



नई दिल्ली
NEW DELHI

याचिका संख्या./ Petition No. 113/MP/2023

कोरम/ Coram:

श्री अरुण गोयल, सदस्य/ Shri Arun Goyal, Member
श्री पी. के. सिंह, सदस्य / Shri P. K. Singh, Member

आदेश दिनांक/ Date of Order: 29th of April, 2024

IN THE MATTER OF:

Petition under section 79 (1) (a) of the Electricity Act, 2003 read with Article 10 of the Power Usage Agreements executed between NTPC Limited and Telangana State Distribution Companies Limited, seeking compensation due to increase in costs on account of change in rate of Goods & Services Tax amounting to a Change in Law event with respect to 20 MW Gandhar and 56 MW Kawas Solar PV Power Projects having Project capacity of totalling to 76 MW under CPSU scheme phase-II tranche II and the tariff was adopted by CERC vide order dated 13.12.2021 in Petition no 174/AT/2021.

AND IN THE MATTER OF:

NTPC Limited,
NTPC Bhawan, Scope Complex,
7 Institutional Area, Lodhi Road,
New Delhi-110003

...Petitioner

Versus

1. Telangana State Southern Power Distribution Company Ltd.,
6-1-50, Mint Compound,
Hyderabad-500063

2. **Telangana State Northern Power Distribution Company Ltd.,**

H. No.: 2-5-31/2,
Vidyur Bhawan, Nakkalagutta,
Hanamkonda, Warangal-506001

3. **Telangana State Power coordination Committee,**

Vidyut Soudhna,
Hyderabad-500082

...**Respondents**

Parties Present:

Shri Adarsh Tripathi, Advocate, NTPC
Shri Ajitesh Garg, Advocate, NTPC
Shri D Abhinav Rao, Advocate, Telangana Discoms
Shri Rahul Jajoo, Advocate, Telangana Discoms

आदेश/ ORDER

The Petitioner, NTPC Limited (NTPC) is a Public Sector Undertaking and is engaged in generation of electricity and allied activities having its plants generating electricity throughout the country. NTPC has submitted that at the time of signing of the Power Usage Agreement (PUA), GST @5% was levied. However, after the notification of 8/2021-Integrated Tax (Rate) dated 30.09.2021, the GST rates have increased to 12%. The Petitioner is seeking declaration that the introduction of Notification No.8/2021- Integrated Tax (Rate) issued by Ministry of Finance, Government of India amounts to Change in Law event under Article 10 of the Power Usage Agreement (PUA) with respect to 20 MW Gandhar and 56 MW Kawas Solar PV Power Projects having Project capacity totalling to 76 MW under the CPSU scheme phase-II tranche II and the tariff was adopted by this Commission vide order dated 13.12.2021 in Petition no 174/AT/2021. The Petitioner is also seeking compensation thereof.

2. Respondents No. 1 and No. 2 i.e. Telangana State Southern Power Distribution Company Ltd. (TSSPDCL) and Telangana State Northern Power Distribution Company Ltd. (TSNPDCCL) are the Distribution Companies in the State of Telangana (Telangana DISCOMs).
3. Respondent No. 3 i.e. Telangana State Power Coordination Committee (TSPCC) is the committee coordinating and helping the TSDISCOMs to meet its power requirement.

4. The Petitioner has made the following prayers:

- a) *Hold and declare that change in the applicable Goods & Services Tax (“GST”) rate on 01.10.2021, brought about by the Ministry of Finance, Government of India’s Notification No. 8/2021-Integrated Tax (Rate) dated 30.09.2021 amounts to Change in Law event in terms of the PUA;*
- b) *Hold and declare that the Petitioner is entitled to a sum of Rs. 9.18 Crore/- upwards on total cost of Gandhar and Kawas Solar PV Projects along with carrying cost applicable from the date the aforesaid amount becomes payable till the actual date of payment, towards compensation for such Change in Law events to the Petitioner.*
- c) *Pass any such other reliefs as this Hon’ble Commission deems just and proper in the nature and circumstances of the present case.*

Factual Matrix

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

- a) On 05.03.2019, the Ministry of New & Renewable Energy (MNRE) issued the Central Public Sector Undertaking Scheme (CPSU) Scheme Phase-II for setting up 12000 MW Grid-Connected Solar Photovoltaic Power Projects by the Government Producers with viability Gap Funding support for self-use or use by the Government/Government Entities either directly or through the Distribution Companies (CPSU Scheme) vide Guideline No. 302/4/2017-Grid Solar dated 05.03.2019 including subsequent amendments and clarification thereof.
- b) On 15.03.2019, Solar Energy Corporation of India Limited (SECI) floated Request for Selection (RfS) for setting up 2000 MW grid connected SPVP in India (Tranche I) and also floated another RfS on 01.08.2019 for selection of Solar Power Developers for setting up 1500 MW Grid (Including Mini and Micro Grid) connected SPVP anywhere in India on “Build Own Operate” (BOO) (Tranche -II) under the CPSU Scheme.
- c) On 20.08.2019, NTPC was declared successful bidder and was allocated 769 MW out of 2000 MW under Tranche -I. Accordingly, SECI issued a Letter of Award dated 28.09.2019 in favour of the Petitioner thereby allotting Project ID No. SPD-CPSU-T1-NTPCL-769 MW.
- d) On 08.11.2019, NTPC was declared successful bidder under Tranche-II and was allocated 923 MW out of 1500 MW under Tranche -II. Accordingly, SECI issued a

Letter of Award dated 25.11.2019 in favour of the Petitioner thereby allotting Project ID No. SPD-CPSU-T2-NTPCL-923 MW.

- e) NTPC entered into several PUAs for sale of Solar Photovoltaic Power by the Petitioner to the Respondents.

Location of the NTPC Solar plant	Capacity in MW	Date of PUA	Original SCOD as per PUA	SECI Extended SCOD	Actual Date of commissioning
Devikot Jaisalmer, Rajasthan	150	30.12.2019	29.09.2021	13.12.2022	13.12.2022
Kolayet, Bikaner, Rajasthan	250	30.12.2019	29.09.2021	12.11.2022	06.08.2022
Shambu-ki-burj, Bikaner, Rajasthan	300	13.03.2020	12.08.2021	150MW-09.01.2023 150MW-30.09.2024	150MW on 29.09.2022
Nokhra, Bikaner, Rajasthan	300	13.03.2020	12.08.2021	139MW-30.12.2022 161MW-30.09.2024	03.06.2023 100MW-20.12.2022 50MW-30.12.2022 50MW-16.02.2023 50MW-01.04.2023 50MW-03.06.2023
Fatehgarh, Jaisalmer, Rajasthan	296	13.03.2020	12.08.2021	09.01.2023	05.08.2022 49.92MW-30.12.2021 74.88MW-05.02.2022 74.88MW-05.03.2022 47.52MW-19.06.2022 48.80MW-05.08.2022
Devikot Village, Jaisalmer, Rajasthan	90	13.03.2020 amended on 30.12.2020	19.02.2022	09.01.2023	13.12.2022
Gandhar, Bharuch (D), Gujarat	20	26.11.2020	09.11.2021	10MW-09.01.2023 10MW-30.09.2024	07.06.2023 10MW-23.08.2022 10MW-07.06.2023
Kawas, Surat (D), Gujarat	56	26.11.2020	24.12.2021	09.01.2023	15.08.2022 20MW-14.05.2022 15MW-15.06.2022 21MW-15.08.2022
Navalakkapatti, Ettayapuram (T), Tuticorin, Tamil Nadu	230	26.11.2020	19.02.2022	15.12.2022	15.12.2022 162.27MW-10.12.2022 67.73MW-15.12.2022

- f) As per the terms and conditions of the PUAs, the Petitioner was setting up 1692 MW Solar PV Power stations at various locations for onward sale of power to the Respondents under the MNRE CPSU Scheme dated 05.03.2019.
- g) Pursuant to the issuance of the National Monetization Pipeline (NMP) by the Ministry of Finance, Government of India, NTPC decided to consolidate its Renewable Energy

(RE) portfolio, wherein it proposed to transfer its 15 renewable energy assets to its group company namely NTPC Green Energy Limited (NGEL). NTPC and NGEL have entered into a Business Transfer Agreement (BTA) for transfer of the said 15 RE Assets from NTPC to NGEL. As per the terms of the BTA, post assignment of the projects from NTPC to NGEL, all the rights & obligations of NTPC under the PUA were to be assigned to NGEL and thereafter, NGEL was to fulfil assignor's obligations as per the PUAs. NTPC requested to provide consent of PUAs for a few projects from NTPC to NGEL such as Devikot (Jaisalmer, Rajasthan), Kolayet (Bikaner, Rajasthan), Shambuki-burj, (Bikaner, Rajasthan), Nokhra (Bikaner, Rajasthan), Fatehgarh (Jaisalmer, Rajasthan), Navalakkapatti (Ettayapuram Taluk, Tuticorin, TN). Consequently, amendment agreements were signed by TSDISCOMs assigning the aforesaid PUAs from NTPC to NGEL.

- h) However, agreements pertaining to 20 MW Gandhar & 56 MW Kawas Solar PV power projects continued with NTPC as under:

Date of issue of LoI	Project location	Project capacity (in MW)	Usage charges (payable per unit)	Scheme	Date of signing of PUA	Date of signing of supplemental PUA	SCoD as extended by SECI
25.11.2019	Gandhar Solar PV project in Gujarat	20	2.69	CPSU Scheme Phase-II Tranche-II	26.11.2020	30.12.2020	10 MW-09.01.2023 10 MW-30.09.2024
25.11.2019	Kawas Solar PV project in Gujarat	56	2.69	CPSU Scheme Phase-II Tranche-II	26.11.2020	30.12.2020	09.01.2023

- i) The present Petition has been filed by NTPC Limited seeking compensation due to increase in costs on account of Change in rate of GST in respect of the said projects (20 MW Gandhar & 56 MW Kawas Solar PV power projects) totalling to a capacity of 76 MW.

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

Events	Project 1 (20 MW)	Project 2 (56 MW)
Scheme	Setting up 2000 MW grid connected SPVP in India (Tranche-I)	Setting up 1500 MW Grid (including Mini and Micro Grid) connected SPVP anywhere in India on Build—Own-Operate basis (Tranche-II)
Project	20 MW	56 MW
Location	Gandhar Solar PV project in Gujarat	Kawas Solar PV project in Gujarat.

Date of Notification No.1/2017-Central Tax (Rate) (2017 GST Notification)	28.06.2017	
Power Usage Agreement (PUA) was executed on	26.11.2020	
Supplementary PUA was signed on	30.12.2020	
Original Schedule date of commencement of supply of power (SCoD) 17 months from signing of the PUA	12.08.2021	
Date of Notification No. 8/2021-Integrated Tax (Rate) (2021 GST Notification)	30.09.2021	
Tariff was Adopted vide Order in Petition No. 174/AT/2021 on	13.12.2021	
Extended Schedule date of commencement of supply of power (SCoD) as per Supplementary Agreement	27.04.2022	
Extended SCoD (on account of 1 st wave of Covid, Supply chain disruptions, 2 nd wave of Covid 19)	10 MW- 09.01.2023 10 MW- 30.09.2024	09.01.2023
CoD	10 MW- 23.08.2022 10 MW- 07.06.2023	20 MW- 14.05.2022 15 MW- 15.06.2022 21 MW- 15.08.2022

7. The present petition was filed on 21.03.2023. The Petition was listed for hearing on 16.08.2023 and the Commission after hearing the submissions of the parties admitted the Petition and directed the Petitioner to serve copy of the petition to the Respondents. Further, hearing was conducted on 09.11.2023, wherein the Commission permitted the Respondents to file their reply. During the hearing held on 23.02.2024, the Commission heard the parties and directed them to file their respective written submissions and reserved the matter for Orders.
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, following issues arise for adjudication:

Issue No. I: *Whether the introduction of Notification No.8/2021- Integrated Tax (Rate) issued by Ministry of Finance, Government of India amounts to Change in Law event under Article 10 of the Power Usage Agreement dated 26.11.2020 and Supplementary Power Usage Agreement dated 30.12.2020? AND Whether the Petitioner is entitled for compensation towards additional expenditure on account of Change in Law event in terms of the Power Usage Agreement?*

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

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

10. Now, we proceed to discuss the above issues

Re: Issue No. I

Whether the introduction of Notification No.8/2021- Integrated Tax (Rate) issued by Ministry of Finance, Government of India amounts to Change in Law event under Article 10 of the Power Usage Agreement dated 26.11.2020 and Supplementary Power Usage Agreement dated 30.12.2020? AND Whether the Petitioner is entitled for compensation towards additional expenditure on account of Change in Law event in terms of the Power Usage Agreement?

11. Briefly, the Petitioner has submitted as under:

- a) At the time of signing of PUA, GST at the rate of 5% was levied (i.e., 2.5% of CGST and 2.5% of SGST) on renewable energy devices and parts. However, the Ministry of Finance, Government of India vide Notification No. 8/2021-Integrated Tax (Rate) dated 30.09.2021 increased the GST rates for renewable energy devices and parts from the earlier rate of 5% to 12%.
- b) The increase in the GST rates on the renewable energy devices and parts tantamount to Change in Law having direct impact on the cost of the power plant and increase in the resultant expenditure incurred by Petitioner. The said change in law event has been duly covered under the agreed terms of the PUA particularly recognising the implications thereof and the same is to be passed on as usage charges to the end beneficiary, i.e. the

Respondents No. 1 & No. 2. Hence, in terms of the PUA, the Petitioner is required to be compensated so that, it is restituted to the same economic position as if such Change in Law event had not taken place.

- c) MNRE, GoI vide notification F.No. 283/3/2018-GRID SOLAR-Part(4) dated 27.09.2022 (issued to SECI, the Petitioner and NHPC) clearly mandates hike in the rate of GST, promulgated vide notifications as mentioned above as a change in law event. In such circumstances, there is no ambiguity in the fact that the promulgation of the said notification tantamounts to a change in law event and following the restitutionary principles, the Petitioner has to be compensated in the requisite manner. In view of the aforesaid Change in Law event brought about by the Notifications dated 30.09.2021, the Petitioner is entitled to seek compensation from the Respondents for increase in rate of GST having direct implication and increased costs on the project in question.
- d) Vide letter dated 19.07.2022, the Petitioner had already informed the Discoms that the tentative impact due to change in law is Rs. 1.34 Crores for Gandhar project and Rs. 7.84 Crores for Kawas project and the actual impact of change in law shall be informed separately along with supporting documents at the time of reconciliation. Therefore, once this Commission declares enactment of GST to be change in law in favour of the Petitioner, the parties can be directed to go in for reconciliation, if at all required.
- e) A computation of the impact of Change in Law in a tabularised manner is as under:

S. No.	Project	CAP (MW)	GST Impact (Rs. in Crores)	Actual Commencement of power
1.	Gandhar Solar PV project in Gujarat	20	1.34	10 MW-23.08.2022 10 MW-07.06.2023
2.	Kawas Solar PV project in Gujarat	56	7.84	20 MW-14.05.2022 15 MW-15.06.2022 21 MW-15.08.2022

- f) Due to Covid-19 pandemic, the supplies and site progress have been severely affected. Considering the severe pandemic situation, MNRE had also issued OMs dated 13.08.2020 and 29.06.2021 allowing time extension of 5 months and 76 days respectively for RE projects. MNRE vide its OM dated 02.06.2021 has given further time extension of 6 months due to temporary shortage of domestically manufactured solar PV cells. Further, due to supply chain disruption, MNRE vide its letter dated

27.12.2022 has further extended the scheduled commissioning date upto 30.09.2024. Accordingly, SECI has granted time extension in *schedule date of commencement of supply of power* (SCoD) and the same has been tabulated above.

12. *Per contra*, Telangana Discoms have submitted as under:

- a) Had the projects been planned and executed to comply with the original SCoDs, the increase in the GST rates (notified during 30.09.2021) would not have resulted in change of costs on account of Change in Law. The DISCOMs being the final users of solar power under the CPSU Scheme were not involved in the process of granting extension of SCoDs and were not even informed in advance before granting extension of SCoD, which otherwise should have been done as per Article 9 (Force Majeure) of the PUs signed between TSDISCOMs and NTPC.
- b) Vide notices dated 19.07.2022, 04.11.2022 & 16.11.2022, the Petitioner informed about the Change in Law events and indicated that the impact, which shall be pass through in Usage Charges, would be informed separately in due course along-with details of expenditure towards Basic Custom Duty (BCD) & GST and necessary documents. However, till date no such information has been shared with the Respondents and in fact *vide* letter dated 16.11.2022, the Petitioner intimated the Respondents that it was approaching this Commission by filing a petition seeking compensation. In light of the above, the contention of the Petitioner that Respondents did not respond to any of the notices is vehemently opposed, since the Petitioner failed to furnish complete details along-with supporting documents for verification by the DISCOMs. The corresponding change/revision in usage charges in view of this Change in Law impact was also not communicated by NTPC.
- c) In view of such grant of SCOD extension(s), that too, without consulting the end users, the power position of TSDISCOMs was severely affected resulting in purchase of power from the open market at higher tariff, which led to increase in overall power purchase costs.
- d) The impact of the change in rates of GST, as claimed by NTPC, for the solar projects in consideration in the present case, varies widely as detailed below:

Sl. No	Project	Capacity (MW)	GST impact (Crores)	Actual commencement of power
1	Gandhar, Gujarat	20	1.34	10MW-23.08.2022 10MW-07.06.2023
2	Kawas, Gujarat	56	7.84	20MW-14.05.2022

				15MW-15.06.2022
				21MW-15.08.2022
	TOTAL		9.18	

13. Before proceeding to the main issues, we feel it is imperative to address the objection raised by Telangana Discoms that they “*were not involved in the process of granting extension of SCoDs and were not even informed in advance before granting extension of SCoD.*”

14. Article 9 of the PUA stipulates as under:

9.0 FORCE MAJEURE

Neither party shall be liable for any claim for any loss or damage whatsoever arising out of failure to carry out the terms of the Agreement to the extent that such a failure is due to Force Majeure Events such as war, rebellion, mutiny, civil commotion, riot, forces of nature, accident, act of God or terrorism or any other reason beyond the control of concerned party. Any party claiming the benefit of this clause shall reasonably satisfy the other party of the existence of such an event and give written notice within a reasonable time to the other party to this effect. **Generation/ Usage of power shall be started as soon as practicable by the parties concerned after such eventuality has come to an end or ceased to exist.**

15. We note that as per Article 9 of the PUA, neither party shall be liable for any claim for any loss or damage due to any other reason beyond the control of contracting party. Generation/ Usage of power shall start as soon as such eventuality has come to an end or ceased to exist. We note that the extension of SCoD was given by MNRE on account of Covid-19 and the Petitioner vide letter dated 26.07.2021 & 17.09.2021 has kept the Respondents updated about the status of the project qua Adoption of tariff/ grant of LTA by CTU in view of frequent extensions being given by MNRE in view of Covid-19. As such the objection of Telengana Discoms that they *were not involved in the process of granting extension of SCoDs and were not even informed in advance before granting extension of SCoD*, does not sustain.

16. We observe that Article 10 of the PUAs dated 26.11.2020 stipulates as under:

ARTICLE 10: CHANGE IN LAW

10.1 “Change in Law” shall mean the occurrence of any of the following events after the date of signing of this Power Usage Agreement, resulting into any additional recurring/ non- recurring expenditure by the NTPC or any income to the NTPC:

- a. *the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law;*
- b. *a change in the interpretation or application of any Law by any Indian*

Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of Law;

- c. the imposition of a requirement for obtaining any Consents, Clearances, Permits and/or licenses which was not required earlier:*
- d. a change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits; except due to any default of the NTPC;*
- e. **any statutory change in tax structure or introduction of any new tax made applicable for setting up of Solar Power Project and supply of power by the NTPC to Power User after the date of signing of this PUA.***

10.2 Further, "Change in Law" shall also mean any statutory change in tax structure or introduction of any new tax made applicable for setting up of Solar Power Project including change in any additional duties under Customs like Anti-Dumping Duty, Countervailing duty on subsidised articles, Safeguard duty etc. and any other taxes including GST, levies, cess etc. applicable on such additional duties resulting into any additional recurring/non-recurring expenditure by the NTPC or any income to the NTPC.

10.3 The effective date for "Change in law" in the aforementioned Para 10.2 shall be one day prior to the signing of this agreement between NTPC and Power User.

11.0 RELIEF FOR CHANGE IN LAW

The implication of change in law shall be pass through in Usage Charges.

17. Relevant provisions of 2017 GST Notification is reproduced below:

"Schedule I – 2.5%

<i>S. No.</i>	<i>Chapter / Heading / Sub-heading / Tariff item</i>	<i>Description of Goods</i>
<i>234</i>	<i>84 or 85</i>	<i>Following renewable energy devices & parts for their manufacture (a) Bio-gas plant (b) Solar power based devices (c) Solar power generating system (d) Wind mills, Wind Operated Electricity Generator (WOEG) (e) Waste to energy plants / devices (f) Solar lantern / solar lamp (g) Ocean waves/tidal waves energy devices/plants</i>

18. We note that Notification No. 8/2021- Integrated Tax (Rate) dated 30.09.2021 (2021 GST Notification) stipulate as under:

(b) in Schedule II – 6%, -

...

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

201 A	84, 85 or 94	<p>Following renewable energy devices & parts for their manufacture: -</p> <p>(a) Bio-gas plant</p> <p>(b) Solar power-based devices</p> <p>(c) Solar power generating system</p> <p>(d) Wind mills, Wind Operated Electricity Generator (WOEG)</p> <p>(e) Waste to energy plants / devices</p> <p>(f) Solar lantern / solar lamp</p> <p>(g) Ocean waves/tidal waves energy devices/plants</p> <p>(h) Photo voltaic cells, whether or not assembled in modules or made up into panels.</p> <p><i>[Explanation: If the goods specified in this entry are supplied, by a supplier, along with supplies of other goods and services, one of which being a taxable service specified in the entry at S. No. 38 of the Table mentioned in the notification No. 11/2017-Central Tax (Rate), dated 28th June, 2017 [G.S.R. 690(E)], the value of supply of goods for the purposes of this entry shall be deemed as seventy per cent. of the gross consideration charged for all such supplies, and the remaining thirty per cent. of the gross consideration charged shall be deemed as value of the said taxable service.]</i></p>
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19. From the above, we observe that Clause (e) of Article 10 of the PUA, 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*, is a Change in Law event. The Notification No. 8/2021- Integrated Tax (Rate) dated 30.09.2021 has been issued by the Ministry of Finance, Government of India. 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 as 'Change in Law'. Hence, we hold that the impugned notifications viz *the 2021 GST Notification* is a Change in Law event as per Article 10 of the PUAs dated 26.11.2020. It is pertinent to mention here that the view taken is consistent with similar orders issued by the Commission, viz. *order dated 05.04.2023 in Petition No. 268/MP/2021; order dated 05.04.2023 in Petition No. 216/MP/2022 and order dated 21.04.2023 in Petition No. 219/MP/2022; order dated 17.05.2023 in Petition No. 174/MP/2022; order dated 20.07.2023 in Petition No. 273/MP/2021; Order dated 16.01.2024 in Petition No. 308/MP/2022 and Order dated 14.03.2024 in Petition No. 65/MP/2023.*

20. In the instant petition, the PUAs were executed between the Petitioner and the Telangana Discoms on 26.11.2020 and the SCoD of the project was 12.08.2021. In terms of the extended SCoD, the Petitioner was required to commence supply of power on or before 30.09.2024 for 20 MW and on or before 09.01.2023 for 56 MW. The Petitioner commenced supply of power from the projects on 07.06.2023 for 20 MW and on 15.08.2022 for 56 MW. We observe that the GST rates were amended vide Notification No. 8/2021- Integrated Tax (Rate) dated 30.09.2021 w.e.f. 01.10.2021, as such the Petitioner's project was affected by the said notification. Thus, we find and hold that the introduction of Notification No.8/2021- Integrated Tax (Rate) issued by Ministry of Finance, Government of India amounts to Change in Law event under Article 10 of the Power Usage Agreement dated 26.11.2020 and Supplementary Power Usage Agreement dated 30.12.2020. Therefore, the Petitioner is entitled for compensation on account of Change in Law as per the terms of Article 10 and Article 11 of the PUA due impugned notification viz. *2021 GST Notification*.
21. The issue is decided accordingly.

Re: Issue No. II

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

22. Briefly, Telangana Discoms have submitted that as per PUA, the implication of change in law shall be a pass through in Usage charges and the impact on account of change in law shall be recovered through usage charges without imposing any carrying cost. However, the corresponding documents conforming to these impacts need to be furnished by the Petitioner for verification of the same.
23. *Per Contra*, the Petitioner has submitted that the change in law event has been duly covered under the agreed terms of the PUA particularly recognizing the implications thereof and is to be passed on as usage charges to the end beneficiary i.e. Telangana Discoms. Vide letter dated 19.07.2022, the Petitioner had already informed the DISCOMs that the tentative impact due to change in law is Rs. 1.34 Crores for Gandhar project and Rs. 7.84 Crores for Kawas project and the actual impact of change in law shall be informed separately along with supporting documents at the time of reconciliation.

24. The only objection raised on behalf of the Respondents is that the projects in question were commissioned beyond the original scheduled commercial operation date(s). Had the projects been planned and executed to comply with the original SCoDs, the increase in the GST rates would not have impacted in change of costs on account of change in law. *Per contra*, the Petitioner has stated that the said submissions are misplaced and an afterthought only to wriggle out of the obligations under the PUA signed between the parties.

25. The relevant provisions of the PUAs are reproduced below:

1.0 Definitions

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1.2. The words or expressions mentioned assigned hereunder:

xxx)	<i>Usage Charges</i>	<i>Shall be the charges as applicable payable by user for consumption of energy supplied from the Solar PV Station.</i>
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11.0 RELIEF FOR CHANGE IN LAW

The implication of change in law shall be pass through in Usage Charges.

6.0 Usage Charges

6.1 The Usage Charges for entire power supplied from Solar PV Station shall be payable by Power User @ Rs 2.86 per Unit. *The Usage Charges for contracted capacity shall be payable from the date of commissioning of the project or the part capacity as the case may be.*

26. From the above, we note that NTPC as well as the Telangana Discoms have agreed that any impact on account of change in law has to be recovered qua usage charges in terms of the PUAs. However, Telangana Discoms have sought documentary proof to assess the impact. As per records vide letters dated 19.07.2022 and, 04.11.2022, NTPC has stated that it will submit the documents along with necessary documents. 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. Hence, in terms of the PUAs and submissions of the parties, we hold that the Petitioner is entitled for change in law compensation viz. *2021 GST Notification* as per the terms of Article 11 of the PUAs subject to submission of necessary documents by NTPC. The parties are accordingly directed to reconcile by carrying out one to one correlation once invoices are raised, supported by auditor certificate.

27. This Commission, in its order dated 20.08.2021 in Petition No. 536/MP/2020, has already decided on the methodology of compensation due to a Change in Law event as under:

65. *We find that in Petition No. 536/MP/2020, SECI and the Respondents (SPDs as well as the Discoms) are on the same page in so far as the rate of interest on loan is considered. This is evident from the computation of the weighted average cost of capital advanced by the contending parties. Majority of the parties have used 10.41% (as mentioned in the CERC RE Tariff Order dated 19.03.2019) as the reference rate of interest for building their arguments for the rate of annuity payment. In other words, the parties have accepted this rate as the appropriate normative rate of interest for any debt that they might have taken. Given the fact that it is not possible in case of competitive bidding projects to ascertain either the capital structuring (extent of debt and equity) of the projects, or the actual rate of interest of the debt component or the expected rate of return on equity, we consider it appropriate to use the normative rate of 10.41% as reference for the purpose of annuity payment. As the actual deployment of capital by way of debt or equity and their cost in terms of rate of interest or return, respectively, is unknown, the rate 10.41% can be taken as the uniform rate of compensation for the entire expenditure incurred on account of GST Laws or Safeguard Duty. The Commission is of the view that the compensation for change in law cannot be a source for earning profit, and therefore, there cannot be any higher rate of return than the prevailing normative cost of debt. Accordingly, we hold that 10.41% shall be the discount rate of annuity payments towards the expenditure incurred on GST or Safeguard Duty (as the case may be) by the Respondent SPDs on account of 'Change in Law'.*

Commencement of 'Monthly Annuity Payments' and "Late Payment Surcharge"

66. *Further, SPDs have submitted that the 'Monthly Annuity Payment' of GST claims ought to start from COD taking into consideration the provisions of applicable 'Late Payment Surcharge' in the PPAs in case of delayed payments*

67. *We observe that in the Petitions filed by the SPDs where claims under Change in Law were adjudicated, the Commission has directed SPDs to make available to SECI/ Discoms all relevant documents exhibiting clear and one to one correlation between the projects and the supply of goods or services, duly supported by the relevant invoices and Auditor's Certificate. SECI/ Discoms were further directed to reconcile the claims for Change in Law on receipt of the relevant documents and pay the amount so claimed to SPDs. It was also held that SECI is liable to pay to SPDs which is not conditional upon the payment to be made by the Discoms to SECI. However, SECI is eligible to claim the same from the Discoms on 'back to back' basis. The claim was directed to be paid within sixty days of the date of respective orders or from the date of submission of claims by SPDs whichever was later failing which it will attract late payment surcharge as provided under PPAs/PSAs. Alternatively, SPDs and the SECI/ Discoms may mutually agree to a mechanism for the payment of such compensation on annuity basis spread over the period not exceeding the duration of the PPAs as a percentage of the tariff agreed in the PPAs.*

68. *In view of the above, the liability of SECI/ Discoms for 'Monthly Annuity Payment' starts from 60th (sixtieth) day from the date of orders in respective petitions or from the date of submission of claims by the Respondent (SPDs), whichever is later. In case*

of delay in the Monthly Annuity Payment beyond the 60th (sixtieth) day from the date of orders in respective petitions or from the date of submission of claims by the Respondent (SPDs), whichever is later, late payment surcharge shall be payable for the delayed period corresponding to each such delayed Monthly Annuity Payment(s), as per respective PPAs/PSAs.

Tenure of ‘Annuity Period’

69. *SPDs have submitted that the annuity period should be 13 years. It is observed that SECI has revised the proposal of annuity payments by considering the annuity period of 13 years instead of 25 years as proposed earlier. Further, SECI has stated that the payment shall be provisional and subject to final decision of this Commission in respective petitions. The period of 13 years is consistent with Regulation 14 of the RE Tariff Regulations, 2017 which stipulates as under:*

“14. Loan and Finance Charges

Loan Tenure

For the purpose of determination of tariff, loan tenure of 13 years shall be considered.”

70. *We observe that as there seems to a general acceptance amongst SECI and the Respondent SPDs that the Annuity Period could be of 13 years, as such the same is approved by the Commission.*

28. We have taken a consistent view on the determination of the appropriate methodology for payment of compensation on account of the Change in Law event. We have considered that in the case of competitive bidding projects, it is not possible to ascertain either the capital structuring (extent of debt and equity) of the projects, the actual rate of interest of the debt component or the expected rate of return on equity. As the actual deployment of capital by way of debt or equity and their cost in terms of rate of interest or return, respectively, is unknown, the normative rate of interest as determined by CERC can be taken as the uniform rate of compensation for the entire expenditure incurred on account of Change in Law. *The compensation for change in law cannot be a source for earning profit, and therefore, there cannot be any higher rate of return than the prevailing normative cost of debt.*

29. We note that the Petitioner’s project was commissioned in parts i.e. 20 MW project was commissioned in the following manner: 10 MW- 23.08.2022, 10 MW- 07.06.2023. 56 MW project was commissioned in the following manner: 20 MW- 14.05.2022, 15 MW- 15.06.2022, 21 MW-15.08.2022. which is during FY 2022-23 and FY 2023-2024.

30. The Commission has notified the *CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2020* and the *RE Tariff Order dated 07.11.2022*. In

the said regulations read with the RE tariff Order; we have considered the interest rate of 9.12% for FY-22-23 and the term of the Loan repayment as 15 years. The Commission vide order dated 08.09.2023 in 10/SM/2023 extended the applicability of the order dated 07.11.2022 in Petition No. 14/SM/2022 until further Orders.

31. Thus, we hold that the *discount rate of 9.12%* and *annuity payment of 15 years* as the appropriate methodology towards change in law compensation. Further, the liability of SECI/ Discoms for ‘Monthly Annuity Payment’ starts from the 60th (sixtieth) day from the date of this order or from the date of submission of claims by the Petitioner, whichever is later. The provision of late payment surcharge in the respective PPA/PSA shall kick in if the monthly annuity payment is not made by the Respondents within the due date.
32. The issue is decided accordingly.

Re: Issue No. III:

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

33. The Petitioner has submitted that carrying cost in accordance of the restitution principle has to be passed on. APTEL in the matter of *Coastal Gujarat Power Limited vs Central Electricity Regulatory Commission & Ors. (Appeal no. 172 of 2017)* has clearly held that carrying cost has to be passed on. Carrying Cost completely in accordance with the restitution principle has to be duly passed on. In this regard, attention is drawn to the findings of the Hon’ble Supreme Court in *UHBVNL vs. Adani Power Ltd. (2019) 5 SCC 325* wherein it has been clearly held that Carrying Cost is allowed on the basis of the financial principle that whenever the recovery of cost in deferred, the financing of the gap in cash flow has to be passed on. *Per Contra*, the Respondents have submitted that the Change in Law provision as in the PUAs signed by the TSDISCOMs does not contemplate passing on the carrying cost to the Petitioner. As such there is no provision for payment of any carrying cost and the impact on account of change in law shall be recovered through usage charges without imposing any carrying cost.
34. We observe that relevant provisions of the PUAs stipulate as under:

ARTICLE 10: CHANGE IN LAW

10.1 “Change in Law” shall mean the occurrence of any of the following events after the date of signing of this Power Usage Agreement, resulting into any additional recurring/ non- recurring expenditure by the NTPC or any income to the NTPC:

- a. *the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law;*
- b. *a change in the interpretation or application of any Law by any Indian Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of Law;*
- c. *the imposition of a requirement for obtaining any Consents, Clearances, Permits and/or licenses which was not required earlier;*
- d. *a change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits; except due to any default of the NTPC;*
- e. **any statutory change in tax structure or introduction of any new tax made applicable for setting up of Solar Power Project and supply of power by the NTPC to Power User after the date of signing of this PUA.**

10.2 Further, “Change in Law” shall also mean any statutory change in tax structure or introduction of any new tax made applicable for setting up of Solar Power Project including change in any additional duties under Customs like Anti-Dumping Duty, Countervailing duty on subsidised articles, Safeguard duty etc. and any other taxes including GST, levies, cess etc. applicable on such additional duties resulting into any additional recurring/non-recurring expenditure by the NTPC or any income to the NTPC.

10.3 The effective date for “Change in law” in the aforementioned Para 10.2 shall be one day prior to the signing of this agreement between NTPC and Power User.

11.0 RELIEF FOR CHANGE IN LAW

The implication of change in law shall be pass through in Usage Charges.

35. In APTEL judgment dated 27.04.2021 in A.No. 172 of 2017 and A.No.154 of 2018 (*Coastal Gujarat vs. CERC & Ors.*) it was held as under:

92. *We agree with the submission that CERC erred to introduce an extraneous qualification or filter which is not borne out from the PPA. The qualifying factor under Article 13 of the PPA is whether or not a CIL event has an impact on the cost of, or revenue from, the business of generation and sale of electricity by the seller (CGPL). In this view, the test applied by CERC that taxable service should have a “direct relation to the input cost of generation” is extraneous to the provisions of the PPA and must be rejected. It is trite that explicit terms of a contract (PPA) bind and it is not open for the adjudicating forums to substitute their own view on the presumed understanding of the commercial terms by the parties [Nabha Power Limited v. PSPCL &Anr. (2018) 11 SCC 508]. **Once it is established that levy of a tax on services availed by CGPL has an impact on the cost of or revenue from business of generation and sale of electricity - whether directly or indirectly - compensation must follow.***

36. In APTEL judgment dated 15.09.2022 in A.No. 256 of 2019 & Batch (*Parampujya Solar Energy Pvt. vs. CERC & Ors.*), it was 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.***

...

37. We observe that APTEL in both the judgments cited above stated that the purpose of the change in law clause in the PUA is to restore the Petitioner to its previous economic position irrespective of the restitution clause in the PPA.
38. Accordingly, the Petitioner, in the instant petition irrespective of the provision for restitution clause in PUA, shall be eligible for carrying costs starting from the date when the actual payments were made to the authorities until the date of issuance of this Order, at the actual rate of interest paid by the Petitioner for arranging funds (supported by Auditor's Certificate) or the rate of interest on working capital as per the applicable RE Tariff Regulations prevailing at that time or the late payment surcharge rate as per the PUA, whichever is the lowest. Once a supplementary bill is raised by the Petitioner in terms of this order, the provision of Late Payment Surcharge in the PUA would kick in if the payment is not made by the Respondents within the due date.
39. Accordingly, the Commission hereby directs the contracting parties to carry out reconciliation of additional expenditure on account of introduction Notification No. 8/2021- Integrated Tax (Rate) dated 30.09.2021 w.e.f. 01.10.2021 (2021 GST Notification) along with carrying cost by exhibiting clear and one to one correlation with the project and the invoices raised supported with auditor certificate.
40. The Commission further directs that the responding Discoms is liable to pay to SECI all the

above reconciled claims that SECI has to pay to the Petitioner. However, payment to the Petitioner by SECI is not conditional upon the payment to be made by the Discom to SECI.

41. The Hon'ble Supreme Court, in its Order dated 12.12.2022, in Civil Appeal no. 8880/2022 in the case of "*Telangana Northern Power Distribution Co. Limited & Anr. Vs. Parampujya Solar Energy Pvt. Limited & Ors.*" (and in similar Orders dated 03.01.2023 and 23.01.2023) has held 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."

42. Therefore, the directions issued in this Order so far as they relate to compensation for the period post Commercial Operation Date of the project in question as also towards carrying cost (pre-COD & post-COD) shall not be enforced and shall be subject to further orders of the Hon'ble Supreme Court in Civil Appeal No. 8880/2022 in *Telangana Northern Power Distribution Company Limited & Anr. V. Parampujya Solar Energy Pvt. Limited & Ors.*, and connected matters. It is pertinent to mention that the view taken is consistent with the views taken in *Order dated 21.12.2023 in Petition No. 267/MP/2022 & batch* and *Order dated 09.01.2024 in Petition No. 255/MP/2022.*

43. The summary of our findings is as follows:

- a) Introduction of Notification No. 8/2021- Integrated Tax (Rate) dated 30.09.2021 w.e.f. 01.10.2021 (*2021 GST Notification*) amounts to Change in Law event under Article 10 of the Power Usage Agreement.
- b) The Petitioner is entitled to compensation on account of Change in Law as per the terms of the PUAs Article 10 read along with Article 11 of the PUA due to the *2021 GST Notification*.
- c) Change in law compensation due to *2021 GST Notification* shall be pass through in usage charges as per the terms of Article 11 of the PUA subject to submission of necessary documents by NTPC. The parties are directed to carry out reconciliation by one to one correlation once invoices are raised and supported by auditor certificate. The discount rate of 9.12% and annuity payment of 15 years shall be the appropriate methodology towards change in law compensation. Further, the liability of SECI/ Discoms for 'Monthly Annuity Payment' starts from the 60th (sixtieth)

day from the date of this order or from the date of submission of claims by the Petitioner, whichever is later. The provision of late payment surcharge in the respective PPA/PSA shall kick in if the monthly annuity payment is not made by the Respondents within the due date.

- d) The Petitioner shall also be eligible for carrying cost starting from the date when the actual payments were made to the Authorities till the date of issuance of this Order, at the actual rate of interest paid by the Petitioners for arranging funds (supported by Auditor's Certificate) or the rate of interest on working capital as per applicable RE Tariff Regulations prevailing at that time or the late payment surcharge rate as per the PUA, whichever is the lowest. Once a supplementary bill is raised by the Petitioners in terms of this order, the provision of Late Payment Surcharge in the PUA would kick in if the payment is not made by the Respondents within the due date.
- e) The directions issued in this Order so far as they relate to compensation for the period post Commercial Operation Date of the projects in question as also towards carrying cost (pre-COD & post-COD) shall not be enforced and shall be subject to further orders of the Hon'ble Supreme Court in Civil Appeal No. 8880/2022 in *Telangana Northern Power Distribution Company Ltd. & Anr. V. Parampujya Solar Energy Pvt. Ltd. & Ors*, and connected matters.

44. The Petition No. 113/MP/2023 is disposed of in terms of the above.

Sd/-
पी. के. सिंह
सदस्य

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अरुण गोयल
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