



नई दिल्ली
NEW DELHI

याचिका संख्या./ Petition No. 219/MP/2022

कोरम/ Coram:

श्री आई. एस. झा, सदस्य/ Shri I. S. Jha, Member
श्री अरुण गोयल, सदस्य/ Shri Arun Goyal, Member
श्री पी. के. सिंह, सदस्य / Shri P. K. Singh, Member

आदेश दिनांक/ Date of Order: 21st of April, 2023

IN THE MATTER OF:

Petition under Section 79(1) (b) and (f) of the Electricity Act, 2003 read with Article 12.2 of the Power Purchase Agreement dated 18.11.2019 between the Petitioner and the Respondent No. 1 seeking relief on account of Change in Law events, viz., the imposition of Safeguard Duty as well as increase in the Integrated Goods and Services Tax, and grant of consequential reliefs therefor.

AND IN THE MATTER OF:

Ayana Renewable Power One Private Limited
S 2904, 29th Floor, World Trade Centre,
Brigade Gateway Campus, #26/1,
Dr. Rajkumar Road, Maleswaram (West),
Bangalore-560055, Karnataka

...Petitioner

VERSUS

1. Solar Energy Corporation of India Limited,
6th Floor, Plate-B, NBCC Office Block,

Tower-2, East Kidwai Nagar,
New Delhi-110 023

- 2. Madhya Pradesh Power Management Company Limited,**
Shakti Bhawan, Rampur,
Jabalpur-482008, Madhya Pradesh

...Respondents

Parties Present: Shri. Aniket Prasoan, Advocate, ARPOPL
Shri. Rishabh Bhardwaj, Advocate, ARPOPL
Ms. Dalima Gupta, Advocate, ARPOPL
Ms. Priya Dhankhar, Advocate, ARPOPL

आदेश/ ORDER

The Petitioner, i.e., Ayana Renewable Power One Private Limited, is a generating company which owns and operates a solar power project of 300 MW (AC capacity with an equivalent DC capacity of 463.68 MW) at Village Khichiya, District Bikaner in the State of Rajasthan pursuant to the PPA. The Petitioner has filed the petition under Section 79(1) (b) and (f) of the Electricity Act, 2003 read with Article 12.2 of the Power Purchase Agreement dated 18.11.2019 seeking relief on account of two Change in Law events, viz., *firstly*, imposition of Safeguard Duty as per *Notification No. 02/2020-Customs (SG) dated 29.07.2020* (“2020 SGD Notification”) and grant of consequential reliefs including additional expenditure incurred by the Petitioner towards Safeguard Duty along with 5% Integrated Goods and Service Tax and *secondly*, increase in Integrated Goods and Services Tax from 5% to 12% for import of solar based power devices which includes solar PV modules for the Project by way of *Notification No. 08/2021-Integrated Tax (Rate) dated 30.09.2021*(2021 IGST Notification) and grant of consequential reliefs.

2. The Respondent No. 1, i.e., Solar Energy Corporation of India Ltd., is an inter-State trading licensee that has been designated as a nodal agency by the Government of India for developing and facilitating the establishment of the grid connected solar power capacity in India in terms of the Government of India’s policy for promotion of solar power in the country.

3. The Respondent No. 2, i.e., MP Power Management Company Limited (MPPMCL), is the holding company of the three distribution companies of the State of Madhya Pradesh (MP DISCOMs).
4. The Petitioner has made the following prayers:
- (i) *Admit the instant Petition and list the same for urgent hearing (through video conferencing);*
 - (ii) *Hold and declare that the levy of Safeguard Duty as per Notification No. 02/2020-Customs (SG) dated 29.07.2020, on the import of solar PV modules of 53.81 MW DC capacity for the Project, is a 'Change in Law' Event under Article 12.1(v) of the Power Purchase Agreement dated 18.11.2019 read with Clause 5.7 of the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar Power Projects;*
 - (iii) *Consequently, direct the Respondent No. 1 to compensate the Petitioner for the additional expenditure incurred by the Petitioner towards Safeguard Duty along with 5% Integrated Goods and Service Tax amounting to Rs. 12,16,97,273/- (Rupees Twelve Crore Sixteen Lakhs Ninety Seven Thousand Two Hundred Seventy Three Only) in terms of Article 12 of the Power Purchase Agreement dated 18.11.2019, along with carrying costs @ 1.25% per month from the date of payment of the Safeguard Duty by the Petitioner till the date of release of compensation by the Respondent No. 1;*
 - (iv) *Hold and declare that the increase in Integrated Goods and Services Tax from 5% to 12% for import of solar based power devices which includes solar PV modules for the Project by way of Notification No. 08/2021-Integrated Tax (Rate) dated 30.09.2021 is a 'Change in Law' Event under Article 12.1(ii) and/or 12.1(v) of the Power Purchase Agreement dated 18.11.2019 read with Clause 5.7 of the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar Power Projects;*
 - (v) *Consequently, direct the Respondent No. 1 to compensate the Petitioner for the additional expenditure incurred by the Petitioner towards Integrated Goods and Services Tax amounting to Rs. 40,72,78,381/- (Rupees Forty Crore Seventy-Two Lakhs Seventy Eight Thousand Three Hundred Eighty One Only), in terms of Article 12 of the Power Purchase Agreement dated 18.11.2019, along with carrying costs @*

1.25% per month from the date of payment of Integrated Goods and Services Tax by the Petitioner till the date of release of compensation by the Respondent No. 1;

- (vi) *Direct the Respondent to reimburse the legal and administrative costs incurred by the Petitioner in pursuing the instant Petition;*
- (vii) *Any errors/ omissions may kindly be condoned, and opportunity be kindly given to rectify the same and also submit additional pleadings at a suitable later date, if required; and*
- (viii) *Grant such order, further relief(s) in facts and circumstances of the case as this Hon'ble Commission may deem just and equitable in favour of the Petitioner.*

Factual Matrix:

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

Location	Village Khichiya, District Bikaner in Rajasthan
Nodal agency	SECI
RfS issued on	13.03.2019
Bid submitted on	30.05.2019
e-Reverse auction held on	12.06.2019
LOA awarded on	25.07.2019
Capacity (MW)	300 MW
Power	Solar
PPA executed on	18.11.2019
Tariff	Rs.2.54/kWh
Date of implementation of Safeguard Duty Notification	30.07.2020
Date of implementation of GST Laws	01.10.2021
Date of operationalization of LTA	23.12.2021
Extended SCoD/Revision	23.04.2021 (as per PPA) 23.09.2021 (extension on account of Covid-19) 22.12.2021 (i.e. actual date of commissioning as per SECI letter dated 08.09.2021)
Module Supply Agreement was entered on	23.02.2021 (with Znshine PV-Tech Co. Ltd. for 155.02 MW); 03.06.2021(with SunPower Systems International Ltd. For 192 MW); 07.06.2021(with J.A. Solar International Ltd. for 116.25 MW).
Commercial Operation Date	100 MW was commissioned on 26.11.2021; 50 MW was commissioned on 07.12.2021; and 150 MW was commissioned on 22.12.2021

Submissions of the Petitioner:

6. Briefly, the Petitioner has submitted that:

- a) The 2020 SGD Notification dated 29.07.2020 and the 2021 IGST Notification dated

30.09.2021 are 'Change in Law' events under Article 12 of the PPA and had a direct effect on the project.

- b) As per the PPA, the Petitioner ought to maintain its Capacity Utilization Factor (CUF) in terms of the *Central Electricity Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2017* ("RE Tariff Regulations, 2017") as amended from time to time. Regulation 1 of the RE Tariff Regulations, 2017 stipulates a requirement of maintaining a CUF of 19% throughout the tenure of the PPAs. For maintaining such CUF, the generator is required to provide additional DC capacity to take care of losses in inverter, evacuation infrastructure and also degradation factor of solar modules. Moreover, it is also a standard industry practice to install higher capacity of DC solar panel as compared to desired AC output for targeting best technical output. Therefore, the Petitioner's Project has a cumulative DC capacity of 463.68 MW which is required to set up and operate the Project at the contracted AC capacity of 300 MW. MNRE already issued an advisory clarification dated 05.11.2019. Furthermore, the principle that compensation on account of occurrence of Change in Law, particularly imposition of Safeguard Duty, is to be paid on the actual installed DC capacity has already been upheld by the Appellate Tribunal for Electricity (APTEL) vide its judgment dated 16.11.2021 in Appeal No. 163 of 2020 titled as *Nisarga Renewable Energy Private Limited v. Maharashtra Electricity Regulatory Commission & Anr.* Accordingly, the installed DC capacity of the Project ought to be considered at the time of compensating the Petitioner for the occurrence of a Change in Law Event in terms of Article 12 of the PPA and Clause 5.7 of the Competitive Bidding Guidelines. The Petitioner is also entitled to claim carrying costs, specifically in view of the principle of complete restitution incorporated in Clause 5.7 of the Competitive Bidding Guidelines, Article 12 of the PPA, and the general law applicable to grant of carrying cost/interest.
- c) The Petitioner vide its emails dated 09.06.2022 and 30.06.2022 has provided copies of the E-way Bills and Lorry Receipts for verification of the Change in Law claim raised by the Petitioner to the extent of the Safeguard Duty payment, which were sought by SECI vide its emails dated 02.06.2022 and 27.06.2022.
- d) The Petitioner by way of the letter dated 21.06.2022 has submitted all the documents substantiating proof of payment of additional expenditure incurred by it towards payment of additional IGST and consequently, requested SECI to complete the

process of reconciliation at the earliest and process the Petitioner's claim for reimbursement of additional IGST as per Article 12 of the PPA.

- e) The issue of cut-off date insofar as pertaining to the 2020 SGD Notification is irrelevant as the extended SCoD of the Project, i.e., 22.12.2021, is subsequent to the expiry of the 2020 SGD Notification on 30.07.2021.
- f) The issue of cut-off date even with respect to the Petitioner's claim for Change in Law on account of issuance of the 2021 IGST Notification is also irrelevant. The Petitioner's claim for Change in Law on account of issuance of the 2021 IGST Notification is limited to the period prior to the COD of the Project. This is evident from a bare perusal of the Independent Auditor's Report dated 02.03.2022 on additional Integrated Goods and Services Tax, which mentions the last date of invoice as 07.11.2021 and payment as 10.12.2021.
- g) The Commission vide its order dated 20.01.2023 in Petition No. 722/MP/2020 and 723/MP/2020 has already decided on the methodology for grant of compensation on account of occurrence of Change in Law in a similar case. This Commission may grant the same dispensation in the present case and direct the Respondents to compensate the Petitioner towards occurrence of Change in Law events as per the same methodology, so that the Petitioner is restored to the same economic position as it would have been had the Change in Law events not occurred.
- h) Though the PPA is on a back-to-back basis with the Power Sale Agreement dated 16.10.2019 (PSA) executed between SECI and Madhya Pradesh Power Management Company Limited (MPPMCL), the payment of compensation by SECI to the Petitioner is not conditional upon payment by MPPMCL to SECI. Though SECI is entitled to recover the payment made to the Petitioner from MPPMCL, such an arrangement cannot stand in the way and be made conditional to the payment to be made by SECI to the Petitioner.

Submissions of SECI:

7. Briefly, SECI has stated as under:

- a) The Safeguard Duty imposed vide Notification dated 29.07.2020 of the Government of India is a "Law" in terms of PPA. However, the onus is on the Petitioner to demonstrate that the 2020 SGD Notification dated 29.07.2020 has resulted in the Petitioner incurring additional expenditure as against the envisaged expenditure as on the Bid Submission Date. The same is for the reason that at the time of Bid

Submission (30.05.2019), the Safeguard Duty Notification dated 30.07.2018 of Ministry of Finance (2018 SGD Notification) was in force providing for Safeguard Duty imposing duty in the range of 25% to 15%.

- b) Further, Rajasthan Electricity Regulatory Commission (RERC) vide Order dated 30.12.2021 in Petition Nos.1914/2021, 1922/2021 and 1941/2021, has held that Imposition of Safeguard Duty vide 2020 SGD Notification dated 29.07.2020 is not a change in Law in terms of Article 12 of PPAs (Change in Law provision). This is on the basis that at the time of submission of bid, the Petitioner ought to have factored the impact of Safeguard Duty (rates being in the range 25% to 15%) imposed vide Notification dated 30.07.2018. The Safeguard Duty imposed vide notification dated 29.07.2020 is in the range of 14.9% to 14.5% i.e. at lesser rate.
- c) In case of composite works contract, subject to admissibility of 2021 IGST Notification dated 30.09.2021 as Change in Law, any increase in tax rate of GST which the Petitioner can claim as per 2021 IGST Notification dated 30.09.2021 of Government of India is only for the increase of GST from 5% to 12% on goods there being no increase in tax on service part of 30% as per the said Notifications.
- d) The extent of relief admissible to the Petitioner on account of Notification dated 30.09.2021 of GST (if any) is subject to examination and verification of documents by SECI (and MPPMCL) to be submitted by the Petitioner. The onus is on the Petitioner to demonstrate that the Notification dated 30.09.2021 has resulted in the Petitioner incurring additional expenditure as against the envisaged expenditure prior to the Bid Submission Date.
- e) The Petitioner may be directed to furnish the relevant details of the actual date of importation of modules into India, the date on which the modules were taken delivery of, Statutory Auditor's Certificate, the documents as per the indicative checklist of SECI etc. to substantiate the impact of safeguard duty on the procurement of modules required for the solar power project.
- f) There has been a decrease in the interest rate of loan and the Commission has notified the *Central Electricity Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2020* (Renewable Tariff Regulations 2020) and RE Tariff Order dated 31.03.2021. In the said regulations read with RE tariff Order, the Commission has considered the interest rate of 9% and the term of the Loan repayment as 15 years instead of 13 years earlier considered. The same parameters for making payment on annuity basis may be considered by the

Commission in case compensation is allowed.

- g) Directions may be issued to MPPMCL to make payment towards the evaluated claims of the Safeguard Duty and GST payable by SECI to Petitioner, on a back to back basis under the PSA in a time bound manner.
- h) APTEL in decision dated 15.09.2022 passed in Appeal No.256 of 2019 and connected Appeals in the case of *Parampujya Solar Energy Pvt. Ltd. vs. Central Electricity Regulatory Commission* (Parampujya Case) has dealt with the impact of Change in Law beyond Commercial Operation Date of the project along with carrying cost. In this regard, it is submitted as under:
- (i) The Hon'ble Supreme Court vide order dated 12.12.2022 in Civil Appeal No.8880 of 2022 filed by Telangana DISCOMs challenging the above judgement dated 15.09.2022 of APTEL in Parampujya Case, has inter-alia held as under:

“2 Pending further orders, the Central Electricity Regulatory Commission (CERC) shall comply with the directions issued in paragraph 109 of the impugned order dated 15 September 2022 of the Appellate Tribunal for Electricity. However, the final order of the CERC shall not be enforced pending further orders.”

- (ii) The Judgment dated 15.09.2022 of the APTEL in Parampujya Case has also been challenged by SECI before the Hon'ble Supreme Court in Civil Appeal bearing Diary No.135 of 2023. The Hon'ble Supreme Court vide Order dated 23.01.2023 in in Civil Appeal being Diary No.135 of 2022 has held as under:

Pending further orders, the Central Electricity Regulatory Commission (CERC) shall comply with the directions issued in paragraph 109 of the impugned order dated 15 September 2022 of the Appellate Tribunal for Electricity. However, the final order of the CERC shall not be enforced pending further orders.

.....

Tag with Civil Appeal No 8880 of 2022.

Analysis and Decision:

8. We have heard the learned counsels for the Petitioner and Respondents and have carefully perused the records and considered the submissions of the parties.
9. On the basis of the submissions of the contracting parties, the following issues arise for adjudication:

Issue No.1: Whether the introduction of Notification No.02/2020- Custom (SG)dated 29.07.2020 issued by the Department of Revenue, Ministry of Finance, Government of India and the introduction of Notification No.8/2021-Central Tax (Rate), Notification No. 8/2021- Intergrated Tax (Rate) dated 30.09.2021 issued by Ministry of Finance, Government of India amounts to Change in Law events under Article 12 of the Power Purchase Agreement dated 17.10.2019?

Issue No.2: Whether the Petitioner is entitled for compensation towards additional expenditure on account of Change in Law event in terms of Article 12.2 of the PPA? AND Whether the Petitioner is entitled to carrying cost towards compensation for Change in Law?

Issue No.3: Whether discount rate @ 10.40% decided by this Commission vide order dated 20.08.2021 in Petition No.536/MP/2020 be considered in calculation of Annuity methodology for payment of compensation (if any) on account of Change in Law?

10. We now proceed to discuss the above issues. Since Issue No.1, Issue No.2 and Issue No.3 are interlinked, they are being taken together for consideration. The Petitioner has submitted that the 2020 SGD Notification was issued after the sunset clause of the 2018 SGD Notification and results in introduction of Safeguard Duty beyond 30.07.2020 which had a direct impact on the Project as it resulted in the Petitioner incurring additional expenditure. Further, vide 2021 IGST Notification the GST rates were increased from 5% to 12%. As such both notifications qualify as Change in law under Article 12 of the PPA and the Petitioner should be compensated accordingly. *Per Contra*, SECI has submitted that the onus is on the Petitioner to demonstrate that the Notifications have resulted in incurring additional expenditure against the anticipated expenditure on the Bid Submission Date.

11. We observe that Article 12 of the PPA stipulates as under:

“ARTICLE 12: CHANGE IN LAW

12.1 Definitions

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

In this Article 12, the term Change in Law shall refer to the occurrence of any of the following events pertaining to this project only after the last date of the bid submission, including (i) the enactment of any new law; or (ii) an amendment, modification or

repeal of an existing law; or (iii) the requirement to obtain a new consent, permit or license; or (iv) any modification to the prevailing conditions prescribed for obtaining an consent, permit or license, not owing to any default of the Solar Power Generator; or (v) any change in the rates of any Taxes including any duties and cess or introduction of any new tax made applicable for setting up the solar power project and supply of power from the Solar Power project by the SPD which have a direct effect on the Project.

However, Change in Law shall not include (i) any change in taxes on corporate income or (ii) any change in any withholding tax on income or dividends distributed to the shareholders of the SPD, or (iii) any change on account of regulatory measures by the Appropriate Commission.”

In the event a Change in Law results in any adverse financial loss/ gain to the Solar Power Generator then, in order to ensure that the Solar Power Generator is placed in the same financial position as it would have been had it not been for the occurrence of the Change in Law, the Solar Power Generator/ Procurer shall be entitled to compensation by the other party, as the case may be, subject to the condition that the quantum and mechanism of compensation payment shall be determined and shall be effective from such date as may be decided by the Appropriate Commission.

It the event of any decrease in the recurring/ nonrecurring expenditure by the SPD or any income to the SPD on account of any of the events as indicated above, SPD shall file an application to the appropriate commission no later than sixty (60) days from the occurrence of such event, for seeking approval of Change in Law. In the event of the SPD failing to comply with the above requirement, in case of any gain to the SPD, SECI shall withhold the monthly tariff payments on immediate basis, until compliance of the above requirement by the SPD.

12.2 Relief for Change in Law

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

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

12. As per the Safeguard Duty Notification No. 1/2018 (SG) dated 30.07.2018 (2018 SGD Notification), the Central Government imposed safeguard duty as per the following rates on the import of “Solar Cells whether or not assembled in modules or panels”:

- a) 25% ad valorem, minus anti-dumping duty, if any, when imported during the period from 30th July 2018 to 29th July 2019;
- b) 20% ad valorem, minus anti-dumping duty, if any, when imported during the period from 30th July 2019 to 29th January 2020;

c) 15% ad valorem, minus anti-dumping duty, if any, when imported during the period from 30th January 2020 to 29th July 2020.

13. The extract of Safeguard Duty Notification No. 2/2020-CUSTOMS (SG) dated 29.07.2020 (2020 SGD Notification), is as under:

- ...
- (a) fourteen point nine per cent. ad valorem minus anti-dumping duty payable, if any, when imported during the period from 30th July, 2020 to 29th January, 2021 (both days inclusive); and
- (b) fourteen point five per cent. ad valorem minus anti-dumping duty payable, if any, when imported during the period from 30th January, 2021 to 29th July, 2021 (both days inclusive).

14. The extract of Notification No. 08/2021-Integrated Tax (Rate) dated 30.09.2021 (2021 IGST Notification), is as under:

(b) in Schedule II – 12%, -

...

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

201 A	84, 85 or 94	<p>Following renewable energy devices & parts for their manufacture: -</p> <p>(a) Bio-gas plant</p> <p>(b) Solar power-based devices</p> <p>(c) Solar power generating system</p> <p>(d) Wind mills, Wind Operated Electricity Generator (WOEG)</p> <p>(e) Waste to energy plants / devices</p> <p>(f) Solar lantern / solar lamp</p> <p>(g) Ocean waves/tidal waves energy devices/plants</p> <p>(h) Photo voltaic cells, whether or not assembled in modules or made up into panels.</p>
------------------	-------------------------	---

15. From the above we note that any application of new tax or an amendment, modification or repeal of an existing law is covered as ‘Change in Law’. We observe that, the 2020 SGD Notification stipulated fourteen point nine per cent (14.9%) ad valorem minus anti-dumping duty payable, on subject goods when imported during the period from 30.07.2020 to 29.01.2021 (both days inclusive); and fourteen point five per cent (14.5%) ad valorem minus anti-dumping duty payable, if any, when imported during the period from 30.01.2021 to 29.07.2021 (both days inclusive). The notification provides for a diminishing ‘Safeguard Duty’ slab in the range of 14.9% to 14.5% applicable ad valorem on the imports from 30.07.2020 till 29.07.2021. The impact of ‘Safeguard Duty’ notification is on any portion of import whose point of taxation is on or after implementation of the Notification dated 29.07.2020 and the same will be subjected to the purview of ‘Safeguard Duty’. The

Commission is of the view that a fresh 'Safeguard Duty' became effective from 30.07.2020 and hence the notification/imposition of 'Safeguard Duty' will directly affect the projects where "Solar Cells whether or not assembled in modules or panels" were imported on or after 30.07.2020. In the present instance, the 2020 SGD Notification has imposed a fresh Safeguard Duty till 29.07.2021 and has thereby increased the rate of the Safeguard Duty from 'zero' to 14.9% & 14.5% for the period- 30.07.2020 to 29.01.2021 and 30.01.2021 to 29.07.2021, respectively.

16. The Commission further observes that Clause (v) of Article 12 of the PPA, in seriatim specifically stipulates that *any change in rates of taxes, duties and cess, or introduction of any new tax made applicable for setting up of Solar Power Project and supply of power from the Solar Power Project by the SPD which have a direct effect on the Project*. The introduction of Notification No. 8/2021- Integrated Tax (Rate) dated 30.09.2021 has been issued by the Ministry of Finance, Government of India. As such the introduction of the impugned notifications have been enacted by the Act of Parliament. The change in rate of Goods and Services Tax from 5% to 12% w.e.f. 01.10.2021 has resulted in the change in cost of the inputs required for generation and the same is considered as 'Change in Law'.
17. Hence, we hold that the impugned notifications viz. 2020 SGD Notification and 2021 IGST Notification are Change in Law as per Article 12 of the PPA.
18. In the instant petition, the bid was submitted by the Petitioner on 30.05.2019. PPA was executed between the Petitioner and the SECI on 18.11.2019 and the SCoD the project was 23.04.2021. In terms of the extended SCoD, the Project was required to be commissioned on or before 23.09.2021. Further, as per letter dated 08.09.2021, SECI informed the Petitioner that "*Scheduled Commissioning Date of your project is being extended for a period equal to 60 days subsequent to operationalization of LTA or actual date of commissioning. whichever is earlier*". It is observed that the Petitioner has commissioned the project in three tranches i.e. 100 MW on 26.11.2021, 50 MW on 07.12.2021 and 150 MW on 22.12.2021 whereas the LTA was operationalized on 23.12.2021. Therefore, the project was commissioned in entirety on 22.12.2021. The 2020 SGD Notification was notified on 29.07.2020 and the 2021 IGST Notification was notified on 30.09.2021. As such the Petitioner's project was affected by the said SGD & GST Notifications. Therefore, the Petitioner is entitled for relief under the SGD and GST Laws as per the terms of Article 12 of the PPA.

19. The **next issue** raised by SECI is that the methodology for payment of compensation should allow the discounting factor as 9 % (which is rate of interest for the loan component of the capital cost) and tenure of payment as 15 years as provided in RE Tariff order dated 31.03.2021 providing for determination of tariff under Regulation 14 (2) (b) of the Renewable Tariff Regulations, 2020. The Petitioner has also agreed to the same and submitted that the Commission vide its Order dated 20.01.2023 in Petition No. 722/MP/2020 and 723/MP/2020 has already decided on the methodology (viz., discount rate of 9% and annuity period of 15 years) for grant of compensation on account of occurrence of Change in Law in a similar case. In view of the agreement between the parties we hold that the discount rate of 9% and annuity period of 15 years will be the appropriate methodology towards change in law compensation.
20. The **next issue** raised by the Petitioner is that, the Petitioner is entitled for compensation towards additional expenditure on account of Change in Law event in terms of Article 12.2 of the PPA along with carrying cost on account of Change in Law event in terms of the PPA.
21. Before, delving into this issue, it is pertinent to analyze the submission of the Petitioner with respect to the compensation on the installed DC Capacity. The Petitioner has submitted that it is entitled to maintain its CUF as per RE Tariff Regulations, 2017. Further, Petitioner has placed reliance on MNRE Advisory Clarification dated 05.11.2019 wherein it was stated as follows:
- “
- (4). Accordingly, all concerned are hereby advised that:
- i. **As long as the solar PV power plant is in accordance with the contracted AC capacity and meets the range of energy supply based on Capacity Utilisation Factor (CUF) requirements, the design and installation of solar capacity on the DC side should be left to the generator / developer.**
 - ii. **Even if the installed DC capacity (MWp) [expressed as the sum of the nominal DC rating (Wp) of all the individual solar PV modules installed] in a solar PV power plant, is in excess of the value of the contracted AC capacity (MW), it is not violation of PPA or PSA, as long as the AC capacity of the solar PV power plant set up by the developer corresponds with the contracted AC capacity and that, at no point, the power (MW) scheduled from the solar PV power plant is in excess of the contracted AC capacity, unless there is any specific clause in the PPA restricting such D.C. capacity.**
-”
22. The Petitioner has further submitted that APTEL has already given its findings on the issue of

compensation qua SGD on the actual installed DC Capacity vide judgement dated 16.11.2021 in A.No. 163 of 2020 in the matter of *Nisarga Renewable Energy Private Limited v. Maharashtra Electricity Regulatory Commission & Anr. (Nisarga Judgement)*. It was *inter-alia*, held as follows:

35. *There can be no quarrel with the proposition that Article 9.2.1 of the PPAs dealing with Change in Law envisages restoration of the affected party to the same financial position. Accordingly, Change in Law impact ought to be computed on actuals. While granting in - principle approval for change in law, the MERC, by its Order dated 18.07.2019, unequivocally held that compensation is to be determined on actuals. **The said order having attained finality, the MERC was expected to consider determination of compensation on actual DC installed capacity.** By the impugned order, the Commission has limited the compensation by restricting the project DC capacity to 39.67 MW as against the total DC capacity of 43.72 MW for Juniper and to 93.33 MW as against the total DC capacity of 101.79 MW for Nisagra. Such an approach is contrary to the terms of the PPAs as well as settled law on the subject, particularly because it is based on normative/arbitrary formula different from the actuals . Juniper and Nisagra have already incurred the full cost for the Project and additional cost on account of imposition of Safeguard Duty, which is a part of the project cost. The claim for compensation under change in law provision is limited to the additional burden of taxes and duties. There is no basis for the assumption at the stage of scrutiny of such claim that the projects have been designed sub- optimally. Relief sought pertains to reimbursement of additional cost on account of Change in Law and not the full cost for the modules.*

36. *In our view, **under the PPAs, there is no restriction on the DC capacity to be set up or the maximum declared CUF. The CUF as declared by the appellants has been accepted by MSEDCL. The higher installed DC capacity results in higher generation from the Project while using the same AC infrastructure, thereby optimizing the utilization of the AC infrastructure, leading to a lower cost of energy, benefits of which have statedly been passed on to MSEDCL as lower tariff in terms of the PPAs. DC overloading is accepted as an industry practice for Solar Projects. MSEDCL has already taken the benefit of higher generation at a lower tariff. MSEDCL cannot claim that DC overloading is high. Accordingly, there is no escape from the full DC capacity of the Projects being considered while computing the Change in Law compensation***

...

44. *It needs to be borne in mind that carrying cost is the value for money denied at the appropriate time and is different from LPS which is payable on non-payment or default in payment of invoices by the Due Date. Payment of carrying cost is a part of the Change in Law clause which is an in-built restitution clause [see *Uttar Haryana Bijli Vitran Nigam Ltd. Vs. Adani Power Ltd. (2019) 5 SCC 325*]. We are satisfied that carrying costs on the CIL amount should have been on actuals and not the Late Payment Surcharge (“LPS”) rate specified in the PPAs i.e., 1.25% in excess of 1-year MCLR of SBI for the period of 25 years.”*

...

50.....

The denial of full compensation of additional expenditure and other consequential impact suffered consequent upon aforementioned change in law event on actual basis in terms of earlier order dated 18.07.2019 being arbitrary, unjust and bad in law, the State Commission shall be obliged to pass a fresh consequent order on the subject bearing in mind the observations recorded and conclusions reached above. The Commission shall hear the parties afresh on the subject of carrying cost and decide on the appropriate rate for full recompense on that account after considering the above-noted alternative pleas of the appellants.”

23. From the above, we observe that APTEL has held that the higher installed DC capacity results in higher generation from the Project while using the same AC infrastructure, thereby optimizing the utilization of the AC infrastructure, leading to a lower cost of energy, benefits of which have statedly been passed on as lower tariff in terms of the PPA. DC overload is accepted as an industry practice for Solar Projects. Accordingly, full DC Capacity can be considered while computing Change in Law compensation. In view of the above, the Commission is of the view that as long as the solar PV power plant is in accordance with the contracted AC capacity and meets the range of energy supply based on CUF requirements, the installation of DC solar capacity can be considered for the compensation after ensuring that DC Capacity has been actually installed at the project site.

24. Further, we observe that APTEL judgement dated 15.09.2022 in A.No. 256 of 2019 & Batch (*Parampujya Solar Energy Pvt. vs. CERC & Ors.*), it was held as under:

CONCLUSION

108. For the foregoing reasons, Appeal no. 35 of 2022 (Chhattisgarh State Power Distribution Company Ltd. v. Central Electricity Regulatory Commission & Ors.) must fail. It is accordingly dismissed.

*109. The other captioned appeals – Appeal no. 256 of 2019 (Parampujya Solar Energy Pvt. Ltd & Anr. v. CERC & Ors.), Appeal no. 299 of 2019 (Parampujya Solar Energy Pvt. Ltd. v. CERC & Ors.), Appeal no. 427 of 2019 (Mahoba Solar (UP) Private Limited v. CERC & Ors.), Appeal no. 23 of 2022 (Prayatna Developers Pvt. Ltd. v. CERC & Ors.) Appeal no. 131 of 2022 (Wardha Solar (Maharashtra) Private Ltd. & Anr. v. CERC & Ors.) and Appeal no. 275 of 2022 (Parampujya Solar Energy Pvt. Ltd. & Anr. v. CERC & Ors.) - deserve to be allowed. **We order accordingly directing the Central Electricity Regulatory Commission to take up the claim cases of the Solar Power Project Developers herein for further proceedings and for passing necessary orders consequent to the findings recorded by us in the preceding parts of this judgment, allowing Change in Law (CIL) compensation (on account of GST laws and Safeguard Duty on Imports, as the case may be) from the date(s) of***

enforcement of the new taxes for the entire period of its impact, including the period post Commercial Operation Date of the projects in question, as indeed towards Operation & Maintenance (O&M) expenses, along with carrying cost subject, however, to necessary prudence check.

...

25. In view of the above the Petitioner shall be entitled for compensation towards additional expenditure on account of Change in Law event in terms of Article 12.2 of the PPA along with carrying cost on account of Change in Law event upto the date of reimbursement by the Respondents. The Petitioner, in the instant petition shall be eligible for carrying cost starting from the date when the actual payments were made to the Authorities till the date of issuance of this Order, at the actual rate of interest paid by the Petitioner for arranging funds (supported by Auditor's Certificate) or the rate of interest on working capital as per applicable RE Tariff Regulations, 2017 or the late payment surcharge rate as per the PPA, whichever is the lowest. Once a supplementary bill is raised by the Petitioner in terms of this order, the provision of Late Payment Surcharge in the PPA would kick in if the payment is not made by the Respondents within the due date.
26. Accordingly, the Commission hereby directs the contracting parties to carry out reconciliation of additional expenditure on account of introduction of Notification No. 2/2020-CUSTOMS (SG) dated 29.07.2020, Notification No. 8/2021- Integrated Tax (Rate) dated 30.09.2021 by Ministry of Finance, Government of India along with carrying cost by exhibiting clear and one to one correlation with the projects and the invoices raised supported with auditor certificate. The Commission further directs that the responding MPPMCL is liable to pay SECI all the above reconciled claims that SECI has to pay to the Petitioner. However, payment to the Petitioner by SECI is not conditional upon the payment to be made by the responding MPPMCL to SECI.
27. Further, SECI has submitted that the Judgment of the APTEL dated 15.09.2022 has been assailed before the Supreme Court in Civil Appeal no. 8880/2022 in the case of "*Telangana Northern Power Distribution Co. Ltd. & Anr. Vs. Parampujya Solar Energy Pvt. Ltd. & Ors.*". SECI has further submitted that the final order by this Commission in this behalf shall not be enforced till further orders are passed by the Hon'ble Supreme Court.
28. The Hon'ble Supreme Court in its Order dated 12.12.2022, in Civil Appeal no. 8880/2022 in the case of "*Telangana Northern Power Distribution Co. Ltd. & Anr. Vs. Parampujya Solar*

Energy Pvt. Ltd. & Ors.” (and in similar Orders dated 03.01.2023 and 23.01.2023) has held as under:

“Pending further orders, the Central Electricity Regulatory Commission (CERC) shall comply with the directions issued in paragraph 109 of the impugned order dated 15 September 2022 of the Appellate Tribunal for Electricity. However, the final order of the CERC shall not be enforced pending further orders.”

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

30. The Petition No. 219/MP/2022 is disposed of in terms of above.

Sd/-
पी. के. सिंह
(सदस्य)

Sd/-
अरुण गोयल
(सदस्य)

Sd/-
आई. एस. झा
(सदस्य)