



whatsoever. Accordingly, the Petitioner has no right whatsoever to seek extension beyond six months and therefore, the instant Petition should be dismissed on this ground itself.

- f) As per Article 11 of the PPA, following are the essential conditions for claiming extension on the ground of Force Majeure events:
- i. In terms of Article 11.3.1, the Petitioner is under an obligation to demonstrate that any event has prevented the Petitioner from performing its obligations arising out of the PPA.
 - ii. In terms of Article 11.4.1, the Petitioner is also under an obligation to demonstrate that delay is not due to its negligence.
 - iii. In terms of Article 11.6, the Petitioner is also under an obligation to notify occurrence of the Force Majeure Event as soon as reasonably practicable, but not later than seven (7) days after the date on which the Petitioner knew occurrence of the Force Majeure Event. In terms of the PPA, issuance of the Force Majeure notice is mandatory, and such shall include full particulars of the event of Force Majeure, its effects on the Petitioner and the remedial measures proposed. The Petitioner is also required to give Force Majeure Cessation Notice notifying cessation of Force Majeure.

- g) Section 50 of the Contract Act read as under:

"50. Performance in manner or at time prescribed or sanctioned by promise. - The performance of any promise may be made in any manner, or at any time which the promise prescribes or sanctions."

Therefore, when the force majeure clause requires a notice to be issued, the same is required to be issued. The Petitioner cannot claim relief under the force majeure clause without complying with the requirements of the clause.

- h) The Petitioner has been granted extension of 7.5 months on the ground of spread of Covid-19. The Petitioner is claiming extension on the ground of spread of Covid-19 in the month of December 2021 and January 2022. The Petitioner has not produced any evidence or supporting documentation for the any restrictions by the Government or how it affected the Petitioner or its Project. Even assuming but not conceding that there was an increase in cases of Covid 19 during December 2021 and January 2022, the Petitioner has not provided any basis that the same affected the Petitioner.
- i) The Petitioner in its communication dated 03.03.2022, much beyond seven days from alleged occurrence of Force Majeure Events (month of December and January) has merely made a bald submission that the Project activity got delayed due to spread of Covid-19. The aforesaid Petitioner's notice dated 03.03.2022 cannot be considered as a Force Majeure Notice in terms of Article 11.6 as the Petitioner had sought for extension in SCOD and there was no reference to the Article 11 of the



PPA. In the said letter dated 03.03.2022, there is no detailing of the events and provision of full particulars, its effect and remedial measures proposed.

- j) The Petitioner has issued one communication on 04.12.2021 wherein it has not mentioned spread of Covid in the month of December and it has also not mentioned about any disruption on the site but has specifically mentioned that civil work has been started on the site. Therefore, in its own admission of the Petitioner, there was no disruption of the work in the month of December.
- k) The Petitioner has not provided any notice notifying occurrence of Force Majeure Event due to delay in Bay Construction but has merely copied to the UPPCL in certain communications issued to UPPTCL. Further, the Petitioner has mistakenly made averment in the Petition that UPPCL was under an obligation to construct the bay which is not a true statement.
- l) In terms of the Connection Agreement dated 09.10.2020, there was no delay in bay construction. Construction of bays and connectivity to the sub-station is the ultimate stage and happens when the project and transmission line is near completion. In terms of Clause 4.3, the Petitioner was under an obligation to intimate UPPTCL regarding the time frame for commissioning of works at its end at least 3 months in advance and to intimate time frame for commissioning of dedicated transmission line at least three months in advance.
- m) UPPTCL has commissioned the connectivity including bay construction within 3 months of the intimation of the commissioning date. On 28.04.2022, the Petitioner intimated UPPTCL that the project will be completed by 15.05.2022. In terms of the Connection Agreement, the Petitioner has negligently delayed intimation to UPPTCL. Therefore, in terms of Clause 11 of the PPA, the Petitioner cannot seek any relief under force majeure for its negligence.
- n) Article 4.8 of the PPA provides for levy of liquidated damages in the event of delay in commissioning of the Project and that such liquidated damaged may be encashed through the Performance Bank Guarantee in accordance with Article 3.3 of the PPA. The Hon'ble Supreme Court repeatedly held that a Bank Guarantee is an independent and separate contract between the Bank and the beneficiary and is absolute in nature and referred the judgements in (i) Gujarat Maritime Board versus L&T Infrastructure Development Projects Ltd (2016 SCC Online SC 1005). (ii) Ansal Engineering Projects Ltd. versus Tehri Hydro Development Corporation Ltd. ((1996)5 SCC 450). The delay in commissioning of the Project has been made on the part of the Petitioner and therefore, UPPCL has the right to encash/invoke Bank Guarantee.
- o) As per Section 74 of the Indian Contract Act, 1872, the party complaining of the breach of contract is entitled to receive the compensation whether or not the actual damage or loss is proved to have been caused. After referring to a number of judgements such as in Fateh Chand Vs Balkishan Dass [(1964) 1 SCR 515], Maula Bux Vs Union of India [(1970) 1 SCR 1405], Shri Hanuman Cotton Mills Vs. Tata Aircraft Limited [(1969) 3 SCC 522] and ONGC Ltd Vs Saw Pipes Ltd [(2003) 5



SCC 705], Hon'ble Supreme Court in Kailash Nath Case has observed that in every case of breach of contract, the person aggrieved by the breach is not required to prove the actual loss or damage suffered by him before he can claim a decree. Further, in some contracts, it would be impossible for the court to assess the compensation arising from the breach and if the compensation claimed is not by way of penalty or unreasonable, the court can award the same if it is genuine pre-estimate by the parties as the measure of reasonable compensation.

- p) In the present case, since there is delay on the part of the Petitioner in achieving COD of the project by the date of revised COD and commencement of supply of electricity to the UPPCL, this has resulted in breach of the terms and conditions of the PPA. In terms of Section 74 of the Indian Contract Act and the principles laid down at para 68(3) & (4) of Kailash Nath judgement, UPPCL is not required to prove the loss or damage suffered on account of delay in commencement of supply of electricity by the Petitioner for claiming the compensation. Since the parties have agreed to pre-estimated compensation in the PPA to be paid in the event of delay in achieving COD and commencement of supply, prayer of the Petitioner should not be granted.
- q) The Notification dated 30.09.2021 issued by the Ministry of Finance cannot be construed as a Change in Law event as per the terms of the PPA. The 'change in law' provision as provided at Article 12 of the PPA does not apply to additional costs incurred by the Petitioner towards capital expenses. The terms of a contract have to be interpreted as per the intention of the parties. In the present case, the intention of the parties at all relevant times, from the RFP to the execution of the PPA, was that the risk and cost of capital expenditure in setting up the plant was to be borne and to remain with the Petitioner. The Petitioner was invited to submit a fixed price bid where it ought to have factored in its capital costs as a sub-component of the bundle of factors comprising the bid price.
- r) This PPA is the culmination of a bidding process carried out under Section 63 of the Electricity Act. It is trite law that in a fixed priced contract / tender process the bidder is supposed to have factored in costs which may arise due to changes in rates of taxes, duties and levies. The Petitioner was well aware that it was submitting a fixed tariff bid for the supply of power for 25 years. Possible variations in the existing rates of taxes, duties and levies at the time of making the bid have been or at least ought to have been factored in the submitted bid. Accordingly, the Petitioner must not be allowed to claim costs incurred for factors it should have considered at the time of making the bid.
- s) Further, the Petitioner purchased a majority of the Solar Modules and Invertors only from January 2022 in spite of the project deadline being only a few months away and the project being in final stages of completion when such equipment should already have been installed. Therefore, such delayed orders for the relevant material points towards a mala fide intention on the part of the Petitioner to recover unnecessary costs from the UPPCL. The consequences of taking a particular



business decision, among various alternatives, lies solely to the risk of the Petitioner taking the decision.

- t) To grant relief for a Change in Law event, the Petitioner has to furnish all documents exhibiting clear and one to one correlation between projects and supply of goods and services, duly supported by the Invoices raised by the supplier of Goods and Services and the Auditor's Certificate. The Petitioner in the present matter, has only submitted the Auditor's Certificate, therefore, the Petitioner is required to furnish the above-mentioned documents demonstrating direct co-relation between the effect of the Change in Law and the loss suffered. The Auditor's certificate is also full of infirmity.
- u) The Petitioner is also under an obligation to provide details of all applicable taxes on the date of the bid submission and their changes due to introduction of GST along with supporting documents. At the time of the bid submission, Safeguard Duty was leviable on the solar modules, the Petitioner has not provided any detail whether it has discounted benefits availed by it from non-payment of the safeguard duty prior to making its claim of change in law due to notification of GST.
- v) Regarding carrying cost, it is well established principle of law that the carrying cost can only be awarded when the terms of the PPA provide for the same. The PPA does not contain any such clause and therefore, there is no basis for the Petitioner to make a claim towards carrying cost and referred Hon'ble Supreme Court of India judgement in *Uttar Haryana Bijili Vitran Nigam Limited & Anr. Vs. Adani Power Ltd. & Ors. (Civil Appeal No.5865 of 2018)*.

7. UPPTCL has filed its reply on 25.11.2022 and has mainly submitted as under:

- a) The Petitioner has signed the connection agreement with the UPPTCL for 132kV substation Konch, District Jalaun on 09.10.2020. The Petitioner has deliberately played fraud with the Commission by not filing the complete document with the Petition and Petitioner has not come with clean hands before the Commission. On this ground, the instant Petition is liable to be dismissed by this Commission.
- b) As per the Connection Agreement, UPPTCL shall construct 132kV Bay at substation-Konch within 7 months after the receipt of fund from the Petitioner. The Petitioner has deposited the Bay estimate amount Rs. 1,48,71,182/- on 28.01.2022 and the completion date of the same as per agreement is 27.08.2022 while the project has been commissioned and charged on 01.07.2022 itself, well before the completion date i.e., 27.08.2022.

Rejoinder of the Petitioner:

- 8. The Petitioner has filed its rejoinder on 29.11.2022 to the UPPCL's reply wherein reiterated its submissions of the Petition. However, the main point of submission is as below:



- a) As per Clause 5.1.5 of the PPA, the Petitioner was required to commission the project within 18 months from the date of execution of the PPA. Further, as per clause 4.7 of the PPA, in the event the Petitioner was prevented from commissioning the project within the SCOD due to UPPCL's event of default or Force Majeure Event affecting UPPCL or Force Majeure Event affecting the Petitioner, the Petitioner would be entitled for deferment/extension of the SCOD and expiry date.
- b) MNRE vide O.M dated 13.08.2020, on account of disruptions and difficulties incurred due to the COVID-19 granted time extension of five months in SCOD of all renewable energy projects under implementation as on date of the lockdown, i.e., 25.03.2020. The said blanket extension would be without case-to-case examination and no documents or evidence shall be sought for grant of such extension. Accordingly, the Petitioner vide letter dated 13.08.2020 to UPPCL requested and the same was granted vide letter dated 21.11.2020. Thereafter, the Petitioner again on 04.12.2021 requested for further extension up to 10.04.2022 on account of the COVID-19 and in view of the directions of the MNRE O.M dated 12.05.2021 and 29.06.2021. UPPCL vide letter dated 24.12.2021 extended the SCOD till 10.04.2022.
- c) No extension of time has been granted to the Petitioner under Article 4.7.6 of the PPA and the extension of time granted was only under the general directions issued by the MNRE applicable on all projects throughout India. Further, on account of the various reasons beyond the control of the Petitioner, the Petitioner is duly entitled for grant of extension of time without levying of any penalty as per Article 4.7 of the PPA. Furthermore, in the instant case no actual loss has been caused to the UPPCL and therefore no liquidated damages can be imposed upon the Petitioner as liquidated damages are not an automatic levy but are subject to proof of loss. The Petitioner had duly sent force majeure notice to the UPPCL vide letter dated 03.03.2022 and therefore, the Petitioner has complied with the requirements mentioned in the PPA.
- d) The seven and half month extension granted was in pursuance of the blanket/general extensions provided by the Government of India. No extension has been provided to the Petitioner by the UPPCL under the terms of the PPA after considering the facts and circumstances peculiar to the Petitioner. Furthermore, the commissioning of the project was also delayed inter alia on account of delay in the land acquisition, delay due to supply chain disruption across the world, the delay in the construction of the bays by respondent, the delay in the approval of the connectivity and the delay in the intimation of bay supervision charges, all of which were beyond the control of the Petitioner.
- e) As per the PPA, performance bank guarantee cannot be invoked unless liquidated damages are not determined. Since in the instant case, no liquidated damages can be imposed in the first place, therefore there arises no question of invoking the performance bank guarantee of the Petitioner. Liquidated damages can also be recovered only if there is a loss that is caused to UPPCL as liquidated damages are



not an automatic levy but are subject to proof of loss. Reliance in this regard is placed on the judgments of the Hon'ble Supreme Court in the case of *Fateh Chand v. Balkishan Dass*, reported in (1964) 1 SCR 515 and *Kailash Nath Associates v. DDA*, reported in (2015) 4 SCC 136. The case law relied by the UPPCL under reply is distinguishable and has no application in the facts and circumstances of this case.

- f) As per the settled position of law laid down by the Hon'ble Apex Court, where the court can determine the loss in terms of money, the party claiming the compensation must prove the loss suffered by it. The actual loss suffered by the UPPCL, if any, can be determined in terms of money. Therefore, liquidated damages can also be recovered by the UPPCL only if it is proved that there is a loss that is caused to UPPCL.
- g) Article 12.1.1 (v) categorically provides that any change in the rates of taxes which have a direct effect on the project shall amount to an event of change in law. Therefore, it is evident from the aforesaid that the increase in the rate of GST vide notification dated 30.09.2021 is a change in law event as per article 12 of the PPA and as such the Petitioner is entitled to be restored to the same position by way of grant of enhancement in the agreed tariff of Rs. 3.05 per kWh or lumpsum reimbursement of additional liability of additional GST as mentioned herein before.

9. The Petitioner has filed its rejoinder on 29.11.2022 to the UPPTCL's reply and has mainly submitted as under:

- a) The Petitioner has duly annexed the entire copy of the inter connection agreement dated 09.10.2020. The commissioning of the project was delayed on account of delay in completion of bay construction work by the UPPTCL. There was delay in the approval of the connectivity and the delay in the intimation of bay supervision charges.
- b) The Petitioner had already completed the work of the project and power plant was ready for commission on 01.6.2022 and further delay was caused only due to non-completion of bays work at the Konch substation. The solar power plant was finally commissioned on 01.07.2022 after the completion of the Bay Construction Work.

Commission's analysis & decision:

10. We have considered the submissions of the parties as well as documents placed on record in the matter and after going through the pleadings, the following issues arise for our consideration:

Issue No.1: Whether SAEL Ltd is entitled for extension of SCOD till 01.07.2022 and liquidated damages can be levied?

Issue No.2: Whether MoF Notification dated 30.09.2021 regarding increase in rate of GST amounts to 'Change in law' event as per the PPA?



Issue No.1: Whether SAEL Ltd is entitled for extension of SCOD till 01.07.2022?

11. Article 1.1 and Article 2.1 of the PPA dated 27.02.2020 regarding SCOD and Effective Date state as under:

"Scheduled Commercial Operation Date or Scheduled COD shall be a date, 18 months at a single location, (Developer to retain condition as per the plant capacity allocated) from the Effective Date, when the Solar PV Project is required to be commissioned as per the terms and conditions of the PPA.

2.1 Effective Date

2.1.1 This Agreement shall be deemed to have come into force with effect from the date of signing of this agreement and shall remain in full force from the date of commissioning of last unit of the Solar PV Plant from which solar power is committed to be supplied under this Agreement and such date shall be referred to as the Effective Date."

12. The effective date, i.e., date of signing the PPA is 27.02.2020 and therefore, the original SCOD of the Petitioner's project is 27.08.2021; being 18 months from effective date. However, the Petitioner has claimed that due to reasons beyond the control of the Petitioner, namely (a) third wave of Covid-19 during Dec'21 and Jan'22 and (b) delay in bay construction work at 132kV Konch substation by UPPTCL, it has failed to achieve the original SCOD.

13. Further, under clause 4.7 of the PPA, if the Petitioner was prevented from commissioning the project by the scheduled commissioning date (SCOD) due to UPPCL's event of default or Force Majeure Event affecting UPPCL or the Petitioner, the Petitioner would be entitled for deferment/extension of the SCOD.

14. The relevant extract Article 11 of the PPA regarding Force Majeure is reproduced as under:

11.2.1 An affected Party means the Seller or the Procurers whose performance has been adversely affected by an event of Force Majeure.

11.3 Force Majeure

11.3.1 A 'Force Majeure' means any event or circumstance or combination of events and circumstances as stated below that wholly or partly prevents or unavoidably delays an Affected Party in the performance of its obligations under this Agreement, but only if and to the extent that such events or circumstances are not within the reasonable control, directly or indirectly, of the Affected Party and could not have been avoided if the Affected Party had taken reasonable care in performing its obligations:

a) Act of God, including, but not limited to lightning, drought, fire and explosion, earthquake, volcanic eruption, landslide, flood, cyclone, typhoon, tornado, or

b) Explosion, accident or breakage of transmission facilities to deliver power from the Delivery Points to the receiving substation(s); or



c) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action making the performance of obligations as specified herein as Impossible; or

d) Radioactive contamination or ionising radiation originating from a source in India or resulting from another Force Majeure Event mentioned above excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Power Project by the Affected Party or those employed or engaged by the Affected Party.

e) An event of force majeure affecting the concerned STU, as the case may be, thereby affecting the evacuation of power from the Delivery Points by the Procurers;

11.4 Force Majeure Exclusions

11.4.1 Force Majeure shall not include (i) any event or circumstance which is within the reasonable control of the Parties and (ii) the following conditions, except to the extent that they are consequences of an event of Force Majeure:

a) Non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment;

b) Strikes at the facilities of the Affected Party,

c) Insufficiency of finances or funds or the agreement becoming onerous to perform; and

d) Non-performance caused by, or connected with, the Affected Party's:
i. Negligent or intentional acts, errors or omissions;
ii. Failure to comply with an Indian Law; or
iii. Breach of, or default under this Agreement

11.5 Notification of Force Majeure Event

a) The Affected Party shall give notice to the other Party of any event of Force Majeure as soon as reasonably practicable, but not later than seven (7) days after the date on which such Party knew or should reasonably have known of the commencement of the event of Force Majeure. If an event of Force Majeure results in a breakdown of communications rendering it unreasonable to give notice within the applicable time limit specified herein, then the Party claiming Force Majeure shall give such notice as soon as reasonably practicable after reinstatement of communications, but not later than one (1) day after such reinstatement.

Provided that such notice shall be a pre-condition to the Affected Party's entitlement to claim relief under this Agreement. Such notice shall include full particulars of the event of Force Majeure, its effects on the Party claiming relief and the remedial measures proposed. The Affected Party shall give the other Party regular (and not less than monthly) reports on the progress of those remedial measures and such other information as the other Party may reasonably request about the Force Majeure Event.



b) The Affected Party shall give notice to the other Party of (i) the cessation of the relevant event of Force Majeure; and (ii) the cessation of the effects of such event of Force Majeure on the performance of its rights or obligations under this Agreement, as soon as practicable after becoming aware of each of these cessations.

15. UPPCL has granted extension of 5 months on account of first wave of covid 19 and 2.5 months on account of 2nd wave of Covid 19, in terms of MNRE O.M. dated 13.08.2020 and 12.05.21 & 29.06.21 respectively. Further, UPPCL has denied the Petitioner's request dated 03.03.2022 for grant of SCOD extension till 31.05.2022, as per Article 4.7.2 of the PPA, and informed the Petitioner that project completion date would remain 10.04.2022 post which liquidated damages would be attracted as per the PPA.
16. **The Commission, however, has noted that MNRE vide its Order dated 30.03.2021 has clarified the scope of O.M dated 13.08.2020 read with O.M dated 09.02.2021 in as much as the total extension that may be granted to an RE Project on account of the Pandemic must not be more than 6 months including the blanket five-month extension granted under the O.M dated 13.08.2020. Therefore, the Commission is of the view that the Petitioner shall be eligible for extension of six months for the SCOD on account of first wave of Covid 19. However, no extension on account of third wave has been allowed by MNRE on the ground of Force Majeure. The Petitioner has also not mentioned about any disruption on the site due to third wave of COVID-19. Therefore, the revised SCOD of the Project at 27.08.2021 would stand extended by six months and 76 days i.e., 11.05.2022.**
17. The Petitioner has issued Force majeure notice dated 03.03.2022 in terms of the provisions of the PPA, the relevant extract of the Petitioner letter dated 03.03.2022 is as below:

"However, due to ongoing Covid Pandemic situation in India and because of third wave of Corona virus in the month of Dec 2021 and Jan 2022, our project development activities again got delayed which is not because of any of our fault.

Further, we wish to submit that civil work and other land development work has already finished at site, and purchase order for all major equipment's for the development of 32MW Solar Project are already placed and installation work is going on in full pace.

However, since there is very little time left in the SCOD date of 10th April 2022, so our lenders are not willing to disburse the funds for the project and had asked us to get the extension in SCOD date. Without the disbursement of funds from our lenders, we will not be able to complete the project on time.

Therefore, in the view of above facts, we hereby request you to kindly allow SCOD extension till 31st May 2022 without any penalty so that project can be successfully commissioned."



Delay in Bay construction.

18. The Petitioner has submitted that the construction of Bays was not completed by Respondent in time and therefore, there is no question imposing liquidated damage when the Respondents have themselves not fulfilled their obligation.
19. It is observed that **the Petitioner has not placed on record the complete copy of the Connection Agreement dated 09.10.2020.** The Complete copy of the same has been placed by UPPTCL along with its reply dated 25.11.2022. **The Petitioner in its rejoinder date 29.11.2022 has also cited delay in land acquisition as one of the reasons of delay, however, in its connectivity application dated 04.03.2020, the Petitioner has stated that it has acquired sufficient land for 32 MW Solar Project. Therefore, the reason of delay in land acquisition does not hold ground in favour of the Petitioner.**
20. The Petitioner had applied for connectivity on 04.03.2020 and the connection agreement was signed on 09.10.2020, after about 7 months against stipulated time of 4 months due to Covid 19 1st wave. **UPPTCL has argued that as per Format-CON3 of the said agreement dated 09.10.2020, 132kV Bay at Konch substation is to be constructed by UPPTCL in seven (7) months after receipt of fund from M/s Sukhbir Agro Energy Ltd and the Petitioner has made payment for construction of bays on 28.01.2022 and therefore, UPPTCL was to complete the bays by 28.08.2022.**
21. Under clause 4.7 of the PPA, if the Petitioner was prevented from commissioning the project by the scheduled commissioning date (SCOD) due to UPPCL's event of default or Force Majeure Event affecting UPPCL or the Petitioner, the Petitioner would be entitled for deferment/extension of the SCOD.
22. **The Commission has noted that UPPTCL had not appointed the contractor till 28.04.2022 when Petitioner requested for early completion of bays. Rather UPPTCL has attempted to veil the delay in completion of bays by stating that the Petitioner made the payment of 28.01.2022. The Commission is of the view that UPPTCL ought to have intimated the bay estimate charges to the Petitioner at the time of signing of connection agreement itself to enable Petitioner to make payment in time. Therefore, the Commission holds UPPTCL has defaulted in timely intimation of bays charges to the Petitioner.**
23. **The Commission finds that Project having been given CEIG completion certificate as early as 30.05.2022, but it was not able to commence supply of power for UPPTCL default. Accordingly, the Commission, in terms of Article 4.7 of the PPA, holds that the delay in commence of supply of power from 11.05.2022 to 01.07.2022 is to the account of UPPTCL and the Petitioner shall be entitled for deferment/ extension of SCOD in terms of Clause 4.7 of the PPA without liquidated damage.**



Issue No.2: Whether MoF Notification dated 30.09.2021 regarding increase in rate of GST amounts to 'Change in law' event as per the PPA?

24. The Petitioner has submitted that during the execution of the project, Ministry of Finance vide notification number 8/2021-integrated tax (rate) dated 30.09.2021 increased the rate of GST from 5% to 12% on solar power-based devices, solar power generators and photovoltaic cells whether assembled in modules or made up into panels. The aforesaid increase in the rate of GST thereby incurred an additional expense of approximately Rs. 5.73 Cr. The Petitioner is also entitled to carrying costs on account of payment towards change in law events.

25. Article 12 of the PPA regarding Change in Law event states as under:

"12.1.1 The term Change in Law shall refer to the occurrence of any of the following events 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 now 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, duties and cess which have a direct effect on the Project.*

However, Change in Law shall not include any change in taxes on corporate income or any change in any withholding tax on income or dividends or (ii) any change in local taxes (iii) any change on account of regulatory measures by the Appropriate Commission including calculation of Availability."

12.2 Relief for Change in Law

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

12.2.2 The decision of the Appropriate (State) Commission to acknowledge a Change in Law and provide relief for the same shall be final and governing on both the Parties.

26. The Central Goods and Services Act, 2017 has been in existence w.e.f. 01.07.2017 which was notified on 12.04.2017. However, it is required to be seen whether components of Solar Project are included in the list items on which GST shall be levied and if so, from when. Therefore, to examining Change in Law event, in terms of Article 12.1.1 of the PPA, the Petitioner is required to furnish all documents viz; applicability of GST on Solar Project components, bid submission date and exhibiting clear and one to one correlation between project and supply of goods and services, duly supported by the invoices raised by the supplier of Goods and services and the Auditor's certificate.




Commission's View

27. The Petitioner having not furnished the requisite details as mentioned above is allowed liberty to approach the Commission afresh with a separate Petition regarding claimed Change in Law event and its impact.

28. Summary of our decisions:

- (a) The revised SCOD of the Project, in terms of Article 4.7 of the PPA, would stand to actual COD of 1.07.22, the date of completion of bays, the Project having been given CEIG certificate as early as 30.05.2022. Since the delay is not on the part of the Petitioner in achieving COD of the project, the prayer of the Petitioner of not levying the liquidated damages is accepted.
- (b) The Petitioner having not furnished the requisite details as mentioned above is allowed liberty to approach the Commission afresh with a separate Petition with regard to claimed Change in Law event and its impact.

The Petition is disposed of in terms of the above directions.


(Vinod Kumar Srivastava)
Member (Law)


(Raj Pratap Singh)
Chairman

Place: Lucknow
Dated: 15.03..2023