

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No: 404/MP/2019

Coram:

**Shri I.S. Jha, Member
Shri Arun Goyal, Member**

Date of Order: 25th January, 2021

In the matter of

Petition under Section 79(1)(b) and 79(1)(f) of the Electricity Act read with Article 13 of the PPA dated 22.4.2007 executed between the Petitioner and the Procurers.

And

In the matter of

Coastal Gujarat Power Limited
C/o The Tata Power Company Limited,
34, Sant Tuka Ram Road, Carnac Bunder,
Mumbai-400 021

.....Petitioner

Vs

1. Gujarat Urja Vikas Nigam Ltd.
Sardar Patel Vidyut Bhavan, Race Course,
Vadodara – 390 007, Gujarat
2. Maharashtra State Electricity Distribution Company Ltd.
4th Floor, Prakashgad, Plot No. G-9,
Bandra (East), Mumbai-400 051, Maharashtra
3. Ajmer Vidyut Vitaran Nigam Ltd.
Hathi Bhata, Old Power House,
Ajmer, Rajasthan
4. Jaipur Vidyut Vitaran Nigam Ltd.
Vidyut Bhawan, Janpath,
Jaipur, Rajasthan
5. Jodhpur Vidyut Vitaran Nigam Ltd.
New Power House, Industrial Area,
Jodhpur, Rajasthan
6. Rajasthan Urja Vikas Nigam Limited
Vidyut Bhawan, Janpath
Jyoti Nagar, Jaipur- 302005
Rajasthan
7. Punjab State Power Corporation Limited,



Parties Present:

Shri Samikrith Rao, Advocate, CGPL
Shri Amit Kapur, Advocate, CGPL
Shri Abhishek Munot, Advocate, CGPL
Shri Kunal Kaul, Advocate, CGPL
Shri M. G. Ramachandran, Sr. Advocate, GUVNL
Ms. Poorva Saigal, Advocate, GUVNL
Ms. Anushree Bardhan, Advocate, GUVNL
Shri Anand Ganesan, Advocate, PSPCL
Ms. Swapna Seshadri, Advocate, PSPCL
Shri Amal Nair, Advocate, PSPCL
Shri Anup Jain, Advocate, MSEDCL
Shri Pulkit Tare, Advocate, MSEDCL

ORDER

The Petitioner, Coastal Gujarat Power Limited (hereinafter referred to as “CGPL” or “the Petitioner”), has filed the present Petition under Sections 79(1)(b) and 79(1)(f) of the Electricity Act, 2003 (hereinafter referred to as ‘the Act’) read with Article 13 of the PPA and Paragraph 4.7 of the Competitive Bidding Guidelines seeking certain reliefs under Change in Law events during the operating period in respect of Mundra Ultra Mega Power Project (in short, ‘Mundra UMPP’).

2. The Petitioner which is a subsidiary of Tata Power Company Ltd., has set up a 4150 MW Ultra Mega Power Project consisting of 5 units of 830 MW each at Mundra in the State of Gujarat based on imported coal after Tata Power Company Ltd. was selected as the successful bidder based on the competitive bidding carried out in accordance with Section 63 of the Act. The tariff of the Mundra UMPP was adopted by the Commission under Section 63 of the Act vide order dated 19.9.2007 in Petition No.18/2007. The Petitioner has entered into a PPA dated 22.4.2007 with the distribution companies in the States of Gujarat, Maharashtra, Rajasthan, Punjab and Haryana for supply of 3800 MW from Mundra UMPP for a period of 25 years. The

distribution companies (Discoms) arrayed as respondents are Gujarat Urja Vikas Nigam Limited (GUVNL); Maharashtra State Electricity Distribution Company Limited (MSEDCL); Ajmer Vidyut Vitran Nigam Limited, Jaipur Vidyut Vitran Nigam Limited, Jodhpur Vidyut Vitran Nigam Limited (Rajasthan Discoms); Punjab State Power Corporation Limited (PSPCL) and Haryana Power Generation Corporation Limited (HPGCL) (the Discoms are collectively referred to as 'the Procurers'). Subsequently, the Petitioner and the Procurers have entered into a Supplemental PPA on 31.7.2008 for advancement of the Scheduled Commercial Operation Dates (SCOD) in terms of Article 3.1.2(iv) of the PPA.

3. The five units of the Mundra UMPP were commissioned as per the following dates:

Unit No.	Date of Commercial Operation
Unit -1	7.3.2012
Unit -2	30.7.2012
Unit -3	27.10.2012
Unit -4	21.1.2013
Unit -5	22.3.2013

4. The Petitioner has made the following prayers:

“(a) Hold that increase in service tax from 12.24% to 14% and subsuming of service tax into the GST regime constitute Change in Law events impacting revenues and/or costs of the Petitioner and all Supplementary Invoices raised by the Petitioner in this regard ought to be paid by the Procurers in the ratio of their Allocated Contracted Capacity under the PPA;

(b) Direct the Procurers to forthwith pay a sum of Rs. 12,63,92,330/- to the Petitioner in terms of Table No. 2 above along with Carrying Cost at the rate of SBAR + 2%;

(c) Direct the Procurers to forthwith pay a sum of Rs. 38,09,23,334/- to the Petitioner in terms of Table No.3 above along with Carrying Cost of at the rate of SBAR + 2%;

(d) Pass an ex parte ad interim order directing the Procurers to, going forward and pending the adjudication of the present proceedings, pay the full Supplementary Invoice amounts raised by the Petitioner towards subsuming of service tax into GST;

(e) *Hold and declare that for future changes in rate of taxes/ cesses/ levies, which have been approved by this Hon'ble Commission as Change in Law events, it is not required for the Petitioner to approach this Hon'ble Commission for a specific declaration of Change in Law;*

(f) *Direct the Procurers to forthwith release all payments against such future Supplementary Invoices raised on account of change in rate of taxes/ cesses/ levies for the Change in Law events approved by this Hon'ble Commission;”*

Submissions of the Petitioner

5. The Petitioner has made the following submissions:

(a) On 8.6.2015, the Petitioner filed Petition No. 157/MP/2015 (for Change in Law events) during the Operating Period of the Mundra IMPP for financial years 2011-12 to 2013-14, before this Commission.

(b) On 6.11.2015, the Ministry of Finance, Government of India issued notifications to the effect that Swachh Bharat Cess on service tax would be levied at the rate of 0.5% and that Swachh Bharat Cess would be applicable with effect from 15.11.2015.

(c) On 28.1.2016, the Ministry of Power, Government of India (MoP), issued the Revised Tariff Policy clarifying that the issue of change in tax and/ or change in rate of taxes etc. is to be treated as Change in Law. Thus, any change in tax and/ or change in rate of taxes, duties and cess is to be allowed as a pass through.

(d) Section 161 of the Finance Act, 2016 provided for levy of Krishi Kalyan Cess at the rate of 0.5%, as service tax on all or any of the taxable services with effect from 1.6.2016.

(e) The Commission in its order dated 17.3.2017 in Petition No. 157/MP/2015 decided/ declared certain events claimed by the Petitioner as Change in Law events under PPA, while disallowed some other events as Change in Law events. On 4.5.2017, the Petitioner filed an Appeal (being Appeal No. 172 of 2017) before the Appellate Tribunal for Electricity (in short, "APTEL") challenging the order dated 17.3.2017 to the extent of certain disallowances as well as certain computational mechanism adopted in the said order.

(f) With effect from 1.7.2017, GST became applicable in place of various existing taxes/ levies/ cess. Subsequently, the Commission in its order dated 14.3.2018 in Petition No. 13/SM/2017 (suo-motu petition) decided that introduction of GST and the consequent subsuming/ abolishing of various taxes/ cesses amounts to a Change in Law event.

(g) The Commission in its order dated 21.2.2018 in Petition No. 121/MP/2017 allowed certain Change in Law claims of the Petitioner. As regards the issue of levy of Swachh Bharat Cess and Krishi Kalyan Cess, the Commission had held that the levy of Swachh Bharat Cess and Krishi Kalyan Cess is allowed as a Change in Law on the services, which has direct nexus with the Petitioner's business of generation and sale of electricity, namely, (a) port services; (b) technical testing; (c) transportation of goods by road; and (d) ocean freight. The Petitioner has filed Appeal No. 154 of 2018 challenging the above order dated 21.2.2018 in Petition No. 121/MP/2017 before APTEL. Amongst others, the Petitioner has challenged the fact that the Commission had erred in allowing levy of Krishi Kalyan Cess and Swachh Bharat Cess as Change in Law on only four services.

(h) In terms of regulatory framework applicable qua Change in Law and the aforesaid Change in Law orders passed by the Commission, the Petitioner had raised supplementary invoices on the Procurers for the period between June 2015 to June 2017 seeking Change in Law compensation on account of increase in service tax from 12.24% (inclusive of applicable cess) to 14%. In these supplementary invoices, the Petitioner had not included the service tax on Works Contract, since the same was disallowed by the Commission in its order dated 17.3.2017 in Petition No. 157/MP/2015. The supplementary invoices were also raised on the Respondents for the period between July 2017 to August 2019 seeking Change in Law compensation on account of subsuming of service tax into GST. The Petitioner had raised invoices only on (a) Port Services; (b) Technical Testing; (c) Transportation of Goods by Road; and (d) Ocean Freight, in terms of the Commission's order. These invoices were issued by the Petitioner without prejudice to its rights to claim compensation on account of introduction of GST on all the services availed by it. Along with the supplementary invoices, the Petitioner had submitted the auditor's certificates and other relevant documents.

(i) GUVNL vide its letter dated 4.1.2019 informed the Petitioner that the Commission had only approved Krishi Kalyan Cess and Swatch Bharat Cess on port services, technical testing and transportation of goods by road as Change in Law events and that the Commission had not approved the change in service tax on these services. Accordingly, GUVNL returned the supplementary invoices towards increase in service tax to the Petitioner.

(j) Subsequently, MSEDCL vide its letters/ e-mails dated 5.1.2019 and 10.10.2019 informed the Petitioner that GST has not been approved on port services, technical testing and transportation of goods by road in terms of the Commission's Order. Accordingly, the supplementary invoices were returned to the Petitioner by the distribution licensee of Maharashtra.

(k) The distribution licensees of Rajasthan vide their letters dated 20.6.2019, 4.7.2019 and 20.9.2019 requested the Petitioner to provide all the relevant documents for the purpose of verifying the impact towards Change in Law claim of the Petitioner. On 25.9.2019, the Petitioner provided its response to the issues raised by the Rajasthan Discoms.

(l) Even though the supplementary invoices were legally and timely issued by the Petitioner, the payments against the same have not been made by all the Procurers. The distribution licensees of Gujarat and Punjab have not released payment of Rs. 10,00,60,595/- and Rs. 2,63,31,735/- respectively towards increase in service tax from 12.24% to 14%, whereas the distribution licensees of Maharashtra, Punjab and Rajasthan have released the entire share of their payments toward increase in service tax. All the distribution licensees have released payments towards increase in rate of tax on ocean freight on account of introduction of GST. However, the Respondents, GUVNL, MSEDCL and Rajasthan Discoms have not paid the entire invoiced amount of Rs. 23,38,49,912/-, Rs. 9,83,36,436/- and Rs. 4,87,36,986/- respectively towards increase in rate of tax on port services, technical testing and transportation of goods by road, whereas the Respondents, PSPCL and HPGCL have released the entire share of payments in this regard.

(m) Despite clear statutory mandate that change in domestic duties, levies, taxes and cess, etc. are to be treated as Change in Law events and the impact

of such Change in Law events is to be allowed as a pass through, there has been substantial delays/ unfair, unwarranted denials by the Procurers in compensating the Petitioner for changes in domestic duties and taxes, etc.

(n) On 27.8.2018, MoP has also issued directions under Section 107 of the Act qua allowing compensation as pass-through for the Change in Law events. The said directions were issued for ensuring better financial health of the generating companies/ power sector at large.

(o) The change in the rates of service tax subsequent to the cut-off date are summarised as under:

Particulars	30.11.2006 (i.e. cut-off date)	1.4.2007	1.6.2015	15.11.2015	1.6.2016	From 1.7.2017 till date
Service tax/IGST	12%	12%	14%	14%	14%	18%
Education Cess	2%	2%	0%	0%	0%	0%
Higher Education Cess	0%	1%	0%	0%	0%	0%
Swachh Bharat Cess	0%	0%	0%	0.50%	0.50%	0%
Krishi Kalyan Cess	0%	0%	0%	0%	0.50%	0%
Effective Rate	12.24%	12.36%	14.00%	14.50%	15.00%	18.00%

(p) The Petitioner's claims towards increase in service tax from 12.24% to 14% pertain to the period from 1.6.2015 to 30.6.2017. On the cut-off date, the service tax was levied at the base rate of 12% on certain services being availed by the Petitioner. Additionally, Education Cess at the rate of 2% was levied on taxable services. Thus, the effective rate of service tax payable by the Petitioner was 12.24%. Thereafter, on 14.5.2015, the Finance Act, 2015 was enacted which increased the rate of service tax from 12% to 14% with effect from 1.6.2015 and Education Cess and Secondary and Higher Education Cess was subsumed into the service tax rate of 14%.

(q) Since there is no pre-requirement of seeking a declaration that an event constitutes Change in Law, the Petitioner had raised the supplementary invoices towards increase in service tax (except in case of Works Contract). As the Procurers have also made payments of Krishi Kalyan Cess and Swachh Bharat Cess (Cesses which are based on service tax of 14%) on certain services, increase in service tax (from 12.24% to 14%), on these permitted/ admitted services cannot be denied as Change in Law and the compensation in this regard be wrongfully withheld. The increase in service tax has only been

claimed of the services permitted in terms of the Commission's earlier orders.

(r) GST regime came into effect from 1.7.2017, whereby the pre-existing taxes, duties and cess were subsumed into GST. Accordingly, the Petitioner had sought compensation on account of introduction of GST on port services, technical testing, transportation of goods by road and ocean freight, being the services approved by the Commission in its order dated 21.2.2018 in Petition No. 121/MP/2017. However, the Respondents, GUVNL, MSEDCL and Rajasthan Discoms have not paid compensation payable to the Petitioner on the basis that the Commission has not allowed GST on these services as a Change in Law.

(s) Introduction of GST is a separate and distinct event of Change in Law that impacts the Petitioner's business of generation and sale of electricity as under:

S. No.	Nature of Service	Rate of service tax on cut-off date (i.e. 31.11.2006) *	GST payable (w.e.f. 1.7.2017)	Change in Tax rate due to GST
1.	Ocean freight on coal received	0	5%	5%
2.	Port services	12.24%	18%	5.76%
3.	Technical testing and analysis agency	12.24%	18%	5.76%
4.	Transport of goods by road	3.06%	5%	1.94%

(t) The absurd stand taken by the Respondents is further evident from the fact that, similar to service tax, Countervailing Duty ("CVD") was also subsumed under GST once GST laws were introduced. Pursuant to the Commission's GST order, the Petitioner had raised the supplementary invoices on account of subsuming of CVD into GST and the Respondents have released the payment against the Petitioner's GST claim (called as CVD in pre-GST regime) in this regard. However, certain Respondents have not released the payment towards aforementioned services on account of subsuming of service tax into GST.

(u) The Procurers ought to be directed to forthwith pay the above outstanding amounts along with the carrying cost and further refrain from denying the Petitioner's claims in future.

(v) As regards the manner of sharing of compensation on account of increase in IGST/ service tax applicable on the three Services (Port Services,

Good Transport Agency (GTA) and Testing Calibration charges), the compensation may be allowed to be shared by Procurers in their allocated contracted capacity. Though these services are directly relatable to the business of generation and sale of electricity, the same have no nexus with the quantum of electricity produced/ generated/ sold by the Petitioner. It is to be noted that, in case of Port handling Charges, the maximum amount is paid as fixed charges irrespective of tonnage of coal received and consumed. The Commission had applied this principle of sharing of compensation on account of Change in Law in the ratio of allocated contracted capacity when paying the impact of Change in Law on ED, CST and GVAT.

6. The matter was heard on 11.12.2019 and notices were issued to the Respondents to file their replies to the Petition. Replies to the Petition have been filed by GUVNL vide its affidavit dated 2.1.2020, Rajasthan Discoms vide their affidavit dated 7.1.2017, Punjab State Power Corporation Limited vide its affidavit dated 20.1.2020 and Maharashtra State Electricity Development Corporation Limited vide its affidavit dated 24.1.2020. The Petitioner has filed rejoinders to the replies filed by the Respondents.

Submissions of the Respondents

7. The Respondents, GUVNL and MSEDCL vide their affidavits dated 2.1.2020 and 24.1.2020 respectively, have made similar submissions and have submitted as under:

(a) The Petitioner has claimed the impact of increase in service tax from June 2015 until June 2017. The Petitioner has relied upon the Notification of 2015 as Change in Law event. The present Petition has been filed in 2019 i.e. more than three years after the event. The claim and the Petition are barred by limitation. In this regard, Hon'ble Supreme Court in its judgment in the case of Andhra Pradesh Power Coordination Committee & Others Vs. Lanco Kondapalli Power Limited & Others [(2016) 3 SCC 468], recognises that the provisions of the Limitation Act, 1963 (hereinafter referred to as 'the Limitation Act') are applicable to Regulatory Commissions when it functions as statutory

adjudicatory quasi-judicial/ judicial authority in determining all claims and disputes, including those arising out of contract between the licensees and generating companies. A claim coming before the Commission cannot be entertained or allowed if it is barred by limitation prescribed for an ordinary suit before the Civil Court.

(b) The Petitioner had not issued any notice of Change in Law in regard to the above increase at the relevant time or any time thereafter. As per Article 13.3 of the PPA, the Petitioner is required to issue notice of Change in Law. This would include any law which results in change in rate of taxation. In absence of such notice, there cannot be any claim for Change in Law. Further the PPA requires a determination of Change in Law by the Central Commission.

(c) The Petitioner is not permitted to simply raise supplementary invoices or bills to claim the impact of Change in Law in absence of any specific decision by the Commission. Since the delays are caused by the Petitioner, there cannot be any carrying costs, let alone interest @2% + SBAR.

(d) In Petition No. 157/MP/2015, the Petitioner only raised the issue of Service Tax vis-à-vis works contract services. The claim was not for increase in service tax from 12% to 14%, but the introduction of service tax on works contract services at 2% and later increased to 4%. Though the order dated 17.3.2017 in Petition No. 157/MP/2015 initially allowed the same as Change in Law, this was corrected vide order dated 31.10.2017 in Review Petition No. 22/RP/2017 filed by GUVNL and the Commission held that the Petitioner is not entitled to service tax on works contract. Therefore, there was no decision on the issue of alleged increase in service tax service tax from 12.24% to 14%.

(e) The Petitioner had not even raised this issue in Petition No. 121/MP/2017 wherein the Petitioner had claimed increase in service tax in respect of ocean freight and imposition of Krishi Kalyan Cess and Swachh Bharat Cess on other services. In this regard, no explanation has been furnished by the Petitioner.

(f) The Notifications dated 14.5.2015 and 19.5.2015 relied upon by the Petitioner were never produced before the Commission in Petition No.

157/MP/2015 and in Petition No. 121/MP/2017 and in any case, there was no determination of Change in Law in this respect.

(g) The order dated 21.2.2018 in Petition No. 21/MP/2017 refers to specific issues and the issue considered was “Levy of service tax on transportation of goods by a vessel from a place outside India to the first custom station of landing in India”. In fact, it was stated that as on cut-off date, there was no service tax on the above. There is no reference in the order to the alleged service tax of 12.24% as on the cut-off date. The entire reasoning and analysis in the order relates to the issue of levy of service tax on ocean freight only i.e. 0% to 4.2% and there is no reference to the increase in service tax for other services from 12.24% to 14%. The contention of the Petitioner that the Commission had duly recognized the increase in rate of service tax from 12.24% to 14% is erroneous and misconceived and an attempt to hide the mistake/ failure of the Petitioner to claim the Change in Law.

(h) The consideration of Swachh Bharat Cess and Krishi Kalyan Cess of 0.5% each also does not reflect the increase in service tax from 12.24% to 14%. Since there was no statement recorded in the order for consideration of 12.24% as on cut-of date, it is not open for the Petitioner to now claim that the said orders in any manner cover the claim now being raised by the Petitioner.

(i) Without approval of the Commission to the Change in Law event, the Respondents, GUVNL and MSEDCL had no obligation to and were not required to make the payment. GUVNL and MSEDCL have duly made the payment related to Change in Law as approved by the Commission in its order dated 21.2.2018 in Petition No. 121/MP/2017.

(j) The Commission in its order dated 17.3.2017 in Petition No. 157/MP/2015 had approved the service tax on works contracts. However, the Petitioner raised bills for Change in Law of works contract along with Change in Law on Service Tax. Without prejudice to the rights of recovery accorded pursuant to the order dated 31.10.2017 in Review Petition No.22/RP/2017, MSEDCL has made payment in compliance of earlier order dated 17.3.2017 which was later set aside and merged.

(k) During revalidation of the claims of the Petitioner and payments made by MSEDCL towards Change in Law for the period from 2012 to June 2017, it was revealed that the payment towards claim of increase in service tax has been made inadvertently. MSEDCL has right to recover the amount paid wrongfully and will recover the same in due course in terms of the PPA. The Petitioner had raised invoices towards Change in Law in terms of order dated 17.3.2017. The invoices included claims regarding works contract tax and service tax along with others. The Petitioner had also submitted auditor certificates in support of its claims regarding taxes paid mentioning “Notes: 5. service tax paid by the Company are on the basis of invoices raised by the vendors (mainly for Annual Maintenance charges, inspection charges and security charges)” as per the direction in the order dated 17.3.2017. It can be seen that the expenses considered in the auditor certificate for calculation of service tax are O&M expenses. The Commission in its order dated 2.4.2019 in Petition No.72/MP/2018 in the case of GMR Kamalanga Energy Limited v/s Dakshin Haryana Bijli Vitran Nigam Limited and Others has disallowed claim under Change in Law on O&M contracts.

(l) On the merits, without prejudice to the contention of limitation, the increase in rate of service tax can be considered if at all only on services which are directly related to the generation and supply of electricity. Further, even if the Change in law is considered, the impact has to be based on quantum of coal considered as per the actual quantum or quantum as per bid assumed parameters for SHR, GCV and Auxiliary Consumption, etc, whichever is lower. The parameters have already been held by the Commission in order dated 17.3.2017 Petition No. 157/MP/2015 read with order dated 31.10.2017 in Petition No. 22/RP/2017.

(m) Since the service tax on such services was not approved, GST on such services cannot be considered. In respect of GST on the ocean freight which was approved by the Commission, MSEDCL has made the payment. Similarly, for CVD, the same was approved as Change in Law in its order dated 17.3.2017 in Petition No. 157/MP/2015.

(n) The issue whether a particular event being claimed is a Change in Law or not has to be decided by the Commission in terms of the PPA between the

parties and not in terms of Tariff Policy or Ministry of Power letter dated 27.8.2018.

(o) There is a reason for requirement of determination by the Commission as any impact of Change in Law would be passed on to the consumers at large. Further, any increase to be allowed has to be considered together with any decrease on other taxes and duties, etc. and the net effect on annual basis needs to be considered. It is, therefore, necessary for any such determination to be done by the Commission and not be left to the Procurers and the generators. The requirement of restitution would not change the basic requirement of approval of the Commission. Similarly, it would also not change the principles of limitation and the need for timely claims being filed. The Tariff Policy 2016 only provides for Change in Law as per the PPA and also requires the approval of the Commission.

(p) The direction issued by MoP dated 27.8.2018 under Section 107 of the Act is not binding on the Commission or on the Procurers. Even the said direction requires the consideration in terms of the PPA and a determination of per unit impact of a Change in Law by the Commission.

(q) The claim is inconsistent with its prayer which states that for future, the change in rate of taxes already approved by the Commission, the Petitioner need not approach the Commission again. This only means that once the service tax has been approved as Change in Law, the increase or decrease in rate may not need fresh adjudication. However, this means that the first approval has to be by the Commission and only subsequent changes can be without a specific declaration. In the present case, there was no previous approval in respect of service taxes for the services being claimed. The only approval regarding service tax was for ocean freight which has been paid by the MSEDCL including on its subsuming into GST.

(r) There can be carrying cost only from the date of filing of the Petition. Further, there cannot be any interest @ SBAR + 2%. The Commission has in the past allowed carrying cost as per the actual interest or interest as per Tariff Regulations, whichever is lower.

8. The Respondent, Punjab State Power Corporation Limited (PSPCL) vide its reply affidavit dated 20.1.2020 has submitted as under:

(a) In so far as PSPCL is concerned, the only grievance of the Petitioner is for the period between 1.6.2015 to 30.6.2017 stating that its supplementary invoices towards increase in service tax from 12.24% to 14% have not been paid by PSPCL. Since no Change in Law claim was filed by the Petitioner or was adjudicated by the Commission on this issue, the supplementary invoices raised had no meaning.

(b) The Commission in its order dated 17.3.2017 in Petition No. 157/MP/2017 had allowed the claims under the head "Increase in service tax" to the following:

(i) Ministry of Finance, Government of India Notification No. 32/2007 dated 22.5.2007 introduced Works Contract (Composition Scheme for Payment of service tax) Rules, 2007 which became effective from 1.6.2007. In the said notification an option was given to pay service tax at the rate of 2% of the gross amount charged for the works contract instead of 12% of service portion;

(ii) Government of India, Ministry of Finance, Department of Revenue (Tax Research Unit) vide Notification No. 32/2007- service tax dated 1.3.2008 increased optional service tax on works contract service from 2% to 4%. Also, Ministry of Finance, Government of India through Finance Act, 2007 levied a Secondary and High Educational Cess at the rate of 1% on aggregate duty of service tax levied and collected by the Central Government.

(c) The above Notifications dated 22.5.2017 and 1.3.2008 which were declared as 'Change in Law' in the category of "Increase in service tax" vide order dated 17.3.2017 are pertaining to levy on the works contract tax.

(d) Aggrieved by the above order dated 17.3.2017, GUVNL had preferred a Review Petition before the Commission seeking review of the said order for seeking rectification of errors with regard to Change in Law events, namely, allowing service tax as a change in law; and computation of quantum of coal for considering the compensation for Clean Energy Cess.

(e) For the purpose of the present reply, only the issue (a) above is relevant. The Commission while disposing of Review Petition vide its order dated 31.10.2017 has held that the Petitioner was not entitled for service tax on works contract under 'Change in Law' because the obligation to service tax on works contract was existing prior to the cut-off date.

(f) Subsequently, the Petitioner filed Petition No. 121/MP/2017 seeking adjustment of tariff for increase/ decrease in cost/ revenue of the Petitioner due to occurrence of certain 'Change in Law' events. The Petitioner did not make any claims for increase in service tax from 12.24% to 14% in the above Petition on various services and was limited to levy of Swachh Bharat Cess and Krishi Kalyan Cess and levy of service tax on '*Transportation of goods by a vessel from a place outside India to the first customs landing station in India*'.

(g) In the order dated 21.2.2018 in Petition No. 121/MP/2017, there was no discussion on the issue of increase in service tax from 12.24% to 14% on all services since the issue was not raised. The obvious corollary is that there was no adjudication by the Commission on the matter. It is in this background that the invoices of the Petitioner for the period from 1.6.2015 to 30.6.2017 claiming the increase of service tax on all services were not payable by PSPCL. A related issue arose when the Petitioner raised its supplementary invoices. In pursuance of the order dated 30.10.2017 in Review Petition No. 22/RP/2017, PSPCL vide its letter dated 5.12.2017 requested the Petitioner to revise the supplementary bills for the period from April 2015 to June 2017 by eliminating the service tax on works contract. In response, the Petitioner vide its letter dated 21.12.2017 incorrectly submitted that there is no 'Change in Law' impact on account of works contract tax during the said period. However, the only invoices which have not been paid by PSPCL are the invoices claiming increase in service tax from 12.24% to 14% on all services and not limited to those pleaded and decided by the Commission in the order dated 21.2.2018.

(h) The claims made by the Petitioner against PSPCL were not admissible in terms of the PPA as any claims made under the PPA are restrictive in regard to the taxes to be allowed as a part of 'Change in Law'. The Commission has only recognized the increase in rate of service tax from 12.24% to 14% as a

Change in Law event *qua* service tax on transportation of goods from a place outside India to the first customs station of landing in India.

(l) The claim of the Petitioner seeking Rs. 2,63,31,735/- as supplementary invoices are misconceived and are liable to be rejected since the Petitioner can only claim Change in Law compensation on the services permitted in terms of the Commission's earlier orders.

(j) The supplementary invoices raised by the Petitioner are barred by limitation. The Finance Act, 2015 *vide* which there was an increase in service tax to 14% came into force in 14.5.2015. Therefore, the cause of action arose on 14.5.2015 and the Petitioner has preferred the instant Petition in 14.11.2019, after the expiry of three years from the date of arising of the cause of action. It is stated that no claims at all are maintainable except for the period of three years before filing of the present petition i.e. prior to 14.11.2016. Any claims prior to this period are barred by limitation in terms of the judgment of the Hon'ble Supreme Court in *AP Power Coordination Committee & Ors v M/s Lanco Kondapalli Power Ltd & Ors*[(2016) 3 SCC 468].

9. The Respondents 3 to 6, Rajasthan Discoms *vide* their affidavit dated 7.1.2020 have submitted as under:

(a) The issue related to the Rajasthan Discoms is subsuming of service tax in IGST. The Petitioner had raised the supplementary invoices for GST. The Petitioner was requested to submit proof of payment/ supporting documents in terms of order dated 14.3.2018 in Petition No. 13/SM/2017. In response, the Petitioner submitted the auditor's certificate for the GST paid. However, the overall GST paid also includes GST paid for the services such as port service, technical testing and analysis agency and transport of goods by road whereas the Commission in its earlier order had only approved levy of Swachh Bharat Cess and Krishi Kalyan Cess on these three services. In view of the above, the Petitioner was requested through letters dated 21.12.2018, 18.3.2019, 20.6.2019, 4.7.2019, 27.8.2019, 20.9.2019, 4.11.2019 and 27.11.2019 to submit the methodology on the bifurcation of taxes and proof of payment.

(b) The Petitioner *vide* its letter dated 25.9.2019 filed its response on the above letters. However, the Petitioner did not provide any methodology for

bifurcation of taxes subsumed in GST. In the absence of proof of payment/ supporting documents and a methodology of bifurcation, the claims could not be verified by the Rajasthan Discoms and payments have not been released.

(c) As per the Commission's order dated 14.3.2018, the Petitioner was required to inform about the benefits to the Procurers due to subsuming of taxes and duties, etc. Since the Petitioner did not inform the same, it cannot claim increase in taxes and has to give the benefit of reduction in taxes. The Petitioner itself had admitted to abolishing of water cess which has to be factored in the claim of increase in tax due to GST.

(d) The reliance on the judgment of the Hon'ble Supreme Court in Uttar Haryana Bijli Vitran Nigam Limited & Anr v. Adani Power Limited is misplaced. The Hon'ble Supreme Court has also recognized that in operation period, the increase/ decrease has to be determined and taken into account as decided by the Appropriate Commission.

(e) Admittedly, there has to be a determination of whether there is a Change in Law or not and if so, the impact of the same and the methodology for passing on such impact. The same has to be done for each generator based on the terms of their PPA and the facts of the case. There cannot be any *ipso facto* application of Change in Law decision.

(f) Since the supplementary invoices have not been raised in timely manner, the Petitioner cannot claim any interest or carrying cost. There was no delay by the Rajasthan Discoms. There cannot be any payment until supporting documents, etc. are provided. Mere raising of invoices is not sufficient. This is also clear from the order of the Commission dated 14.3.2018 in Petition No. 13/SM/2017. There cannot be any interest at SBAR + 2% and the Commission has in the past allowed carrying cost as per the actual interest or interest as per Tariff Regulations, whichever is lower.

Rejoinder of the Petitioner to replies filed by Respondents

10. The Petitioner, vide its affidavits dated 20.1.2020 and 10.2.2020 has filed rejoinder to the replies filed by GUVNL, MSEDCL, Rajasthan Discoms and PSPCL and has mainly submitted as under:



(a) While the Rajasthan Discoms, MSEDCL and HPGCL have released the payment qua increase in service tax from 12.24% to 14%, it is only the Respondents, GUVNL and PSPCL who have not released the payment towards the said Change in Law. Further, as regards subsuming of service tax into IGST, the HPGCL and PSPCL have released the compensation qua subsuming of service tax into IGST. MSEDCL is now seeking to take undue advantage of the present situation by unfairly opposing the Petitioner's legitimate claim which has already been acknowledged and earlier paid by MSEDCL. MSEDCL has now estopped from making such claims contrary to its wilful actions of the past. It is not the interpretation of the 'Change in Law' provision under the PPA that each and every Change in Law event is to be adjudicated by the Commission which is evident from the fact that the Respondents, Rajasthan Discoms, MSEDCL and HPGCL have released the payment on account of increase in service tax from 12.24% to 14% without any such pre-condition of adjudication. Having made the payments, it is clear that such claims are undisputed. No dispute can be said to be raised now, at such belated stage, beyond the provisions of the PPA.

(b) MSEDCL now cannot submit, at this belated stage and contrary to its actions that it had erroneously paid the compensation towards increase in service tax from 12.24% to 14%. This is evident from the following facts:

(i) On 12.5.2017, the Petitioner had issued the invoice of Rs. 1,55,69,697 towards increase in service tax from 12.24% to 14% for the period from June 2015 to March 2016. On 15.6.2017, MSEDCL unconditionally released the entire amount.

(ii) On 13.10.2017, the Petitioner issued invoices of Rs. 2,27,87,068 towards increase in service tax from 12.24% to 14% for the period from April 2016 to March 2017. On 30.11.2017, MSEDCL unconditionally released the entire amount.

(iii) On 13.10.2017, the Petitioner issued invoices of Rs. 37,74,012 towards increase in service tax from 12.24% to 14% for the period from April 2017 to June 2017. On 30.11.2017, MSEDCL had unconditionally released the entire amount.

(iv) From 15.6.2017 till date, no dispute has ever been raised by

MSEDCL qua increase of service tax from 12.24% to 14% as a Change in Law event and/ or its obligation to make payment to the Petitioner for such increase in service tax. It is only after filing of the Petition and reviewing the replies filed by the other Respondents that MSEDCL now seeks to resile from its earlier position stating that it would claim reimbursement/ adjustment of compensation paid by it to the Petitioner.

(c) As regards the issue of limitation, compensation for the claim of increase in service tax from 12.24% to 14% is for the period from June 2015 to June 2017. In this regard, the Petitioner had issued the supplementary invoices to GUVNL towards increase in service tax from 12.24% to 14%, namely, (i) on 12.5.2017, invoice of Rs. 3,69,78,031 for the period between June 2015 to March 2016, (b) on 13.10.2017, invoice of Rs. 5,41,19,286 for the period between April 2016 to March 2017, and (c) on 13.10.2017, invoice of Rs. 89,63,278 for the period between April 2017 to June 2017.

(d) The Petitioner had issued the supplementary invoices to MSEDCL towards increase in service tax from 12.24% to 14%, namely (i) on 12.5.2017, invoice of Rs. 1,55,69,697 for the period from June 2015 to March 2016, (b) on 13.10.2017, invoice of Rs. 2,27,87,068 for the period from April 2016 to March 2017, and (iii) on 13.10.2017, invoice of Rs. 37,74,012 for the period April 2017 to June 2017.

(e) The Petitioner had issued supplementary invoices to PSPCL towards increase in service tax from 12.24% to 14%, namely (i) on 12.5.2017, invoice of Rs. 97,31,061 for the period between June 2015 to March 2016, (ii) on 13.10.2017, invoice of Rs. 1,42,41,917 for the period between April 2016 to March 2017, and (iii) on 13.10.2017, invoice of Rs. 23,58,757 for the period between April 2017 to June 2017.

(f) The payment of invoices is due after a period of 30 days. In terms thereof, necessary payments have been made by MSEDCL as per the PPA provisions. It is, therefore, unclear as to on what basis the provisions of the Limitation Act is being invoked by MSEDCL. Further, as is evident, the cause of action on account of non-payment of compensation by GUVNL had arisen after expiry of 30 days from the date of the issuance of invoice. Thus, in terms of the provisions of the Limitation Act, the limitation period of 3 years expires in July

2020 for the invoices raised for the period from June 2015 and March 2016 and November 2020 in case of invoices raised for the period April 2016 and June 2017. In view of the above, the Petitioner's claim towards increase in service tax is well within the period of limitation.

(g) As regards PSPCL's submissions that the period of limitation is to be computed from 14.5.2015 is wrong. As admitted by PSPCL itself, the principles qua limitation arises only in terms of exercise of powers under Section 79(1)(f) of the Act by the Commission. Adjudicatory functions are exercised only when a dispute arises between the parties. In the facts of the present case, the dispute has arisen when the invoices were unpaid by PSPCL. In view of the above, it is incorrect to suggest that the cause of action has arisen on 14.5.2015.

(h) As regards the Change in Law notice, CGPL had issued a Change in Law notice on 31.8.2015 qua increase in service tax from 12.24% to 14%.

(i) As regards the contention that there is no order passed by the Commission qua declaring that increase in rate of service tax from 12.24% to 14% amounts to Change in Law, it may be noted that on 28.1.2016, the MoP, issued the Revised Tariff Policy clarifying that the issue of change in tax and/ or change in rate of taxes, etc. is to be treated as a Change in Law. Thus, any change in tax and/ or change in rate of taxes, duties and cess is to be allowed as a pass through, unless otherwise provided in the PPA. Since the Petitioner's PPA was in line with the tariff policy, there was no need for the Petitioner to separately seek a declaration for merely increase in rate of taxes/ duties.

(j) Further, the Commission in its order dated 21.2.2018 in Petition No.121/MP/2017 has acknowledged that the service tax has been increased from 12.24% to 14%. This is evident from the fact that on the cut-off date there was no service tax payable on ocean freight. Thereafter, the service tax at the rate of 14% was made applicable. However, the Government of India clarified that there would be an abatement on 70% of the assessable value. In other words, only 30% of the assessable value is to be considered for the purpose of computation of service tax. Accordingly, the Commission allowed the service tax at the rate of 4.2% [i.e. 30% of 14%].

(k) The scope of Change in Law provision is governed by Article 13 of the

PPA read with the Revised Tariff Policy and MoP's directives, which provides that Change in Law means the occurrence of events, on or after 30.11.2006 ("cut-off date") which results in any change in cost of or revenue from the business of generating and selling electricity by CGPL to the Procurers under the terms of the PPA. The definition of 'Law' under Article 1.1 of the PPA is an inclusive definition which includes statutes, notifications, ordinance, rules, regulations and codes, etc. There is no requirement of a prior declaration from the Appropriate Commission for an event to be declared as a Change in Law event in terms of the PPA. It is only where there is a 'dispute' between the parties, the Appropriate Commission needs to be approached. [Article 13.2(b) r/w Article 17 of the PPA and the Hon'ble Supreme Court's Judgment in the case of Uttar Haryana Bijli Vitran Nigam Ltd. & Anr. v. Adani Power Ltd. & Ors.: (2019) 5 SCC 325 Para 9, 10, 13]. Article 13.2 of the PPA has an in-built mechanism to compensate the party affected by Change in Law by restoring such affected party to the same economic position as if such Change in Law has not occurred. Article 13.2 contemplates restitutive relief [Ref: *UHBVNL v. Adani Power Ltd. (2019) 5 SCC 325 Para 9, 10, 13*]. The affected party needs to be restituted with effect from the date of Change in Law, in case the Change in Law happens to be by way of adoption, promulgation, amendment, re-enactment or repeal of the Law or Change in Law; or the date of order/judgment of the Competent Court or tribunal or Indian Governmental Instrumentality, if the Change in Law is on account of a change in interpretation of Law [*Article 13.4.1 r/w UHBVNL v. Adani Power Ltd. (2019) 5 SCC 325*].

(l) The compensation for Change in Law is to be made through bills as mentioned in Article 11.8 of the PPA. In case of any change in tariff by reason of Change in Law, as determined in accordance with the PPA, the monthly invoice to be raised by the Petitioner after such change in tariff should appropriately reflect the changed tariff [*Article 13.4.2*].

(m) Indian Governmental Instrumentality under the PPA includes the Government of India, the Government of States where the Procurers and the Project are located (i.e., Governments of Gujarat, Maharashtra, Rajasthan, Punjab and Haryana), any ministry or department or board, agency or other regulatory or quasi-judicial body under the aegis of the Government of India or the Government of Gujarat, Maharashtra, Rajasthan, Punjab and Haryana.

(n) Once occurrence of a Change in Law event has been ascertained, it needs to be evaluated whether such Change in Law results in an increase/decrease in the cost of or revenue from the Project [Ref: *Sasan Power Ltd. v. CERC & Ors: 2017 ELR (APTEL) 0508, Para 23*]. The underlying principle of Change in Law provision is to restore the affected party to the same economic position as if the Change in Law event had not occurred, i.e., relief is relatable to actuals along with carrying cost.

(o) Change in tax and/ or change in rate of taxes, etc. is treated as a Change in Law, as clarified by the MoP in the Revised Tariff Policy dated 28.1.2016. Thus, any change in tax and/ or change in rate of tax, duties and cess is to be allowed as a pass through. The APTEL in its judgment in the case of *Sasan Power Ltd. v. CERC & Ors.* has held that any change in tax which affects the cost of business of generation and sale of electricity is to be treated as Change in Law.

(p) Any event which has been previously declared as a Change in Law for any generator, the same is *ipso facto* applicable to all the generating companies.

(q) Auditor's Certificates issued by the Petitioner to MSEDCL suggests that the Change in Law claim of the Petitioner is towards O&M expenditure incurred by the Petitioner on account of increase in service tax from 12% (plus 2% of Educational Cess) that became effective from 1.6.2015. Pursuant thereto, on 31.8.2015, the Petitioner issued a Change in Law notice, amongst others, for increasing the service tax from 12.24% to 14% along with the tentative impact to all the Procurers. Since no dispute qua change in service tax from 12.24% to 14% was raised by the Procurers, on 12.5.2017, the Petitioner raised the supplementary invoice towards Change in Law events for the financial year 2015-16, including increase in service tax from 12.24% to 14% for the period from June 2015 to March 2016 on all the Services. Thereafter, on 13.10.2017, two supplementary invoices were issued by the Petitioner towards increase in service tax for the financial years 2016-17 and 2017-18 (up to June 2018). Subsequent to issuance of the invoices, on 21.2.2018, the Commission had passed order in Petition No. 121/MP/2017 holding that only four services are related to the business of generation or sale of electricity. Accordingly, after

passing of the order dated 21.2.2018, the Petitioner has raised Change in Law invoices only on the services approved by this Commission. The Petitioner has filed an Appeal No. 154 of 2018 before APTEL challenging the Commission's order dated 21.2.2018, amongst others, qua disallowance of Change in Law on remaining services being availed by it.

(r) Outsourcing of O&M activities is an established and common industry practice and is followed by public and private developers, considering factors like cost economics, expertise and efficiency. Moreover, O&M is an essential service and availing of appropriate O&M services is in line with prudent utility practices. There were no restrictions in the bidding documents which prevented the parties from outsourcing their O&M activities. It was the intent of the bid to achieve the power sought at most economical rates. Whether or not to outsource an activity is a premised on the facts of a case as well as the intent to achieve most competitive results.

(s) The Petitioner filed Petition No.157/MP/2015 stating that the compensation is to be granted to the Procurers on account of decrease in CST from 4% to 2% and decrease in Excise Duty (ED) from 16.32% to 12.36%. By its order dated 17.3.2015, the Commission directed that the benefit of reduction of CST and ED ought to be granted by the Petitioner to the Procurers. In terms thereof, the benefit of the reduction in CST and ED has been passed on by the Petitioner to the Procurers. The reduction of CST and ED is levied on spares and consumables which are utilized for O&M. If MSEDCL's interpretation is to be accepted, then the benefit of reduction of CST and ED should also not be granted to the Procurers since these spares and consumables are used by the third-party contractor for O&M only. MSEDCL cannot be permitted to selectively interpret the Change in Law provisions as per its convenience.

(t) As regards the manner of computation of relief on account of increase in service tax, the Petitioner's claim towards increase in service tax relates only to those services which have nexus with generation and sale of electricity. Further, the relief of Change in Law on the basis of actuals or normative can be considered only qua those services which relate to procurement of coal. The said principle cannot be made applicable for all the services being availed by the Petitioner and the same would have to be judged on the basis of the nature

of the services availed by the Petitioner. This contention of the Petitioner is without prejudice to its submissions that Change in Law is to be allowed on all services availed by the Petitioner and relief of Change in Law is to be allowed on actuals.

(u) Submission of GUVNL that subsuming of service tax into IGST was not allowed since the service tax on services which are being claimed by CGPL for compensation was not approved by this Commission, is not only absurd and unreasonable, the same is in teeth of the Commission's order dated 14.3.2018 in Petition No. 13/SM/2017.

(v) Submissions of Rajasthan Discoms that the Petitioner has not provided relevant information and documents for non-payment of compensation on account of Change in Law, are unreasonable. The Petitioner has had various discussions/ meetings with the Rajasthan Discoms, wherein the Petitioner had time and again explained to the Rajasthan Discoms that upon introduction of GST, various taxes and cess were subsumed into GST/IGST. In fact, the order of the Commission dated 14.3.2018 clearly records that service tax, Krishi Kalyan Cess, Swatch Bharat Cess, Educational Cess and Secondary and Higher education cess have been subsumed into GST/IGST. The Petitioner had already issued a letter dated 25.9.2019 to the Rajasthan Discoms clarifying the said position. Despite a categorical clarification, Rajasthan Discoms has issued letters on 4.11.2019 and 27.11.2019 reiterating its demand of bifurcation between the service tax and Cess Payable by the Petitioner.

(w) Rajasthan Discoms have asked for proof of payment of GST from the Petitioner. IGST, being an indirect tax, liability to discharge such tax (GST) lies with service provider and not with the service recipient and the Petitioner, being a service recipient, is not in a position to furnish any proof of payment of service tax/ IGST. However, in order to provide compensation payable by the Rajasthan Discoms, the Petitioner has provided copies of the Auditor's Certificate in terms of the Commission's order dated 14.3.2018.

(x) Rajasthan Discoms have contended that the Petitioner has not provided the benefit of water tax. The Respondents are taking inconsistent stand. On one hand, the Respondents have submitted that each and every Change in Law

event is to be approved by the Commission, on the other hand, they are seeking compensation on reduction of water cess. The Respondents are not permitted to approbate and reprobate at the same time. In any case, the Petitioner has issued invoices to Rajasthan Discoms providing the benefit of water cess and such benefit has been availed by Rajasthan Discoms. These crucial facts are not disclosed by the Rajasthan Discoms in its Reply. In this regard, a table capturing the invoices raised by the Petitioner and the benefits availed by the Rajasthan Discoms has been placed on record.

(y) PSPCL's submissions in regard to supplementary invoices, are factually incorrect and the Petitioner had not issued the Change in Law invoice on account of increase in service tax on works contract. The service tax raised by the Petitioner was towards increase in service tax from 12.24% to 14% only. The Petitioner had not submitted any incorrect bill to PSPCL. In fact, the Respondents have been well notified of such Change in Law event in due time which has not been disputed by any Respondents including PSPCL.

(z) The Commission in its order dated 14.3.2018 in Petition No. 13/SM/2017 held that introduction of GST is a Change in Law. While doing so, the Commission had observed that on account of introduction of GST, various taxes/ cesses have been abolished and/ or stand subsumed within GST. Service tax is one such tax that has been subsumed within GST, meaning thereby that in place of service tax, the Petitioner is now liable to pay GST (i.e. introduction of new tax) on various services availed by it in the course of its business of generation of electricity.

(za) It is the Petitioner, who has in all fairness computed the compensation on account of subsuming of service tax into IGST on four taxable services which (according to this Commission) have direct nexus with the business of sale of electricity by the Petitioner, being: (a) Port Services; (b) Technical Testing; (c) Transportation of Goods by Road; and (d) Ocean Freight.

Written Submissions by the Parties

11. The Respondents, GUVNL and MSEDCL in their written submissions dated 7.8.2020, have reiterated the submissions made in their replies and for the sake of

brevity, the same are not being repeated herein again. The relevant additional submissions are as under:

(a) In terms of the Article 13.2 of the PPA, liability to pay for the impact for Change in Law during the operation period crystalizes and becomes effective only from the date when as per the provisions of the PPA there is a decision by the Commission. The Commission has to consider the claim made by the Petitioner and the defence/ objections of the Respondents and adjudicate on the issue. The Petition needs to be filed before the Commission for the decision including the determination as to whether the net amount payable is in excess of the threshold limit. This has been recognized by the Hon'ble Supreme Court in the case of Uttar Haryana Bijli Vitran Nigam Limited and Another v. Adani Power Mundra Limited and others [(2019) 5 SCC 325].

(b) The claim of the Petitioner that there is no need for declaration of Change in Law by the Appropriate Commission is contrary to the Letter dated 27.8.2018 of Ministry of Power which is a direction specifically for determination of impact of Change in Law by the Commission. If there was no need for any declaration by the Appropriate Commission, there would be no need for such policy direction. The stand of the Petitioner is also inconsistent with the practice followed by all generators including the Petitioner who has filed Petitions for claiming Change in Law including Petition No. 121/MP/2017 and Petition No. 157/MP/2015.

(c) If the contention of the Petitioner is to be accepted, the reference made to the determination by the Appropriate Commissions for impact of Change in Law, would be superfluous, which is not a permissible construction of contract. It is settled principle that if the provisions of the contract provide for a manner of performance, the same need to be followed. In this regard, the reference is made to Section 50 of the Indian Contract Act, 1872 and the judgment of the APTEL dated 3.6.2016 in Appeal No. 97 of 2016 in the case of Talwandi Sabo Power Limited v. Punjab State Power Corporation Limited and others.

(d) The cause of action as per the PPA in Change in Law is occurrence of the event of enactment of any law. The claim of the Petitioner is in respect of the Notification dated 14.5.2015. The prayer (a) is for holding the increase in

service tax from 12.24% to 14% as Change in Law event. Such prayer is clearly time barred and even otherwise suffers from laches. The Petitioner is in fact seeking a declaration/ determination of Change in Law event in terms of the PPA. The event for which the determination is sought is on 14.5.2015 and the Petition has been filed on 14.11.2019 i.e. beyond three years.

(e) Further even assuming but not admitting that the Petitioner was entitled to raise the bills without any determination by the Commission, then the bills ought to have been raised on supply of electricity. Article 11.2 of the PPA recognizes that the seller i.e. the Petitioner shall issue the signed monthly bill for immediately preceding month. Even otherwise, the Limitation Act recognizes the period for price of goods sold (where no fixed period of credit is agreed upon) as three years from the date of delivery of the goods (Article 14 of the Schedule).

(f) The order dated 21.2.2018 in Petition No. 121/MP/2017 refers to the issues specifically and the issue considered was "levy of service tax on transportation of goods by a vessel from a place outside India to the first custom station of landing in India." In fact, it was stated that as on cut-off date, there was no service tax on the above. There is no reference in the order to the alleged service tax of 12.24% as on the cut-off date. The entire reasoning and analysis in the order relates to the issue of levy of service tax on ocean freight only i.e. 0% to 4.2% and there is no reference to the increase in service tax for other services from 12.24% to 14%. The contention of the Petitioner that the Commission had duly recognized the increase in rate of service tax from 12.24% to 14% is, therefore, erroneous and misconceived and an attempt to hide the mistake/ failure of the Petitioner to claim the Change in Law.

(g) MSEDCL has submitted that the cause of action for claiming Change in Law is not the invoice raised in 2017, but is the Notification of 2015. Furthermore, based on the Notification of 2015, the invoices were raised in the year 2017, which was so done by the Petitioner after considerable delay and the Petitioner cannot be benefited for such delay, moreover not even for the purposes of counting the period of limitation. As in accordance with the restitution principles of Article 13 of the PPA, the compensation amount would have to be calculated right from 2015 despite the invoices being raised in 2017,

since the same pertains to the period from 2015 onwards. Therefore, the limitation period starts from 2015 and not from 2017.

(h) The Petitioner is further prevented from raising the issue of supplementary invoices/ bills as an event of Change in Law as there is no single decision of the Commission which states that such invoices/ bills can be considered as a Change in Law event. In such a scenario, where the Petitioner has not even sent a notice for Change in Law, which is a mandatory exercise under Article 13 of the PPA, MSEDCL is not obligated to make any such payment towards the same.

(i) In so far as the payments of service tax prior to the GST regime by MSEDCL is concerned, the payment was made in the year 2017 and at that time the position of law as to the treatment which has to be given to the increase of the service tax was unclear, as no orders of the Commission qua Change in Law was prevailing. However, for the first time the treatment, which has to be meted out to the increase in service tax on O&M was crystallised in the year 2019 by the order of the Commission in Petition No. 117 of 2019, whereby it was clarified that the increase in the rate of service taxes for O&M contracts cannot be considered as Change in Law and hence the payment earlier made, became recoverable.

12. The Petitioner, in its written submission dated 7.8.2020, has mainly reiterated the earlier submissions and for the sake of brevity, the same are not repeated herein again. The Petitioner has additionally submitted as under:

(a) During the course of hearing, learned counsels for the Respondents, GUVNL, Rajasthan Discoms and MSEDCL had confirmed that they were willing to pay the compensation on account of subsuming of service tax into IGST provided that all the relevant documents are furnished by the Petitioner. Since the Petitioner had provided all the relevant documents, including the Auditor's Certificate to the Procurers, as per the Commission's order dated 14.3.2018 in Petition No. 13/SM/2017, the amount raised by the Petitioner on the four services allowed by the Commission in its order 21.2.2018 in Petition No. 121/MP/2017, be forthwith allowed. Further, the Commission may grant liberty

to the Petitioner to raise the amount towards subsuming of service tax into IGST if the Petitioner's Appeal No. 154 of 2018, challenging order dated 21.2.2018, is allowed and the Petitioner's interpretation that it is permitted to receive compensation on account of all service tax is being allowed by the APTEL.

(b) From conjoint reading of Article 13.1.1, Article 13.2, Article 13.3 and Article 13.4.1 of the PPA, it is evident that, these articles form part of one scheme, which contemplates that, once a Change in Law event takes place, a notice and details of Change in Law event along with its tentative impact is to be provided by the affected party to the other parties. If both the parties are at ad idem qua the event as a Change in Law and its consequence, then the impact of such Change in Law/ appropriate compensation becomes payable immediately. The impact of Change in Law/ appropriate compensation becomes payable from the date on which such Change in Law becomes effective. However, if there is a dispute amongst the parties qua (a) an event qualifying as a 'Change in Law', (b) compensation payable for such Change in Law event, (c) the date from which the payment on account of Change in Law event be effective, Article 13.2(b) becomes applicable and the parties are required to approach the Commission for seeking appropriate relief. There is no need for approaching the Commission for seeking a declaration/ acknowledgement/ confirmation of a Change in Law event.

(c) Reliance placed by the Respondents on the judgment of the Hon'ble Supreme Court in the case of *UHBVNL v. Adani Power* (Supra) is misleading since the said judgment holds that the party affected by a Change in Law is entitled to carrying cost from the date on which such Change in Law event takes place. The issue whether Article 13 of the PPA provides that each and every Change in Law event is to be approved by the Commission, irrespective of a dispute amongst the parties, was not the issue before the Hon'ble Supreme Court. Thus, the said judgment is not applicable in the facts of the present case.

(d) As regards the contentions of the Respondents, GUVNL and PSPCL that the Petitioner's claim is hit by the doctrine of delay and laches even if not barred under the Limitation Act, it is stated that the principles of delay and laches are based on the maxim that "*Delay defeats equity*". The principles of delay and laches are not applicable in cases where the period of limitation is not

prescribed in the statute. In the context of the Act, the period of limitation has been prescribed only when an Appropriate Commission exercises its adjudicatory functions and not its other functions, such as regulatory or advisory functions. Since the regulatory functions are specifically kept outside the rigours of limitation, the principles of delay and laches cannot be incorporated while exercise of regulatory functions. The Hon'ble Supreme Court in its judgment in the case of *T.N. Generation & Distribution Corpn. Ltd. v. PPN Power Generating Co. (P) Ltd.*, (2014) 11 SCC 53 has held that principles of delay and laches are not applicable in the context of Act.

(e) Even otherwise, rule of laches or delay is not a rigid rule which can be cast in a straitjacket formula. It is a settled law that the courts have the discretion to not interfere if there is an inordinate and unexplained delay and the third-party rights are created in an intervening period. If the delay is properly explained and third-party rights are not created, the courts in exercise of their discretionary powers ought to ignore the delay and consider the case on merits. Further, the discretion ought to be exercised to promote justice and not to defeat it.

(f) The reliance placed by the GUNVL on the judgment of the Hon'ble Supreme Court in the case of *Prabhakar v. Sericulture Deptt.*, [(2015) 15 SCC 1] is unfounded since in the said case there was a delay of 14 years where no notice was issued by the Petitioner. Accordingly, the Hon'ble Supreme Court had held that there were no 'live' disputes amongst the parties. However, in the facts of the present case, there is a gap of less than three years and CGPL had time and again discussed the issue of non-payment of compensation with the Procurers.

(g) Respondents have submitted that taxes on O&M cannot be considered towards Change in Law compensation since it has been disallowed by the Commission in its order dated 2.4.2019 in Petition No. 72/MP/2018 (in the case of *GMR Kamalanga Energy Limited v. DHBVNL &Ors*) and Ld. MERC's Order dated 23.8.2019 in Case No. 117 of 2016 (*JSW Energy Limited v. MSEDCL*). It is a settled principle of law that a judgement has to be read in the context of the facts of case. In GMR's case (which was relied upon by the learned counsel for the MERC in JSW's case), the Commission had relied upon its earlier order

dated 9.10.2018 in Petition No. 188/MP/2017 in the case of Acme Bhiwandi Solar Power Private Limited v SECI & Batch and denied increase in O&M cost on account of subsuming of service tax into GST laws on the basis that outsourcing of O&M was not the requirement of bidding documents/ PPA. Hence, the impact on account of higher taxes cannot be passed on to the Procurers. In the facts of the Petitioner's case, the bidding documents as well as the PPA always contemplated that there could be a third-party contractor for performing O&M activities. This is evident from Annexure 6 of the RfP and definition of 'Project Documents' read with 'O&M contracts'. Therefore, above judgments are not applicable in the facts of the Petitioner's case.

(h) Contention of the Rajasthan Discoms that the Petitioner has not provided relevant information and documents, is unreasonable since all the relevant information and documents, including the auditor's certificates, have been provided by the Petitioner as under:

Nature of Service	Payment Mechanism under GST	Liability to pay GST	Remarks
Goods Transport Agency (GTA)	Reverse Charge Mechanism	Since the payment mechanism is under Reverse Charge Mechanism, the liability to pay service tax is with the service recipient, i.e. CGPL in the present case.	CGPL has provided the proof of payment/ challans to the Procurers along with the supplementary invoices raised by CGPL.
Ocean Freight	Reverse Charge Mechanism	Same as above	Same as above
Port Services	Direct Charge Mechanism	The liability to pay the service tax is with Service Provider, i.e. Adani Port and SEZ in the present case.	As Service Provider is liable to discharge the tax liability, proof of Payment/ Challans are not available with CGPL. Accordingly, CGPL reimburses the payment of service tax/ IGST based on the Invoices raised by the Service Provider.
Technical Testing Services	Direct Charge Mechanism	The liability to pay the service tax is with Service Provider, i.e. Grafite India Pvt Ltd & Other Service Providers	Same as above

Analysis and Decision

13. We have considered the submissions of the parties and perused documents on record. After going through the submissions of the parties, the following issues arise for our consideration:

Issue No.1: What is the scope of Change in Law in the Power Purchase Agreement?

Issue No.2: Whether the provisions of the Power Purchase Agreement with regard to notice have been complied with?

Issue No. 3: Whether the Petition's Change in Law claims for increase in rate of service tax are time barred and suffer from delay and laches?

Issue No.4: Whether the compensation claims are admissible under Change in Law?

Issue No.5: What should be the mechanism for processing and reimbursement of admitted claims under Change in Law?

We now proceed to discuss the above issues and examine the claims of the Petitioner in subsequent paras.

14. The chronology of events with regard to PPA are as under:

Cut-off date	30.11.2006
Bid Deadline	7.12.2006
PPA executed on	22.4.2007
COD of Station	22.3.2013

Issue No.1: What is the scope of Change in Law in the Power Purchase Agreement?

15. The Petitioner has submitted that, as per Article 13 of the PPA, the parties are not required to approach the Commission for seeking a declaration/ acknowledgement that an event constitutes a Change in Law event. According to the Petitioner, the parties are required to approach the Commission only if there is a dispute between the parties to the PPA regarding (i) an event being Change in Law; (ii) the amount of compensation payable on account of Change in Law; and (iii) date from which such Change in Law event takes place. The Petitioner has submitted that

this is evident from the opening sentence of Article 13.2, which states that '*While determining the consequence of Change in Law under Article 13, the Parties shall have due regard to the principle that the purpose of compensating....*' and is applicable for the both (a) construction period and (b) operating period. Any interpretation contrary to the above, would make the opening part of Article 13.2 nugatory. The conjoint reading of Article 13.1.1, Article 13.2 read with Article 13.3 and Article 13.4.1 makes it clear that they form part of one scheme, which contemplates that once a Change in Law event takes place, a notice and details of Change in Law event along with its tentative impact is to be provided by the affected parties to the other parties. If both the parties are at *ad idem* qua the event as a Change in Law and its consequences, then the impact of such Change in Law/ appropriate compensation becomes payable immediately. It is only when there is a dispute amongst the parties with regard to aspects (i), (ii) and (iii) as noted above, Article 13.2(b) becomes applicable and the parties are required to approach the Commission for seeking appropriate relief. To fortify these submissions, reliance has also been placed on the comparison of Change in Law provisions in the Petitioner's PPA vis-à-vis Change in Law provisions under the other PPAs.

16. On the other hand, the Respondents have relied on Article 13.2(b) of the PPA and have submitted that the liability to pay for Change in Law relief during the operation period becomes effective only when a decision is passed by the Commission, for which the Petitioner is required to file a Petition before the Commission and before deciding the Change in Law, the Commission is required to consider the claim made by the Petitioner and the objections of the Procurers. This position has been recognized by the Hon'ble Supreme Court in its judgment in the case of Uttar Haryana Bijli Vitran Nigam Limited and Another v. Adani Power Mundra Limited and others [(2019) 5 SCC 325]. There is no statutory mandate for the

procurers to allow Change in Law for increase in taxes without consideration to the terms of PPA and without following the procedure in the PPA and without approval and determination by the Commission. If the contention of the Petitioner is accepted, the reference made to the determination by the Appropriate Commission for impact of Change in Law would be superfluous.

17. We have considered the submissions of the Petitioner and the Respondents. The claims of the Petitioner are with respect to events under Change in Law under Article 13 of the PPA. The same 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 Procurers under the terms of this Agreement, or (iv) any change in the (a) Declared Price of Land for the Project or (b) the cost of implementation of the resettlement and rehabilitation package of the land for the Project mentioned in the RFP or (c) the cost of implementing Environmental Management Plan for the Power Station mentioned in the RFP, indicated under the RFP and the PPA;

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

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

13.1.2 "Competent Court" means:

The Supreme Court or any High Court, or any tribunal or any similar judicial or quasi-judicial body in India that has jurisdiction to adjudicate upon issues relating to the Project.”

13.2 Application and Principles for computing impact of Change in Law

While determining the consequence of Change in Law under this Article 13, the Parties shall have due regard to the principle that the purpose of compensating the Party affected by such Change in Law, is to restore through Monthly Tariff Payments,

to the extent contemplated in this Article 13, the affected Party to the same economic position as if such Change in Law has not occurred.

.....

(b) Operation Period

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

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

18. Article 17 of the PPA provides for dispute resolution arising out of claim made by any party for any change in or determination of tariff or any matter relating to tariff.

The said Article is extracted as under:

“17.3 Dispute Resolution

17.3.1 Where any Dispute arises from a claim made by any Party for any change in or determination of the Tariff or any matter related to Tariff or claims made by any Party which partly or wholly relate to any change in the Tariff or determination of any of such claims could result in change in the Tariff or (ii) relates to any matter agreed to be referred to the Appropriate Commission under Articles 4.7.1, 13.2, 18.1 or clause 10.1.3 of Schedule 17 hereof, such Dispute shall be submitted to adjudication by the Appropriate Commission. Appeal against the decisions of the Appropriate Commission shall be made only as per the provisions of the Electricity Act, 2003, as amended from time to time.

The obligations of the Procurers under this Agreement towards the Seller shall not be affected in any manner by reason of inter-se disputes amongst the Procurers.”

19. A combined reading of the above provisions reveals that the events covered under Change in Law are broadly as under:

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

(b) Any change in interpretation of any law by a competent court of law, Tribunal or Indian Governmental Instrumentality acting as final authority under law for such interpretation, or

(c) Imposition of a requirement for obtaining any consents, clearance 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 otherwise than the default of the seller,

(e) Any change in the tax or introduction of any tax made applicable for supply of power by the Petitioner to Respondents,

(f) Such Changes (as mentioned in (a) to (e) above) 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 13, the affected Party to the same economic position as if such 'Change in Law' has not occurred. The compensation for any increase/ decrease in revenue or cost to the seller shall be determined and made effective from such date as decided by the Commission which shall be final and binding on both the Petitioner and Respondents, subject to the rights of appeal provided under the Act.

20. The terms 'Law' has been defined under Article 1.1 of the PPA as under:

"Law" means, 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;

21. The term 'Indian Governmental Instrumentality' has been defined in Article 1.1 of the PPA as under:

"Indian Government Instrumentality" means the GOI, Government of States where the Procurers and Project are located and any ministry or department of or board, agency or other regulatory or quasi-judicial authority controlled by GOI or Government of States where the Procurers and Project are located and includes the Appropriate Commission;

22. As per the above definitions, law includes (a) all laws including electricity laws in force in India; (b) any statute, ordinance, regulation, notification, code, rule or their interpretation by Government of India, Government of States or any Ministry, Department, Board, Body Corporate agency or other authority under such

Government; (c) all applicable rules, regulations, orders, notifications by a Government of India Instrumentality; and (d) all rules, regulations, decisions and orders of the Appropriate Commission. If any of these laws affect the cost of generation or revenue from the business of selling electricity by the seller to the procurer, the same shall be considered as Change in Law to the extent it is contemplated under Article 13 of the PPA.

23. In light of the above and in view of the broad principles discussed above, it is clear that in terms of Article 13.2.(b), the Petitioner is required to approach the Commission for determination of Change in Law. When the terms of contract are clear and unambiguous, there is no scope of purposive interpretation as sought for by the Petitioner. There is no embargo on the parties to the PPA to agree upon whether a particular event, which affects the cost/ revenue of the seller to be Change in Law event. However, in case of any disagreement, the parties are required to approach the Commission for adjudication of their claims/ disputes. In addition, irrespective of whether there is agreement or disagreement between the parties, for any Change in Law event during the Operating Period, the compensation for such increase/ decrease in revenues/ cost to the Seller and the effective date is required to be determined by the Commission. Accordingly, we proceed to deal with the claims of the Petitioner under Change in Law during the Operating Period.

Issue No.2: Whether the provisions of the Power Purchase Agreement with regard to notice have been complied with?

24. The claims of the Petitioner in the present Petition pertain to Change in Law event related to the PPA dated 22.4.2007 during operation period. Article 13 of the PPA deals with the notification of Change in Law and the same is extracted as under:

“13.3 Notification of Change in Law

13.3.1 *If the Seller is affected by a Change in Law in accordance with Article 13.2 and wishes to claim a Change in Law under this Article, it shall give notice to the*

Procurers of such Change in Law as soon as reasonably practicable after becoming aware of the same or should reasonably have known of the Change in Law

13.3.2 *Notwithstanding Article 13.3.1, the Seller shall be obliged to serve a notice to all the Procurers under this Article 13.3.2 if it is beneficially affected by a Change in Law. Without prejudice to the factor of materiality or other provisions contained in this Agreement, the obligation to inform the Procurers contained herein shall be material.*

Provided that in case the Seller has not provided such notice, the Procurers shall jointly have the right to issue such notice to the Seller.

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

(a) the Change in Law; and

(b) the effects on the Seller of the matters referred to in Article 13.2.

13.4 Tariff Adjustment Payment on account of Change in Law

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

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

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

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

25. In this regard, the Respondents have contended that the Petitioner's Change in Law claims towards increase in rate of service tax from 12.24% to 14%, apart from being time barred, are also not maintainable on the ground that the Petitioner had not served any notice to the Respondents. As per the provisions of the PPA, the Petitioner is required to serve notice on the Procures for claiming compensation of any Change in Law event and in absence of any such notice by the Petitioner, no relief ought to be allowed to the Petitioner.

26. *Per contra*, the Petitioner has submitted that on 31.8.2015, the Petitioner had issued a Change in Law notice to all the procurers, *inter-alia*, informing them qua increase in effective rate of service tax from 12.24% to 14% and had also provided the tentative impact of such Change in Law event.

27. We have considered the submissions of the Petitioner and the Respondents. As per Article 13.3 of the PPA, the Petitioner is required to give notice about occurrence of Change in Law events as soon as reasonably practicable after becoming aware of such events. The Respondents have contended that the Petitioner has not issued Change in Law notice in respect of increase in the rate of service tax from 12.24% to 14%. The increase in the service tax from 12.24% to 14% with effect from 1.6.2015 was by enactment of the Finance Act, 2015 notified on 19.5.2015. We observe that the Petitioner had issued Change in Law notice dated 31.8.2015 to the Procurers. In the said notice, the Petitioner has brought out the occurrence of Change in Law events, *inter-alia*, increase in the rate of service tax and had also apprised the Procurers about the impact of such events. The Procurers have not responded to the notice of the Petitioner. Therefore, in our view, the Petitioner has complied with the requirement of notice and prior consultation in terms of Article 13.3 of the PPA.

Issue No. 3: Whether the Petitioner's Change in Law claims for increase in rate of service tax are time barred and suffer from delay and laches?

28. The Respondents have contended that the Petitioner has claimed the impact of increase in the rate of service tax from 12.24% to 14% from June 2015 till June 2017. The said increase in the rate of service tax from 12.24% to 14 % was effected through Finance Act, 2015 dated 14.5.2015, whereas the present Petition claiming the relief on account thereof has been filed by the Petitioner on 14.11.2019. Therefore, as per the principle laid down by the Hon'ble Supreme Court in case of Andhra Pradesh Power Coordination Committee & Others Vs. Lanco Kondapalli Power Limited & Others [(2016) 3 SCC 468], the claims of the Petitioner are time barred and even otherwise suffers from the laches on the part of the Petitioner. According to the Respondents, the cause of action as per the PPA in Change in Law is the occurrence of the event of enactment of any law. Accordingly, the prayer of the Petitioner for

holding increase in service tax from 12.24% to 14% as Change in Law event in respect of Finance Act, 2015 dated 14.5.2015 is time barred and even otherwise suffers from laches. It has also been submitted that the Petitioner was not entitled to raise supplementary bills without declaration of Change in Law and determination of the impact of the same by the Commission. Even assuming that the Petitioner was entitled to raise the supplementary bills without any determination by the Commission, the bills ought to have been raised on supply of electricity, whereas the Petitioner has issued the invoices only belatedly i.e. in 2017. Moreover, the above claims were neither raised in the Petition No. 157/MP/2015 nor in the Petition No. 121/MP/2017 and there was no determination of Change in Law in this respect. The Notifications dated 14.5.2015 and 19.5.2015 relied by the Petitioner, were never produced before the Commission either in Petition No. 157/MP/2015 or in Petition No. 121/MP/2017. While in the order dated 21.2.2018, the issue of 'levy of service tax on transportation of goods by a vessel from a place outside India to the first custom station of landing in India' was considered, the entire reasoning and analysis therein was related to issue of levy of service tax on ocean freight only i.e. 0% to 4.2% and there was no reference to the increase in service tax for other services from 12.24% to 14%. Similarly, the consideration of Swachh Bharat Cess and Krishi Kalyan Cess of 0.5% each therein also does not reflect the increase in service tax from 12.24% to 14%.

29. *Per contra*, the Petitioner has submitted as per the decision of the Hon'ble Supreme Court in Lanco Kondapalli's case, the limitation is applicable only when the Commission exercises its adjudicatory functions and not when the Commission exercises the regulatory functions. The Petitioner has submitted that on one hand the Respondents are taking a position that each and every Change in Law event is to be approved by this Commission (even in the absence of a dispute), which can only be

done by the Commission in exercise of its regulatory functions read with PPA provisions, and on the other hand they are seeking to apply the limitation. The Respondents cannot approbate and reprobate at the same time. According to the Petitioner, as per the provisions of Article 13 of the PPA, each Change in Law event is not required to be declared as such by the Commission and that the parties are required to approach the Commission, for a Change in Law claim, only if there is a dispute amongst them. The Petitioner has submitted that the supplementary invoices were raised on the Respondents in the year 2017 once the clarity qua mechanism of payment was provided by the Commission in its order dated 17.3.2017 in Petition No. 157/MP/2015. The Petitioner has submitted that it had raised the supplementary invoices on 12.5.2017 and 13.10.2017 for the period from June 2015 to March 2016 and April 2016 to June 2017 respectively, which were due on the 30th day after receipt of invoices by the Respondents. Thus, in terms of the provisions of the Limitation Act, the limitation period of 3 years expires on: (a) 10.6.2020 for the invoices raised on 12.5.2017; and (b) 10.11.2020 for the invoices raised on 13.10.2017. Therefore, the Petitioner's claim towards increase in service tax is within the period of limitation. It has also been submitted that the Respondents have wrongly contended that the period of limitation is to be computed from 14.5.2015, as the adjudicatory functions are exercised only when a 'dispute' arises between the parties and the cause of action for initiating a lis arises only when there is a 'dispute' amongst the parties, which could not be the date on which the notification on which the service tax was increased from 12.24% to 14%. Thus, in the present case, the dispute arose only when the invoices were unpaid by the Respondents. It has also been stated that the contention of the Respondents that the claim of the Petitioner is hit by the doctrine of delay and laches even if not barred under the Limitation Act is also erroneous. The principles of delay and laches are based on the maxim that

“Delay defeats equity”. The principle of delay and laches is not applicable in cases where the period of limitation is not prescribed in the statute. According to the Petitioner, in the facts of the present case, the dispute arose only when the invoices were unpaid by the Respondents. In this context, the Respondents have relied on Article 58 of Schedule I of Limitation Act to suggest that the period of limitation for seeking any other declaratory reliefs, is 3 years when the ‘right to sue’ arises. It is stated that, the reliance on Article 58 of the PPA is misleading, since the right to sue for a declaratory relief arises only when a right/ title over a property/ claim is denied by the other party. In other words, the said Article becomes applicable only when a dispute has arisen amongst the parties.

30. We have considered the submissions made by the Petitioner and the Respondents. The issue that arises for our consideration is whether the Petitioner's Change in Law claim for increase in rate of service tax from 12.24% to 14% is time barred and whether it suffers from delays and laches. The Act is a special statute which does not provide for any period of limitation for adjudication of money claims by this Commission. Though no period of limitation has been prescribed in the Act for filing Petitions for adjudication of disputes, the Hon`ble Supreme Court in Andhra Pradesh Power Co-ordination Committee Vs. Lanco Kondapalli Power Limited [(2016) 3SCC 468] held that the claims coming for adjudication before the Commission cannot be entertained or allowed if otherwise the same is not recoverable in a regular suit on account of law of limitation. Relevant extract of the said judgment is as under:

“30...In the absence of any provision in the Electricity Act creating a new right upon a claimant to claim even monies barred by law of limitation, or taking away a right of the other side to take a lawful defence of limitation, we are persuaded to hold that in the light of nature of judicial power conferred on the Commission, claims coming for adjudication before it cannot be entertained or allowed if it is found legally not recoverable in a regular suit or any other regular proceeding such as arbitration, on account of law of limitation. We have taken this view not only because it appears to be more just but also because unlike labour laws and the Industrial Disputes Act, the

Electricity Act has no peculiar philosophy or inherent underlying reasons requiring adherence to a contrary view.”

31. In the light of the above judgment, the limitation period prescribed in the Limitation Act, i.e. 3 years will be applicable for filing the application before the Commission. Vide the Finance Act, 2015, the effective rate of service tax was increased from 12.24% (inclusive of Education Cess) to 14% with effect from 1.6.2015. Being affected by the said Change in Law event, the Petitioner issued Change in Law notice for the said event, to the Procures on 31.8.2015 indicating the tentative impact of such Change in Law. It is also relevant to note that the Petitioner had also filed Petition No. 157/MP/2015 before the Commission on 8.6.2015 for determination of various Change in Law events that had impacted the Petitioner's costs and revenue during the operating period i.e. financial years 2011-12 to 2013-14. The said Petition was disposed of by the Commission on 17.3.2017, wherein the Commission not only recognized that increase in service tax is Change in Law event (albeit with reference to Works Contract) but also laid down the mechanism for compensation on account of Change in Law during the operating period for subsequent years as well. The relevant extract of the said order dated 17.3.2017 in Petition No. 157/MP/2015 is extracted as under:

“(D)The mechanism for compensation on account of Changes in Law during the operation period.

..... The Commission has specified a mechanism considering the fact that compensation of change in law shall be paid in subsequent contract years also. Accordingly, the following mechanism is prescribed to be adopted for payment of compensation due to change in law events allowed as per Article 13.4.2 of the PPA in the subsequent years of contracted period:

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

(b)The increase in clean energy cess, customs duty, excise duty on coal, Central Sales tax and service tax shall be computed based on actual payment subject to ceiling of coal consumed corresponding to scheduled generation and shall be payable by the beneficiaries pro-rata based on their respective share in the scheduled generation. In case of reduction of clean energy cess, custom duty, sale tax and

excise duty on coal, the Petitioner shall compensate the procurers on the basis of above principle.

(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 the Procurers during the year. The reconciliation statement duly certified by Auditor shall be retained by the Petitioner so that the same could be produced on demand from Procurers/ beneficiaries, if so desired.

(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 Article 13.2(b) of the PPA.

*(e)To approach the Commission every year for computation and allowance of compensation for such change in **law event which has been determined in this order is** a time consuming process which results in time lag between the amount paid by Seller and actual reimbursement by the Procurers. Accordingly, the mechanism prescribed above is to be adopted for payment of compensation due to change in law events allowed as per Article 13.2 (b) of the PPA for the subsequent period as well.*

56.The Commission has not made computation of the threshold value based on the claims for Change in Law allowed in this order. The Petitioner shall calculate the threshold value as per Article13.2 (b) of the PPA and if the impact due to Change in Law exceeds the threshold value, the Petitioner shall be entitled to raise the supplementary bills as per the PPA.”

32. However, one of the procurers, namely, GUVNL filed Review Petition No. 22/RP/2017 against the aforesaid order, seeking review of the order as regards relief of service tax on Works Contract on the basis that the service tax was already existing as on the cut-off date and that Notifications on basis of which relief was sought for by the Petitioner only gave an option to a person to discharge its service tax liability by paying an amount equivalent to 2% of gross amount charges instead of paying service tax. The Commission in its order dated 31.10.2017 allowed the said review Petition and subsequently the relief of service tax on Works Contract was withdrawn.

33. However, it is the case of the Petitioner that change in rate of service tax by the Finance Act, 2015 being unarguably Change in Law event and in terms of mechanism for compensation on account of Change in Law events for the subsequent years finalised by the Commission in its order dated 17.3.2015, the

Petitioner raised supplementary invoices dated 12.5.2017 and 13.10.2017 on to the Procurers seeking compensation on account of increase in service tax from 12.24% to 14% for the period from June 2015 to June 2017. Admittedly, apart from GUVNL and PSPCL, all other procurers have paid the amount against the said invoices. However, GUVNL and PSPCL have refused to pay the amount on the ground that the Change in Law event and the compensation thereof has not been determined by the Commission as required in terms of the PPA. *Per contra*, the Petitioner has submitted that as per the provisions of the PPA, the acknowledgement of each and every Change in Law event is not required by the Commission and it is only in the case of any dispute between the parties that the Commission is required to be approached by the parties. Regardless of the interpretation of the Article 13 of the PPA as put forth by the parties, we are of the view that the dispute between the parties in the present case arose only pursuant to the raising of supplementary invoices dated 12.5.2017 and 13.10.2017 by the Petitioner on the Respondents and subsequent refusal of payment by GUVNL and PSPCL in terms thereof. The payment of the invoices is due on the 30th day after receipt of Invoices by the Respondents. Thus, the 'dispute' (and consequently cause of action qua the Respondents, GUVNL and PSPCL) arose only after the expiry of the 30th day from the date of issuance of invoice when the payment of supplementary invoices were not made by the Respondents, GUVNL and PSPCL. Therefore, in terms of the provisions of the Limitation Act, the limitation period of 3 years expires on: (a) 10.6.2020 for the invoices raised on 12.5.2017; and (b) 10.11.2020 for the invoices raised on 13.10.2017. Even considering the date of the supplementary invoice (i.e. 12.5.2017) as date of receipt by the Respondents and therefore, the due date being 30 days thereafter, the present Petition filed on 14.11.2019, is squarely within the period of limitation of 3 years. Hence, we hold that

the claims of the Petitioner for compensation on account of increase in service tax from 12.24% to 14% are not time barred.

34. Having held that the Petitioner's claims are not time barred and within the period of limitation, the contentions of the Respondents do not survive.

Issue No. 4: Whether the compensation claims are admissible under Change in Law?

35. We proceed to deal with the claims of the Petitioner under Change in Law during the Operating Period:

(a) Increase in service tax from 12.24% to 14%

36. The Petitioner has submitted that as on cut-off date i.e. 30.11.2006, the service tax was levied at the base rate of 12% on most of the services availed by the Petitioner and in addition Education Cess @2% was levied on the taxable services. Thus, the effective rate of service tax payable was 12.24%. Thereafter, vide Finance Act, 2007, Secondary and Higher Education Cess @1% was levied on the aggregate value of service tax and thus, effective rate of service tax became 12.36%. Subsequently, on 14.5.2015, vide Finance Act, 2015, the effective rate of service tax was increased from 12.24% to 14% with effect from 1.6.2015 and further the Education Cess and Secondary and Higher Education Cess was subsumed into the service tax rate of 14%. The Petitioner has submitted that increase in the rate of service tax by the Finance Act, 2015 is clearly a Change in Law event in terms of the PPA. The Petitioner has submitted that as per its understanding of the provisions of the PPA, the parties are required to approach the Commission for declaration of Change in Law and determination of compensation thereof only when there is a dispute. Therefore, as per the mechanism qua compensation for Change in Law provided by the Commission vide its order dated 17.3.2017 in Petition No.

157/MP/2015, the Petitioner vide its supplementary invoices dated 12.5.2017 and 13.10.2017 raised its claims for compensation on account of increase in service tax from 12.24% to 14% for the period from 1.6.2015 to 30.6.2017. While the Respondents, MSEDCL, Rajasthan Discoms and HPGCL have paid as per the said invoice, the Respondents, GUVNL and PSPCL have disputed the claims. The Petitioner has also contended that the Commission in its order dated 21.2.2018 in Petition No. 121/MP/2017 had acknowledged that the service tax has been increased from 12.24% to 14%, while considering its Change in Law claims on ocean freight.

37. The Respondents have submitted that without the Commission declaring the event as to the Change in Law event, the Respondents had no obligation to and were not required to make the payment. The Petitioner ought to include a specific claim for increase in service tax. The Notifications dated 14.5.2015 and 19.5.2015 relied upon by the Petitioner were never produced before the Commission either in Petition No. 157/MP/2015 or in Petition No. 121/MP/2017 and in any case, there was no determination of Change in Law in this respect.

38. We have considered the submissions made by the parties. Prior to examining as to whether the change in the rate of service tax by enactment of Finance Act, 2015 constitutes a Change in Law event, it would be relevant to examine whether such increase has already been considered by the Commission in its orders in Petition No. 157/MP/2015 and Petition No. 121/MP/2017. The relevant extracts of the Commission's order dated 17.3.2018 in Petition No. 157/MP/2015 in regard to the increase in rate of service tax is as under:

"43. We have considered the submissions of the petitioner and MSEDCL. As on the cut-off date of 30.11.2006, there was no service tax on Works Contract Service. As per the bid documents, the petitioner was required to factor in all the taxes, cess, duties etc. in the bid. In the absence of service tax on Works Contract Service as on cut-off date, the petitioner could not be expected to factor the same while quoting the tariff. The service tax on works contract service was introduced through the Finance Act,

1994 and levied by the Ministry of Finance, Department of Revenue vide Notification No. 32/2007- service tax dated 22.5.2007 at the rate of 2% under Works Contract (Composition Scheme for Payment of service tax) Rules, 2007 issued under Section 93 and 94 of the Finance Act, 1994. Subsequently, Government of India, Ministry of Finance, Department of Revenue (Tax Research Unit) vide Notification No. 7/2008- service tax dated 1.3.2008 increased service tax on works contract service from 2% to 4%. Government of India, Ministry of Finance through Finance Act, 2007 levied a Secondary and High Educational Cess at the rate of 1% on aggregate duty of service tax levied and collected by the Central Government. The petitioner has been paying service tax on work contract service at the rate of 4% and 1% of Secondary and Higher Education Cess to the tune of Rs.13 lakh and Rs. 39 lakh for the years 2012-13 and 2013-14 respectively since the effective date of the notifications. Therefore, the service tax on works contract service and levy of Secondary and Higher Education cess were introduced after the cut-off date through the Act of Parliament and the rates were being notified from time to time by Ministry of Finance (Department of Revenue) and Department of Revenue (Tax Research Unit) which are Indian Government Instrumentalities. Accordingly, the claim of the petitioner is allowed under Change in Law. The petitioner shall submit to the beneficiaries the auditor certificate based on the service tax paid on the service component of the works contract after obtaining all relevant documents from the contractor on annual basis.”

39. Further, the aforesaid order was sought to be reviewed by the Respondent, GUVNL vide Review Petition No. 22/RP/2017 on the ground that there was no change in service tax as regard the works contract subsequent to the cut-off date. The said Review Petition was allowed by the Commission vide order dated 31.10.2017 and consequently held that the Petitioner is not entitled for service tax on works contract services.

“15. Based on the above discussions, there exists sufficient reasons to review the impugned order dated 17.3.2017 with regard to the decision to allow the service tax on Works Contract services under Change in Law as claimed by the respondent, CGPL. Considering the fact that the increase in service tax has resulted due to exercise of an option by the Petitioner, we in line with the decision of the Commission dated 31.8.2017 in Petition No. 141/MP/2016, review the decision in para 43 of the order dated 17.3.2017 as under:

“43. It is noticed that the service tax of 12% was imposed on service component/ elements of Works Contract, thereby effectively considering 2% of service tax on Works Contract at the time of the bid. This has been considered by the Petitioner as on the cut-off date (30.11.2006). Thus, the notification dated 22.5.2007 of the Ministry of Finance giving options to the persons by paying an amount equal to 2% of the gross amount charged for the Works Contract, instead of paying service tax at the rate specified under the Finance Act, 1994 is not a new levy but an option given to the person to pay 2% of the gross instead of 12% of the service component. Thus, in our view, the exercise of option by the Petitioner, which is beneficial to the person liable to pay tax, cannot therefore be termed as

a Change in law event falling within the scope of Article 13 of the PPA. Similarly, the increase of service tax to 4% as per Notification dated 1.3.2008 is also an option to the person to discharge his tax liability. Since the increase in service tax has resulted due to exercise of an option by the Petitioner, the impact of the same cannot be passed on to the Procurers. In this background, the claim of the Petitioner during the Operating period is not allowed.”

Accordingly, the Respondent shall not be entitled for service tax on works contract under change in law. The impugned order dated 17.3.2017 shall stand modified to this extent.”

40. Thereafter, the Petitioner had filed Petition No.121/MP/2017 seeking compensation on account of occurrence of Change in Law events, namely, (a) levy of Swachh Bharat Cess, (ii) levy of Krishi Kalyan Cess, (c) levy of service tax on transportation of goods by vessels from a place outside India to the first customs station landing in India, and (d) Corporate Social Responsibility. The said Petition was decided by the Commission vide its order dated 21.2.2018, wherein the Commission, *inter-alia*, allowed the Petitioner's claims regarding Swachh Bharat Cess and Krishi Kalyan Cess only on the four services, being:- (a) port services; (b) technical testing; (c) transportation of goods by road; and (d) ocean freight, being the services which are directly related to business of generation and sale of electricity. The relevant extract of the order dated 21.2.2018 is as under:

“39. We have considered the submissions of the Petitioner and Respondents. Krishi Kalyan Cess has been imposed by an Act of Parliament on the taxable services at the rate of 0.5%. 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 per cent, on the value of such services for the purposes of financing and promoting initiatives to improve agriculture or for any other purpose relating thereto.

162 (3). The Krishi Kalyan Cess leviable under sub-Section (2) shall be in addition to any cess or service tax leviable on such taxable services under Chapter V of the Finance Act, 1994, or under any other law for the time being in force.”

Therefore, Krishi Kalyan Cess @ 0.5% is a service tax on taxable service and has been introduced through an Act of Parliament and is therefore covered under change in law. The Commission has already allowed Krishi Kalyan Cess as change in law events vide order dated 1.2.2017 in Petition No. 8/MP/2014, order dated 6.2.2017 in Petition No. 156/MP/2014 and order dated 7.4.2017 in Petition No. 112/MP/2015. The Commission

had directed the Petitioner to submit the taxable service on which Krishi Kalyan Cess has been levied. The Petitioner has given list of 24 taxable services as extracted in Para 32 of this order. We have examined the taxable service and find that only 4 services at Sr. No. 1, 18, 21 and 23 are directly related to the input cost for generation and sale of power by the Petitioner to the procurer. Accordingly, Krishi Kalyan Cess at the rate of 0.5% is allowed on the following services:

(a) Transportation of goods by a vessel from a place outside India to the first customs landing station in India- Ocean Freight on coal received at Mundra.

(b) Port Service- Fixed Port Handling charges and Permission Charges on usage of intake channel.

(c) Technical Testing & Analysis Agency- Coal analysis charges and coal stock yard sampling& analysis and Drinking Water sampling and analysis.

(d) Transport of goods by road- Hiring utility vehicle for material transportation and transportation charges on LDO, various equipment sent for repairing.

The Petitioner shall submit the Audited Certificate as regard to actual payment of Krishi Kalyan Cess to the Procurers while claiming the same under Change in Law.”

41. Thus, as is apparent from the above orders, neither in Petition No. 157/MP/2015 nor in Petition No. 121/MP/2017, the Petitioner had claimed the increase in rate of service tax as per Notification of Finance Act, 2015. Therefore, we need to first examine whether increase in the effective rate of service tax by enactment of Finance Act, 2015 constitutes a Change in Law event.

42. The Finance Act, 2015 notified on 14.5.2015 in regard to service tax provides as under:

“108. In section 66B of the 1994 Act, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, for the words “twelve per cent.”, the words “fourteen per cent.” shall be substituted.”

43. Further, Department of Revenue, Ministry of Finance vide its letter dated 10.4.2015 clarified as regards rate of service tax as under:

“3. service tax Rate:

3.1 The rate of service tax is being increased from 12% plus Education Cesses to 14%. The ‘Education Cess’ and ‘Secondary and Higher Education Cess’ shall be subsumed in the revised rate of service tax. Thus, the effective increase in

service tax rate will be from the existing rate of 12.36% (inclusive of all cesses) to 14%, subsuming the cesses.

3.2 In this context, an amendment is being made in section 66B of the Finance Act, 1994. Further it has been provided vide clauses 179 and 187 respectively of the Finance Bill, 2015 that section 95 of the Finance Act, 2004 and 140 of the Finance Act, 2007, levying Education Cess and Secondary and Higher Education Cess on taxable services shall cease to have effect from a date to be notified by the Government.

3.3 The new service tax rate shall come into effect from a date to be notified by the Central Government after the enactment of the Finance Bill, 2015.”

44. Since the above Notification issued by Department of Revenue, Ministry of Finance, that has increased rate of service tax on taxable services, is consequent upon an Act of Parliament, the same is covered under Change in Law event in terms of Article 13.1.1 (i) of the PPA. The Commission in similar cases has held that the increase in service tax to 14% by Ministry of Finance, Department of Revenue vide its Notification No. 14/2015- service tax dated 19.5.2015 is a Change in Law event and the generator is allowed to be compensated by the beneficiaries @ of difference between 14% and the rate of service tax (%) which prevailed as on cut-off date duly considering the applicable percentage on which service tax was payable for particular services. In this regard, an extract from order of the Commission dated 12.6.2019 in Petition No. 118/MP/2018 is as below:

“103. 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. Therefore, as on cut-off date i.e. 17.9.2012 in case of the PPAs, 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 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. 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	Admissible rate of service tax under Change in Law
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		service tax	
17.09.2012 (cut-off date)	12.36%		
1.10.2012	12.36%	3.708%	0%
01.06.2015	14.00%	4.200%	0.492%
15.11.2015	14.50%	4.350%	0.642%
01.06.2016	15.00%	4.500%	0.792%

45. Accordingly, the Petitioner is entitled to compensation on account of increase in the rate of service tax from 12.24% to 14%. However, it is relevant to note that the Petitioner has not indicated the services for which the compensation on account of increase in the rate of service tax from 12.24% to 14% has been sought for.

46. The Respondents have contended that the increase in rate of service tax can be considered if at all only on the services which are directly related to the generation and supply of the electricity. MSEDCL has further pointed out that the Auditor Certificate submitted by the Petitioner pursuant to the Commission's order dated 17.3.2017 indicates that it has also considered the service tax on O&M expenses. The Commission having already disallowed the claim of increase in service tax on O&M contracts as Change in Law event in its order dated 2.4.2019 in Petition No. 72/MP/2018 (GMR Kamalanga Energy Limited v. Dakshin Haryana Bijli Vitran Nigam Limited and Ors.), in the instant case also, the Change in Law on O&M contracts ought not to be allowed. MSEDCL has referred to the order of Maharashtra Electricity Regulatory Commission dated 6.8.2019 in the Case No.117 of 2019.

47. In response, the Petitioner has submitted that the decision of the Commission in 72/MP/2018 is not applicable in the present case. In the said decision, the Commission had relied upon its earlier order dated 9.10.2018 in Petition No. 188/MP/2017 (Acme Bhiwandi Solar Power Pvt. Ltd. v. SECI and Batch) and denied increase in O&M cost on account of subsuming of service tax into GST laws on the

basis that outsourcing of O&M was not the requirement of bidding documents/PPA. However, in the present case, the bidding documents (Annex-6 of RfP) as well as the PPA {definition of 'O&M contracts' and Article 12.3(ii)(1)(b)} always contemplated that there could be a third party contractor for performing O&M activities. It is a settled law that if an event qualifies as a Change in Law, then necessary consequences qua such Change in Law must follow. Increase in service tax, after the cut-off date, qualifies as a Change in Law and accordingly, the restitutory relief ought to be granted to the Petitioner. The Petitioner in its Petition No. 157/MP/2015 had also stated that the compensation is to be granted to the procurers on account of decrease in Central Sales Tax (from 4% to 2%) and decrease in Excise Duty (from 16.32% to 12.36%), which were levied on spares and consumable, which are utilised for O&M. Thus, once benefits of reduction in taxes and duties (CST and ED) applicable on material/ services used for O&M have been passed on to the Procurers, then the burden due to increase in tax rate applicable on O&M is also required to be shared by the Procurers.

48. We have considered the submissions made by the parties. However, as noted above, the issue of admissibility of the Petitioner's Change in Law claims regarding levy of Krishi Kalyan Cess and Swachh Bharat Cess in respect of the various services availed by the Petitioner has already been examined by the Commission in its order dated 21.2.2018 in Petition No.121/MP/2017. It is only after examining the list of taxable services as, the Commission admitted the reliefs only for four services, namely, (a) port services; (b) technical testing; (c) transportation of goods by road; and (d) ocean freight, being the services which are directly related to business of generation and sale of electricity. However, the levy of service tax on ocean freight was exempted till 1.6.2016 and the levy of the service tax thereafter being Change in Law event has already been considered and approved by the Commission in its order

dated 21.2.2018 in Petition No. 121/MP/2017. Accordingly, the Petitioner's entitlement to the compensation on account of increase in the rate of service tax due to enactment of Finance Act, 2015 shall be limited to the balance three services only.

49. We also observe that service tax has been subsumed into GST w.e.f. 1.7.2017. Therefore, claims on account of change in rate of service tax shall be payable only up to 30.6.2017.

(b) Subsuming of service tax into IGST

50. The Petitioner has submitted that upon the GST regime coming into effect from 1.7.2017, various pre-existing taxes, duties and cesses were subsumed into GST. Accordingly, the Petitioner had sought compensation on account of GST on (a) port services, (b) technical testing, (c) transportation of goods by road and (d) ocean freight, being the services approved by the Commission in its order dated 21.2.2018 in Petition No.121/MP/2017. While the Respondents, PSPCL and HPGCL have made the payment to the Petitioner on account of subsuming of service tax into IGST, the Respondents, GUVNL, MSEDCL and Rajasthan Discoms have not paid the compensation payable to the Petitioner on the basis that the Commission had not allowed GST on these services as Change in Law. The issue of GST as a Change in Law is no longer *res integra*. The Commission in its order dated 14.3.2018 has already observed that the GST is a Change in Law and that upon the introduction of GST, various taxes/ cesses have been abolished and/ or stand subsumed within GST and service tax is one such tax that has been subsumed within GST. It has also been held that the subsuming of service tax into GST is a Change in Law event and in place of the service tax, the Petitioner is now liable to pay GST on various services availed by it in the course of its business of generation of electricity. In terms of the

Commission's order dated 14.3.2018 read with Article 13 of the PPA, the Petitioner is entitled to recover the impact of GST from the procurers.

51. The Respondents, GUVNL and MSEDCL have submitted that since the service tax on the three services, namely, on (a) port services, (b) technical testing, and (c) transportation of goods by road was not approved, GST on such services cannot be considered to be approved. In respect of GST on the ocean freight, which was approved by the Commission in its order dated 21.2.2018, GUVNL and MSEDCL have already made the payments. Thus, where the Commission had already held the tax to be Change in Law, the subsuming of the same in the GST has been passed through in continuation to the above.

52. We have considered the submissions of the parties. As already noted above, the Commission in its order dated 21.2.2018 in Petition No. 121/MP/2017 has already allowed levy of service tax on ocean freight w.e.f. 1.6.2016 as well as the levy of Swachh Bharat Cess and levy of Krishi Kalyan Cess @0.50% each as Change in Law events on (a) port services, (b) technical testing, (c) transportation of goods by road, and (d) ocean freight and has held that the Petitioner is entitled to compensation on account of the above Change in Law events.

53. Further, in regard to subsuming of service tax into GST, the Commission in its order dated 14.3.2018 in Petition No. 13/SM/2017 has also held that service tax, Swachh Bharat Cess and Krishi Kalyan Cess have been subsumed in GST, and the same is a Change in Law event. The relevant extract of the said order reads as under:

“....

29.Keeping in view the above point and earlier decisions of this Commission allowing/disallowing as change in law, the submissions made by Generator/s and Distribution Company/ies have been analyzed. From the analysis done on the submissions, the Commission finds that apart from the GST compensation cess,

following taxes, duties, cess etc. are change in law events as a result of enactment of various legislations as indicated in paragraph 4, 7 and 8 of this order. The list in not exhaustive and is only indicative.

- i. Taxes, duties and cess levied (wherever applicable):*
 - a. IGST at the rate of 5 per cent,*
 - b. GST of 5 per cent on transportation of coal by rail,*
 - c. GST compensation Cess of Rs.400 per tonne.*
- ii. Taxes and duties subsumed:*
 - a. Central Excise duty,*
 - b. Central Sales Tax,*
 - c. VAT,*
 - d. Stowing Excise duty,*
 - e. Additional duty of custom – Countervailing Duty (CVD)*
 - f. Special Additional duty of Customs and other Central Surcharges and Cesses,*
 - g. service tax,*
 - h. KrishiKalayan Cess,*
 - i. Swacch Bharat Cess,*
 - j. Education Cess and Secondary and Higher education cess,*
 - k. Entry Tax and Octroi*

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.

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....”

54. Accordingly, the Petitioner is entitled to recover the impact of GST on account of subsuming of service tax including Swachh Bharat Cess and Krishi Kalyan Cess into IGST for the four services as allowed by the Commission in its order dated 21.2.2018 in 121/MP/2017. Moreover, as in foregoing paragraphs, the Commission

has also allowed the relief of Change in Law qua increase in rate of service tax (from 12.24% to 14%) on the above services to the Petitioner, the objection of the Respondents that service tax on (a) port services, (b) technical testing, and (c) transportation of goods by road was not approved and, therefore, GST on such services cannot be considered, no longer survives.

55. The Petitioner has further prayed that sharing of compensation on account of increase in IGST/ service tax applicable on the three Services (Port Services, Good Transport Agency (GTA) & Testing Calibration charges) be allowed to be shared by procurers in their Allocated Contracted Capacity. The Petitioner has submitted that though these services are directly relatable to the business of generation and sale of electricity, these services have no nexus with the quantum of electricity produced/ generated/ sold by the Petitioner. The Commission had applied this principle of sharing of compensation on account of Change in Law in the ratio of Allocated Contracted Capacity when allowing the impact of Change in Law on ED, CST & GVAT.

56. The Respondents have submitted that the impact has to be based on quantum of coal considered as per the actual quantum or quantum as per bid assumed parameters for SHR, GCV, Auxiliary Consumption etc. whichever is lower. These parameters have already been held by the Commission in its order dated 17.3.2017 in Petition No. 157/MP/2015 read with order dated 31.10.2017 in Petition No. 22/RP/2017. 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 Change in Law.

57. We have considered the submissions of the parties. The Commission has already laid down the mechanism for recovery of compensation including the

compensation on account of increase in service tax and levy of Swachh Bharat Cess and Krishi Kalyan Cess on the allowed services in its order dated 21.2.2018 in Petition No. 121/MP/2017 read with order dated 3.9.2019 in IA No. 71/2018 in Petition No. 121/MP/2017. Accordingly, in the present case also, the Petitioner shall be entitled to recover its compensation in the same manner as held by the Commission in the above order.

58. It is noticed that while the Rajasthan Discoms have not contested the Petitioner's claim on account of subsuming of service tax into IGST, they have submitted that the Petitioner has not provided the requisite documents/ proof of payment as per the Commission's order dated 14.3.2018 in Petition No.13/SM/2017. It has been submitted that while the Petitioner submitted the Auditor Certificate for the GST paid, the overall GST paid also includes GST paid for the services of Port service, Technical testing and Analysis agency and transport of goods by road whereas the Commission in its order dated 21.2.2018 in Petition No. 121/MP/2017 had only approved levy of Swachh Bharat Cess and Krishi Kalyan Cess on these three services. Accordingly, the Respondents vide their various letters requested for submission of methodology on bifurcation of taxes and proof of payment and since the Petitioner was not able to furnish the same, the claims could not be verified and payments have not been released. In response, the Petitioner has submitted that during various discussion/ meetings with the Respondents, the Petitioner had explained to the Respondents that upon introduction of GST, various taxes and cess were subsumed into GST/IGST as clearly recorded in the order dated 14.3.2018 and that the bifurcation of service tax and Cess payable by the Petitioner as sought by the Respondents is irrelevant for the purpose of payment of compensation to the Petitioner. Introduction of GST is a separate and distinct tax, which impacts the Petitioner's business of generation and sale of electricity. As regards the proof of

payment of GST being not provided by the Petitioner, IGST being an indirect tax, liability to discharge such tax lies with the service provider and not with service recipient. The Petitioner being a service recipient is not in a position to furnish any proof of payment of service tax/IGST. However, in order to provide compensation payable by the Respondents, Rajasthan Discoms, the Petitioner has provided copies of the auditor's certificates in terms of the Commission's order dated 14.3.2018. The Petitioner has also provided the proof of payments in cases where the Petitioner is liable to pay IGST under the reverse charge mechanism. Accordingly, the Petitioner has met with the requirements of providing relevant information to the Respondents Rajasthan Discoms.

59. We have considered the submissions of the parties. It is pertinent to note that while the Respondents, Rajasthan Discoms have not denied the Change in Law claim of the Petitioner on account of subsuming of service tax into IGST, the payments have not been processed by them citing absence of relevant information/ documents. On the other hand, the Petitioner has submitted that the issues have been discussed and it has submitted/ provided all the necessary and relevant information to the Rajasthan Discoms. Thus, the issue between the parties appears to be of reconciliation of the claims. However, since in the succeeding paragraphs, we have directed the Petitioner to issue revised supplementary invoice(s), if required, we are not inclined to go into this issue.

(c) Carrying cost

60. The Respondents have submitted that the Petitioner cannot claim carrying cost for the period where there has been delay and laches on part of the Petitioner itself. Any claims of the Change in Law can be enforced only after the decision by the Commission which in turn can only be after the Petitioner has filed the Petition and

submitted the complete information and not before. Therefore, any delay in the determination of the impact of Change in Law is on account of the Petitioner as the Petitioner had not filed the Petition and/or not placed the complete information and supporting documents. In support of their contention, the Respondents have relied upon the decision of the APTEL dated 19.9.2007 in Appeal No. 70 of 2007 (MSEDCL v. MERC), which was also followed in the decision dated 30.5.2014 in Appeal No. 147 of 2013 and Ors. (Torrent Power Ltd. v. GERC) and decision dated 4.12.014 in Appeal No. 45 of 2014 (Paschim Gujarat Vij Company Ltd. v. GERC).

61. *Per contra*, the Petitioner has submitted that the Respondents have unreasonably withheld the payment of compensation to the Petitioner and, therefore, the Respondents are required to be directed to pay the compensation amount along with the carrying cost at the rate of SBAR+2% in terms of the PPA provisions. There was no delay or laches on part of the Petitioner as contended by the Respondents. Regardless, such contentions are only with regard to claim of increase in service tax from 12.24% to 14% and not on the issue of subsuming of service tax into IGST. Despite the orders of the Commission, the Respondents, Rajasthan Discoms, GUVNL and MSEDCL have refused to pay the compensation on one pretext or the other.

62. We have considered the submissions of the Petitioner. APTEL in its judgment dated 13.4.2018 in Appeal No. 210 of 2017 in the matter of Adani Power Limited v. Central Electricity Regulatory Commission & Ors. has allowed the carrying cost on the claim under Change in Law and held as under:

“ix. In the present case we observe that from the effective date of Change in Law the Appellant is subjected to incur additional expenses in the form of arranging for working capital to cater the requirement of impact of Change in Law event in addition to the expenses made due to Change in Law. As per the provisions of the PPA the Appellant is required to make application before the Central Commission for approval of the Change in Law and its consequences. There is always time lag between the happening of Change in Law event till its approval by the Central Commission and this time lag

may be substantial.....We also observe that this Tribunal in SLS case after considering time value of the money has held that in case of re-determination of tariff the interest by a way of compensation is payable for the period for which tariff is redetermined till the date of such re-determination of the tariff. In the present case after perusal of the PPAs we find that the impact of Change in Law event is to be passed on to the Respondent Nos. 2 to 4 by way of tariff adjustment payment as per Article 13.4 of the PPA.

From the above it can be seen that the impact of Change in Law is to be done in the form of adjustment to the tariff. To our mind such adjustment in the tariff is nothing less than re- determination of the existing tariff.

x. Further, the provisions of Article 13.2 i.e. restoring the Appellant to the same economic position as if Change in Law has not occurred is in consonance with the principle of "restitution" i.e. restoration of some specific thing to its rightful status. Hence, in view of the provisions of the PPA, the principle of restitution and judgement of the Hon'ble Supreme Court in case of Indian Council for Enviro-Legal Action vs. Union of India &Ors., we are of the considered opinion that the Appellant is eligible for Carrying Cost arising out of approval of the Change in Law events from the effective date of Change in Law till the approval of the said event by appropriate authority. It is also observed that the Gujarat Bid-01 PPA have no provision for restoration to the same economic position as if Change in Law has not occurred. Accordingly, this decision of allowing Carrying Cost will not be applicable to the Gujarat Bid-01 PPA.

xi. Accordingly, this issue is decided in favour of the Appellant in respect of above mentioned PPAs other than Gujarat Bid – 01 PPA."

63. The aforesaid judgment of APTEL was challenged before the Hon'ble Supreme Court wherein the Hon'ble Supreme Court vide its judgment dated 25.2.2019 in Civil Appeal No. 5865 of 2018 with Civil Appeal No.6190 of 2018 (Uttar Haryana Bijli Vitran Nigam Limited & Anr. vs. Adani Power Ltd. & Ors.) has upheld the judgment of APTEL regarding payment of carrying cost to the generator on the principles of restitution and held as under:

"10. A reading of Article 13 as a whole, therefore, leads to the position that subject to restitutionary principles contained in Article 13.2, the adjustment in monthly tariff payment, in the facts of the present case, has to be from the date of the withdrawal of exemption which was done by administrative orders dated 06.04.2015 and 16.02.2016. The present case, therefore, falls within Article 13.4.1(i). This being the case, it is clear that the adjustment in monthly tariff payment has to be effected from the date on which the exemptions given were withdrawn. This being the case, monthly invoices to be raised by the seller after such change in tariff are to appropriately reflect the changed tariff. On the facts of the present case, it is clear that the respondents were entitled to adjustment in their monthly tariff payment from the date on which the exemption notifications became effective. This being the case, the restitutionary principle contained in Article 13.2 would kick in for the simple reason that it is only after the order dated 04.05.2017 that the CERC held that the respondents were entitled to claim added costs on account of change in law w.e.f. 01.04.2015. This being the case, it would be fallacious to say that the respondents would be claiming this restitutionary amount on some general principle of equity outside the PPA. Since it is clear that this amount of carrying cost is only relatable to Article 13 of the PPA, we find no reason to interfere with the judgment of the Appellate Tribunal.

16.....*There can be no doubt from this judgment that the restitutionary principle contained in Clause 13.2 must always be kept in mind even when compensation for increase/decrease in cost is determined by the CERC.*"

64. Further, Article 13.2 of the PPA provides as under:

"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."

65. In view of the provisions of the PPA, the principles of restitution and the judgment of Hon'ble Supreme Court, we are of the considered view that the Petitioner is eligible for carrying cost arising out of approved Change in Law events from the effective date of Change in Law till the actual payment is made to the Petitioner. However, in the foregoing paragraphs, we have observed that so far as its claims towards increase in service tax is concerned, there is a delay on the part of the Petitioner in filing this Petition vis-à-vis occurrence of Change in Law events and, therefore, on these claims, the Petitioner will be entitled to carrying cost only from the date of filing of the Petition. Thus, while the claim of the Petitioner as regards increase in rate of service tax is not time-barred, the carrying cost on the claim can be paid only when the Petitioner has filed this petition. Once a supplementary bill is raised by the Petitioner in terms of this order, the provisions of Late Payment Surcharge in the PPA would kick in if the payment is not made by the Respondents within Due Date.

66. The Commission in its order dated 17.9.2018 in Petition No.235/MP/2015 (AP(M)L vs UHBVNL &Ors.) has decided the issue of carrying cost as under:

"24. After the bills are received by the Petitioner from the concerned authorities with regard to the imposition of new taxes, duties and cess, etc. or change in rates of existing taxes, duties and cess, etc., the Petitioner is required to make payment within a stipulated period. Therefore, the Petitioner has to arrange funds for such payments. The Petitioner has given the rates at which it arranged funds during the relevant period. The Petitioner has compared the same with the interest rates of IWC as per the Tariff Regulations of the Commission and late payment surcharge as per the PPA as under:

<i>Period</i>	<i>Actual interest rate paid by the Petitioner</i>	<i>Working capital interest rate as per CERC Regulations</i>	<i>LPS Rate as per the PPA</i>
2015-16	10.68%	13.04%	16.29%
2016-17	10.95%	12.97%	16.04%
2017-18	10.97%	12.43%	15.68%

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.

26. The Petitioner shall work out the Change in Law claims and carrying cost in terms of this order. As regards the carrying cost, the same shall cover the period starting with the date when the actual payments were made to the authorities till the date of issue of this order. The Petitioner shall raise the bill in terms of the PPA supported by the calculation sheet and Auditor's Certificate within a period of 15 days from the date of this order. In case, delay in payment is beyond 30 days from the date of raising of bills, the Petitioner shall be liable for late payment surcharge on the outstanding amount."

67. In line with above order of the Commission, in the instant case, so far as its Change in Law claims towards subsuming of service tax into IGST is concerned, the Petitioner shall be eligible for carrying cost from 1.1.2017 at the actual interest rate paid by the Petitioner for arranging funds (supported by Auditor's Certificate) or the Rate of Interest on Working Capital as per the applicable CERC Tariff Regulations or the Late Payment Surcharge Rate as per the PPA, whichever is lower. However, as stated earlier, in so far as Change in Law claims towards increase in rate of service tax is concerned, the Petitioner shall be eligible for carrying cost as per the above rates only from the date of filing of the Petition.

Issue No. 5: What should be the mechanism for processing and reimbursement of admitted claims under Change in Law?

68. Article 13.2(b) of the PPA dated 22.4.2007 provides for the principle for commuting the impact of Change in Law during the operation period as under:

"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 in aggregate for a Contract Year."

69. The Commission in its orders in Petition No. 157/MP/2015 and Petition No. 121/MP/2017 has provided for the mechanism for compensation under Change in Law and accordingly, the same mechanism shall be applied for the Change in Law claims covered in the present Petition. It is also observed that the Petitioner had already issued the supplementary bill(s) for the Change in Law event i.e. increase in rate of service tax and subsuming service tax into GST on to the Respondents/ procurers and some of the Respondents/ procurers have already made the payment. However, in view of our decision in the foregoing paragraphs, the Petitioner will issue revised supplementary bill(s), if required. In cases where the Respondents/ procurers have already made the surplus/ excess payments against the supplementary bill(s)/ invoices already raised, treatment of such excess amount will be governed as per the provisions of the PPA.

70. For the sake of the clarity, the final prescription for arriving at the "**Admissible rate of service tax under Change in Law**" including compensation for increase in service tax rate from 12.24% to 14%, Swachh Bharat Cess and Krishi Kalyan Cess and subsequent subsuming of all these into GST for four services allowed by the Commission will be as under:

(a) Transportation of goods by Road

Applicability date	Rate of service tax	Service tax on transportation of goods by road @25% of service tax till 31.6.2017/ GST	Admissible rate of service tax/GST under Change in Law
30.11.2006 (cut-off date)	12.24%	3.06%	
1.6.2015	14%	3.5%	0.44%
15.11.2015	14.50%	3.625%	0.565%
1.6.2016	15.00%	3.75%	0.69%
1.7.2017		5%	1.94%

(b) Ocean Freight on coal received

Applicability date	Rate of service tax	Service tax on ocean freight on coal received @30% of service tax from 1.6.2016 till 31.6.2017/ GST	Admissible rate of service tax/GST under Change in Law
30.11.2006 (cut-off date)	12.24%	0%	0%
1.6.2015	14%	0%	0%
15.11.2015	14.50%	0%	0%
1.6.2016	15.00%	4.5%	4.5%
1.7.2017		5%	5%

(c) Technical testing and analysis

Applicability date	Rate of service tax	Service tax on technical testing & analysis till 31.6.2017/ GST	Admissible rate of service tax/ GST under Change in law
30.11.2006 (cut-off date)	12.24%	0%	0%
1.6.2015	14%	14%	1.76%
15.11.2015	14.50%	14.50%	2.26%
1.6.2016	15.00%	15.00%	2.76%
1.7.2017		18%	5.76%

(d) Port services

Applicability date	Rate of service tax	Service tax on port services till 31.6.2017/ GST	Admissible rate of service tax/GST under Change in Law
30.11.2006 (cut-off date)	12.24%	0%	0%
1.6.2015	14%	14%	1.76%
15.11.2015	14.50%	14.50%	2.26%
1.6.2016	15.00%	15.00%	2.76%
1.7.2017		18%	5.76%

71. We have not computed the threshold value based on the claims for Change in Law events allowed in this order. The Petitioner shall calculate the threshold value as per Article 13.2(b) of the PPA and if the impact due to Change in Law exceeds the threshold value, the Petitioner shall be entitled to the compensation as per PPA.

72. With regard to prayer (e) of the Petitioner, Article 13.1.1 and 13.2(b) of the PPA provides that the Change in Law event and its compensation has to be decided by

the Commission. Therefore, with regard to the Petitioner's prayer about future changes in rate of taxes/ cesses/ levies, which have been approved by this Commission as Change in Law events, there is no requirement to approach the Commission. However, for declaration/ approval of any new event to be claimed as a Change in Law event and consequent determination of compensation in terms of Article 13.2(b) of the PPA, the parties are required to approach the Commission on case to case basis.

73. The Petition No. 404/MP/2019 is disposed of in terms of the above.

Sd/-
(Arun Goyal)
Member

sd/-
(I.S. Jha)
Member