Discoms as change in law under Article 13 of the PPA. The Haryana Discoms have also argued that increase in freight is a commercial decision of the Railways which is not admissible under change in law in terms of the orders of the Commission and judgment of the APTEL.

20. *Per Contra*, the Petitioner has contended that BSS and DC have been subsumed in the basic freight with effect from 15.1.2018. Accordingly, the Petitioner has not raised any claim with regards to these charges w.e.f. from 15.1.2018. However, since these charges have been subsumed in the basic freight, there has been no change in the cost incurred by the Petitioner since 15.1.2018. The Petitioner has also submitted that though the question of refund does not arise, however, if it is assumed that Haryana Discoms are entitled to refund w.e.f. 15.1.2018, such refund has to be corresponding to linkage coal supplied by subsidiaries of Coal India Limited.

21. Thus, the controversy in the present dispute is whether abolishing/ subsuming of BSS and DC in the basic freight of Railways constitutes change in law in favour of the Haryana Discoms.

22. Relevant provisions of Article 13 (dealing with Change in Law) of the PPAs between the Petitioner and the Haryana Discoms is extracted as under:

"13 ARTICLE 13 CHANGE IN LAW

13.1 Definitions

In this Article 13, the following terms shall have the following meanings:

13.1.1 "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:

(i) the enactment, bringing into effect, adoption, promulgation, amendment, modification or repeal, of any Law or (ii) a change in interpretation of any Law by a Competent Court of law, tribunal or Indian Governmental Instrumentality provided such Court of law, tribunal or Indian Governmental Instrumentality is final authority under law for such interpretation or (iii) change in any consents, approvals or licenses available or obtained for the Project, otherwise than for default of the Seller, which results in any change in any cost of or revenue from the business of selling electricity by the Seller to the Procurer under 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.
Provided that if Government of India does not extend the income tax holiday for power generation projects under Section 80 IA of the Income Tax Act, upto the Scheduled Commercial Operation Date of the Power Station, such non-extension shall be deemed to be a Change in Law (applicable only in case the Seller envisaging supply from the Project awarded the status of "Mega Power Project" by Government of India).

13.2 Application and Principles for computing impact of Change in Law

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

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b) ***Operation Period***

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

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

23. We note that occurrence of any of the events set out in Article 13.1.1 of the PPAs "*after the date, which is seven (7) days prior to the Bid Deadline"* that "*results in any change in any cost of or revenue from the business of selling electricity by the Seller to the Procurer under the terms of this Agreement",* constitutes change in law in terms of the PPAs. We also note that Article 13.2(b) of the PPAs provides that "*the compensation for any increase/decrease in revenues or cost to the Seller shall be*

determined" and that "*compensation shall be payable only if and for increase/decrease in revenues or cost to the Seller is in excess of an amount equivalent to 1 % of Letter of Credit it in aggregate for a Contract Year."*

24. Therefore, increase as well as decrease in revenues/cost to the seller constitute change in law in terms of the PPAs. Cut-off date i.e. the date, which is seven (7) days prior to the Bid Deadline was 19.11.2008 in case of the PPAs entered into between the Petitioner and the Haryana Discoms. The APTEL has, in Appeal No. 158 of 2017 vide judgment dated 7.6.2021, already held that BSS and DC are events of change in law and that the Petitioner needs to be compensated since BSS and DC have been levied/ increased subsequent to the cut-off date.

25. Though the Petitioner has not admitted that reduction of BSS and DC to nil constitute change in law, it has also not categorically denied that subsuming/ abolishing of BSS and DC are not change in law events. We note that the Petitioner has submitted that if it is required to refund on this account, such refund to the Haryana Discoms has to be corresponding to linkage coal supplied by subsidiaries of Coal India Limited.

26. It is the admitted position of the parties that as on cut-off date, BSS was levied @5% and DC was levied @2%. BSS and DC were applied at varying rates up to 14.1.2018 when it was became nil with effect from 15.1.2018. While the Petitioner has contended that BSS and DC have been subsumed in the basic freight and, therefore, it is not required to refund any amount, the Haryana Discoms, on the other hand have contended that BSS and DC have been abolished and that such

abolishment is a change in law event in the same manner as their introduction/ increase are change in law events.

27. In our view, there is no need to get into technicalities of whether BSS and DC have been abolished (as claimed by the Respondents) or have been subsumed in the basic freight (as claimed by the Petitioner), as the only point required to be considered is whether such levy/ increase/ decrease is covered under Article 13 of the PPAs. In the instant issue, we note that BSS and DC have become nil with effect from 15.1.2018. The relevant extract from the Rates Circular No.1 of 2018 issued vide No. TCR/1078/2015/07 of Indian Railways dated 9.1.2018 is as follows:

> *"1.0 In supersession to Board's Corrigenda to Rates Circular under reference regarding rationalization of Coal and Coke Tariff Structure, the competent authority has decided to rationalize the Coal and Coke Tariff Structure for transportation of Coal and Coke by rail.*
>
> *2.0 The revised Freight Rate Tables for transportation of Coal and Coke by rail are attached herewith.*
>
> *2.1 These Freight Rate Tables for transportation of Coal and Coke by rail shall be applicable throughout the year.*
>
> *2.2 No Busy Season Surcharge and Development Charge shall be leviable on transportation of Coal and Coke by rail.*
>
> *3.0 These instructions shall come into force with effect from 15.01.2018.*
>
> *4.0 This issues in consultation with Traffic Transportation Directorate and with the concurrence of Finance Directorate of Ministry of Railways.*"

28. From the above-quoted extract of Rates Circular of the Railway Board, it is clear that BSS and DC have not been levied w.e.f. 15.1.2018. It is also noted that vide the same circular, the revised Freight Rate Tables for transportation of Coal and Coke by rail have been issued. Any increase or decrease in the basic freight rate vide that circular or any subsequent circular is captured in the escalation indices notified by the Commission. The Petitioner, if it has quoted escalable component of

tariff in its bid, would be getting corresponding increase/ decrease in this component of tariff in terms of the escalation indices.

29. Since BSS and DC were levied @5% and @2% as on cut-off date, they got reduced by 5% and 2% respectively w.e.f. 15.1.2018 (when these became nil) vis-à-vis the rate that prevailed as on cut-off date. In terms of the Article 13 of the PPAs, increase as well as decrease in revenue/ cost constitutes change in law. Therefore, while the Petitioner requires to be compensated by the Haryana Discoms for change in law (i.e. increase in BSS and DC) from cut-off date (19.11.2008) up to 14.1.2018, it would need to reimburse to the Haryana Discoms for the same change in law (i.e. decrease in BSS and DC) from 5% and 2% respectively to nil.

30. The Petitioner shall be entitled to recover on account of change in BSS and DC 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 the Respondent. If actual generation is less than the scheduled generation, 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 the Respondent. The Petitioner and the Respondent are further directed to carry out reconciliation on account of these claims annually.

31. Further, pursuant to the directions of the Commission vide Record of Proceedings for hearing dated 30.7.2021, the Petitioner on 2.8.2021 issued supplementary bills to Haryana Discoms for compensation towards allowed change

in law events viz. BSS and DC and carrying cost applicable on all approved change in law events along with detailed calculation and supporting documents and the parties also undertook reconciliation of the aforesaid claims. Thereafter, based on the consensus arrived at between the parties to consider the Paradeep Port instead of Dhamra Port for IPT coal for computation of BSS and DC, the claims were revised to Rs. 358.94 crore (up to 31.7.2021) instead of Rs. 390.13 crore as raised earlier by the Petitioner. In respect of this revised claim, during hearing on 27.9.2021, the Haryana Discoms have submitted that since the Petitioner has given the acceptance in regard to Paradeep Port only in affidavit dated 24.9.2021, they have so far not been able to verify the computation. Furthermore, the above computations were also subject to the manner of treatment of BSS and DC being change in law after these being subsumed/abolished w.e.f. 15.1.2018. This issue having now been decided in this order, computations need to be finalised. We deem it appropriate to issue directions to the Petitioner to provide revised computations within 15 days of this order and the Haryana Discoms are directed to complete the verification of computation provided by the Petitioner within 30 days of receipt of such computations. The Haryana Discoms shall make payment to the Petitioner within 60 days of receipt of computation from the Petitioner, failing which the provisions of LPS shall kick in as per the provisions of PPAs.

(II) *Carrying cost - whether simple interest or compound interest basis*

32. The Commission in its order dated 6.2.2017 had rejected the claim of the Petitioner in respect of carrying cost and had observed as under:

> *"105. In view of the above discussion, the Commission is of the view that in the absence of provisions in the PPAs regarding carrying cost, the prayer of the petitioner to grant carrying cost on the principle of restitution from the date of occurrence of the Change in Law events till the date of raising of the claims or invoices cannot be allowed."*

33. The APTEL vide judgment dated 7.6.2021 has set aside the aforesaid findings of the Commission and has held that the Petitioner is entitled for carrying cost on the compensation allowed on account of change in law events. The relevant portion of the judgment of APTEL is extracted as under:

> *"65. The next argument of the Appellant Generator's counsel pertains to Carrying Cost on the deferred payment. The Appellant's contention is that carrying cost is nothing but a compensation for time value of money denied at the appropriate time to the claimant. They rely upon Article 13 of the PPA contending that the said Article provides to mitigate the impact of change in law i.e., a party is to be restored to the same economic position as if such change in law event had not occurred. By placing reliance on various Judgments as stated below, they contend that the terms of PPA i.e., Article 13 is a complete restitutionary principle and therefore, the issue of carrying cost is no longer res integra. The Judgments relied upon by the learned counsel for the Appellant Generator are as under:*
>
> **********
>
> *66. As against this, learned counsel for the Respondent Discoms fairly contends that in the Judgment of the Tribunal dated 13.04.2018 carrying cost was allowed and was affirmed by the Hon'ble Supreme Court, in Appeal No. 210 of 2017 in the case of Adani Power Limited vs. CERC & Ors.*
>
> *67. In the light of above Judgment of the Hon'ble Supreme Court in Haryana Bijli Vitran vs. Adani Power Limited, we are of the opinion that the controversy is no longer res integra, therefore, the opinion of the Central Commission in rejecting the claim of Carrying Cost is set aside holding that the Appellant Generator is entitled for Carrying Cost on deferred payment."*

34. On the issue of carrying cost, the Petitioner has mainly submitted as under:

(a) The Petitioner has claimed the carrying cost on BSS and DC as well as other approved change in law events based on monthly compounding methodology, which is in line with the methodology adopted by Haryana Discoms for making payments towards carrying cost on change in law compensation on account of taxes and duties levied on imported coal. However, Haryana Discoms now wish to compute the carrying cost based on simple interest which is contrary to Haryana Discoms earlier approach and is impermissible.

(b) The very same issue between the same parties has been conclusively settled by the APTEL vide its judgment dated 12.8.2021 passed in Appeal No. 421 of 2019 *(APMuL v. CERC & Ors)*.

(c) The Petitioner is entitled to claim carrying cost on the basis of compound interest in terms of provisions of the PPA and the decision of Hon'ble Supreme Court in Energy Watchdog v. CERC [(2017) 14 SCC 80]. The Hon'ble Supreme Court in Uttar Haryana Bijli Vitran Nigam Ltd. & Anr. v. Adani Power Ltd. & Ors.[(2019) 5 SCC 325], while considering the provisions of the same PPAs dated 7.8.2008 executed between the same parties, has held that Article 13.2 of the PPA has an in-built restitutionary principle, which compensates the party affected by such change in law and which must restore, through monthly tariff payments, the affected party to the same economic position as if such change in law has not occurred. Accordingly, the Hon'ble Supreme Court held that in terms of the restitutionary principle, carrying cost is payable to the affected party and the restitutionary amount qua carrying cost ought to be granted in terms of the principles provided under the PPA itself.

(d) The contention of Haryana Discoms that compounding basis or interest on interest is not permissible in law in the absence of any agreement or statutory provisions specifically providing the same and the reliance on Section 3 of the Interest Act, 1978, have been dealt with by the APTEL in its recent judgment dated 20.9.2021 in Appeal No. 386 of 2019 in MSEDCL v. MERC and Anr.

(e) In order to effect restitution, compensation ought to be granted on compound interest basis and the same has been judicially recognised. In this regard, reliance is placed on *Indian Council for Enviro-Legal Action v. Union of India: (2011) 8 SCC 161*, *T.N. Generation & Distribution Corpn. Ltd. v. PPN Power Generating Co. (P) Ltd.: (2014) 11 SCC 53, South Eastern Coalfields Ltd. v. State of Madhya Pradesh and Ors.: (2003) 8 SCC 648* and *Noida Power Company Limited v. UPERC, 2016 SCC OnLine APTEL 61*.

(f) The APTEL by judgment dated 4.2.2021 passed in Appeal No. 56 of 2020 in the case of D.B. Power Ltd. v. CERC & Anr has held that the order passed by the State Commission directing payment to a party shall not be made conditional or subject to reconciliation since that would relegate the parties to the same stage as they were prior to the adjudicatory process being initiated. Rendering the enforcement of legitimate claim of a creditor subject to

reconciliation by the debtor at its own convenience is throwing the former into a vicious circle, virtually denying the relief indefinitely. Such condition added to the direction to pay the lawful dues is in fact taking back by one hand what has been given by the other. Hence, the Regulatory Commission shall bear in mind that there is a need for clear findings to be returned on the liabilities which are subject matter of the lis.

(g) As regards contention of Haryana Discoms that interest rates as mentioned under the Auditors' Certificate are higher when compared to the interest rates mentioned in CA Certificates submitted by the Petitioner, the rates of interest for the initial period of 3 years in the Auditor's Certificate were slightly higher than those claimed in the CA certificate and remained same for the balance 5 years. However, in the interest of justice, the Petitioner has claimed interest based on the CA certificates, being lower than the rates mentioned in the Auditor's Certificate, which have been duly submitted by the Petitioner before the Commission during re-listing of the present Petition.

35. The Respondents, Haryana Discoms in their reply, have mainly submitted as under:

(a) The Petitioner's computation of carrying cost is on compounding basis with monthly interest. There is no provision for compounding of carrying cost, either in the order dated 17.9.2018 or in the order passed by the APTEL. Further, the Petitioner is claiming interest on carrying cost (interest on interest) which was neither argued nor provided by the APTEL. In any event, such interest on compounding basis or interest on interest is not permissible in law in the absence of any agreement or statutory provisions specifically providing for the same.

(b) The principle of compensation is limited to the extent contemplated in Article 13 of the PPA. There is no provision for restitution on compound interest basis in terms of Article 13.2 of the PPA for computation of relief under change in law. There cannot be any claim of compound interest and/or penal interest and/or interest on interest. Except in cases where compound interest is

specifically allowed by virtue of an express stipulation contained in the agreement or provided in a Statute, the charging of compound interest is usurious and penal in nature and is not permissible in law.

(c) Section 3(3)(c) of the Interest Act, 1978 provides that *'(3) Nothing in this section,—….shall empower the Court to award interest upon interest.'*

(d) The well-settled principle is that in the absence of any provision for interest on interest in the contract, it is not permissible for the Court to award interest upon interest or compound interest.

(e) The claim is also contrary to the settled principles in the case of Jaigad Power Transco Limited v. Maharashtra Electricity Regulatory Commission in decision 11.5.2017 passed in Appeal No. 250 of 2015 by the APTEL.

(f) The reliance placed by the Petitioner on the judgment dated 12.8.2021 passed by the APTEL in Appeal No. 421 of 2019 is erroneous. There is no such direction passed by the APTEL in Appeal No. 158 of 2017 in regard to the payment of interest on compounding basis or interest on carrying cost and it is not open to refer to some other decision as applicable to the present case.

(g) The reliance placed by the Petitioner on the decision dated 20.9.2021 of the APTEL in Appeal No. 386 of 2019 *(Maharashtra State Electricity Distribution Company Limited vs Maharashtra Electricity Regulatory Commission)* is misplaced as it was a case where the amount has been directed to be paid by the Commission and there was delay/ default in the payment.

(h) There are discrepancies in the rate of interest applied in the Chartered Account Certificate and Statutory Auditor Certificate. Further, the interest rate has been claimed by the Petitioner from 9.87% to 13.10% for the period 2012 to till date whereas, CGPL in its Petition 157/MP/2015 has claimed interest for the period from March 2012 to January 2021 at the rate ranging from 8.76% to 10.94% on simple interest basis and not on compounding basis. There is no justification for the Petitioner to claim such excessive rate for carrying cost when both Power Plants are of same size, located at the same place and both

are multilateral industrial groups. The inability of the Petitioner to source finances and funding at reasonable and competitive rate cannot be a ground for claiming higher carrying cost at the cost of the consumers in the State.

(i) In regard to the above, even assuming for the sake of argument, the Petitioner's claim for compounding interest is to be considered, it is appropriate to consider the rate of interest at 9% allowed by the Hon'ble Supreme Court even with compounding interest in the decision of *Jaipur Vidyut Vitran Nigam Limited & Ors. -v- M/s. Adani Power Rajasthan Limited & Ors. [2020 SCC On Line SC 69*] be followed wherein it has been held that *'rate of interest/late payment surcharge would be at SBAR, not exceeding 9 per cent per annum, to be compounded annually, and the 2 per cent above the SBAR (as provided in Article 8.3.5 of PPA) would not be charged in the present case.'* In the said case, Adani Rajasthan had claimed carrying cost at the rate of 2% in excess of applicable SBAR per annum, on the amount of outstanding payment, calculated on a day-to-day basis (and compounded with monthly rest) for each day of the delay. The Hon'ble Supreme Court noted that the same would cause a huge liability on the Rajasthan Discoms and directed that the interest as claimed by Adani Rajasthan would not be charged in the said case.

36. We have considered the submission made by the Petitioner and the Respondents. The Petitioner has submitted that its claim of carrying cost based on monthly compounding basis is in line with the methodology adopted by Haryana Discoms for making payments towards carrying cost on change in law compensation on account of taxes and duties levied on imported coal. It has also been submitted that very same issue between the parties has been conclusively settled by the APTEL in its judgment dated 12.8.2021 in Appeal No. 421 of 2019.

37. *Per Contra*, Haryana Discoms have contended that the action of Haryana Discoms of paying the invoices with carrying cost as claimed by the Petitioner after

an earlier order dated 17.9.2018 passed by the Commission in Petition No. 235/MP/2015 cannot be considered as a binding precedent for other subsequent cases. Haryana Discoms have also submitted that the reliance placed by the Petitioner on APTEL judgment dated 12.8.2021 in Appeal No. 421 of 2019 is erroneous as there is no such direction passed in the judgment dated 7.6.2021 in Appeal No. 158 of 2017 based on which the APTEL has remanded back this petition for hearing. Haryana Discoms have also objected to the interest rates claimed in the range of 9.87% to 13.10% from 2012 till date.

38. Irrespective of legal and other arguments raised by the parties, we note that the above issue is no more *res integra*. The same parties under the same PPAs made arguments before the APTEL in Appeal No 421 of 2019 and the APTEL vide its judgment dated 12.8.2021 decided as under:

> *"48. The other defence raised by Respondent Nos.2 and 3 is the principle applicable for determination of interest rate. The Appellant is claiming the methodology approved by CERC in its order dated 17.09.2018 in Petition No. 235/MP/2015. In this order, CERC opined that actual interest rate or working capital interest rate as per CERC Regulations, whichever is lower, for computation of carrying cost on the approved change in law events was the methodology, which the Appellant is also claiming.* ***The Respondents also contend that the principle evolved so far as methodology to determine the interest rate in the above said petition by CERC has to be adopted. Since the Appellant is adopting the same principle, we don't see any controversy so far as the methodology pertaining to the determination of interest rate.***
>
> *49. Then coming to another objection raised by Respondents that there is no concept of payment of interest on carrying cost, according to Respondents, since no provision exists in the PPA for payment of interest on interest or compounding basis, hence it cannot be granted. However, the Appellant contends that they are entitled for such interest on carrying cost.* ***Appellants place reliance on the orders of the Commission dated 17.09.2018 passed in Petition No. 235/MP/15. In terms of this order of CERC, the Respondents have paid carrying cost from the date of approval of change in law events and thereafter, Respondents have also paid interest on such carrying cost till subsequent order dated 17.09.2018 of CERC in the said petition.***
>
> ***50. Though Respondents contend that the payment of interest by Haryana utilities in the said petition cannot be a ground for claiming computation of interest on carrying cost, but there is no explanation as to why Respondent***

utilities are taking different yardstick for different parties. The Respondent being a public utility, cannot adopt a different approach but should have same approach towards all the parties. In the absence of any explanation as to why the facts in the present appeal are different from the facts in Petition No.235/MP/2015, we are of the opinion that the Appellants are entitled for interest on carrying cost as well*."*

39. Therefore, in light of the above judgment and as observed by the APTEL, the Respondents cannot adopt different yardstick for computation of carrying cost for different change in law Petitions under same PPAs. As noted by the APTEL in the above-quoted order, the Respondents being public utilities, should have same approach towards all the parties. Accordingly, in the present case also, the methodology for payment of carrying cost by the Respondents shall be the same as considered in the order dated 17.9.2018 in Petition No. 235/MP/2015, basis which the payments have already been made by the Respondents to the Petitioner in the past.

40. The Respondents have also contended that the interest rate has to be reasonable and, in the facts and circumstance of the case, it should not exceed the rate of 9%, as decided by the Hon'ble Supreme Court in the case of *Jaipur Vidyut Vitran Nigam Limited v. Adani Power Rajasthan Limited*, considering the interest of the consumers in the State of Haryana. Haryana Utilities have also contended that the interest rate claimed by the Petitioner is excessive which is in the range of 10.24% to 13.10% for the period from 2013-14 till 2019-20.

41. As regards contention of the Haryana Utilities to charge interest rate of 9% by relying on the judgment of the Hon'ble Supreme Court in *Jaipur Vidyut Vitran Nigam Limited & Ors. -v- M/s. Adani Power Rajasthan Limited & Ors.*, [2020 SCC Online SC 69], we note that the Haryana Utilities themselves had agreed to the methodology as

decided by the Commission vide order dated 17.9.2018 in Petition No. 235/MP/2015 to determine the rate of interest and on that basis, the APTEL in its judgment dated 12.8.2021 has also observed that since the Petitioner is adopting the same principle as the Respondents, there is no controversy so far as the methodology pertaining to the determination of interest rate. The relevant extract of the judgment dated 12.8.2021 in Appeal No. 421 of 2019 is as under:

> *"48. The other defence raised by Respondent Nos.2 and 3 is the principle applicable for determination of interest rate. The Appellant is claiming the methodology approved by CERC in its order dated 17.09.2018 in Petition No. 235/MP/2015. In this order, CERC opined that actual interest rate or working capital interest rate as per CERC Regulations, whichever is lower, for computation of carrying cost on the approved change in law events was the methodology, which the Appellant is also claiming. The Respondents also contend that the principle evolved so far as methodology to determine the interest rate in the above said petition by CERC has to be adopted.* ***Since the Appellant is adopting the same principle, we don't see any controversy so far as the methodology pertaining to the determination of interest rate.****"*

42. Hence, we are of the view that the Haryana Utilities in the present case cannot now turnaround and request for the applicable rate of interest at 9%.

43. In view of the above, interest rate shall be determined as per the methodology adopted in the order dated 17.9.2018 in Petition No. 235/MP/2015 which would be lowest of actual rate of interest at which funds were arranged by the Petitioner or rate of working capital worked out as per the Regulations of the Commission or the rate of LPS (late payment surcharge) as per the PPAs. The relevant extract of the order dated 17.9.2018 in Petition No. 235/MP/2015 is as under:

> *"25. It is noted that the rates at which the Petitioner raised funds is lower than the interest rate of the working capital worked out as per the Regulations of the Commission during the relevant period and the LPS as per the PPA. Since, the actual interest rate paid by the Petitioner is lower, the same is accepted as the carrying cost for the payment of the claims under Change in Law."*

44. The rates at which the Petitioner raised funds (as per certificate of Chartered Accountant) for the years 2013-14, 2014-15, 2018-19 and 2019-20 are lower than the interest rate of the working capital worked out as per the Regulations of the Commission during the relevant period and the LPS as per the PPA. Since the actual interest rate paid by the Petitioner is lower, the same is accepted as the carrying cost for the payment of the claims under Change in Law.

45. As regards the difference in rate of interest considered in the CA certificate and Auditor certificate, the Petitioner has clarified that the rates of interest for the initial period of 3 years in the Auditor Certificate were slightly higher than those claimed in the CA certificate, and that, the said interest remained same for the balance years. The Petitioner has claimed interest based on the CA certificate, being lower than the rates mentioned in the Auditor certificate. Accordingly, we direct to consider the interest rate as lower of the interest rates submitted vide CA certificate and rates submitted vide Auditor certificate for computation of carrying cost.

46. The Haryana Utilities have contended that there is no provision for compounding of carrying cost, either in the order dated 17.9.2018 or in the order passed by the APTEL. It has been submitted that such interest on compounding basis is not permissible in law, in the absence of any agreement or statutory provisions specifically providing for the same.

47. We observe that the said contention of the Haryana Utilities was also raised in the Appeal No. 421 of 2019 and has been dealt by the APTEL in its judgment dated 12.8.2021 as under:

> *"49. Then coming to another objection raised by Respondents that there is no concept of payment of interest on carrying cost, according to Respondents, since no*

provision exists in the PPA for payment of interest on interest or compounding basis, hence it cannot be granted. However, the Appellant contends that they are entitled for such interest on carrying cost. Appellants place reliance on the orders of the Commission dated 17.09.2018 passed in Petition No. 235/MP/15. In terms of this order of CERC, the Respondents have paid carrying cost from the date of approval of change in law events and thereafter, Respondents have also paid interest on such carrying cost till subsequent order dated 17.09.2018 of CERC in the said petition.

50. ***Though Respondents contend that the payment of interest by Haryana utilities in the said petition cannot be a ground for claiming computation of interest on carrying cost, but there is no explanation as to why Respondent utilities are taking different yardstick for different parties. The Respondent being a public utility, cannot adopt a different approach but should have same approach towards all the parties. In the absence of any explanation as to why the facts in the present appeal are different from the facts in Petition No.235/MP/2015, we are of the opinion that the Appellants are entitled for interest on carrying cost as well****.*

52. In light of above discussion and reasoning, the appeal is allowed setting aside the impugned order partly to the extent challenged in the appeal so far as Petition No.104/MP/2018 (order dated 28.03.2018). Accordingly, we pass the following order:

i) xxxxx.

ii) ***The Appellant is entitled for interest on carrying cost, as claimed by the Appellant****."*

48. Thus, there is a categorical finding of the APTEL that interest on carrying cost is payable in respect of the same PPAs. Accordingly, the Haryana Utilities are directed to make payment of carrying cost and interest thereon in accordance with the methodology adopted in order dated 17.9.2018 in Petition No. 235/MP/2015, as per which the payment has already been made by the Haryana Utilities. As directed in earlier part of this order, wherever interest rate vide CA certificate is lower, the same shall be considered instead of interest rates as per Auditor's certificate.

49. All other terms and conditions of the order dated 6.2.2017 in Petition No. 156/MP/2014 to the extent not modified and/ or set aside by APTEL in its judgment dated 7.6.2021, shall remain unaltered.

50. In terms of the above order, the directions of the APTEL in its judgment dated 7.6.2021 in Appeal No. 158 of 2017 stand implemented.

Sd/-	sd/-	sd/-	sd/-
(P.K.Singh)	**(Arun Goyal)**	**(I.S.Jha)**	**(P.K.Pujari)**
Member	**Member**	**Member**	**Chairperson**