

CENTRAL ELECTRICITY REGULATORY COMMISSION NEW DELHI

Petition No.202/MP/2021

Coram:

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

Date of Order: 27th April, 2023

In the matter of

Petition for execution/implementation of the order dated 3.6.2019 passed under Section 79 of the Electricity Act, 2003 by this Commission in Petition No. 156/MP/2018; and initiation of proceedings under Section 142 of the Electricity Act, 2003 against Uttar Pradesh Power Corporation Limited and Uttar Pradesh Discoms in relation thereto.

And

In the matter of

MB Power (Madhya Pradesh) Limited,
239, Okhla Industrial Estate, Phase-III,
New Delhi-110 020

...Petitioner

Versus

1. Uttar Pradesh Power Corporation Limited,
7th Floor, Shakti Bhawan,
14, Ashok Marg, Lucknow – 226001
2. Pashchimanchal Vidyut Vitran Nigam Limited,
Urja Bhawan, Victoria Park,
Meerut – 250001
3. Purvanchal Vidyut Vitran Nigam Limited,
DLW Bhikaripur,
Varanasi – 221004
4. Madhyanchal Vidyut Vitran Nigam Limited,
4A, Gokhale Marg,
Lucknow – 226001
5. Dakshinanchal Vidyut Vitran Nigam Limited,
Urja Bhawan, NH – 2,
(Agra-Delhi Bypass Road),

Sikandra, Agra – 282002

6. PTC India Limited,
2nd Floor, NBCC Tower,
15, Bhikaji Cama Place,
New Delhi-110066

....Respondents

Parties present:

Shri Amit Kapur, Advocate, MBPMPL
Shri Akshat Jain, Advocate, MBPMPL
Shri Avdesh Mandloi, Advocate, MBPMPL
Shri Abhishek Gupta, MBPMPL
Shri Sitesh Mukherjee, Advocate, UPPCL
Shri Abhishek Kumar, Advocate, UPPCL
Shri Karan Arora, Advocate, UPPCL
Shri Nived Veerapaneni, Advocate, UPPCL
Shri Ravi Kishore, Advocate, PTC
Shri Keshav Singh, Advocate, PTC
Shri Deepak Raizada, UPPCL
Shri Dhruv Tripathi, PTC

ORDER

The Petitioner, MB Power (Madhya Pradesh) Limited (hereinafter referred to as 'the Petitioner'/'MB Power') a generating company, incorporated under the Companies Act, 1956, has developed a 1200 MW coal based thermal power project (hereinafter referred to as the 'Project') in District Anuppur in the State of Madhya Pradesh. The Project comprises of two units of 600 MW each. Unit-I and Unit-II of the Project achieved COD on 20.5.2015 and 7.4.2016 respectively.

2. The Petitioner has entered into the following Power Purchase Agreements (PPA) for supply of power from the Project:

(a) Supply of 361 MW to Uttar Pradesh Discoms, namely Paschimanchal Vidyut Vitran Nigam Limited, Purvanchal Vidyut Vitran Nigam Limited, Madhyanchal

Vidyut Vitran Nigam Limited and Dakshinanchal Vidyut Vitran Nigam Limited (UP Discoms), through PTC India Limited (PTC);

(b) Supply of 30% of the installed capacity of the Project to Madhya Pradesh Power Trading Company Limited, Madhya Pradesh Poorva Kshetra Vidyut Vitran Nigam Limited, Madhya Pradesh Madhya Kshetra Vidyut Vitran Nigam Limited and Madhya Pradesh Kshetra Vidyut Vitran Nigam Limited; and

(c) Supply of 5% of the net output of the Project to Madhya Pradesh Power Trading Company Limited.

3. On 20.1.2014, the Petitioner and PTC entered into a long term Power Purchase Agreement for supply of 361 MW power from the Petitioner`s Project to UP Discoms/ Uttar Pradesh Power Corporation Limited (UPPCL) for a period of 25 years from the Scheduled Delivery Date, through a back to back long term PPA dated 18.1.2014 entered into between PTC and UP Discoms/ UPPCL.

4. The chronological dates of events with regard to the UP Discoms PPA are as under:

Power Supply to	UPPCL under Long Term PPA (361 MW)
Cut-off date	17.9.2012
Date of submission of bid	24.9.2012
PPA executed on	20.1.2014
Start of supply of power to UP under PPA	From 22.8.2015

5. The Petitioner had filed Petition No. 156/MP/2018 seeking reliefs for various Change in Law events. The aforesaid Petition was disposed of vide order dated 3.6.2019

wherein, the Commission had allowed the Petitioner's claim compensation for the following Change in Law events along with carrying cost:

- (a) Clean Energy Cess.
- (b) Change in Chhattisgarh Infrastructure Development Cess and Change in Chhattisgarh Environmental Cess.
- (c) Change in Service Tax and introduction of Swachh Bharat Cess and Krishi Kalyan Cess on transportation of coal.
- (d) Introduction of Forest tax.
- (e) Revision/Addition of components in computation of Central Excise Duty.
- (f) Change in MP Electricity Duty on Auxiliary Consumption and self-consumption.
- (g) Introduction of tax towards contribution to the National Mineral Exploration Trust and District mineral Foundation.
- (h) Introduction of Coal Terminal Surcharge on coal transportation.
- (i) Introduction of Evacuation Facility Charges.
- (j) Introduction of GST.
- (k) Amendment in NCDP resulting in reduction in supply of coal by Coal India Limited and its subsidiaries.
- (l) Additional cost towards Fly Ash Transportation.

6. The Commission in its order dated 3.6.2019, had devised the following mechanism for claiming Change in Law compensation:

"132. The Article 10 the PPAs provide for the principle for computing the impact of change in law during the operating period. These provisions enjoin upon the Commission to decide the effective date from which the compensation for increase/ decrease in revenues or of cost shall be admissible to the Petitioner. In our view, the effect of change in law as approved in this order shall come into force from the date of commencement of supply of electricity to the Procurers or from the

date of occurrence of Change in Law event, whichever is later. We have specified a mechanism, in the following paragraphs, considering the fact that compensation for the change in law events allowed as per PPAs shall be paid in subsequent years of the contract period:

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

b) For Change in Law events related to the operating period, the 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 of the PPAs.

c) If the Petitioner is eligible to receive compensation for Change in Law as per provisions of the PPA the compensation amount allowed shall be shared by the procurers based on the scheduled energy.

d) The financial impact on account of Change in Law event with respect to coal shortfall due to Change in NCDP shall be computed in accordance with the methodology detailed out by the Commission in Para 105 of this order. The Petitioner is directed to furnish along with its monthly regular and/or supplementary bill(s), the computations duly certified by the auditor to the procurers (UP Discoms).”

7. The Petitioner has submitted that pursuant to decision in the order dated 3.6.2019, the Petitioner has raised various supplementary invoices on Uttar Pradesh Power Corporation Limited through PTC India Limited seeking Change in Law compensation for the period from 22.8.2015 to 28.2.2021 aggregating to Rs. 10,47,20,47,656/- (approximately Rs. 1047.20 crore). The Petitioner has submitted that it has provided all documents and details to UPPCL and PTC along with each of the aforesaid supplementary invoices for the period from 22.8.2015 to 28.2.2021. However, UPPCL and PTC have not complied with the Commission’s Order dated 3.6.2019 inasmuch as UPPCL while issuing the verification sheets has unilaterally deducted amounts

aggregating to Rs. 72,85,02,732/- (approximately Rs. 72.85 crore) against various heads from the Change in Law compensation claimed by the Petitioner for the period from 22.8.2015 to 28.2.2021, without providing any reasons for the same.

8. The Petitioner has submitted that in addition to the above deductions of almost Rs. 72.85 crore till 28.2.2021, UPPCL has failed to pay entire carrying cost and Late Payment Surcharge (“LPS”) on Supplementary Invoices raised by MB Power for Change in Law claims allowed by the Commission in its order dated 3.6.2019.

9. Against the above background, the Petitioner has made the following prayers:

“(a) Hold the various arbitrary and unilateral deductions made by UPPCL against the Supplementary/Change in Law Invoices raised by MB Power in terms of the Subject Order dated 03.06.2019 as illegitimate and unlawful and accordingly:

(i) Direct UPPCL to pay the entire amount without any delay which has been arbitrarily and unilaterally deducted by UPPCL against the various Supplementary/ Change in Law Invoices raised by MB Power.

(ii) Direct UPPCL to pay Late Payment Surcharge on such arbitrary and unilateral deductions from their respective bill Due Date(s) as per the PPAs provisions till the date final payment is made.

(iii) Direct UPPCL not to resort to such arbitrary and unilateral deductions against the Supplementary/ Change in Law Invoices raised by MB Power in future in terms of the Subject Order dated 03.06.2019.

(b) Direct UPPCL to pay the entire Late Payment Surcharge without any delay for the various Invoices/Supplementary Invoices raised by MB Power including but not limited to Supplementary/Change in Law invoices dated 29.07.2019, 15.10.2019 and 02.12.2019 from their respective due date(s) from the presentation of these Invoices by MB Power, as per the provisions of the PPAs;

(c) Direct UPPCL to henceforth compute and pay the Late Payment Surcharge for the various Invoices/Supplementary Invoices to be raised by MB Power in the future essentially from respective due date(s) of such Invoices from the presentation of these Invoices by MB Power, as per the provisions of the PPAs.

(d) *Direct UPPCL to pay the entire Carrying Cost without any delay for the period corresponding to the date of occurrence of Change in Law event till raising of Supplementary Invoice by MB Power in terms of the Subject Order dated 03.06.2019.*

(e) *In the interim, direct UPPCL to pay 90% of the due amount;*

(f) *Initiate proceedings under Section 142 of the Electricity Act against UPPCL for failure to comply with the directions of this Commission; and*

(g) *Pass any such further order as this Commission may deem necessary in the interest of justice.”*

Hearing dated 18.11.2021

10. The Petition was admitted on 18.11.2021 and notices were issued to the Respondents with directions to file their replies to the Petition. UPPCL vide its reply dated 3.1.2022 has raised the issue of maintainability of the Petition to which, MB Power filed its rejoinder on 11.1.2022.

11. UPPCL thereafter filed its reply on merits to the Petition on 10.3.2022. The Petitioner filed its rejoinder to UPPCL's reply on 1.4.2022.

12. Meanwhile UPPCL filed an IA i.e. 26/IA/2022 on 4.4.2022 seeking summoning of officers of MB Power and PTC for examination on oath qua the allegations made in the present Petition. UPPCL has made the following prayers in the IA:

(a) *Allow the present application and issue an order summoning the officers named in paragraph 7.3 above for examination on oath qua the allegation insofar as the issue of LPS trigger date for supplementary bills is concerned and the consent under the emails dated 23.05.2020, 09.06.2020 and 11.06.2020 was obtained under coercion and economic/financial duress; and*

(b) *Pass such further or other orders as this Commission may deem fit in the facts and circumstances of the present case.”*

13. Both PTC and MB Power filed their reply to UPPCL's IA on 22.9.2022 and 26.10.2022 respectively challenging the maintainability of IA to which the rejoinders were filed by UPPCL on 5.11.2022 and 7.11.2022 respectively.

14. Subsequently, the matter was heard at length on 19.1.2023, wherein learned counsels for the MB Power, UPPCL and PTC made detailed submissions on the Petition. However, during the hearing, the counsel of UPPCL did not make any submissions / did not press for its IA No. 26/2022. In absence of any arguments on this IA, the Commission is not inclined to adjudicate upon the said IA and accordingly, IA No. 26/2022 stands disposed of. The reply, rejoinder and written submissions filed by the parties have been considered in subsequent paragraphs of this order.

Analysis and Decision

15. After consideration of the submissions of the Petitioner and the Respondents, the following issues arise for our consideration:

Issue No. 1: Whether the Petition as framed is maintainable at this stage?

Issue No. 2: Whether supplementary invoices raised by the Petitioner are in accordance with the mechanism prescribed under Commission's Order dated 3.6.2019?

Issue No. 3: Whether the deductions made by UPPCL from the Petitioner's supplementary invoices on various heads is justified?

Issue No. 4: Whether Late Payment Surcharge is payable on supplementary bills raised by the Petitioner in context of the facts and law?

The above issues have been dealt with in succeeding paragraphs.

Issue No. 1: Whether the Petition as framed is maintainable at this stage?

16. The Respondent, UPPCL has submitted that the Petition in so far as it seeks execution/implementation of the Order dated 3.6.2019 passed by the Commission in Petition No. 156/MP/2018 is not maintainable since the Commission in Order dated 3.6.2019, (a) has not decided the monetary claims of MB Power i.e., the total amount payable to MB Power pursuant to the allowed Change in Law claims; and (b) has only accorded in-principle approval to certain events qualifying as Change in Law for MB Power under the PPA. UPPCL has further submitted that the question of maintainability has to be decided at the preliminary stage of hearing and merits can be adjudicated only after maintainability is established. UPPCL has submitted that MB Power has not disclosed any cause of action in its Petition in terms of Order 7 Rule 11(a) of the Code of Civil Procedure.

17. *Per contra*, the Petitioner, MB Power has submitted that UPPCL's contentions are baseless, self-contradictory, and an attempt to delay the adjudication of the present execution proceedings. The Commission in its Order dated 3.6.2019 while allowing various Change in Law claims of MB Power had specifically provided a detailed mechanism for computing the compensation amount on account of such allowed Change in Law events at Paragraph 127 to Paragraph 132 of the Order. Accordingly, the Commission had directed UPPCL to pay compensation for such allowed Change in Law claims based on the mechanism formulated by the Commission. The Petitioner has submitted that even in its reply dated 3.1.2022, UPPCL has made self-contradictory statements. At one hand UPPCL states that the Petition is not maintainable because the Commission in order dated 3.6.2019 has not decided the monetary claims of MB Power

(i.e., the total amount payable to MB Power pursuant to the allowed Change in Law claims). On the other hand, UPPCL at Paragraph 9, Paragraph 10 and Paragraph 13 of its reply has admitted that pursuant to Order dated 3.6.2019, MB Power had raised Supplementary Invoices for the allowed Change in Law claims along with requisite supporting documents and UPPCL had to verify and pay such invoices based on the principles and methodology enunciated by the Commission in order dated 3.6.2019. The Petitioner has submitted that in an execution proceeding, the Commission has the power to decide the liability of payment to be made by a party arising out of the order under execution. In this regard, reliance has been placed upon the various Orders passed by this Commission in execution Petitions namely, Order dated 8.7.2019 passed in Petition No. 269/MP/2018 titled Adani Power (Mundra) Limited vs. Uttar Haryana Bijli Vitran Nigam Limited and Ors., Orders dated 6.3.2019 and 22.8.2019 passed in Petition No. 286/MP/2018 titled GMR Warora Energy Limited v. Tamil Nadu Generation and Distribution Corporation Ltd. and Order dated 6.8.2021 passed in Petition No. 424/MP/2019 titled DB Power Limited (DBPL) v. TANGEDCO & Anr., wherein the Commission has adjudicated and passed orders directing payment of amount by the procurers. These Petitions were filed by generating companies seeking execution of the Commission's orders since the procurer had objected to the computation/formula for calculation of compensation payable to the generating company on account of Change in Law events allowed by the Commission. The Petitioner has submitted that the Commission by Order dated 3.6.2019 has already decided the Change in Law claims and provided a methodology and formula for computing the compensation payable by UPPCL to MB Power for such allowed Change in Law claims. Hence, UPPCL's denial to make

payment of such compensation does not result in a fresh billing dispute between the parties. The issues have already been decided by the Commission and MB Power is only seeking execution of the directions and findings returned by the Commission in Order dated 3.6.2019. The Petitioner further submitted that the provisions of Code of Civil Procedure, 1908 are not applicable to proceedings before the Commission as upheld by the APTEL in catena of Judgments and by Hon'ble Supreme Court in the case of *MSEDCL v. MERC*, [(2021) SCC OnLine SC 913].

18. We have considered the submissions of the Petitioner and the Respondent, UPPCL. The Commission in its various earlier orders has affirmed the position that the Commission has the necessary powers to execute its own Orders as rightly submitted by the Petitioner.

19. The Commission by its Order dated 8.7.2019 passed in Execution Petition No. 269/MP/201 in the case of *Adani Power (Mundra) Limited v. Uttar Haryana Bijli Vitran Nigam Limited and Ors* [Para 17-18] in a similar factual situation held that -

(a) Pursuant to the Order of the Commission the amounts payable should be reconciled by the parties themselves and there is no need to approach the Commission for the same.

(b) Since the distribution licensee has objected to the computation provided by the generating company, the Commission is required to deal with the issue of deciding the liability of payment arising out of its earlier order under execution.

(c) Adjudicated the dispute between the parties therein arising out of the directions issued in earlier order and directed Haryana Discom to make payments.

20. The Commission is of the view that UPPCL's contentions on maintainability do not merit any consideration since the Petitioner is entitled to have its claims adjudicated on merits, especially since UPPCL itself admits that the supplementary invoices have been raised by the Petitioner pursuant to the Order dated 3.6.2019, i.e., the order which is being sought for execution. Accordingly, the Commission holds that the present Petition as framed is maintainable.

Issue No. 2: Whether the Petitioner raised the supplementary invoices in accordance with the mechanism prescribed under Order dated 3.6.2019?

21. The Petitioner has submitted that the Commission, under Paragraph 132 of its Order dated 3.6.2019 had provided a detailed mechanism for computing the compensation amount on account of the allowed Change in Law events and raising the supplementary invoices thereof and further directed UPPCL to pay compensation for such allowed Change in Law claims based on the mechanism formulated by the Commission. Accordingly, the Petitioner has raised various supplementary invoices upon UPPCL through PTC seeking Change in Law compensation in terms of the said Order dated 3.6.2019 for the period from 22.8.2015 to 28.2.2021 aggregating to Rs. 10,47,20,47,656/- (approximately Rs. 1047.20 crore) along with the supporting documents which have been furnished to UPPCL (through PTC) from time to time. A summary of the invoices raised by the Petitioner is as under:

S.No	Invoice No	Power Supply Period	Invoice Date	Invoice Amount (Rs.)
1.	UP/15-16/SCIL/01/A	22.08.2015 to 31.03.2016	29.07.2019	130,03,83,147
2.	UP/16-17/SCIL/01/A	01.04.2016 to 31.03.2017	29.07.2019	159,30,43,499
3.	UP/17-18/SCIL/01/A	01.04.2017 to 31.03.2018	29.07.2019	177,19,98,583
4.	UP/18-19/SCIL/01/A	01.04.2018 to 31.03.2019	29.07.2019	257,34,08,384
5.	UP/19-20/SCIL/01	01.04.2019 to 31.07.2019	15.10.2019	76,25,34,803
6.	UP/19-20/SCIL/02	01.08.2019 to 30.09.2019	02.12.2019	46,66,74,832
7.	UP/19-20/SCIL/03	01.10.2019 to 30.11.2019	10.02.2020	34,44,12,338
8.	UP/19-20/SCIL/04	01.12.2019 to 31.01.2020	03.04.2020	21,67,65,363
9.	UP/19-20/SCIL/05	01.02.2020 to 29.02.2020	05.05.2020	12,77,66,134
10.	UP/19-20/SCIL/06	01.03.2020 to 31.03.2020	01.06.2020	8,42,42,006
11.	UP/20-21/SCIL/01	01.04.2020 to 30.04.2020	20.06.2020	13,18,56,911
12.	UP/20-21/SCIL/02	01.05.2020 to 31.05.2020	02.07.2020	12,29,56,850
13.	UP/20-21/SCIL/03	01.06.2020 to 30.06.2020	29.07.2020	12,97,86,439
14.	UP/20-21/SCIL/04	01.07.2020 to 31.07.2020	27.08.2020	12,66,01,842
15.	UP/20-21/SCIL/05	01.08.2020 to 31.08.2020	03.11.2020	11,95,36,006
16.	UP/20-21/SCIL/05	01.09.2020 to 31.09.2020	03.11.2020	14,04,36,234
17.	UP/20-21/SCIL/06	01.10.2020 to 31.10.2020	21.01.2021	11,08,28,097
18.	UP/20-21/SCIL/07	01.11.2020 to 30.11.2020	04.02.2021	8,45,00,534
19.	UP/20-21/SCIL/08	01.12.2020 to 31.12.2020	19.02.2021	9,34,46,830
20.	UP/20-21/SCIL/09	01.01.2021 to 31.01.2021	16.03.2021	8,64,63,113
21.	UP/20-21/SCIL/10	01.02.2021 to 28.02.2021	26.03.2021	8,44,05,812
Total claim towards compensation for Change in Law events allowed for the power supply for the period from 22.08.2015 to 28.02.2021				10,47,20,47,756 [Rs. 1047.20 crore]

22. The Petitioner further submitted that in compliance to the directions of the Commission spelt out in order dated 3.6.2019, MB Power has provided all the documents and details to UPPCL (through PTC) along with each of the Supplementary Invoices mentioned above, which are as under:

- (a) Auditor Certificate from the Statutory Auditor certifying the amount claimed in the Supplementary Invoices.

(b) A working sheet providing detailed calculation of Change in Law compensation and head-wise and year-wise breakup of Change in Law compensation.

(c) Additional details pertaining to: -

- (i) Year-wise Madhya Pradesh Electricity Duty on Auxiliary Consumption (“Aux”)
- (ii) Generation from the Project (GSHR, Aux, PLF & Transit Loss)
- (iii) Normative Aux vs. Actual Aux.
- (iv) Coal Grade enhancement/ Grade Slippage
- (v) Month-wise GCV of Linkage Coal & Other Coal (i.e. washed coal, e-auction coal, as-is-where-is basis coal, etc)
- (vi) Daily GCV of linkage coal and other coal
- (vii) Calculation of UPPCL’s share in linkage coal quantity
- (viii) Applicable rate of interest.

23. The Petitioner has submitted that on 10.10.2019, PTC wrote to MB Power forwarding UPPCL’s letter dated 3.10.2019, wherein UPPCL had raised certain queries qua the said supplementary invoices dated 29.7.2019 (i.e., for the period from financial year 2015-16 to financial year 2018-19) raised by MB Power. On 7.11.2019, MB Power wrote to PTC providing point-wise reply to the queries raised by UPPCL towards supplementary invoice dated 29.7.2019 and requested PTC/UPPCL to process these supplementary invoices and release the payment at the earliest. Similar clarification/details were further provided by MB Power to PTC and UPPCL on:

- (a) 25.2.2020 for Change in Law Invoices for the period from April 2019 to November 2019.

- (b) 19.5.2020 for Change in Law Invoices for the period from December 2019 to February 2020.
- (c) 04.06.2020 for Change in Law Invoices for the period March 2020.
- (d) 29.06.2020 for Change in Law Invoices for the period April 2020
- (e) 02.07.2020 for Change in Law Invoices for the period May 2020
- (f) 29.07.2020 for Change in Law Invoices for the period June 2020
- (g) 27.08.2020 for Change in Law Invoices for the period July 2020
- (h) 03.11.2020 for Change in Law Invoices for the period August 2020
- (i) 03.11.2020 for Change in Law Invoices for the period September 2020
- (j) 21.01.2021 for Change in Law Invoices for the period October 2020
- (k) 04.02.2021 for Change in Law Invoices for the period November 2020
- (l) 19.02.2021 for Change in Law Invoices for the period December 2020
- (m) 16.03.2021 for Change in Law Invoices for the period January 2021
- (n) 26.03.2021 for Change in Law Invoices for the period February 2021

24. The Petitioner has further submitted that on 3.10.2019 UPPCL sought details and clarification from MB Power on the supplementary invoices. In response to clarification sought by UPPCL, MB Power, on 21.1.2020, yet again provided the required clarification on the supplementary invoices to PTC and UPPCL, despite the fact that details and documents had already been submitted by MB Power along-with various Change in Law Invoices

25. *Per contra*, UPPCL has contended that UPPCL was obligated to undertake verification of claims of MB Power only after verifying supporting documents in relation to the claims of MB Power towards Change in Law events. Furthermore, UPPCL being a

State instrumentality was mandated to analyze the principles adopted by MB Power while issuing such invoices and further, UPPCL was to confirm whether the approach adopted by MB Power was in consonance with the methodology enunciated/ approved by the Commission. The Petitioner has not provided details/data/documents as sought by UPPCL which is required to verify the supplementary invoices.

26. We have considered the submissions of the Petitioner and the Respondent, UPPCL. On perusal of the various submissions/ documents placed on record by the parties and during the course of proceedings of the matter before the Commission, we note that MB Power had complied with the mechanism prescribed under our order dated 3.6.2019 for raising supplementary invoices and had provided the required data, documents along with these supplementary invoices as desired by UPPCL. We further note that UPPCL has failed to specify details or data which was not submitted to UPPCL by the Petitioner. Details of the correspondences exchanged between the parties with respect to providing clarifications/data qua the supplementary invoices raised by MB Power for Change in Law compensation are as under:

(a) On 10.10.2019, PTC forwarded UPPCL's letter dated 3.10.2019 to MB Power, wherein UPPCL had raised certain queries qua computation under supplementary invoice dated 29.7.2019.

(b) On 7.11.2019, MB Power wrote to PTC/UPPCL providing point-wise reply to the queries raised by UPPCL towards supplementary invoice dated 29.7.2019. Similar clarification was further provided by MB Power to PTC and UPPCL on various occasions.

(c) On 21.1.2020, MB Power once again provided the clarification to PTC/UPPCL towards computation under supplementary invoices, which had also been provided earlier.

27. In view of the above, the Commission finds that the supplementary invoices were raised by the Petitioner in accordance with the mechanism prescribed under Paragraph 132 of our Order dated 3.6.2019 and the Petitioner had submitted the required documents/data with each of the supplementary invoices to UPPCL. The issue is answered accordingly.

Issue No. 3: Whether the deductions made by UPPCL from the Petitioner's supplementary invoices on various heads is justified?

28. Having decided above that the supplementary invoices raised by MB Power towards the Change in Law compensation were in order and in compliance with the mechanism enunciated in the Commission's Order dated 3.6.2019, we now proceed to decide the issue whether the deductions made by UPPCL from the Petitioner's supplementary invoices on various heads is justified.

29. The Petitioner has submitted that against each of the above-mentioned supplementary invoices raised towards Change in Law compensation for the period from 22.8.2015 to 28.2.2021, it has provided all the required documents and details to UPPCL and PTC. However, UPPCL and PTC have not complied with the Commission's Order dated 3.6.2019 inasmuch as UPPCL while issuing the verification sheets has unilaterally deducted amounts aggregating to Rs. 72,85,02,732/- (approximately Rs. 72.85 crore) from the Change in Law compensation claimed by the Petitioner for the period from

22.8.2015 to 28.2.2021, without providing any reason for the same. A summary of the said deductions made by UPPCL/PTC is as under:

S. No	Power Supply Period	Date of supplementary invoice raised by MB Power	Date of verification by UPPCL	Invoiced amount by MB Power (Rs.)	Amount approved by UPPCL (Rs.)	Arbitrary and unilaterally deducted amount by UPPCL (Rs.)
1	Financial year 2015-16 to Financial year 2018-19	29.07.2019	27.01.2020	723,88,33,612	671,93,74,612	51,94,59,000
2	April 2019 to September 2019	15.10.2019; 02.12.2019	19.03.2020	122,92,09,635	118,54,58,635	4,37,51,000
3	October 2019 to February 2020	10.02.2020; 03.04.2020; 05.05.2020	28.05.2020	68,89,43,835	65,24,01,835	3,65,42,000
4	March 2020 to April 2020	01.06.2020; 20.06.2020	25.07.2020	21,60,98,917	19,03,51,710	2,57,47,207
5	May 2020	02.07.2020	18.08.2020	12,29,56,850	11,59,59,850	69,97,000
6	June 2020	29.07.2020	11.11.2020	12,97,86,439	11,47,51,279	1,50,35,160
7	July 2020	27.08.2020	11.11.2020	12,66,01,842	11,31,35,251	1,34,66,591
8	August 2020	03.11.2020	18.01.2021	11,95,36,006	9,33,08,767	2,62,27,239
9	September 2020	03.11.2020	18.01.2021	14,04,36,234	12,94,64,053	1,09,72,181
10	October 2020	21.01.2021	18.02.2021	11,08,28,097	9,95,46,712	1,12,81,385
11	November 2020	04.02.2021	20.03.2021	8,45,00,534	7,61,77,552	83,22,982
12	December 2020	19.02.2021	23.03.2021	9,34,46,830	8,98,24,424	36,22,406
13	June 2021	16.03.2021	04.05.2021	8,64,63,113	8,26,22,335	38,40,778
14	February 2021	26.03.2021	04.05.2021	8,44,05,812	8,11,68,009	32,37,803
TOTAL				10,47,20,47,756	9,74,35,45,024	72,85,02,732
Total unilateral deductions by UPPCL against the supplementary invoices towards Change in Law claims allowed by the Commission in the Order dated 3.6.2019						72,85,02,732 [72.85 crore]

30. The Petitioner has also submitted the details of claim-wise deductions made by UPPCL on the claims raised till 28.2.2021 as under:

S. No	Change in Law Claims	Arbitrary and unilateral deductions made by UPPCL (Rs.)			
		FY 2015-16 to FY 2018-19	FY 2019-20	FY 2020-21*	Total deductions till 28.02.2021
		(A)	(B)	(C)	=(A+B+C)
1.	GST Impact of O&M, Insurance and Financial Charges	2,42,00,000	69,90,156	73,18,053	3,85,08,209

2.	Change in MP Electricity Duty on Auxiliary Consumption and self-consumption	1,23,00,000	14,54,331	92,98,417	2,30,52,748
3.	Transit Loss on coal transportation	5,16,00,000	2,64,54,904	2,40,80,918	10,21,35,822
4.	Credit for penalty/ compensation received from coal companies towards grade slippage, shortfall in supply of coal	10,16,00,000	3,91,70,424	4,45,97,481	18,53,67,905
5.	Coal terminal surcharge	72,59,000	3,19,70,185	1,77,09,532	5,69,38,717
6.	Compounding of carrying cost	32,25,00,000	-	-	32,25,00,000
Total Deductions		51,94,59,000	10,60,40,000	10,30,04,401	72,85,02,732 [72.85 crore]
Total arbitrary & unilateral deductions made by UPPCL till 28.2.2021					

31. The Petitioner has submitted that it has provided detailed justification for each Change in Law claim thereby refuting the arbitrary and unilateral deductions made by UPPCL and requested UPPCL to release such deducted amounts. However, these amounts have not been released by UPPCL and still remain outstanding on UPPCL till date.

32. *Per contra*, the Respondent, UPPCL has submitted that the claims of MB Power to the extent of deductions made by UPPCL (i.e. Rs. 72,85,02,732/-) have not been verified by UPPCL as not being tenable in terms of the findings of the Commission in its Order dated 3.6.2019. UPPCL has further submitted that after perusal of supplementary invoices raised by MB Power it came to fore that an amount equivalent to Rs. 72,85,76,627/- had been over claimed by MB Power and hence, such amount being untenable was deducted by UPPCL. UPPCL has submitted reasons/ rationale/ justification for such deductions made under each head. MB Power has tendered rebuttal to head-wise deduction by UPPCL. Accordingly, the Commission has examined that submissions of the parties with respect to deduction by UPPCL under each head as follows:

A) GST impact on O&M, Insurance and Financial Charges.

33. UPPCL has submitted that MB Power vide Petition No. 156/MP/2018 had prayed that the Introduction of GST may be allowed as a Change in Law event. Pertinently, MB Power based its claim for Introduction of GST as a Change in Law event on the Commission's Order dated 14.3.2018 issued in Petition No. 13/MP/2017. It is significant to highlight that the said order deals with impact of introduction of GST and subsuming/abolition of few taxes, duties and levies on "Coal" only. UPPCL has submitted that in consonance with the Order dated 14.3.2018, the Commission vide its Order dated 3.6.2019 allowed introduction of GST as a Change in Law event. UPPCL has submitted that what was claimed by MB Power vide Petition No. 156/MP/2018 and what was allowed by the Commission vide its order for the said Petition is impact of GST on "Coal" only as a Change in Law event. However, MB Power vide its supplementary invoices has erroneously claimed Impact of GST on O&M, Insurance and Financial Charges as well. UPPCL has placed reliance on the Commission's Order dated 19.9.2018 issued in Petition No. 50/MP/2018 and Petition No. 52/MP/2018, wherein the Commission has already taken a stand on this aspect and has adopted an approach whereby, it has disallowed GST on O&M expenses. UPPCL has submitted that the claims of MB Power as have been allowed by this Commission vide its Order dated 3.6.2019, there is no approval of impact of GST on O&M, Insurance and Financial charges for MB Power either. Accordingly, MB Power's approach to claim impact of GST on O&M, Insurance and Financial Charges is not tenable and hence, the amount corresponding to the captioned head has not been verified by UPPCL.

34. *Per contra*, the Petitioner has submitted that the Commission in Order dated 3.6.2019 relying upon its Order dated 14.3.2018 passed in Petition No. 13/SM/2017 has held that introduction of GST and subsuming/abolition of specific taxes, duties, etc. in the GST is a Change in Law event for MB Power. Once introduction of GST has been allowed as a Change in Law event for MB Power, UPPCL is mandated to pay compensation for the impact of GST on all claims of MB Power. There cannot be any selectivity in payment of compensation qua the impact of GST i.e., compensation for GST impact on procurement of coal will be allowed by UPPCL while GST impact of O&M, Insurance and Financial Charges will not be allowed as pass through. At the time of submission of bid under the Tariff Based Competitive Bidding Process invited by UPPCL for procurement of power on long term basis, Service Tax Regime was prevailing in the country. As such MB Power, structured its bid based on the applicable service tax on O&M, Insurance & Financial Charges. GST was not applicable at that point in time, subsequently, on 12.4.2017 the Parliament introduced the Central Goods and Services Tax Act, 2017 (“CGST Act”) and Integrated Goods and Service Tax Act 2017 (“IGST Act”) (abolishing/replacing the prevailing Service Tax regime) in terms of which a tax of 18% is levied on services.

35. The Petitioner has further submitted that imposition of GST on O&M, Insurance and Financial Charges constitutes a Change in Law event for MB Power in terms of the following:

- (a) The imposition of GST was introduced by way of CGST Act which falls within the definition of law under the PPA.

(b) CGST Act was introduced by the Parliament, which comes within the ambit of Indian Government Instrumentality under the PPA.

(c) The CGST Act came into effect on 12.4.2017 i.e., after the cut-off date of 17.9.2012 under the PPA.

(d) The imposition of GST on O&M, Insurance and Financial Charges has led to an increase in expenditure for MB Power.

36. The Petitioner has submitted that the Commission by Order dated 14.3.2018 passed in Suo-Motu Petition No. 13/SM/2017 and in Order dated 3.6.2019 has already held that the introduction of GST and subsuming/abolition of specific taxes, duties & cess, etc. under GST is a Change in Law event. APTEL has also accepted this position in its Judgment dated 14.8.2018 in Appeal No. 119 of 2016 & IA Nos. 668 & 674 of 2016 titled as Adani Power Rajasthan Ltd. vs. Rajasthan Electricity Regulatory Commission & Ors. and has held that *“xvi. ... The Bidder was required to suitably incorporate the other taxes, duties, levies etc. existing at the time of bidding. The Bidder cannot envisage any changes happening regarding taxes, levies, duties etc. in future date”*. Therefore, introduction of GST after the cut-off-date squarely qualifies as an event of Change in Law in terms of Article 10 of the PPAs. APTEL by Judgment dated 19.4.2017 passed in Appeal No. 161 of 2015 titled Sasan Power v. CERC and Ors, [2017 ELR (APTEL) 508] ('Sasan Power Judgment') has held that compensation ought to be meted out for a Change in Law event despite the bidder having quoted an all-inclusive tariff as denial of compensation will render the Change in Law clause otiose. The Petitioner has submitted that post the cut-off-date there has been an increase in the cost of O&M, Insurance and Financial

Charges due to imposition of a new tax component i.e., GST. Hence, the principle of Change in Law being permitted in cases where imposition is on carrying out the business of generating electricity as propounded by the APTEL in Para 42 of the Sasan Power Judgment squarely applies in the facts of the instant case. Accordingly, the imposition of GST on O&M, Insurance and Financial Charges being a recurring expenditure squarely qualifies as Change in Law for MB Power and its financial impact as claimed by MB Power must be paid by UPPCL. In compliance with the Commission's Order dated 14.3.2018 and 3.6.2019, MB Power has only claimed the differential amount arising due to introduction of GST & abolition of service tax on Insurance & Financial Charges, which is admissible under Change in Law provision of the PPA. MB Power has further relied on the APTEL's Judgment dated 27.4.2021 passed in Appeal No. 172 of 2017 titled Coastal Gujarat Power Ltd v. CERC & Ors, ('CGPL Judgment dated 27.4.2021'), wherein APTEL has held that outsourcing the O&M activities/works to O&M contractors is a commercial decision of the generator and that the generator cannot be questioned for any such commercial decision, which has not been expressly barred under the PPAs. Once it is established that levy of a tax including GST on O&M services availed by MB Power has an impact on the cost of or revenue from business of generation and sale of electricity - whether directly or indirectly - compensation must follow (paras 34, 67, 68, 90, 91, 92 of the CGPL Judgment dated 27.4.2021'). During the course of the proceedings and in the pleadings filed before the Commission, the Petitioner had submitted that till 28.2.2021, MB Power had only claimed Change in Law compensation from UPPCL with respect to GST's impact on Insurance and Finance Charges. Accordingly, the deductions of Rs 3.85 crores by UPPCL till February 2021 have been essentially towards GST's impact on

Insurance and Finance Charges and not on O&M. Till date, MB Power has not claimed any compensation from UPPCL towards the impact of GST (vis-à-vis erstwhile Service Tax Regime) on O&M services on account of Change in Law.

37. We have considered the submissions of the Petitioner and the Respondent. We observe that the present Petition has been filed by MB Power, seeking execution/ implementation of the Commission's Order dated 3.6.2019 passed in Petition No. 156/MP/2018. In the Order dated 3.6.2019, the Commission has approved impact of GST only on coal as a Change in Law event and impact of GST on O&M, Insurance and Financial Charges has not been allowed as Change in Law event. Therefore, the Petitioner MB Power, in the present Petition cannot seek execution of something which has not been allowed in the principle order dated 3.6.2019. Accordingly, we agree with the contentions made by UPPCL and the issue is decided in favour of UPPCL.

38. We, however, make it clear that the Commission is not inclined to adjudicate on merits the issue whether GST on O&M, Insurance and Financial Charges constitutes a Change in Law event under the PPA at this juncture since these aspects did not form part of the Order dated 3.6.2019.

B) Change in MP Electricity Duty on Auxiliary Consumption and self-consumption.

39. The Respondent, UPPCL has submitted that MB Power vide Petition No. 156/MP/2018 had prayed that change in MP electricity duty on auxiliary consumption and self-consumption may be allowed as a Change in Law event. While, the Commission had allowed the said prayer of MB Power to consider change in MP electricity duty as a Change in Law event vide its Order dated 3.6.2019. However, MB Power while claiming

compensation on account of change in MP electricity duty on auxiliary consumption and self-consumption has failed to corroborate such claims with supporting documents such as receipts of payment made by MB Power towards electricity duty. Nothing on the record seems to establish that MB Power has actually paid the electricity duty to the government vis-à-vis its claimed amount. Furthermore, the details furnished by MB Power do not provide any clarity on why colony consumption should not be excluded from the auxiliary consumption for calculating Uttar Pradesh share in MP electricity duty. Owing to lack of justification provided by MB Power in this regard, the claimed amount under the captioned head has not been verified by UPPCL.

40. *Per Contra* the Petitioner argued that the aforesaid allegations of UPPCL are wrong and has submitted that the amount corresponding to increase in MP electricity duty on auxiliary consumption and self-consumption is only for the proportion of generation capacity which has been supplied to UPPCL, despite MB Power having paid such MP electricity duty on aggregate generation capacity of its Project. The Petitioner has submitted that receipts of payment made by MB Power towards electricity duty have already been submitted to UPPCL by MB Power's letter dated 7.11.2019. While the actual auxiliary consumption of MB Power is higher than the normative auxiliary consumption specified in CERC Tariff Regulations, 2019, MB Power has restricted its claim to the normative auxiliary consumption as specified in CERC Tariff Regulations, 2019 only. This is in compliance with the Commission's directions in Order dated 3.6.2019 in terms of which claims have to be computed based on normative parameters or the actual parameters (whichever is lower). Evidently, the definition of auxiliary consumption in CERC Tariff Regulations, 2019 clearly excludes energy consumed by the

housing colony. Hence, the normative levels of auxiliary consumption considered by MB Power as per the said Tariff Regulations does not include such energy consumed by the housing colony. The Petitioner has submitted that requisite documentary proof and detailed computation with respect to claim of MP electricity duty on auxiliary consumption and self-consumption has already been provided to UPPCL by MB Power through its various letters.

41. We have considered the submissions of the Petitioner and the Respondent, UPPCL. Based on documents and submissions placed on record, we observe that MB Power vide its letter dated 7.11.2019 has enclosed receipts of payment made by MB Power towards electricity duty. Accordingly, we are of the view that MB Power has provided the information to UPPCL. Further, with regard to UPPCL's contentions regarding exclusion of colony consumption from the auxiliary consumption for calculating Uttar Pradesh share in MP electricity duty, we have perused CERC Tariff Regulations, 2019, wherein auxiliary consumption has been defined as under:

“(5) 'Auxiliary Energy Consumption' or 'AUX' in relation to a period in case of a generating station means the quantum of energy consumed by auxiliary equipment of the generating station, such as the equipment being used for the purpose of operating plant and machinery including switchyard of the generating station and the transformer losses within the generating station, expressed as a percentage of the sum of gross energy generated at the generator terminals of all the units of the generating station:

*Provided that auxiliary **energy consumption shall not include energy consumed for supply of power to housing colony** and other facilities at the generating station and the power consumed for construction works at the generating station and integrated coal mine;”*

42. Evidently, the definition of auxiliary consumption in CERC Tariff Regulations, 2019 clearly excludes energy consumed by the housing colony. Since, MB Power has

restricted its claim based on normative parameters specified in CERC Tariff Regulations, the energy consumed by the housing colony stands excluded from the normative levels of auxiliary consumption. Hence, the Commission is of the view that terms in which claims have been computed based on normative parameters or the actual parameters (whichever is lower) is in compliance with the Commission's directions in Order dated 3.6.2019. Relevant Portion of the said order dated 3.6.2019 is extracted as under:

*“62. In the light of the decision as quoted above, the claim of the Petitioner for reimbursement on account of Change in MP Electricity Duty on Auxiliary Consumption and for self-consumption is allowed under Change in Law. Accordingly, the Petitioner is entitled to recover such increase in Electricity Duty on Auxiliary Consumption and for self-consumption from the UP Discoms as per applicable annual rate of MP Discom Tariff revised from time to time for such Electricity Duty **in proportion to the coal as per the parameters of the applicable Tariff Regulations of this Commission or actually consumed, whichever is lower, for generation and supply of electricity to UP Discoms.**”*

In view of the above, we hold that the deductions made by UPPCL against this head are wrong and erroneous and UPPCL is directed to refund the amount such deducted to MB Power along with applicable LPS accrued from the invoice due date till the date of making final payment in accordance with the provisions of the PPA after verification of documents in this regard.

C) Transit losses on Coal

43. The Respondent, UPPCL has submitted that MB Power vide Petition No. 156/MP/2018 had not claimed transit losses on coal and accordingly, the same has not been considered or rather did not warrant any consideration by the Commission vide its Order dated 3.6.2019. MB Power while seeking execution of Order dated 3.6.2019 issued in Petition No. 156/MP/2018 has raised claims which were neither sought for by MB

Power vide Petition No. 156/MP/2018 nor bear any mention in the Order dated 3.6.2019. On this account alone, the claims under the captioned head are liable to be disallowed. MB Power while issuing supplementary invoices has sought to apply transit losses on coal transportation on the basis of the CERC Tariff Regulations, 2019. However, these regulations are applicable for projects whose tariff is determined by the Commission under Section 62 of the Act. Whereas the instant factual matrix concerns project implemented under Section 63 of the Act hence, on account of the regulations relied upon by MB Power being not applicable to the instant factual matrix, claims of MB Power on this account have not been verified by UPPCL. In any case, for transit of imported coal, the Regulation 39 of the CERC Tariff Regulations, 2019 adopted by MB Power prescribe transit losses of 0.2%, whereas MB Power has considered transit losses of 0.8% for imported coal as well. Hence, the claimed amount under the captioned head being untenable, has not been verified by UPPCL.

44. *Per contra*, the Petitioner argued that the aforesaid allegations of UPPCL are wrong and has submitted that the Commission in Order dated 3.6.2019 has clearly acknowledged shortfall in coal, faced by MB Power for supply of power to UPPCL on account of Change in NCDP as a Change in Law event. Further, this Commission at Para 106 of the said Order has clearly directed that compensation for such coal shortage is to be worked out in accordance with the normative parameters prescribed under the applicable CERC Tariff Regulations for the entire actual coal shortage. The Petitioner has submitted that in compliance with the aforesaid directions, MB Power has considered coal quantity after deducting the normative transit and handling losses of 0.8% (being a non-pithead project) as prescribed under Regulation 39 of CERC Tariff Regulations, 2019

for non-pithead generating stations. The Petitioner has contended that MB Power's 1200 MW Project being a non-pithead generating station, involves inland transportation of coal for as long as 800 kms from various sources like ports, etc. thereby leading to actual transit and handling losses which are way higher than the normative coal transit and handling losses of 0.8% prescribed under CERC Tariff Regulations, 2019. However, MB Power in compliance with the Commission's directions in Order dated 3.6.2019 has restricted its claim for coal transit and handling losses to only 0.8%. The Petitioner has submitted that with respect to imported coal, insignificant/negligible quantity of imported coal has been procured by MB Power.

45. We have considered the submissions of the Petitioner and the Respondent, UPPCL. This issue needs to be examined in light of Para 106 of the Commission's Order dated 3.6.2019 and Regulation 39 of CERC Tariff Regulations, 2019 which are extracted as under:

Commission's Order dated 3.6.2019

"106. Accordingly, the Petitioner be compensated on account of coal shortage to be worked out in accordance with the parameters of the applicable Tariff Regulations of this Commission for the entire actual coal shortage without imposing any restrictions in terms of any % of the ACQ. The Petitioner is directed to furnish along with its monthly regular and/or supplementary bill(s), the computations duly certified by the auditor to UP Discoms. The Petitioner and UP Discoms are directed to carry out reconciliation on account of these claims annually."

Regulation 39 of CERC Tariff Regulations, 2019

"39. Transit and Handling Losses: For coal and lignite, the transit and handling losses shall be as per the following norms:-

<i>Thermal Generating Station</i>	<i>Transit and Handling Loss (%)</i>
<i>Pit head</i>	<i>0.20%</i>
<i>Non-pit head</i>	<i>0.80%</i>

*Provided that in case of pit-head stations, if coal or lignite is procured from sources other than the pit-head mines which is transported to the station through rail, transit and handling losses applicable for non-pit head station shall apply;
Provided further that in case of imported coal, the transit and handling losses applicable for pit-head station shall apply.”*

46. On perusal of the above, we observe that MB Power has duly complied with the directions under Para 106 of the Commission's Order dated 3.6.2019 for computation of compensation for coal shortage in accordance with the normative parameters prescribed under the applicable CERC Tariff Regulations which *inter-alia* provides for transit and handling losses. Further, MB Power's project being a non-pit head station, the normative transit and handling losses are to be considered as 0.8% as per the applicable CERC Tariff Regulations.

47. In view of the above, we hold that the deductions made by UPPCL against this head are wrong and erroneous and UPPCL is directed to refund the such deducted amount to MB Power along with applicable LPS accrued from the invoice due date till the date of making final payment in accordance with the provisions of the PPA.

D) Penalty received for shortfall in supply of coal/ grade slippage compensation.

48. The Respondent, UPPCL has submitted that MB Power vide Petition No. 156/MP/2018 had prayed that amendment to the New Coal Distribution Policy (NCDP) resulting in reduction in supply of domestic coal by SECL/ CIL under the FSA to MB Power may be allowed as a Change in Law event. While, allowing the said prayer of the Petitioner to consider amendment to NCDP as a Change in Law event vide Order dated 03.06.2019, the Commission directed that any compensation paid by the coal company to MB Power for shortfall in supply of domestic coal shall be adjusted from the claim for

compensation on account of amendment to NCDP. UPPCL has submitted that MB Power has admitted that it is entitled to a certain amount on account of coal grade enhancement/grade slippage pertaining to the period in question accordingly, such benefit ought to have been reduced from claim for shortfall in linkage coal (NCDP). A tabular representation of the claim on account of coal grade enhancement/grade slippage to which MB Power is entitled to is set out herein below:

Claim settlement on account of Coal Grade enhancement/ Grade Slippage Period	Net debit (-) /credit (+) amount (in Rs.)
Financial Year 2018-19	22,15,24,862
April 2019 to September 2019	3,87,14,591
December 2019 to February 2019	2,41,64,782
October 2019, November 2019 & March 2020	4,07,27,549
April 2020	13,50,211
May 2020	1,39,45,314
June 2020	1,78,97,170
July 2020	5,08,37,759
August 2020	88,96,200
September 2020	1,59,47,595
October 2020	1,19,75,033
November 2020	(13,66,941)
December 2020	(1,48,20,713)
January 2020	(1,12,45,487)
Total	41,85,47,925

49. UPPCL has further submitted that any benefit to which MB Power is entitled to on account of any amount to be received from coal company towards grade slippage compensation is to be passed on to UPPCL. However, MB Power has failed to pass on such benefit to UPPCL in terms of the Commission's direction vide its Order dated 3.6.2019. Accordingly, MB Power while issuing the supplementary invoices ought to have considered and reduced the amounts indicated above from such invoices.

50. *Per contra*, the Petitioner argued that it has been passing the penalties/credit received from Coal India Limited towards shortfall in supply of coal/grade slippage compensation to UPPCL. However, there have been instances wherein Coal India Limited has claimed extra charges/raised debit notes on MB Power towards supply of higher-grade coal. As such, the Commission may direct both the parties to take into consideration both credit and debit passed on (credit)/claimed (debit) by Coal India Limited towards grade slippage/supply of higher grade of coal while computing the compensation towards coal shortfall and the net amount after adjusting both credit and debit may be passed on to UPPCL in proportion of the energy supplied to UPPCL.

51. We have considered the submissions of the Petitioner and Respondent, UPPCL, based on which we deem it appropriate to direct both the parties to take into consideration both credit (passed by Coal India Limited) towards grade slippage and debit (deducted by Coal India Limited) towards supply of higher grade of coal while computing the compensation towards coal shortfall and the net amount after adjusting both credit and debit may be passed on to UPPCL in proportion of the energy supplied to UPPCL. Any deductions made by UPPCL contrary to this mechanism are wrong and erroneous and UPPCL is directed to refund the amount such deducted to MB Power along with applicable LPS accrued from the invoice due date till the date of making final payment in accordance with the provisions of the PPA after verification of documents in this regard.

E) Coal Terminal Charge

52. UPPCL has submitted that MB Power vide Petition No. 156/MP/2018 had prayed that introduction of Coal Terminal Surcharge on transportation of coal by Indian Railways

(in particular, vide Corrigendum No. 14 to Rates Circular No. 8 of 2015 dated 22.08.2016) may be allowed as a Change in Law event. It is relevant to highlight that the Commission vide its Order dated 3.6.2019 has only allowed the circular dated 22.8.2016 to be considered as a Change in Law event. MB Power vide Petition No. 156/MP/2018 had submitted that Coal Terminal Surcharge has been subsumed in GST w.e.f. 10.7.2017. However, MB Power vide its supplementary invoices has sought to seek compensation on account of subsequent developments on account of re-imposition of Coal Terminal Surcharge vide notification dated 27.12.2018 after filing of Petition No. 158/MP/2018. MB Power while seeking execution of Order dated 03.06.2019 issued in Petition No. 156/MP/2018 has raised claims which were neither sought for by MB Power vide Petition No. 156/MP/2018 nor bear any mention in the Order dated 3.6.2019 issued for the said Petition by the Commission. On this account alone, the claims under the captioned head are to be disallowed by the Commission. While, any levy imposed by Ministry of Railway being a Government instrumentality shall be considered as Change in Law event. However, since, the basis and criteria for levy of terminal charge based on notification dated 27.12.2018 is very different from the earlier notification dated 22.8.2016 of Coal Terminal Surcharge, the claimed amount under the captioned head being untenable, has not been verified by UPPCL.

53. *Per Contra*, the Petitioner argued that the aforesaid allegations of UPPCL are wrong. The Commission in Order dated 3.6.2019 has held that introduction/levy of Coal Terminal Surcharge by Ministry of Railways, Government of India for transportation of coal by Indian Railways qualifies as Change in Law event for MB Power under Article 10 of the PPA. Further, at Para 70 of the said Order, this Commission held that circulars

issued by Ministry of Railways have the force of law and as such Coal Terminal Surcharges introduced by Ministry of Railways vide its circulars issued from time to time constitute Change in Law in terms of the Article 10 of the PPA dated 18.1.2014. Accordingly, MB Power is entitled to recover Coal Terminal Surcharge from UPPCL as per its applicable rate. MB Power has further argued that in terms of the Commission's Order dated 3.6.2019 all circulars issued by Ministry of Railways have force of law and levy of Coal Terminal Surcharge by Ministry of Railways vide its Circular/Notification dated 22.8.2016 as well as all subsequent Notification issued by Ministry of Railways with respect to levy of Coal Terminal Surcharge will be considered as Change in Law for MB Power. As such, MB Power is entitled to recover Coal Terminal Surcharge from UPPCL as per its applicable rate(s).

54. MB Power has further submitted that Coal Terminal Surcharge of Rs. 110/tonne of coal (i.e., Rs. 55/ tonne on both loading and unloading points) was introduced by Ministry of Railways with effect from 22.8.2016 and the same was abolished with effect from 10.7.2017. Subsequently, vide its Circular dated 27.12.2018, Ministry of Railways again started levying Coal Terminal Surcharge @ Rs 20/tonne of coal with effect from 27.12.2018. Accordingly, in terms of the Commission's direction at Para 70 of Order dated 3.6.2019, MB Power has claimed compensation from UPPCL for Coal Terminal Surcharge with effect from 27.12.2018 onwards, as per its applicable rate.

55. MB Power has submitted that the Circular dated 27.12.2018 issued by Ministry of Railways qualifies as an event of Change in Law, since:

(a) Levy of Coal Terminal Surcharge is pursuant to a Circular issued by the Railway Board dated 22.8.2016 which comes within the ambit of 'Law' under the PPA.

(b) The Circular was issued by the Railway Board, Ministry of Railways. In terms of the Railways Act, 1989 ('Railways Act') read with Gazette Notification No. 990 dated 31.3.1999, the Central Government has invested the Railway Board with all the powers and functions of the Central Government under Section 30 and Section 31 of the Railways Act. The Railway Board/Ministry of Railways, therefore, falls within the definition of Indian Governmental Instrumentality and its Circulars have the force of law as upheld by the APTEL in its Judgment dated 14.8.2018 passed in Appeal No. 119 of 2016 titled Adani Power (Rajasthan) Ltd. vs. RERC & Ors. ('Adani Judgment').

(c) It is an enactment of a law under Article 10 of the PPA.

(d) The aforesaid change (i.e., levy of Coal Terminal Surcharge) was effective after the cut-off dates under the PPA.

(e) Levy of Coal Terminal Surcharge with effect from 27.12.2018 has led to a recurring expenditure/increase in cost for MB Power during the operating period.

56. MB Power has submitted that levy of Coal Terminal Surcharge has been held to be a Change in Law event by the APTEL in Judgment dated 29.1.2020 passed in Appeal No. 284 of 2017 & Appeal No. 09 of 2018 titled Adani Power Rajasthan Limited Vs. Rajasthan

Electricity Regulatory Commission & Ors ('Adani 284 Judgment'). Further, Ministry of Power by its statutory directions dated 27.8.2018 issued to this Commission under Section 107 of the Act has clearly stated that *"Any change in domestic duties, levies, cess and taxes imposed by Central Government, State Governments/Union Territories or by any Government instrumentality leading to corresponding changes in the cost, may be treated as "Change in Law" and may unless provided otherwise in the PPA, be allowed as pass through. Where CERC has already passed an order to allow pass through of changes in domestic duties, levies, cess and taxes in any case under Change-in-law, this will apply to all cases ipso facto and no additional petition would need to be filed in this regard."*

57. MB Power has further submitted that in the present case, the Commission by Order dated 3.6.2019 has already allowed introduction/levy of Coal Terminal Surcharge by Ministry of Railways as an event of Change in Law for MB Power under Article 10 of the Procurers PPA dated 18.1.2014 and PTC PPA dated 20.1.2014. Hence, in terms of Ministry of Power's statutory direction dated 27.8.2018, MB Power is not required to file any separate Petition for claiming pass through of Change in Law compensation emanating from levy of Coal Terminal Surcharge by Ministry of Railways' subsequent Notification dated 27.12.2018, especially when this Commission has allowed MB Power to recover Coal Terminal Surcharge from UPPCL as per its applicable rate(s) from time to time.

58. We have considered the submissions of the Petitioner and the Respondent, UPPCL. This issue needs to be examined in light of observations made by the Commission's Order dated 3.6.2019 which reads under:

Commission's Order dated 3.6.2019

"66. The Petitioner has submitted that as on cut of date, there was no levy of Coal Terminal Surcharge. Subsequently, the Railway Board, Ministry of Railways vide Circular No. TCR/1078/2017/07 dated 22.8.2016, imposed a Coal Terminal Surcharge w.e.f. 22.8.2016 at Rs. 55/tonne at both loading and unloading of coal (totalling to Rs. 110/tonne) for distance beyond 100 km. The Petitioner has submitted that the Coal Terminal Surcharge introduced by way of Railway Circular and effective after the cut-of date is change in law event. The Petitioner has submitted that subsequently, Railway Board vide its Circular dated 6.7.2017 abolished Coal Terminal Surcharge w.e.f. 10.7.2017.

68. We have considered the submissions of the Petitioner and the Respondents. The Appellate Tribunal in its judgment dated 14.8.2018 in Appeal No. 119 of 2016 & IA Nos. 668 & 674 of 2016 has held that the circulars issued by Ministry of Railways (MoR) have a force of law. The relevant portion of the said judgment dated 14.8.2018 (Page No. 50) is extracted as under:

"xiii. From the above it is crystal clear that the Circulars issued by MoR regarding Busy Season Surcharge, Development Surcharge and Port Congestion Charges which have bearing on costs of the Kawai Project of APRL have force of law."

69. Further, the Commission in its order dated 2.4.2019 in Petition No. 72/MP/2018 has considered levy of Coal Terminal Surcharge by Indian Railways as a Change in Law event. The relevant portion of the said order dated 2.4.2019 is extracted as under:

.....
70. The above decision of the Commission is also applicable in the present case. As on cut-off date i.e.17.9.2012, there was no Coal Terminal Surcharge on transportation of coal. Subsequently, Ministry of Railways vide its circular dated 22.8.2016, levied Coal Terminal Surcharge of Rs. 110/tonne (Rs. 55/tonne on each terminal) on transportation of coal with effect from 22.8.2016 and the same was subsequently abolished with effect from 10.7.2017 vide Ministry of Railways circular dated 6.7.2017. **Since circulars issued by Ministry of Railways have force of law, therefore introduction of Coal Terminal Surcharge by Ministry of Railways vide its circulars constitutes "Change in Law" in terms of Article 10 of the PPA. Accordingly, the Petitioner is entitled to recover such Coal Terminal Surcharge from the UP Discoms as per its applicable rate in proportion to the coal as per the parameters of the applicable Tariff Regulations of**

this Commission or actually consumed whichever is lower, for generation and supply of electricity to UP Discoms.”

59. On perusal of the above, we observe that the Commission in Order dated 3.6.2019 has only dealt with the Petitioner's Change in Law claim relating to Coal Terminal Surcharge levied in terms of Railway Board, Ministry of Railways' Circular dated 22.8.2016 which subsequently came to be abolished by Circular dated 6.7.2017. In the said order, neither the Petitioner had raised the issue of levy of Terminal Charges nor this Commission consequently dealt with the above charges in the said order. Whereas the Terminal Charges came to be introduced by Railway Board, Ministry of Railways vide Circular dated 27.12.2018 @ Rs. 20/tonne on both inward and outward traffic for all commodities (excluding container traffic) being handled at Railway Goods Sheds and Private Freight Terminal (PFTs) both greenfield and brownfield to be collected by the Railways. Although both are essentially a levy by the Ministry of Railways, Coal Terminal Surcharge and Terminal Charges cannot be simply termed as one and the same charges both being distinct in their nature and scope. In the Order dated 3.6.2019, the Commission did not have any occasion to consider the Terminal Charges – as the same had not been raised by the Petitioner at all – and therefore, it cannot be said that the Change in Law claims of the Petitioner based on Terminal Charges are covered under paragraph 70 of the Order.

60. The Petitioner has submitted that the Commission has already recognised the circular issued by the Ministry of Railways having force of law and thus, keeping in view the Ministry of Power's statutory direction dated 27.8.2018, MB Power is not required to file any separate Petition for claiming pass through of Change in Law compensation

emanating from levy of Coal Terminal Surcharge by Ministry of Railways' subsequent Notification dated 27.12.2018, especially when this Commission has allowed MB Power to recover Coal Terminal Surcharge from UPPCL as per its applicable rate(s) from time to time. We have considered the submission made by the Petitioner. We do find that the Commission has indeed held that the circular(s) of Ministry of Railways have force of law. However, the scope of the present Petition is limited to examining the dispute that arose in course of implementation of Order dated 3.6.2019 and regardless of the merits of its Change in Law claim, any new Change in Law event, which did not form part of the original proceedings, cannot be dealt with in the present proceedings. Since MB Power's claim toward Terminal Charges did not form part of the proceedings in Petition No. 156/MP/2019 and consequently, the Order dated 3.6.2019, the deductions done by the Respondent, UPPCL, to this extent cannot be held as against the Order dated 3.6.2019.

61. Since the claim of Terminal Charges as Change in Law event was not dealt with in Petition No 156/MP/2019, the claim of the Petitioner regarding Terminal Charges introduced by Railway Board, Ministry of Railways vide Circular dated 27.12.2018 is beyond the scope of execution of Petition No 156/MP/2019. Therefore, the Commission is not inclined to adjudicate on merits the issue whether imposition of Terminal Charges by Ministry of Railways' Notification dated 27.12.2018 constitutes a Change in Law event under the PPA at this juncture.

F) Carrying Cost

62. The Respondent, UPPCL has submitted that the Petitioner in Petition No. 156/MP/2018 had prayed to allow incremental costs due to the Change in Law events

along with carrying cost, so as to restore MB Power to the same economic position as if such Change in Law events had not occurred. Considering the prayer of the Petitioner, the Commission vide its Order dated 3.6.2019 has held that the Petitioner MB Power is eligible for carrying cost at the actual interest rate paid by it 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 the lowest. While MB Power has applied the criterion specified by the Commission for claiming carrying cost i.e., lowest rate among the actual interest rate paid by MB Power for arranging fund, however, MB Power has erroneously carried out compounding of carrying cost on monthly basis in their claims. UPPCL has submitted that the Order dated 3.6.2019 issued by the Commission, is silent on the aspect of whether the carrying cost is to be recovered on simple interest basis or it needs to be compounded, as such the issue whether interest needs to be recovered/paid on simple interest basis or compound interest basis unless specified, is no longer *res integra* and has been discussed by the Hon'ble Supreme Court in *State of Haryana v. S.L. Arora & Co., [(2010) 3 SCC 690]*. The Hon'ble Supreme Court vide the said judgment has held that interest unless otherwise specified, refers to simple interest, that is, interest paid on only the principal and not on any accrued interest.

63. UPPCL further submitted that as per the Regulation 8(13) of CERC Tariff Regulations, 2014, the amount under-recovered or over-recovered needs to be recovered or refunded along with simple interest. The Commission has approved the application of CERC Tariff Regulations to the project of MB Power for the purposes of it claiming carrying cost. UPPCL has submitted that there is no concept of compound

interest in dealing with various provisions related to interest calculations in the CERC Tariff Regulations. Therefore, by no stretch of imagination can MB Power be permitted to claim carrying cost along with compound interest with monthly rest. UPPCL has placed reliance on APTEL's Order dated 11.5.2017 issued in the case of *Jaigad Power Transco Limited v. Maharashtra Electricity Regulatory Commission i.e., Appeal No. 250 of 2015 and S.L. Arora's case (Supra)*. UPPCL has submitted that even though the judgment in S.L. Arora's case has been rendered in the context of Arbitration Act, the logic and principles enunciated therein can be applied to the present case as well.

64. The Respondent, UPPCL has submitted that carrying cost allowed by the Commission vide its Order dated 3.6.2019 is akin to pre-award interest. Further, in any case, in the absence of any provision for interest upon interest in the CERC Tariff Regulations, the Commission does not have the power to award interest upon interest, or compound interest, for claims of carrying cost. Accordingly, carrying cost has been paid by UPPCL based on simple interest, and the amount equivalent to the difference between calculating carrying cost on compounding basis and simple interest basis, being untenable has not been verified by UPPCL. In view of the foregoing, UPPCL has deducted Rs 72,85,02,732/ from the supplementary invoices raised by MB Power till 28.2.2021 on account being a difference between calculating carrying cost on compounding basis and simple interest basis.

65. *Per Contra*, the Petitioner argued that the above allegations of UPPCL are wrong. The Commission in Order dated 3.6.2019 directed UPPCL to pay carrying cost arising out of approved Change in Law events from the effective date of Change in Law till the actual

payment to MB Power and LPS as per the PPA if payment is not made by UPPCL within due date.

66. The Petitioner has further argued that the Commission at Para 126 of the Order dated 3.6.2019 has held that MB Power is entitled for carrying cost at the actual interest rate paid by it for arranging funds or the rate of Interest on Working Capital rate as per the applicable CERC Tariff Regulations or the LPS Rate as per the PPA, whichever is the lowest. The Petitioner has submitted that the interest being charged by its lenders on the debt facility/working capital availed by MB Power is on monthly compounding basis. Further, in terms of Article 8.3.5 of the PPA dated 18.1.2014, LPS is payable at the rate of 2% in excess of the applicable SBAR per annum on the amount of outstanding payment, calculated on day-to-day basis and compounded with monthly rest. Evidently, the interest charged by the lenders of MB Power as well as payment of LPS under the PPA is on monthly compounding basis. Hence, in terms of this Commission's direction in Order dated 3.6.2019, UPPCL is mandated to pay carrying cost on compound interest basis and not on simple interest.

67. The Petitioner has relied on the Hon'ble Supreme Court's recent Judgment dated 24.8.2022 in *Civil Appeal No. 7129 of 2021 UHBVNL v. Adani Power (Mundra) Ltd. & Anr. [2022 SCC OnLine SC 1068]*, wherein the Hon'ble Supreme Court has held that impact of Change in Law is required to be computed in line with the restitutionary principles and accordingly, the carrying cost is to be recovered on compound interest basis from the date of occurrence of the Change in Law event.

68. The Petitioner has further argued that the Judgments referred to by UPPCL do not apply in the present case since the present case pertains to compensation for Change in Law claims which is based on restitutionary principle envisaged in Article 10.2 of the PPA as upheld by the Hon'ble Supreme Court in the case of *Energy Watchdog v. CERC* [(2017) 14 SCC 80] (Para 57), and *UHBVNL v. Adani Power Ltd. & Ors* [(2019) 5 SCC 325].

69. The Petitioner has argued that in order to effect restitution, compensation and carrying cost ought to be granted on compound interest basis and the same has been judicially recognized by the Hon'ble Supreme Court, the APTEL and this Commission in the following judgments:

a) APTEL judgment dated 14.9.2019 passed in Appeal Nos. 202 & 305 of 2018 *Adani Power Rajasthan Limited v. Rajasthan Electricity Regulatory Commission & Ors*, wherein it has held that carrying cost is nothing but a compensation towards the time value of money and restitution in terms of the PPA. Hence, carrying cost should be paid on the same basis as Late Payment Surcharge under the PPA. [Para 13.4]

b) Hon'ble Supreme Court Judgement dated 31.08.2020 in *Jaipur Vidyut Vitran Nigam Limited & Ors v. Adani Power Rajasthan Limited & Ors*, [(2020) SCC OnLine SC 69], wherein the above ratio of the APTEL enunciated judgment dated 14.9.2019 with respect to payment of interest/carrying cost at the rate of 2% in excess of SBAR and compounded with monthly rest has been upheld by the Hon'ble Supreme Court.

c) Hon`ble Supreme Court Judgement in *Indian Council for Enviro-Legal Action v. Union of India*, [(2011) 8 SCC 161], wherein it has been judicially recognized that in order to effect restitution, compensation and carrying cost ought to be granted on compound interest basis [Paras 169, 178, 179, 180, 181]

d) Hon`ble Supreme Court Judgement in the case of *TANGEDCO. v. PPN Power* [(2014) 11 SCC 53][Para 73 & 75]

e) Hon`ble Supreme Court Judgement in the case of *NPCL v. UPERC*, [2016 SCC OnLine APTEL 61] [Para 24 & 25]

f) This Commission's Order dated 23.10.2021 passed in Petition No. 104/MP/2017 in the case of *Adani Power (Mundra) Limited vs. UHBVNL*, wherein the Commission has held that interest on carrying cost is to be calculated on compounding basis. [Para 20,21 & 22]

70. Subsequent to the Commission's aforesaid order dated 23.10.2021, in the same matter involving Adani Power (Mundra) Limited and Uttar Haryana Bijli Vitran Nigam Limited, the issue where the carrying cost is to be paid by on simple interest or compounded interest, the Hon'ble Supreme Court in its recent judgment dated 24.8.2022 in *Civil Appeal No. 7129 of 2021 UHBVNL v. Adani Power (Mundra) Ltd. & Anr.* [2022 SCC OnLine SC 1068] has held that impact of Change is Law is required to be computed in line with the restitutionary principles and accordingly, the carrying cost is to be recovered on compound interest basis from the date of occurrence of the Change in Law event.

71. We have considered the submissions of the Petitioner and the Respondent, UPPCL. We observe that the Commission in Order dated 3.9.2019, in accordance with the principles of restitution, had allowed MB Power carrying cost arising out of approved Change in Law events from the effective date of Change in Law till the actual payment. Relevant portion of the said order dated 3.9.2019 is extracted as under:

*“124. In view of the provisions of the PPAs, the principles of restitution and the recent judgment of the 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 to the Petitioner.....***

*126. In line with above Order of the Commission, in the instant case, the **Petitioner shall be eligible for carrying cost 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 rate as per the applicable CERC Tariff Regulations or the Late Payment Surcharge Rate as per the PPA, whichever is the lowest.***”

72. We observe that while, UPPCL has not disputed criterion specified by the Commission for claiming carrying cost (i.e., lowest rate among the actual interest rate paid by MB Power for arranging funds, the rate of interest on working capital as per the applicable CERC Tariff Regulations, and the Late payment Surcharge rate as per the PPA). However, the issue at hand is whether this carrying cost is to be recovered on simple interest or monthly compounding basis?

73. The issue of recovery of carrying cost has been dealt with by the Commission, APTEL and the Hon’ble Supreme Court in the dispute between Adani Power (Mundra) Limited vs. Uttar Haryana Bijli Vitran Nigam Limited & Ors. The APTEL in its judgement dated 12.8.2021 in the *Appeal 421 of 2019 involving Adani Power (Mundra) Limited vs. Uttar Haryana Bijli Vitran Nigam Limited*, while allowing interest of carrying cost i.e.

recovery of carrying cost on monthly compounding basis, remanded the matter to the Commission for determination of amounts payable:

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

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

.....

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

- i) The Appellant is entitled for carrying cost in respect of compensation for change in law event towards FGD installation as approved by the Commission from the date of change in law occurrence.*
- ii) The Appellant is entitled for interest on carrying cost, as claimed by the Appellant.***
- iii) The Respondent Commission shall determine the amounts payable to the Appellant, in terms of our judgment within eight (8) weeks from today”.*

74. The Commission in the above remand proceedings issued the Order dated 23.10.2021 in Petition No. 104/MP/2017 titled Adani Power (Mundra) Limited vs. Uttar Haryana Bijli Vitran Nigam Limited & Ors, reviewed the matter in view of the above directions of APTEL and allowed interest of carrying cost which is nothing but recovery of

carrying cost on monthly compounding basis. Relevant portion of the said order dated 23.10.2021 is extracted as under:

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

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

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

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

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

i) XXXXX.

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

22. Thus, there is a categorical finding of the APTEL that interest on carrying cost is payable which cannot be denied in the remand order by the

Commission. Accordingly, the Haryana Utilities are directed to make payment of carrying cost and interest thereon in accordance with the methodology adopted in order dated 17.9.2018 in Petition No. 235/MP/2015, as per which the payment has already been made by the Haryana Utilities.”

The above mentioned APTEL Judgement dated 12.8.2021 in the Appeal 421 of 2019 was challenged in the Hon'ble Supreme Court. Hon'ble Supreme Court, in its recent judgment dated 24.8.2022 in this matter bearing Civil Appeal No. 7129 of 2021 UHBVNL v. Adani Power (Mundra) Ltd. & Anr. [2022 SCC OnLine SC 1068] upheld the decision of the APTEL and held as under

“16.Once carrying cost has been granted in favour of the respondent No. 1 – Adani Power, it cannot be urged by the appellants that interest on carrying cost should be calculated on simple interest basis instead of compound interest basis. Grant of compound interest on carrying cost and that too from the date of the occurrence of the Change in Law event is based on sound logic. The idea behind granting interest on carrying cost is not far to see, it is aimed at restituting a party that is adversely affected by a Change in Law event and restore it to its original economic position as if such a Change in Law event had not taken place.

17. The interest rate framework followed by Scheduled Commercial banks and regulated by the Reserve Bank of India mandates that interest shall be charged on all advances at monthly rests. In this view of the matter, the respondent No. 1 – Adani Power is justified in stating that if the banks have charged it interest on monthly rest basis for giving loans to purchase the FGD, any restitution will be incomplete, if it is not fully compensated for the interest paid by it to the banks on compounding basis. We are of the opinion that interest on carrying cost is nothing but time value for money and the only manner in which a party can be afforded the benefit of restitution in every which way. In the facts of the instant case, the Appellate Tribunal was justified in allowing interest on carrying cost in favour of the respondent No. 1 – Adani Power for the period between the year 2014, when the FGD was installed, till the year 2021.....

18. We are not persuaded by the submission made on behalf of the appellants that since no fault is attributable to them for the delay caused in determination of the amount, they cannot be saddled with the liability to pay interest on carrying cost; nor is there any substance in the argument sought to be advanced that there is no provision in the PPAs for payment of compound interest from the date when the Change in Law event had occurred.

19. The entire concept of restitutionary principles engrained in Article 13 of the PPAs has to be read in the correct perspective. The said principle that governs compensating a party for the time value for money, is the very same principle that would be invoked and applied for grant of interest on carrying cost on account of a Change in Law event. Therefore, reliance on Articles 11.3.4 r/w 11.8.3 on the part of the appellants cannot take their case further...

20. In view of the aforesaid discussion, the impugned judgment and order dated 12th August, 2021 passed by the Appellate Tribunal is upheld and the present appeal is accordingly dismissed as meritless.”

75. In view of the above, we observe that in order to effect restitution, it is essential that the affected party needs to be compensated for the time value of money by providing interest on carrying cost i.e. recovery of carrying cost on monthly compounding basis. This fact has been duly recognized by the Hon'ble Supreme Court, the APTEL and the Commission.

76. We accordingly, hold that MB Power is right in recovering the carrying cost on monthly compounding basis and therefore, the deductions made by UPPCL against this head are wrong and erroneous and UPPCL is directed to refund the amount such deducted to MB Power along with applicable LPS accrued from the invoice due date till the date of making final payment in accordance with the provisions of the PPA.

Issue No. 4: Whether Late Payment Surcharge is payable on supplementary bills raised by the Petitioner in context of the facts and law?

77. Having decided above that:

- a) Supplementary invoices raised by MB Power towards the Change in Law compensation were in order and in compliance with the mechanism enunciated in the Commission's order dated 3.6.2019 and;

b) Apart from deductions made by UPPCL on account of GST impact on O&M, Insurance and Financial Charges and Terminal Charges, the deductions made by UPPCL from the MB Power's supplementary invoices against the various other heads were wrong and erroneous, we now proceed to decide the issue whether Late Payment Surcharge is payable on supplementary bills raised by the Petitioner in context of the facts and law.

78. The Petitioner has submitted that the Commission by Order dated 3.6.2019 held that once a supplementary bill is raised by MB Power for the allowed Change in Law claims, the provisions of Late Payment Surcharge in the PPAs would kick in if payment is not made by UPPCL within the due date. The Petitioner has further submitted that in terms of Article 8.8.3 read with Article 8.3.5 of the PPA dated 18.1.2014, UPPCL is mandated to pay Late Payment Surcharge (LPS) to MB Power, in the event of delay in payment of supplementary bill beyond the due date. LPS is payable at the rate of 2% in excess of applicable SBAR per annum on the amount of outstanding payment, calculated on a day to day basis (and compounded with monthly rest), for each day of the delay. In terms of the PPA dated 18.1.2014, "Due Date" for payment of supplementary bill is 30th day after the bill is received by UPPCL. The Petitioner has submitted that in terms of the aforesaid, it is amply clear that UPPCL is liable to pay LPS on the supplementary invoices for the period corresponding to its Due Date (i.e. 30th day post issuance of such Supplementary Invoice by MB Power) till date of making complete payment by UPPCL against these supplementary invoices.

79. The Petitioner has further submitted with respect to supplementary invoices dated 29.7.2019, 15.10.2019 and 2.12.2019, PTC on behalf of UPPCL, by way of emails dated 22.5.2020, 27.5.2020 and 8.6.2020 informed that:

(a) LPS on the outstanding amount of such Invoices shall be payable from 23.1.2020 and 27.2.2020 respectively (being the dates on which UPPCL has processed the payments as due) and not from the respective bill Due Date(s) as per the PPA provisions i.e., 29.8.2019, 15.11.2019 and 2.1.2020.

(b) Payment for such supplementary invoices will not be released by UPPCL until MB Power provides its consent in writing with regards to levy of LPS from 23.1.2020 and 27.2.2020.

80. Details of such supplementary invoices, contractual bill due date(s) under the PPA and UPPCL's acknowledgement date is as under:

S. No	Power Supply Period	Date of invoice by MB Power	Invoiced amount (Rs.)	Bill Due Date as per PPA (30 Days)	Invoice verification date by UPPCL
1.	Financial years 2015-16 to 2018-19	29.07.2019	723,88,33,612	29.08.2019	23.01.2020
2.	April 2019 to July 2019	15.10.2019	76,25,34,803	15.11.2019	27.02.2020
3.	August 2019 to September 2019	02.12.2019	46,66,74,832	02.01.2020	27.02.2020
	TOTAL		846,80,43,247		

81. The Petitioner has submitted that a substantial amount corresponding to more than 12 months billing was outstanding on UPPCL. Due to such huge outstanding, MB Power was facing severe financial constraints, as it was not able to make timely payments

to its lenders, O&M Contractors, and other vendors, thereby risking the seamless and uninterrupted operations of its Project with an increasing threat of the Project turning into a NPA. In view of the same, MB Power was left with no other option, but to provide its consent by emails dated 23.5.2020, 9.6.2020 and 11.6.2020 with respect to levy of LPS from UPPCL's acknowledgment date, while reserving its right to discuss the issue further. MB Power has submitted that it had consented to such arbitrary and illegitimate demand of UPPCL under coercion and financial duress. As a result of such arbitrary and illegal actions of UPPCL, MB Power has suffered a substantial loss towards LPS not paid by UPPCL.

82. The Petitioner has further submitted that its consent obtained by means of coercion (due to financial duress caused by unilateral withholding of amounts by UPPCL) does not qualify as valid consent under Section 15 of the Indian Contract Act, 1872 and MB Power has placed reliance upon the following:

(i) Hon'ble Supreme Court Judgment in *Century Metal Recycling (P) Ltd vs. Union of India*, (2019) 6 SCC 655, wherein the Hon'ble Supreme Court set aside a letter of consent issued by the appellant therein when they had no option but to issue a letter of consent agreeing to assessment/valuation by the customs authorities in order to avoid delay in clearance, levy of demurrage, ground rent and container detention charges, etc.

(ii) High Court judgment in the case of *Dai-ichi Karkaria Private Ltd., Bombay vs. Oil and Natural Gas Commission Bombay*, AIR 1992 Bom 309, wherein it has

been held that consent obtained owing to financial duress falls within the scope of 'coercion' under Section 15 of the Indian Contract Act, 1872,

(iii) Report of High-Level Empowered Committee (HLEC) dated November 2018 acknowledging the existing trend whereby the distribution licensees delaying the payment of monthly and supplementary bills are not paying LPS on delayed payment, despite the PPA providing for the same. Accordingly, HLEC has recommended that Ministry of Power (MOP) shall engage with the Regulators to ensure that LPS is mandatorily paid in the event of delay in payment by the DISCOMs,

(iv) Recommendations of the Central Government for constitution of a Group of Ministers (GOM) to examine the specific recommendations of HLEC which was constituted to address the issue of stressed power projects and forward their comments for consideration by the Cabinet. The GOM thereafter submitted its recommendation to the Cabinet Committee on Economic Affairs (CCEA) on 7.3.2019. The CCEA on 7.3.2019 approved recommendations of the GOM to make payment of LPS as mandatory,

(v) Ministry of Power's Office Memorandum dated 8.3.2019, approving the said recommendation qua mandatory payment of LPS.

83. The Petitioner has submitted that as evident from the above, UPPCL has not paid the entire Late Payment Surcharge (LPS) on the supplementary invoices dated 29.7.2019, 15.10.2019 and 2.12.2019, raised by it for Change in Law claims allowed by the Commission in order dated 3.6.2019.

84. The Respondent, UPPCL has submitted that in terms of the Commission's Order dated 3.6.2019, MB Power was obligated to raise supplementary invoices complete in all respects and thereafter, UPPCL was obligated to verify such claims and proceed with clearing of such invoices. In absence of MB Power issuing supplementary invoices which were complete in all due respects, UPPCL could not have proceeded with clearing of the supplementary invoices without duly verifying them. UPPCL has further submitted that MB Power has failed to establish that it's consents to receive LPS from the date on which UPPCL has processed payments (and not from the bill due date) was under coercion and financial/economic duress and not free consent and hence such an assertion has no merits. In support of its arguments, UPPCL has placed reliance on the judgment of Hon'ble Supreme Court in the case of *New India Assurance Co. Ltd. v. Genus Power Infrastructure Ltd.*, [(2015) 2 SCC 424].

85. UPPCL has further submitted that MB Power was keen to have a settlement and avoid litigation and hence consented for receiving of LPS from the date on which UPPCL had processed payments as due and thus UPPCL agreed and settled the claim of LPS with MB Power. Therefore, the settlement between MB Power and UPPCL is binding and valid, and there cannot be any subsequent claim qua this aspect. In this regard, UPPCL has placed reliance on the judgement of Hon'ble Supreme Court in the case of *National Insurance Co. Ltd. v. Boghara Polyfab (P) Ltd.*, [(2009) 1 SCC 267].

86. In its rejoinder to UPPCL's reply, the Petitioner has rebutted the above arguments of UPPCL and argued that in terms of the Commission's order dated 3.6.2019, in case of any delay in payment beyond the "Due Date" (i.e. 30th day after the bill is received by

UPPCL), UPPCL is liable to pay LPS as per the provisions of PPA. Accordingly, MB Power has relied on the judgment of Hon'ble Supreme Court in the case of *MSEDCL v. MERC & Ors*, [2021 SCC OnLine SC 913], categorically holding that LPS is payable when payment against monthly bills is delayed beyond the due date and the object of LPS is to enforce and/or encourage timely payment of charges by the procurer i.e., LPS dissuades the procurer from delaying payment of charges.

87. MB Power has further argued that consent e-mails were issued by it upon UPPCL's continuous insistence as a condition precedent for disbursement of substantial outstanding arrears towards supplementary bills amounting to more than 12 months billing. Thus, MB Power had consented to such arbitrary demand of UPPCL under coercion and financial duress, so as to ensure that UPPCL would release the huge outstanding payment which was necessary for continued operation of the Project. Such consent was not given under any commercial pressure. It is a clear case of coercion and financial duress. To substantiate its submissions, MB Power has placed reliance on the judgment of the Hon'ble Supreme Court in the case of *National Insurance Co. Ltd. v. Boghara Polyfab Pvt. Ltd* [(2009) 1 SCC 267] wherein it has been held that a construction company, hard pressed for funds and keen to get the admitted amounts released, might execute a document styled as a "full and final settlement" but such discharge is under economic duress.

88. MB Power has further argued that the consent obtained through coercion and financial duress does not qualify as valid consent under Section 15 of the Indian Contract Act, 1872. We have considered the submission. Section 15 of the Indian Contract Act,

1872 defines coercion as “*committing or threatening to commit, any act forbidden by the Indian Penal Code, or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter in to an agreement.*” It is not a case that any illegal demand was being made as such and the consent was given under coercion. The chain of exchange of mails taken together with placed facts and circumstances does not give any inkling of duress or coercion. If UPPCL’s argument is to be accepted then every Discom in the country would adopt such *modus operandi* and evade payment of LPS from the due date and call it commercial pressure. Such conduct is contrary to and violative of the provisions of the PPA, judgment of Hon’ble Supreme Court in the case of *MSEDCL v. MERC & Ors*, [2021 SCC OnLine SC 913] and this Commission’s Order dated 3.6.2019 in terms of which LPS is payable from the contractual due date.

89. MB Power argued that UPPCL in its reply has itself admitted that it had applied commercial pressure on MB Power for evading payment of LPS. This is admission by UPPCL that they are trying to act in a manner contrary to the mandate of PPA, Act and judgment of Hon’ble Supreme Court in the case of *MSEDCL v. MERC & Ors*, [2021 SCC On Line SC 913]. In view of such an admission by UPPCL, UPPCL be directed to pay the entire LPS accrued from the invoice due date in terms of the PPA till the date of making final payment. UPPCL may be further directed to restrain from exerting such coercion/ commercial pressure and make timely payments, failing which it shall be liable to pay the entire LPS in terms of the applicable provisions of the PPA.

90. The matter has been examined. We have perused the various submissions/ documents placed on record by the parties and during the course of proceedings of the matter before the Commission.

91. The Commission by Order dated 3.6.2019 held that once a supplementary bill is raised by MB Power for the allowed Change in Law claims, the provisions of Late Payment Surcharge in the PPAs would kick in if payment is not made by UPPCL within the due date: -

*“124 In view of the provisions of the PPAs, the principles of restitution and the recent judgment of the 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 to the Petitioner**.....Once a supplementary bill is raised by the Petitioner in terms of this Order, **the provisions of Late Payment Surcharge in the PPAs would kick in if payment is not made by the Respondents within due date.**”*

92. We note that in terms of Article 8.8.3 read with Article 8.3.5 of the PPA dated 18.01.2014, UPPCL is mandated to pay LPS, in the event of delay in payment of supplementary bill beyond the due date which is 30th day after raising of the supplementary bill. LPS is payable at the rate of 2% in excess of applicable SBAR per annum on the amount of outstanding payment, calculated on a day to day basis (and compounded with monthly rest), for each day of the delay. Relevant provisions of the PPA are extracted as under:

“8.3.5 In the event of delay in payment of a Monthly Bill by the Procurers beyond its Due Date, a Late Payment Surcharge shall be payable by such Procurers to the Seller at the rate of two percent (2%) in excess of the applicable SBAR per annum, on the amount of outstanding payment, calculated on a day to day basis (and compounded with monthly rest), for each day of the delay. The Late Payment Surcharge shall be claimed by the Seller through the Supplementary Bill.

8.8.3 In the event of delay in payment of a Supplementary Bill by either party beyond its Due Date, a Late Payment Surcharge shall be payable at the same terms applicable to the Monthly Bill in Article 8.3.5.”

1.1 Definition.....

Due Date shall mean the thirtieth (30th) day after a Monthly Bill or a Supplementary Bill is received and duly acknowledged by the Procurer(s) or, if such day is not a Business Day, the immediately succeeding Business Day, by which date such Monthly Bill or a Supplementary Bill is payable by such Procurer(s);”

93. We note that Hon’ble Supreme Court in its judgment in the case of *MSEDCL v. MERC & Ors*, [2021 SCC OnLine SC 913], has held that LPS is payable when payment against monthly bills is delayed beyond the due date and the object of LPS is to enforce and/or encourage timely payment of charges by the procurer i.e., LPS dissuades the procurer from delaying payment of charges.

94. We have perused the E-mails exchanged between MB Power, PTC (on behalf of UPPCL) on this issue and the relevant extracts are reproduced as under:

PTC E-mail dated 22.05.2020: -

“Ref: Conference calls held between PTC and MB power officials on different dates on the subject matter.

This is with reference to ongoing reconciliation between UPPCL & PTC (MB Power), wherein UPPCL has acknowledged the following change in law bills towards CERC order against Petition no. 156/MP/2018:

S.N	Change in Law Period	Invoice amount Claimed	Invoice amount Passed	Bill presentation date to UPPCL by MB/PTC	UPPCL acknowledgment date
1.	Financial years 2015-16 to 2018-2019	723,88,33,612/-	671,93,74,612/-	06/08/2019	23/01/2020
2.	April 19 to July-19	76,25,34,803/-	118,54,58,635/-	08/11/2019	27/02/2020
3.	August-19 to September-19	46,66,74,832/-		04/12/2019	27/02/2020

It is to note that UPPCL is accepting/ready to reconcile the surcharge on change in law invoices as per date acknowledged by them on amount so verified and not date of bill presentation by MB/PTC. This matter has also been discussed by MB power with UPPCL directly for considering the bill presentation date for surcharge calculation. However, UPPCL is not accepting the same and MB power has agreed not to reconcile the surcharge amount on this amount.

It is to mention that PTC has to reconcile the principal amount on Change in law invoices wherein bill dates are also to be mentioned. Accordingly, PTC is reconciling the account with mentioning bill presentation date as mentioned in column 4 and UPPCL bill acknowledge date as mentioned in column 5 of above table. However, it is to note that whenever surcharge on these invoices is reconciled by UPPCL, it will be calculated by considering the acknowledge date as mentioned in column 5 of above table.

It is requested to confirm the same so that reconciliation can be carried out. In case of non-confirmation from MB power, reconciliation for these change in law invoices will not be carried out.”

PTC E-mail dated 27.5.2020: -

*“Subject: RE: Calculation of Surcharge on Change in law invoices dated 29.07.2019, 15.10.2019 and 02.12.2019
This with reference to our trailing mail dated 22.05.2020.*

UPPCL has requested PTC to submit the revised statement including calculation of surcharge considering the bill acknowledgement date as 23.01.2020 and 27.02.2020. Accordingly, it is requested to confirm the same for onward submission to UPPCL.”

PTC E-mail dated 8.6.2020: -

“Subject: RE: Calculation of Surcharge on Change in law invoices dated 29.07.2019, 15.10.2019 and 02.12.2019

This is with reference to our previous communications and tele conference calls regarding reconciliation with UPPCL, we are proposing the following comment subject to acceptance of UPPCL in the reconciliation to be signed.

Late payment surcharge on change in law claims dated 06.08.2019, 08.11.2019 and 04.12.2019 submitted under order dated 03.06.2019 in petition no. 156/MP/2018 has not been claimed in the present reconciliation, which will be taken up later on. PTC/MB Power do not agree with the bill acknowledgment date as per UPPCL for which matter will be taken up with the higher management of UPPCL for resolution and surcharge will be claimed accordingly.”

It is requested to consent the same.”

MB Power E-mail dated 23.5.2020:-

“Without Prejudice

Dear Sir,

We write with reference to your E-mail dated 22.05.2020. You will recall that Ld. CERC had allowed Petition No. 156/MP/2018 in terms of Order dated 03.06.2019 allowing our claim for Change in Law compensation as per Article 10 of the PPA. Pursuant to the CERC Order, we had raised the captioned invoices computing our Change in Law claims for the period FY 2015-16 to FY 2019-20 (upto September 2019). In this context, we have computed Late Payment Surcharge on the invoice(s) raised for seeking compensation on account of “Change in Law” events in accordance with PPA provisions and regulations.

PTC/UPPCL has expressed that this Late Payment Surcharge shall be payable from 23.01.2020 and 27.02.2020 respectively being the dates on which they processed the payments as due and confirmed to us that the payments shall be released to us.

Under these circumstances, considering the major financial crisis being faced by us due to large outstanding dues from PTC/UPPCL, for the moment we agree and request you to kindly release the amount that you have cleared for payment including the LPSC as proposed at your earliest convenience. We also seek an early opportunity to discuss modalities for timely payment of dues including LPSC as per PPA and the applicable law.”

MB Power E-mail dated 9.6.2020:-

“With respect to Late payment surcharge (LPSC) on supplementary bills for change in law amounts submitted on 06.08.2019, 08.11.2019 and 04.12.2019 respectively consequent to CERC order dated 03.06.2019 in petition no. 156/MP/2018 in respect of which PTC/UPPCL has expressed that LPSC shall be payable from 23.01.2020 and 27.02.2020 being the acknowledge dates on which UPPCL processed the payments as due. Considering the major financial crisis being faced by MBPL due to the large outstanding dues, we opt to agree and complete the reconciliation of aforesaid bills as per UPPCL bill acknowledges date (mentioned in column 5 of the table). However, we also seek an early opportunity to discuss modalities for timely payment of dues including LPSC as per PPA and the applicable law.”

MB Power E-mail dated 11.6.2020:-

“Subsequent to trailing mail, matter has been discussed with UPPCL officials and you today, accordingly we again confirm that we are agreeing for reconciliation of LPS as per the acknowledgment dates given in the column 5 of the table of your trailing mail dated 22 May.”

95. From the above e-mails, it is apparent that MB Power never qualified its emails that it is agreeing to the acknowledgment dates of UPPCL under protest. Even vide its final e-mail dated 11.6.2020, MB Power simply accepted the reconciliation of LPS as per the acknowledgment dates of UPPCL and did not protest or reserved its rights to challenge the action of UPPCL. In our view, there is merit in the contention of UPPCL contention that in the absence of MB Power issuing supplementary invoices which were complete in all due respects, UPPCL could not have proceeded with clearing of the supplementary invoices without duly verifying them.

96. In our view, MB Power has failed to establish that it was coerced into agreeing to the reconciliation of LPS. Even afterwards, there was no communication from MB Power to protect its right to receive balance amount of LPS. Since the Petitioner raised this issue only in the instant Petition, it is evidently an after-thought to revive the claim surrendered earlier. Instead, MB Power agreed to reconciliation stating financial crisis which could not be termed as coercion without any evidence.

97. In view of the above, we hold that MB Power is not entitled to receive LPS that it had surrendered before the Respondent, UPPCL and its prayer is hit by the principles of waiver, estoppel and acquiescence.

98. Accordingly, we direct UPPCL to pay the amount allowed in this order within 60 days of issuance of the order.

99. Petition No. 202/MP/2021 is disposed of in terms of above.

Sd/-
(P.K. Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I.S. Jha)
Member