



नई दिल्ली
NEW DELHI

याचिका संख्या./ Petition No. 46/RP/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: 31st of October, 2023

IN THE MATTER OF:

Review Petition under section 94(1)(f) of the Electricity Act, 2003 read with Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 alongwith the applicable provisions of law, seeking review of the Order dated 23.08.2022 passed by this Hon'ble Commission in Petition No. 373/MP/2019 in light of the error apparent on the face of the record

AND IN THE MATTER OF:

Adani Solar Energy Jodhpur Five Pvt Ltd.,
(Formerly Known as SB Energy Four Private Limited)
435 Regus Centre, 4th Floor, Rectangle 1 Building,
Saket District Centre,
New Delhi – 110 017

.....Review Petitioner

Versus

- Solar Energy Corporation of India,**
D-3, First Floor, A Wing, District Centre,
Saket, New Delhi – 110 017
- Uttar Pradesh Power Corporation Limited,**

Parties Present : Shri Sujit Gosh, Advocate, ASEJFPL
Shri Mohd. Munis Siddique, Advocate, ASEJFPL
Ms. Mannat Waraich, Advocate, ASEJFPL
Ms. Anushree Bardhan, Advocate, SECI
Ms. Tanya Sareen, Advocate, SECI

आदेश/ ORDER

The Review Petitioner, M/s Adani Solar Energy Jodhpur Five Pvt Ltd has filed the present petition under Section 94 (1)(f) of the Electricity Act, 2003 read with Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations 1999 (CBR 1999) seeking review of the order dated 23.08.2022 passed by this Commission on 23.08.2022 (*Impugned Order*)

2. The Review Petitioner has made the following prayers:
- Allow the present Review Petition;*
 - Hold and declare that the Review Petitioner is entitled to reimbursement of claims raised post COD & SECI may further be directed to pay the disallowed amount on account of it;*
 - Hold and declare that the Review Petitioner is entitled to carrying costs at LPS rate on compounding basis from the date of incurring the expenditure till the date of payment; and*
 - Pass any such order(s), further relief(s) in facts and circumstances of the case as this Hon'ble Commission may deem just and equitable in favour of the Review Petitioner.*

Brief Background:

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

Location of the project	Bhadla Phase-III Solar Park, Rajasthan
Request for Selection (RFS) was issued on	21.06.2017
Bid submitted on	05.12.2017
E-Reverse conducted on	21.12.2017

Letter of Intent (LOI) was issued on	28.03.2018
Power Purchase Agreements (PPAs) executed on	27.04.2018
Tariff	Rs. 2.48/kWh
Safe Guard Duty (SGD) Notification was introduced on	30.07.2018
SCOD of the Projects as per the PPA.	27.04.2019
COD of the projects	Projects ID: <u>P2B4T11-BBEFLB-10RJ-1D-</u> 09.07.2019; <u>P2B4T11-BBEFLB-10RJ-2D-</u> 03.05.2019
Date of Impugned Order	23.08.2022
APTEL judgment in A.No. 256 of 2019 & Batch titled as <i>Parampujya Solar Energy Pvt. Ltd. v. CERC & Ors.</i> (Parampujya judgment)	15.09.2022
Review Petition was filed on	13.10.2022
Supreme Court order in Civil Appeal no. 8880/2022 in the case of <i>“Telengana Northern Power Distribution Co. Ltd. & Anr. Vs. Parampujya Solar Energy Pvt. Ltd. & Ors.”</i>	12.12.2022 (Similar order was passed on 23.01.2023)

Submissions of the Review Petitioner:

4. The Review Petitioner submitted as follows:

a) The Commission vide the impugned order dated 23.08.2022 held as under:

*“19. In view of the above discussions, the Commission holds that **regarding Safeguard duty claims, the invoices related to supply of the goods can be raised till the COD for all the equipment as per the rated project capacity that has been installed and through which energy has flown into the grid.** The contracting parties are directed to follow the directions given in Order dated 20.08.2021 in Petition No. 536/MP/2020 meticulously....
20. Accordingly, Petition No. 373/MP/2019 is disposed of.”*

- b) This Commission did not render any findings on the claim for carrying costs which was specifically pleaded and prayed by the Review Petitioner. Aggrieved by the Impugned Order dated 23.08.2022, Review Petitioner has filed the review petition seeking rectification of error which is apparent on the face of order dated 23.08.2022.
- c) The impugned order has failed to record any findings whatsoever in relation to the detailed and critical claim for interest/carrying cost thereby rendering the impugned order susceptible to review on account of an error apparent on the face of record.
- d) Recently, APTEL vide the *Parampujya judgment* dated 15.09.2022 has also allowed the claim for carrying costs in terms of a change in law clause which is *pari materia* to the change in law clauses considered in the Impugned Order.

- e) Carrying cost ought to be allowed at the rate of interest prescribed for late payment surcharge (*LPS*) under PPA, as *LPS* and carrying cost both are applicable towards the deferred payments.
- f) The settled principles of law governing grant of carrying cost factoring in the principle of time value of money, are squarely applicable to the present case. In the present case, the recovery has been unreasonably delayed for reasons not attributable to the Review Petitioner and hence, the applicable carrying costs at *LPS* rate on compounding basis are legitimately and contractually due to the Review Petitioner. The glaring and patent error on the face of the record may be rectified by passing appropriate findings on the claim for carrying costs at *LPS* rate on compounding basis, considering the recent decisions of the Tribunal & Hon'ble Supreme Court.
- g) In order to prevent miscarriage of justice, this Commission may rectify the Impugned Order and allow the SGD claims of the Review Petitioner, without considering COD as the cut-off date.

Submissions of SECI

5. SECI has submitted as under:

- a) Explanation to Order 47 Rule 1 of Code of Civil Procedure Code (CPC) states that even if the decision on a question of law on which judgment of the court is based has been reversed or modified by subsequent decision of a superior court in any other case, it shall not be a ground for review of such judgment.
- b) In view of the well-settled legal position, the impugned order dated 23.08.2022 passed by the Commission in Petition No.373/MP/2019 cannot be reviewed on the basis of subsequent decision dated 15.09.2022 of APTEL in *Parampujya* Case. The claim for reviewing the Order dated 23.08.2022 of the Commission in light of *Parampujya judgment* and allowing change in law compensation for the period post COD and carrying cost is inadmissible.
- c) The *Parampujya judgment* dated 15.09.2022 has been challenged by SECI before the Hon'ble Supreme Court in Civil Appeal No. 000505-000510. The enforceability of this Commission's order to be passed in pursuance of APTEL's judgment dated 15.09.2022 in *Parampujya* case has been stayed with account of impact of change in law for the period post COD of the projects and towards O&M expenses.

- d) PPA in the present case does not have any provision dealing with restitution principles of restoration to the same economic position. Therefore, the Review Petitioner is not entitled to claim relief of carrying cost.
 - e) Carrying cost is different from the late payment surcharge which is payable in terms of Article 10.3.3 of PPAs and not otherwise. The claim of carrying cost is based on the principle of restitution and is completely different from the penal rate of interest which is late payment surcharge payable on non-payment or default in payment of invoices by the due date.
 - f) In the absence of specific contractual agreement or a statutory provision stipulating for compound interest or interest on interest, such claim cannot be awarded.
6. SECI has filed its written submissions on 14.08.2023, the gist of which has been already covered in the Reply. So, the same is not being reiterated here.

Rejoinder by the Review Petitioner dated 16.07.2023

7. The Review Petitioner has reiterated the submissions already made in the plaint and hence, the same is not being reiterated here. Additionally, the Review Petitioner has submitted as under:
- a) Since neither has this Commission incorporated by reference, the provisions of Order 47 Rule 1 read with section 114 of the CPC, nor has it made Regulation 103 subject to provisions of Order 47 Rule 1 read with section 114 of the CPC but has instead, widened the scope of review as alluded to above namely in respect of time frame to file a review as also in respect of assuming *suo moto* power of review, it is clear that provisions of the CPC are not intended to be applied *ipso facto stricto sensu* to review proceedings before this Commission.
 - b) Since this Commission has laid out its own procedure in terms of Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, there is no warrant to invoke Explanation appended to Order 47 Rule 1 read with section 114 of the CPC, for that would be an undesirable approach bringing in the ghost of CPC through the backdoor, thereby affecting the decision making of the authorities in the power sector. Since in the present case, the issue with respect to carrying costs was not even dealt with by this Commission, accordingly, the Explanation V to Section 11 CPC cannot be said to apply.

8. As, the gist of Review Petitioner's submissions in the Written Submissions dated 11.09.2023 are already covered in the plaint, so the same is not being reiterated here.

Analysis and Decision

9. We have heard the learned counsels for the Review Petitioner and the Respondents and have carefully perused the records.

10. The issues that arise for our consideration are as under:

Issue No. 1: *Whether the Review Petitioner's contention that the impugned order dated 23.08.2022 does not render any findings on the aspect of carrying costs, amounts to error apparent on the face of record and can be treated as a ground for review of the order by the Commission?*

Issue No. 2: *Whether Review Petitioner is entitled to Change in law claims in terms of the Parampujya judgment dated 15.09.2022?*

11. Now, we discuss and analyse the issues.

Re: Issue No. 1:

12. The Review Petitioner submitted that this Commission has not rendered any finding with respect to the Review Petitioner's claim for carrying cost towards compensation qua Change in Law event and this is an error apparent on the face of record. *Per Contra*, SECI has submitted that if a decree is silent with regards to any relief which is claimed by the plaintiff, the relief is treated as declined in terms of explanation V of Section 11 of the Civil Procedure Code, 1908. Further, the parties have admitted on record that Safeguard Duty claims of the Review Petitioner stood reconciled.

13. The Commission vide impugned order dated 23.08.2022 has held as under:

13.Subsequent proceedings:

...

The present Petition was re-listed for hearing before this Commission on 14.07.2022, where it made the following observations:

"2. Learned counsel for the Petitioner submitted that the Safeguard Duty claims of the Petitioner have already been reconciled and the payments are being made by the Respondent, SECI. Learned counsel, accordingly, requested to pass an appropriate order in the matter.

3. Learned senior counsel for the Respondent, SECI submitted that SECI has already

reconciled the Safeguard Duty claims of the Petitioner and the relevant details have already been furnished by SECI vide affidavit dated 13.7.2022. Learned senior counsel further submitted that while SECI has considered the Safeguard Duty claims of the Petitioner upto the commercial operation date in accordance with the Commission's order dated 20.8.2021 in Petition No. 536/MP/2020, the distribution licensee, Uttar Pradesh Power Corporation Limited (UPPCL), in its reconciliation, has limited the consideration of claims till the scheduled commissioning date only. Learned senior counsel added that UPPCL is yet to make payment to SECI and hence, the Commission may issue direction to UPPCL to make payment towards reconciled and evaluated claims of Safeguard Duty payable by SECI to the Petitioner on a back-to-back basis under the Power Supply Agreement."

Submissions by SECI:

14. SECI had filed a short submission on 13.07.2022, which outlined the details of the reconciliation of the Petitioner's safeguard duty claims, which are given as under:

...

i) Since the commercial supply of power from the power projects under the PPAs is from the Commercial Operation Date of the power plant, SECI prays that this Commission may clarify the Cut-off Date for considering the Safeguard Duty impact as the actual Commercial Operation Date.

Analysis and Decision

16. The Petitioner and SECI have admitted on record that the Safeguard Duty claims of the Petitioner stand reconciled. Further, SECI has submitted that it has considered the Safeguard Duty claims of the Petitioner upto the commercial operation date in accordance with the Commission's Order dated 20.8.2021 in Petition No.536/MP/2020 whereas UPPCL, in its reconciliation, has limited the consideration of claims till the SCoD only. SECI has submitted that UPPCL is yet to make payment to them and hence, the Commission may issue direction to UPPCL to make payment under the Power Supply Agreement on a back-to-back basis towards reconciled and evaluated claims of Safeguard Duty payable by SECI to the Petitioner.

.....

14. Section 115 in The Indian Evidence Act, 1872

115 Estoppel. —When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing. Illustration A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it. The land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale, he had no title. He must not be allowed to prove his want of title.

15. From the above, we observe that during the course of hearing dated 14.07.2022 (in Petition No. 373/MP/2019), the Review Petitioner admitted on record that its Safeguard Duty claims were reconciled and the Respondent had started making payments to SECI and SECI submitted that

it had already furnished the details on affidavit regarding the same. Further, SECI had prayed that the Commission might clarify the Cut-off Date for considering the Safeguard Duty impact as the actual Commercial Operation Date. Accordingly, the Commission passed the Order in the impugned petition. The Commission is of the view that the Review Petitioner having submitted by way of admission *that the Safeguard duty claims stand reconciled*, is estopped from taking a contrary claim that the Commission has not given any findings on the aspect of carrying costs on the ground of it being an error apparent on the face of record.

16. We observe that Order XLVII of Civil Procedural Code, 1908 stipulates as under:

“ORDER XLVII- REVIEW

1. Application for review of judgment—

(1) Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

*and who, from the **discovery of new and important matter or evidence** which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of **some mistake or error apparent on the face of the record** or for **any other sufficient reason**, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.”*

17. Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 stipulates as under:

Amendment of orders

103A. Clerical or arithmetical mistakes in the orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Commission either of its own motion or on the application of any of the parties.

18. From the above, we observe that the Review Petitioner has failed to point out any clerical or arithmetical mistakes in the Orders or errors arising therein from any accidental slip or omission which may at any time be corrected by the Commission either of its own motion or on the application of any of the parties. The Review Petitioner has also failed to point out any reason for invocation of Regulation 103A of the CERC (Conduct of Business) Regulations, 1999. The prayer of the Review Petitioner is not covered under any of the grounds of review as provided in Order 47 Rule 1 of Code of Civil Procedure, 1908. The Commission has taken a

conscious decision keeping in mind the specific admission of the Review Petitioner with respect to reconciliation of safeguard duty claims. Accordingly, we hold that *there is no error apparent* as such and that review of the impugned order is not required on this aspect. Hence, this issue is answered against the Review Petitioner

Re: Issue No. 2:

19. The Review Petitioner has submitted that it is entitled to Change in Law compensation in the light of the APTEL judgment dated 15.09.2022 in A. No. 256 of 2019 & Batch titled as *Parampujya Solar Energy Pvt. Ltd. & Ors vs. CERC & Ors*. Further, this Commission had laid down its own procedure in terms of Section 103 of CERC Conduct of Business Rules, 1999 and there is no need to invoke explanation to Order XLVII Rule I of CPC as it will amount to *bringing the ghost of CPC through the backdoor*. ***Per Contra***, SECI submitted that the Review Petitioner has itself submitted that the present Review Petition has been filed under Section 94 (1)(f) of the Electricity Act in accordance with Order 47, Rule 1 of CPC. The Relevant para in the plaint is as under:

“A.2. It is submitted that *in light of the powers conferred under section 94(1)(f) of the Electricity Act, 2003, this Hon’ble Commission is empowered to exercise its power of review in accordance with Order 47 Rule 1 of the Code of Civil Procedure, which inter alia provides that a person may apply for a review in cases where there are some mistake or error apparent on the face of the record.*”

20. SECI has submitted that as per Order 47 Rule 1 of CPC, 1908 even if the decision on a question of law on which judgment of the court is based has been reversed/modified by the subsequent decision of a superior court, it shall not be a ground for review of such judgment. Hence, the Review Petition is not sustainable.
21. We observe that APTEL vide judgment dated 23.03.2023 in IA. No. 1766 of 2022 in A. No. 334 of 2021 titled as *Tata Power Delhi distribution Limited v. Delhi Electricity Regulatory Commission* has held as under:

(i) APPLICABILITY OF CPC TO APPELLATE PROCEEDINGS BEFORE APTEL

33. Section 120(1) of the Electricity Act provides that the Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Appellate Tribunal shall have the power to regulate its own procedure.

.....

*36. Relying on its earlier Order in *New Bombay Ispat Udyog Limited v. MSEDCL* (Judgment dated 06.05.2010 in Appeal No. 55 of 2009), this Tribunal, in *Kalani**

*Industries Pvt. Ltd. v. Rajasthan Electricity Regulatory Commission (RERC) (Order in APL No. 185 of 2015 Dated 25.10.2018), held that Section 175 of the Electricity Act, 2003 provides that the provisions of the Electricity Act are in addition to and not in derogation of any other law for time being in force; **the provisions of the CPC, in so far as they are not inconsistent with the provisions of the Electricity Act, apply to the proceedings before the Commission under Section 86(1)(f) of the Electricity Act;** this Tribunal is adequately empowered to regulate its own procedure, and there is no embargo on its invoking the provisions of the CPC; **the Commission is also adequately empowered to regulate its own procedure, and there is no embargo on its invoking the provisions of the CPC as they are not inconsistent with the provisions of the Electricity Act, and will apply to proceedings before the Commission under Section 86(1)(f) of the Electricity Act;** and the very purpose of specifically excluding the provisions of the CPC in the Electricity Act, is defeated if, through the backdoor, the ghost of CPC affects the decision making of the authorities in the power sector.*

.....

42. *In New Bombay Ispat Udyog Ltd. V.Maharashtra State Electricity Distribution Co. Ltd./Maharashtra Electricity Regulatory Commission (Order in Appeal No.55 of 2009 dated 06.05.2010), this Tribunal held that a careful perusal of the judgments of the Supreme Court, in A.A. Haja Muniuddian vs. Indian Railways: (1992) 4 SCC 736, and Industrial Credit and Investment Corporation of India vs. Grapco Industries Ltd & Ors: 1999 (4) SCC 710, make it abundantly clear that Section 120(1) of the Electricity Act was not enacted with the intention to curtail the power of this Tribunal with reference to the applicability of the Code of Civil Procedure to the proceedings before it; **on the contrary, the Supreme Court has clearly held that the words “shall not be bound by” do not imply that the Tribunal is precluded or prevented from invoking the procedure laid down by the CPC; the words “shall not be bound by the procedure laid down by CPC” only imply that the Tribunal can travel beyond the CPC;** the only restriction on its power is to observe the principles of natural justice; the right of Appeal, under Section 111 of the Electricity Act, 2003, is neither an unrestricted nor an unfettered right; Section 111 of the Electricity Act, 2003 should, necessarily, be read harmoniously along with the other provisions in the Electricity Act, 2003 namely Section 120 of the Act; a conjoint reading, of both Sections 111 and 120 of the Electricity Act, would make it clear that the right of appeal, available to an aggrieved person under Section 111 of the Electricity Act 2003, is subject to the procedure adopted by this Tribunal under Section 120 of the Electricity Act, 2003; **this Tribunal is not precluded from invoking the provisions of, and the procedure contemplated under, the CPC; this Tribunal is well within its right to adopt its own procedure as well as the procedure contemplated under the CPC; there is nothing to indicate that the provisions of the CPC are in conflict with the provisions of the Electricity Act; when there is no conflict, express or implied, both the Electricity Act and the CPC should be read together; and this tribunal can establish its own separate procedure or it may invoke the provisions of the CPC in respect of the same for which there is no bar.***

22. From the above, we are of the view that this Commission is well within its right to invoke the provisions of Civil Procedure Code, 1908 (CPC, 1908) despite there being appropriate regulations of this Commission to regulate its own procedure. Moreover, the Review Petitioner had itself relied on the provisions of CPC, 1908 to seek review of the impugned order dated

23.08.2022. As such nothing remains to be adjudicated on the limited issue of applicability of provisions of CPC, 1908 to the instant case.

23. We observe that Section 94 of the Electricity Act, 2003 stipulates as under

Section 94. (Powers of Appropriate Commission): --- (1) The Appropriate Commission shall, for the purposes of any inquiry or proceedings under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely: -

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) discovery and production of any document or other material object producible as evidence;
- (c) receiving evidence on affidavits;
- (d) requisitioning of any public record;
- (e) issuing commission for the examination of witnesses;
- (f) **reviewing its decisions, directions and orders;**
- (g) any other matter which may be prescribed.

24. Explanation to Order XLVII Rule I of CPC, 1908 stipulates as under

[Explanation.—The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.]

25. The Hon'ble Supreme Court vide judgment dated 17.03.2023 in the matter of *Govt. of NCT of Delhi through the Secretary, Land and Building Department and Another v. K.L. Rathi Steels Limited and others* [2023 SCC Online SC 288] has held as under:

66. Although, the expression “for any other sufficient reason” in Order XLVII Rule 1 CPC is wide enough to take within its scope and ambit many circumstances or situations which do not fall in the earlier part of the Order XLVII Rule 1 CPC which are the two grounds (i) and (ii) referred to above, in my view, the Explanation to the said provision carves out an exception to the expression “for any other sufficient reason” as a ground for review of a judgment in ground (iii). The Explanation being in the nature of an exception is to be read outside the scope of the expression “for any other sufficient reason” in Order XLVII Rule 1 CPC. In other words, if, on a question of law, a decision of a Court is reversed by a subsequent decision of a superior Court (Larger Bench in the instant case) and the same is reopened on the basis of the said subsequent decision there would be no finality of judgments of the Court even between the parties thereto. It is, hence, observed that even an erroneous judgment or order is binding on the parties thereto even if subsequently that very judgment is reversed in a decision of a superior Court. Otherwise, there would be chaos and no finality of any decision of a Court which is against public policy. Judgments rendered by a Court of competent jurisdiction as per the prevailing law are binding on the parties to the said judgment. Merely because that judgment is subsequently overruled by a subsequent decision of a superior Court in any other case, the same shall not be a ground for review of such judgment.

72. The Explanation to Order XLVII Rule 1 CPC states that the fact that a decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment. Thus, the bar is for a Court to review its judgment, when a Court superior to it has subsequently reversed or modified a judgment on a question of law. As far as this Court is concerned, a superior Court would mean a Larger Bench of this Court which would pass a judgment or order contrary to the judgments sought to be reviewed.

...
79. Hence, in my view, having regard to the scope and ambit of the Explanation to Order XLVII Rule 1 CPC, these review petitions are not maintainable and the judgment and the orders of this Court ought not be reviewed and the review petitions are liable to be dismissed.

80. It is also important to bear in mind that in various High Courts across the country following the judgment in Pune Municipal Corporation, Writ Petitions have been disposed of and the said decisions passed in the said writ petitions or intra court appeals, as the case may be, may have attained finality and binding on the parties thereto. **If these review petitions are allowed and are held to be maintainable there would be hundreds of review petitions which would be filed seeking review of the decisions passed by various High Courts in writ petitions following the judgment in Pune Municipal Corporation. This would open a Pandora's Box and upset the binding nature of the decisions between the parties and be contrary to the doctrine of finality in litigation.**

26. The *ratio decidendi* which emerges from the aforesaid provision of CPC, 1908 and the decisions of Hon'ble Supreme Court is that:

- a) A judgment or order is binding on the parties even if the decision on a question of law on which judgment of the court is based has been subsequently reversed/modified by the superior court.
- b) Even if the decision on a question of law on which judgment of the court is based has been subsequently reversed/modified by the superior court, this does not mean that the said decision will be a ground for review.

27. We observe that APTEL, vide judgement dated 15.09.2022 in A.No. 256 of 2019 & Batch titled as *Parampujya Solar Energy Pvt. Ltd. & Ors vs. CERC & Ors.*, held as under:

“.....
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.”

28. The *Parampujya judgment* has been challenged in Civil Appeal No. 000505-000510 and the Hon’ble Supreme Court 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. We observe that the *Parampujya judgment* was passed on 15.09.2022 which is after the decision of this Commission on 27.08.2022 in Petition No. 373/MP/2019. Hence, in terms of *explanation to Order XLVII, Rule I of CPC* and the aforesaid decisions of Hon’ble Supreme Court (on the issue of applicability of *explanation to Order XLVII Rule I of CPC*), the decision of APTEL qua *Parampujya judgment* does not apply to the instant matter. Hence, we hold that the aforesaid issue raised by the Review Petitioner cannot be a ground for review of the impugned order dated 23.08.2022.

30. In view of the discussions in the aforesaid paras, the grounds raised by the Review Petitioner for seeking review of the *impugned order* of this Commission does not survive and is answered against the Review Petitioner.

31. The Petition No. 46/RP/2022 is disposed of in terms of the above.

Sd/-
पी. के. सिंह
सदस्य

Sd/-
अरुण गोयल
सदस्य

Sd/-
आई. एस. झा
सदस्य