



नई दिल्ली  
NEW DELHI

याचिका संख्या./ Petition No. 283/MP/2022 &  
286/MP/2022

कोरम/ Coram:

श्री जिष्णु बरुआ, अध्यक्ष/Shri Jishnu Barua, Chairperson  
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: 05<sup>th</sup> of December, 2023

**IN THE MATTER OF:**

A petition under section 79 of the Electricity Act 2003 before the Hon'ble Central Electricity Regulatory Commission for seeking declaration of "Change in Law" on account of change in Goods and Services Tax slabs vide Notification No. 8/2021-Central Tax (Rate) dated 30.09.2021 read with G.O. (MS) No. 121 bearing Notification No. II(2)/CTR/671(e-1)/2021 dated 04.10.2021 issued by the Government of Tamil Nadu in terms of Article 12 of the Power Purchase Agreement executed between JSW Renew Energy Limited and Solar Energy Corporation of India Limited

**AND IN THE MATTER OF:**

1) **Petition No. 283/MP/2022**

**M/s. JSW Renew Energy Limited,**  
JSW Centre, Bandra Kurla Complex,  
Bandra (East), Mumbai

...Petitioner

**Versus**

1. **M/s Solar Energy Corporation of India Limited,**  
1<sup>st</sup> Floor, A Wing, D-3, District Centre,  
Saket, New Delhi – 110017, Delhi
2. **Madhya Pradesh Power Management Company,**  
Shakti Bhawan, Rampur, Vidyut Nagar,  
Jabalpur, Madhya Pradesh- 482008

...Respondents

**AND IN THE MATTER OF:**

2) **Petition No. 286/MP/2022**

**M/s. JSW Renew Energy Limited,**  
JSW Centre, Bandra Kurla Complex,  
Bandra (East), Mumbai

...Petitioner

**VERSUS**

1. **Solar Energy Corporation of India Limited (SECI),**  
1<sup>st</sup> Floor, A Wing, D-3, District Centre,  
Saket, New Delhi – 110017, Delhi
2. **Chhattisgarh State Power Distribution**  
4<sup>th</sup> Floor, Vidyut Seva Bhawan Dangania,  
Raipur, Chhattisgarh- 492013
3. **West Bengal State Electricity Distribution,**  
Vidyut Bhaan, Biddhanagar,  
Block DJ, Sector-II, Kolkata -700091

...Respondents

**Parties Present:**

Shri Aditya K Singh, Advocate, JREL  
Ms. Pratiksha Chaturvedi, Advocate, JREL

Shri Vinit Kumar, Advocate, JREL  
Shri M. G. Ramachandran, Sr. Advocate, SECI  
Ms. Tanya Sareen, Advocate, SECI  
Ms. Surbhi Kapoor, Advocate, SECI  
Ms. Srishti Khindaria, Advocate, SECI

### **आदेश/ ORDER**

The Petitioner, JSW Renewable Energy Limited (JREL) is a generating company engaged in the business of generation and sale of electricity. M/s JSW Future Energy Ltd. (formerly JSW Solar Ltd.) is the parent company of the Petitioner and was declared as a successful bidder in the Competitive Bidding Process for the development, generation and supply of Electricity from the 500 MW & 310 MW Blended Wind Power Projects to be set up in the State of Tamil Nadu. The Petitioner is seeking a declaration of Change in Law on account of a change in Goods and Services Tax slabs in terms of Article 12 of the Power Purchase Agreements (PPAs) dated 01.05.2021 in petition no. 283/MP/2022 and dated 27.07.2021 in petition no. 286/MP/2022.

2. Respondent No. 1, Solar Energy Corporation of India Limited (SECI), (in petition no. 283/MP/2022 & 286/MP/2022) has been set up under the administrative control of the Ministry of New and Renewable Energy (MNRE) to facilitate the implementation of the Jawaharlal Nehru National Solar Mission (NSM) for the development, promotion, and commercialization of solar energy technologies in the country and to achieve targets set out in the NSM. SECI has been designated as the nodal agency for the implementation of MNRE schemes for developing grid-connected solar and wind power projects in India.
3. Respondent No. 2, Madhya Pradesh Power Management Company Limited (MPPMCL) (in petition no. 283/MP/2022), is a fully owned company of the Government of Madhya Pradesh and entrusted for procurement of power for three Distribution Companies of the State of Madhya Pradesh.
4. Respondents No. 2 & 3, Chhattisgarh State Power Distribution Co. Ltd. (CSPDCL) and West Bengal State Electricity Distribution Co. Ltd. (WBSEDCL) (in petition no. 286/MP/2022) are distribution companies (DISCOMs) in the State of Chhattisgarh and West Bengal respectively.

5. The Petitioner has made the following prayers in Petition No. 283/MP/2022 & 286/MP/2022:
- Declare the increase in the rate of GST slabs vide Notification NO. 8/2021-Central Tax (Rate) dated 30.09.2021 issued by the Ministry of Finance as a Change in Law event in terms of the PPA;*
  - Declare the increase in the rate of GST slabs vide Notification dated bearing No. II(2)/CTR/671(e-1)/2021 issued by the Government of Tamil Nadu as a Change in Law event in terms of the PPA;*
  - Direct the Solar Energy Corporation of India to reimburse the Petitioner for the corresponding increase in the Project cost on account of the increase in Goods and Services Tax as and when paid by the Petitioner no later than forty-five (45) days of claim(s) submitted by the Petitioner;*
  - Grant interest/carrying cost from the date of actual payment of the goods and services tax till the date of reimbursement made by the Solar Energy Corporation of India;*
  - Pass any such other and further reliefs as this Hon'ble Commission deems just and proper in the nature and circumstances of the present case.*

**Factual Matrix:**

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

Scheme	Setting up of 2500 MW ISTS Connected Blended Wind Power Projects (Tranche-IX)
Location of the projects	At district Tuticorin, Tenkasi and Tirunelveli in the State of Tamil Nadu (283/MP/2022). At district Tiruppur in the State of Tamil Nadu (286/MP/2022).
Project capacity	500 MW & 40MW (283/MP/2022); 270 MW (286/MP/2022)
Nodal Agency	SECI
Tariff	Rs. 3.00/kWh
GST Notification No.1/2017-Central Tax (Rate) (2017 GST Notification) notified on issued by Government of India	28.06.2017
Request for Selection (RfS) was floated on	20.03.2020
Bid was submitted on	28.07.2020
E-Reverse Auction	14.08.2020
Letter of Award (LoA) issued on	25.09.2020
GST Notification No. 8/2021-Central Tax (Rate) (2021 GST Notification) notified on	30.09.2021
GST Notification No. II(2)/CTR671 (E-1)/2021 issued by Government of Tamil Nadu on	04.10.2021
Adoption Order vide petition no. 178/AT/2021	21.12.2021
Power Sale Agreement (PSA) executed on	<u>Petition No. 283/MP/2022:</u> ➤ between SECI and MPPMCL on 05.03.2021

	Petition No. 286/MP/2022: ➤ between SECI and CSPDCL on 02.07.2021 and with WBSSEDCL on 30.06.2021
Power Purchase Agreement (PPA) executed on	01.05.2021 (283/MP/2022); 27.07.2021 (286/MP/2022)
Effective date of PPAs	31.03.2021 (283/MP/2022); 15.07.2021 (286/MP/2022)
Scheduled Commercial Operation Date (SCoD)	31.03.2023(283/MP/2022); 15.07.2023 (286/MP/2022)
Extended SCoD by SECI vide letter dated 05.07.2022	30.12.2023 (283/MP/2022); 28.12.2023 (286/MP/2022)

7. The instant petitions were filed on 19.08.2022. The Petitions were listed for hearing on 16.02.2023, wherein the Commission, after hearing the parties, admitted the petitions. Subsequently, the Petitions were listed for hearing on 16.05.2023. The Commission, after hearing the submissions of the parties, reserved the matter and directed them to file their respective submissions. SECI filed its reply against Petitioner's submissions in Petition No. 283/MP/2022 on 03.12.2022 and on 19.05.2023 in Petition No. 286/MP/2022.

### **Hearing dated 16.05.2023**

13. During the course of hearing dated 16.05.2023, the Commission observed as under;

*Learned counsel for the Petitioner submitted that the present Petitions have been filed, inter-alia, seeking declaration of Change in Law on account of change in GST slabs vide Notification No.8/2021-Central Tax (Rate) dated 30.9.2021 read with G.O (MS) No. 121 bearing Notification No. II(2)/CTR/671(e-1)/2021 dated 4.10.2021 issued by the Government of Tamil Nadu in terms of Article 12 of the Power Purchase Agreements dated 1.5.2021 and 27.7.2021 executed between the Petitioner and SECI. Learned counsel further submitted that vide Record of Proceedings for the hearing dated 16.2.2023, notice was also issued to the buying entities/distribution licensees in these matters. However, none of the buying entities/distribution licensees have filed any reply.*

**2. Learned senior counsel for the Respondent, SECI submitted while the Respondent has already served its reply on the Petitioners, it may also be permitted to upload its reply on e-filing portal of the Commission. Learned senior counsel submitted that at the time of seeking adoption of tariff in Petition No. 178/AT/2021, SECI had prayed for recognition of changes in rates of Safeguard Duty, GST and Basic Custom Duty after 28.7.2020. However, in view of the notification of Change in Law Rules by the Ministry of Power, Government of India, the Commission directed the parties to follow the process specified therein and approach the Commission in terms thereof. The Appellate Tribunal for Electricity has, however, vide order dated 5.4.2022 in OP No.1 of 2022 has held that the Change in Law Rules will not apply to the Change in Law events which occurred prior to the date of notification of Change in Law Rules.**

3. None was present on behalf of other Respondents (buying entities/distribution licensees) despite notice.
4. After hearing the learned counsel for the Petitioner and the learned senior counsel for SECI, the Commission permitted SECI to upload its reply within a week. The Commission also deemed appropriate to give an opportunity to buying entities/ distribution licensees to file their written submissions, if any, within two weeks with copy to the Petitioner who may file its written submissions, if any, within two weeks thereafter.
5. Subject to the above, the Commission reserved the matters for order.

### **Analysis & 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. I:** *Whether the introduction of Notification No.8/2021-GST issued by the Ministry of Finance, Government of India and the introduction of Notification No.II (2)/ CTR671 (E-1)/2021 by Government of Tamil Nadu on 04.10.2021 amounts to Change in Law events under Article 12 of the Power Purchase Agreement? AND Whether the Petitioner is entitled to compensation towards additional expenditure on account of Change in Law event in terms of Article 12.2 of the PPA?*

**Issue No. II:** *What should be the discount rate for the calculation of Annuity for payment of compensation (if any) on account of Change in Law?*

**Issue No. III:** *Is the Petitioner entitled to carrying cost towards compensation for Change in Law?*

10. Now, we proceed to discuss the above issues

### **Re: Issue No. I**

11. Briefly, the Petitioner has submitted that the increase in the rate of GST on renewable energy devices and their parts (from 5% to 12%) has been introduced vide Notification No. 8/2021-Central Tax (Rate) dated 30.09.2021 by the Ministry of Finance, Government of India and Notification dated 04.10.2021 being Notification No. II(2)/CTR/671(e-1)/2021 by the Government of Tamil Nadu. Since the GST Notifications have come into effect after the date of submission of bids i.e. 28.07.2020, it would also qualify as a change in law under Article 12 of the PPAs. The GST notifications resulted in a change in the GST rates for renewable energy devices, and the same is also covered under Article 12 of the PPAs, which specifically stipulates

that 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 wind power project and supply of power from the Project by the WPD which have a direct effect on the Project.

14. *Per-contra*, SECI has submitted that the Commission vide Order dated 22.12.2021 in Petition No.178/AT/2021 has held that ‘in case of changes in rates of Safeguard Duty, GST and Basic Customs Duty after 28.7.2020 and resulting in Change in project cost, such change will be treated as ‘Change in Law’ and the quantum of compensation payment on account of change in rates of such duties shall be provided to the affected party as per Article 12.2.3 subject to the provision that Appropriate Commission recognizes such provisions at the time of adoption of tariff and any decision in this regard shall be governing on WPD and buying entity.’ Further, since the notification dated 30.09.2021 and notification dated 04.10.2021 in regard to GST Laws were notified prior to Change in Law Rules (notified on 22.10.2021), accordingly, these events shall be ‘dealt in accordance with the prevalent dispensation/rule position at the time of occurrence of the event’ and not as per the Change in Law Rules 2021. In view of the above, it is necessary for the Commission to consider recognising the change in the rate of GST claimed by the Petitioner under Article 12.1.3 of the PPAs. Further, at this stage, the extent to which the relief is to be given, including the calculation of the impact of the change in the law in terms of the increase in the capital expenditure to be serviced, etc., is not required to be considered.

12. We observe that Article 12 of the PPA dated 01.05.2021 in Petition No. 283/MP/2022 stipulates as under:

**12. ARTICLE 12: CHANGE IN LAW**

**12.1 Definitions**

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

**12.1.1** *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 28.07.2020 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 Wind Power Developer; 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 wind power project and supply of power from the Project by the WPD 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 WPD.*

*12.1.2 In the event of occurrence of any of events as provided under Article 12.1.1 which results in any increase/ decrease in the Project Cost (i.e. cost incurred by the WPD towards supply and services only for the Project concerned, upto Scheduled Commissioning Date or extended Scheduled Commissioning Date, as the case may be), the WPD/SECI/Buying Utility(ies) shall be entitled for compensation by the other party, as the case may be, subject to the condition that the such 'Change in Law' is recognized by the Appropriate Commission. Compensation payment on account of such 'Change in Law' shall be determined and shall be effective from such date as may be decided by the Appropriate Commission.*

*12.1.3 However, in case of change in rates of safeguard duty, GST and basic customs duty after 28.07.2020 and resulting in change in Project Cost, then such change will be treated 'Change in Law' and the quantum of compensation payment on account of change in rates of such duties and shall be provided to the affected party by the other party as per Article 12.2.3, subject to the provision that Appropriate Commission and any decision in Commission recognizes such provisions at the time of adoption of tariff by the governing on WPD and Buying Entity.*

#### **12.2 Relief for Change in Law**

*12.2.1 Save and except as provided under Article 12.1.3, the aggrieved Party shall be required to approach the Hon'ble CERC for seeking approval of Change in Law.*

*12.2.3 The decision of the Hon'ble CERC 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 WPD and Buying Entity.*

*12.2.3 In case of Change in Law as approved by the Appropriate Commission pursuant to Article 12.2.1 or as provided under Article 12.1.3, the WPD/SECI/ Buying Entities (as the case may be) shall be entitled for relief as follows:*

***Every net increase/decrease of Rs.1 lakh per MW in the Project Cost (Le cost incurred by the WPD for the supply and services in the Project concerned, upto Scheduled Commissioning Date or extended Scheduled Commissioning Date, for reasons other than those wherein such extension is on account of payment of liquidated damages, penalty or any other charges, as the case may be), shall be liable for corresponding increase/decrease of an amount equal to Rs 0.0045 /kWh.***

*Any such change shall be considered upto three digits after the decimal point, and remaining digits, if any, shall be ignored.*

*For e.g. in case the change in tariff payable is calculated as Rs. 0.14678/kWh, it shall be modified as Rs. 0.146/kWh.*

.....

15. We observe that Article 12 of the PPA dated 27.07.2021 in Petition No. 286/MP/2022 stipulates as under:

#### **ARTICLE 12: CHANGE IN LAW**

##### **12.1 Definitions**

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

*12.1.1 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 28.07.2020 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 Wind Power Developer; 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 wind power project and supply of power from the Project by the WPD 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 WPD.*

*12.1.2 In the event of occurrence of any of events as provided under Article 12.1.1 which results in any increase/ decrease in the Project Cost (i.e. cost incurred by the WPD towards supply and services only for the Project concerned, upto Scheduled Commissioning Date or extended Scheduled Commissioning Date, as the case may be), the WPD/ SECI/ Buying Utility(ies) shall be entitled for compensation by the other party, as the case may be, subject to the condition that the such Change in Law' is recognized by the Appropriate Commission. Compensation payment on account of such 'Change in Law' shall be determined and shall be effective from such date as may be decided by the Appropriate Commission.*

*12.1.3 However, in case of change in rates of safeguard duty, GST and basic customs duty after 28.07.2020 and resulting in change in Project Cost, then such change will be treated as 'Change in Law' and the quantum of compensation payment on account of change in rates of such duties and shall be provided to the affected party by the other party as per Article 12.2.3, subject to the provision that Appropriate Commission recognizes such provisions at the time of adoption of tariff by the Appropriate Commission and any decision in this regard shall be governing on WPD and Buying Entity.*

## *12.2 Relief for Change in Law*

*12.2.1 Save and except as provided under Article 12.1.3, the aggrieved Party shall be required to approach the Hon'ble CERC for seeking approval of Change in Law.*

*12.2.2 The decision of the Hon'ble CERC 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 WPD and Buying Entity.*

*12.2.3 In case of Change in Law as approved by the Appropriate Commission pursuant to Article 12.2.1 or as provided under Article 12.1.3, the WPD/ SECI/ Buying Entities (as the case may be) shall be entitled for relief as follows:*

*Every net increase/decrease of Rs.1 lakh per MW in the Project Cost (i.e cost incurred by the WPD for the supply and services in the Project concerned, upto Scheduled Commissioning Date or extended Scheduled Commissioning Date, for reasons other than those wherein such extension is on account of payment of liquidated damages, penalty' or any other charges, as the case may be), shall be liable for corresponding increase/decrease of an amount equal to Rs 0.0045 /kWh.*

*Any such change, shall be considered upto three digits after the decimal point, and remaining digits, if any, shall be ignored.*

*For e.g. in case the change in tariff payable is calculated as Rs. 0.14678/kWh, it shall be modified as Rs. 0.146/kWh*

12.2.4 In case Change in Law results in delay in commissioning or supply of power, where cause and effect between these two can be clearly established, the SEC-1 under intimation to the Buying Entities may provide suitable time-extension in Scheduled Commissioning Date or Scheduled Date of Commencement of Supply of Power, as the case may be.

12.2.5 In the event of any decrease in the project cost by the WPD or any income to the WPD on account of any of the events as indicated above, WPD shall pass on the benefit of such reduction at a rate as provided in Article 12.2.3 to SECI which shall be further passed on to the Buying Entity. In the event of the WPD failing to comply with the above requirement, SECI shall make such deductions in the monthly tariff payments on immediate basis. Further, at the time of raising of 1<sup>st</sup> Monthly Tariff Payment Bill, WPD shall be required to provide a statutory auditor certificate supported by Board Resolution in regard to implications (loss/ gain) arising out of Article 12.

12.3.1 In case of any decrease or increase in project cost occurs due to change in law, in accordance with Article 12 and to settle such claim under this Article, WPD shall give notice to the SECI and Buying Utility (s) of such Change in Law as soon as reasonably practicable (but no later than 60 days from the date of occurrence of such Change in Law).

12.3.2 Any notice service pursuant to this Article 12.3.1 and 12.1.3, shall provide, amongst other things, precise details of the Change in Law and its effect on the Project Cost, supported by documentary evidences including Statutory Auditor Certificate to this effect so as to establish one to one correlation and its impact on the Project Cost.

16. The extract of 2021 IGST Notification dated 30.09.2021, 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	Following renewable energy devices & parts for their manufacture: - (a) Bio-gas plant (b) Solar power-based devices (c) Solar power generating system (d) Windmills, Wind Operated Electricity Generator (WOEG) (e) Waste to energy plants/devices (f) Solar lantern / solar lamp (g) Ocean waves/tidal waves energy devices/plants (h) Photo voltaic cells, whether or not assembled in modules or made up into panels.
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17. Relevant excerpts of the GST Notification dated 04.10.2021 is as under:

(b) in Schedule II - 6%,-

.....

after serial number 201 and the entries relating thereto, the following serial number and entries shall be inserted, namely

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

18. We observe that Clause (v) of Article 12 of the PPAs, 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 and the introduction of Notification dated 04.10.2021 being Notification No. II(2)/CTR/671(e-1)/2021 has been issued by the Government of Tamil Nadu. As such, the impugned notifications have been enacted by the Act of Parliament and the Government of Tamil Nadu. 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 the cost of the inputs required for generation, and the same is considered a 'Change in Law'. Hence, we hold that the impugned notifications viz. Notification No. 8/2021- Integrated Tax (Rate) dated 30.09.2021 and Notification No. II(2)/CTR/671(e-1)/2021 dated 04.10.2021 are Change in Law events as per Article 12 of the PPAs dated 01.05.2021 and 15.07.2021.

19. In the instant petitions, bids were submitted by the Petitioner on 28.07.2020. PPAs were executed between the Petitioner and the SECI on 01.05.2021(in Petition No. 283/MP/2022) and on 27.07.2021 (in Petition No. 286/MP/2022) and the SCoD of the projects were 31.03.2023 (in Petition No. 283/MP/2022) and 15.07.2023 (in Petition No. 286/MP/2022). In terms of SECI's letter dated 05.07.2022, the SCoD of the projects were revised and the Projects were required to be commissioned on or before 30.12.2023 and 28.12.2023 in Petition No. 283/MP/2022 and 286/MP/2022 respectively. We observe that GST rates were amended vide Notification No. 8/2021- Central Tax (Rate) dated 30.09.2021 w.e.f. 01.10.2021 and Notification No. II(2)/CTR671 (E-1)/2021 issued by Government of Tamil Nadu. As such, the Petitioner's

project was affected by the said notifications. Therefore, we hold that the Petitioner is entitled to compensation on the increase of GST from 5% to 12% on goods only on account of a Change in Law as per the terms of Article 12 of the PPAs due impugned notifications viz. Notification No. 8/2021- Integrated Tax (Rate) dated 30.09.2021 and Notification No. II(2)/CTR/671(e-1)/2021 dated 04.10.2021.

20. The issue is decided accordingly.

**Re: Issue No.II & III**

*What should be the discount rate for the calculation of Annuity for payment of compensation (if any) on account of Change in Law?*

*And*

*Is the Petitioner is entitled to carrying cost towards compensation for Change in Law?*

21. The Petitioner has submitted that Change in Law clauses under the PPA, which have a statutory flavour attached to them, are restitutive in nature. Unless there is an express provision under the PPA prohibiting the grant of restitution on account of an increase/change in GST rates, the affected party would be legally entitled to be restored to the same economic position that it would have been but for the Change in Law event. The Petitioner shall be entitled to compensation along with applicable carrying cost on the principles of *quantum meruit*, as statutorily enshrined in Section 70 of the Indian Contract Act, 1872. The Petitioner has further submitted that it will approach the Commission seeking reimbursement as and when the actual expenditure is incurred in relation to the events which have been declared as Change in Law. On the aspect of carrying cost, the Petitioner has submitted that it is entitled to carrying costs on account of the Change in Law event in terms of the PPA and as per Section 70 of the Indian Contracts Act, 1872.

22. *Per-contra*, SECI has submitted the extent to which the relief is to be given, including calculation of the impact of change in law of increase in the capital expenditure to be serviced etc., is not required to be considered. Upon the Petitioner commissioning and declaring the commercial operation of the project, the Petitioner be directed to furnish the relevant details including the date of delivery of goods, invoices, the date on which invoices were raised, Statutory Auditor's Certificate etc. to substantiate the impact of the change in the rate of GST in terms of the above Notifications on the specified renewable energy devices and parts for their manufacture. It is

then for the Petitioner to establish the one-to-one correlation between the project, the supply of goods and/or services against which change in law is claimed, the invoices and other relevant documents for proof of the payment of the claimed amount on account of change in law. Upon filing the requisite details, SECI will coordinate with the Buying Entities and the Petitioner has to reconcile and determine the extent to which the impact of change in the law is to be allowed. At this stage, the claim of Petitioner for consideration of further aspects and directions is premature. This Commission may give an order granting recognition of the change in the rate of GST after 28.07.2020 as claimed by the Petitioner falling under the category specified in Article 12.1.3 of the PPA and the impact will be considered in respect of project cost. On the aspect of computation methodology for evaluating change in law claims, SECI submitted that the project cost could not be considered as the Petitioner has yet to commission the power project. SECI has further 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.*”. The final order by this Commission in this matter shall not be enforced till further orders are passed by the Hon’ble Supreme Court.

23. From the documents submitted on records by the parties, we note that the SCoD of the projects were 31.03.2023 (in Petition No. 283/MP/2022) and 15.07.2023 (in Petition No. 286/MP/2022). In terms of the SECI letter dated 05.07.2022, the SCoD of the projects were revised and the Projects were required to be commissioned on or before 30.12.2023 (in Petition No. 283/MP/2022) and 28.12.2023 (in Petition No. 286/MP/2022). The Petitioner has yet to commission the projects.
24. We observe that the impact of a change in law event can be only assessed in respect of the project cost when actual expenditure is incurred by the Petitioner. As also admitted on records by the Petitioner that they will approach the Commission when they incur actual expenditure, we hold that as on date, it is not necessary to pass any order on the computation methodology/ carrying cost. However, once the Petitioner incurs actual expenditure, it may approach this Commission separately, seeking compensation qua change in law events.
25. The issues are decided accordingly.

26. Petition No. 283/MP/2022 & Petition No. 286/MP/2022 are disposed of in terms of the above.

Sd/-  
पी. के. सिंह  
सदस्य

Sd/-  
अरुण गोयल  
सदस्य

Sd/-  
आई. एस. झा  
सदस्य

Sd/-  
जिष्णु बरुआ  
अध्यक्ष