

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)**

**APL No. 394 OF 2018,
APL No. 395 OF 2018,
APL No. 398 OF 2018,
APL No. 399 OF 2018,
APL No. 65 OF 2023,
&
APL No. 901 OF 2023**

Dated: 27.05.2025

**Present: Hon'ble Mr. Sandesh Kumar Sharma, Technical Member
Hon'ble Mr. Virender Bhat, Judicial Member**

Appeal No. 394 OF 2018

IN THE MATTER OF:

Azure Power Jupiter Private Limited
Asset No. 301-4
World Mark 3, Aerocity,
New Delhi - 110 017.

... Appellant

Vs.

1. The Secretary
Central Electricity Regulatory Commission
3rd & 4th Floor, Chanderlok Building,
36, Janpath, New Delhi- 110001.
2. NTPC Limited
Through its General Manager (Commercial)
Core-7, SCOPE Complex,
7 Institutional Area, Lodi Road,
New Delhi – 110003.
3. NTPC Vidyut Vyapar Nigam Limited

Through its Chief Executive Officer
NTPC Bhawan, Core-7, SCOPE Complex,
7 Institutional Area, Lodi Road
New Delhi – 110003.

4. The Chairman & Managing Director
Uttar Pradesh Power Corporation Limited
Shakti Bhawan, 14, Ashok Marg,
Lucknow – 226 027. ... Respondent(s)

Counsel for the Appellant(s) : Mr. Aniket Prasoon
Mr. Abhishek Kumar

Counsel for the Respondent(s) : Mr. Adarsh Tripathi
Mr. Vikram Singh Baid
Mr. Ajitesh Garg for R-2

Ms. Anushree Bardhan
Ms. Srishti Khindaria
Mr. Ravi Nair for R-3

Appeal No. 395 OF 2018

IN THE MATTER OF:

Azure Power Thirty Six Private Limited
Asset No. 301-4
World Mark 3, Aerocity,
New Delhi - 110 017.

... Appellant

Vs.

1. Central Electricity Regulatory Commission
3rd & 4th Floor, Chanderlok Building,
36, Janpath, New Delhi- 110001.
2. Solar Energy Corporation of India Ltd.
1st Floor, A-Wing, D-3,
District Centre Saket,
New Delhi – 110017.

3. Eastern Power Distribution Company of Andhra Pradesh Ltd.
P&T Colony, Seetammadhara,
Visakhapatnam – 503013.
4. Southern Power Distribution Company of Andhra Pradesh Ltd.
Kesavayanagunta, Tiruchanoor Road,
Tirupati, Andhra Pradesh - 517501. ... Respondent(s)

Counsel for the Appellant(s) : Mr. Aniket Prasoon
Mr. Abhishek Kumar

Counsel for the Respondent(s) : Ms. Ranjitha Ramachandran
Mr. Pulkit Agarwal
Ms. Poorva Saigal
Ms. Anushree Bardhan
Mr. Shubham Arya for R-2

Mr. Sidhant Kumar
Ms. Anushka Shah
Ms. Manyaa Chandok
Ms. Akshit Mago
Ms. Ekssha Kashyap
Mr. Om Batra
Mr. Sarthak Sareen for R-3 & 4

Appeal No. 398 OF 2018

IN THE MATTER OF:

Azure Power Venus Private Limited
Asset No. 301-4
World Mark 3, Aerocity,
New Delhi - 110 017

... Appellant

Vs.

1. Central Electricity Regulatory Commission
3rd & 4th Floor, Chanderlok Building,
36, Janpath, New Delhi- 110001.
2. Solar Energy Corporation of India Ltd.

1st Floor, A-Wing, D-3,
District Centre Saket,
New Delhi – 110017.

3. Uttar Pradesh Power Corporation Limited
Shakti Bhawan, 14, Ashok Marg,
Lucknow – 226 027. ... Respondent(s)

Counsel for the Appellant(s) : Mr. Aniket Prasoon
Mr. Abhishek Kumar

Counsel for the Respondent(s) : Ms. Ranjitha Ramachandran
Mr. Pulkit Agarwal
Ms. Poorva Saigal
Ms. Anushree Bardhan
Mr. Shubham Arya for R-2;

Appeal No. 399 OF 2018

IN THE MATTER OF:

Azure Power Thirty Seven Private Limited
Asset No. 301-4
World Mark 3, Aerocity,
New Delhi - 110 017 ... Appellant

Vs.

1. Central Electricity Regulatory Commission
3rd & 4th Floor, Chanderlok Building,
36, Janpath, New Delhi- 110001.
2. The General Manager (Commercial)
NTPC Limited
Core-7, SCOPE Complex,
7 Institutional Area, Lodi Road,
New Delhi – 110003.
3. The Chief Executive Officer
NTPC Vidyut Vyapar Nigam Limited
NTPC Bhawan, Core-7, SCOPE Complex,

7 Institutional Area, Lodi Road,
New Delhi – 110003.

4. The Chairman & Managing Director,
Southern Power Distribution Company of Telangana Ltd.
6-1-50, Corporate Office, Mint Compound,
Hyderabad, Telangana – 500063.
5. The Chairman & Managing Director
Northern Power Distribution Company of Telangana Ltd.
H. No. 2-5-31/2, Corporate Office,
Vidyut Bhavan, Nakkalgutta,
Hanamkonda, Warangal – 506001. ... Respondent(s)

Counsel for the Appellant(s) : Mr. Aniket Prasoon
Mr. Abhishek Kumar

Counsel for the Respondent(s) : Mr. Adarsh Tripathi
Mr. Vikram Singh Baid
Mr. Ajitesh Garg for R-2

Ms. Anushree Bardhan
Ms. Srishti Khindaria
Mr. Ravi Nair for R-3

Mr. D. Abhinav Rao for R-4&5

Appeal No. 65 OF 2023

IN THE MATTER OF:

Azure Power (Rajasthan) Private Limited
Through its Authorized Signatory
5th Floor, Southern Park,
D-11, Saket, New Delhi — 110017

...Appellant

Vs.

1. Central Electricity Regulatory Commission
Through its Secretary,
3rd & 4th Floor, Chanderlok. Building,

- 36, Janpath, New Delhi- 110001
- 2 NTPC Vidyut Vyapar Nigam Limited
Through its Chief Executive Officer
Core-7, SCOPE Complex NTPC Bhawan,
7 Institutional Area, Lodhi Road,
New Delhi — 110003.
 3. NTPC Limited
Through its Managing Director
Core-7, SCOPE Complex,
7 Institutional Area, Lodhi Road,
New Delhi — 110003.
 4. Punjab State Power Corporation Limited (PSPCL)
Through its Managing Director
The Mall, PSEB Head Office,
Baradari, Patiala, Punjab — 147 001.
 5. Uttar Pradesh Power Corporation Limited (UPPCL)
Through its Managing Director
Shakti Bhawan, 14 Ashok Marg,
Lucknow — 226 001.
 6. Chhattisgarh State Power Distribution Company Limited (CSPDCL)
Through its Managing Director
4th Floor, Vidyut Seva Bhawan Dangania,
Raipur, Chhattisgarh — 492 013.
 - 7 Grid Corporation of Orissa Limited (GRIDCO)
Through its Managing Director
Bhoi Nagar, Janpath
Bhubaneswar — 751 022
 8. West Bengal State Electricity Distribution Company Limited
(WBSEDCL)
Through its Chairman & Managing Director
Vidyut Bhawan, Bidhannagar,
Block DJ, Sector-II, Kolkata — 700 091.

9. Damodar Valley Corporation Ltd (DVC)
Through its Chairman
DVC Headquarters, DVC Towers,
VIP Road, Kolkata — 700 054.
10. Mangalore Electricity Supply Company Limited (MESCOM)
Through its Managing Director
Paradigm Plaza, AB Shetty Circle,
Mangalore — 575 001.
11. Bangalore Electricity Supply Company Limited (BESCOM)
Through its Managing Director
BESCOM, KR Circle,
Bangalore — 560 001.
12. Chamundeshwari Electricity Supply Corp. Limited (CESC)
Through its Managing Director
29, Vijayanagara 2nd Stage
Hinkal, Mysuru-570017.
13. Gulbarga Electricity Supply Company Limited (GESCOM)
Through its Managing Director
Corporate Office, Station Road,
Kalaburagi, Karnataka — 585 102.
14. Hubli Electricity Supply Company Limited (HESCOM)
Through its Managing Director
PB Road, Navanagar,
Hubli — 580 025.
15. Assam Power Distribution Company Limited (APDCL)
Through its Managing Director
Bijulee Bhawan, Paltan Bazaar,
Guwahati — 781 001.
16. Jaipur Vidyut Vitran Nigam Limited (JVVNL)
Through its Managing Director
Vidyut Bhawan, Jyoti Nagar,
Jaipur-302 005.

17. Jodhpur Vidyut Vitran Nigam Limited (JDVVNL)
Through its Managing Director
New Power House, Industrial Area,
Jodhpur, Rajasthan — 342 003.

18. Ajmer Vidyut Vitran Nigam Limited (AVVNL)
Through its Managing Director
Vidyut Bhawan, Panchsheel Nagar,
Makarwali Road, Ajmer — 305 004.

...Respondent(s)

Counsel for the Appellant(s) : Mr. Aniket Prasoon
Ms. Shweta Vashist
Mr. Rishabh Bhardwaj
Ms. Priya Dhankar
Ms. Aanandini Thakare
Mr. Shubham Mudgil
Mr. Akash Lamba
Ms. Akanksha Tanvi

Counsel for the Respondent(s) : Mr. Sakie Jakharia for R-2

Mr. Anand K. Ganesan
Ms. Swapna Seshadri
Mr. Amal Nair
Ms. Sugandh Khanna
Ms. Kritika Khanna for R-4, 16, 17 & 18

Mr. Anant Singh for R-5

Mr. Ravi Sharma for R-6

Appeal No. 901 OF 2023

IN THE MATTER OF:

1. Southern Power Distribution Company of Telangana Ltd.
Rep. by the Chairman and Managing Director
Corporate Office, Ming Compound,
Hyderabad, Telangana – 500063.

-
2. Northern Power Distribution Company of Telangana Ltd.,
Rep. by the Chairman and Managing Director,
Corporate Office, Vidyuth Bhavan,
Hanamkonda, Warangal, Telangana – 566001. ...Appellant(s)

Vs.

1. Central Electricity Regulatory Commission,
3rd and 4th Floor, Chanderlok Building, 36, Janpath,
Rep. by the Chairman/Managing Director,
New Delhi – 110001.
2. M/s.. ACME Mahaboobnagar Solar Energy Private Ltd.,
Plot No. 152, Sector – 44, Gurugram, Haryana – 122002.
Rep. by the Chairman / Managing Director.
3. M/s.. ACME Yamunanagar Solar Power Private Ltd.,
Plot No. 152, Sector – 44, Gurugram, Haryana – 122002.
Rep. by the Chairman / Managing Director.
4. M/s. Azure Power Thirty Seven Limited,
Asset No. 301-4, World Mark 3, Aero City,
New Delhi – 110017
Rep. by the Chairman/ Managing Director.
5. NTPC Limited
Core – 7, SCOPE Complex,
7, Institutional Area, Lodi Road,
New Delhi – 110003.
Rep. by the Chairman / Managing Director.
6. NTPC Vidyut Vyapar Nigam Ltd.
Core – 7, SCOPE Complex,
7, Institutional Area, Lodi Road,
New Delhi – 110003.
Rep. By the Chairman/ Managing Director.Respondent(s)

Counsel for the Appellant(s) : Mr. D. Abhinav Rao

Counsel for the Respondent(s) : Mr. Aniket Prasoon

Mr. Utsav Mukherjee
Ms. Akanksha Tanvi
Mr. Md. Aman Sheikh
Mr. Vinit Kumar
Mr. Sanjeev Singh Thakur
Mr. Paritosh Bisen
Mr. Prithu Chawla
Ms. Archita Kashyap
Mr. Vikalp Wange
Mr. Mayukh Roy for R-2,3&4

Mr. Shri Venkatesh
Ms. Nishtha Kumar
Mr. Somesh Srivastava
Mr. Vikas Maini
Mr. Suhael Buttan
Mr. Ashutosh Kumar Srivastava
Ms. Lasya Pamidi for R-5

JUDGEMENT

PER HON'BLE MR. SANDESH KUMAR SHARMA, TECHNICAL MEMBER

1. These Appeals have been filed by the Appellants challenging the Impugned Orders dated 09.10.2018 read with corrigendum dated 05.11.2018 in Petition No. 34/MP/2018, Impugned Order dated 09.10.2018 read with corrigendum dated 05.11.2018 in Petition No. 47/MP/2018, Impugned Order dated 19.09.2018 in Petition No. 52/MP/2018, Impugned Order dated 09.10.2018 read with corrigendum dated 05.11.2018 in Petition No. 13/MP/2018, Impugned Order dated 30.11.2021 in Petition No. 211/MP/2018, Impugned order dated 09.10.2018 with corrigendum dated 05.11.2018 in Petition No. 232/MP/2017, 233/MP/2017 & 13/MP/2018 passed by the Central Electricity Regulatory Commission.

Description of the Parties

2. The Appellants, in these appeals, are the wholly owned subsidiary of Azure Power India Private Limited (in short APIPL), *inter alia*, are generating companies in terms of Section 2(28) of the Electricity Act and have set up the Solar Projects based on Photo Voltaic technology pursuant to the Power Purchase Agreement (in short “PPA”).

3. Central Electricity Regulatory Commission (in short “Respondent Commission” or “CERC” or “Central Commission”) is a statutory body in terms of Section 76 of the Electricity Act, which was established under Section 3 of the Electricity Regulatory Commissions Act, 1998 and has been vested with powers under the Electricity Act.

4. The other Respondents are either the trading licensees or the distribution licensees procuring electricity from the Appellants’ projects through the trading licensees.

5. All the appeals are identical in nature, as such, appeal no. 394 of 2018 is taken up lead appeal for adjudication on merit.

Factual Matrix of the Case (Appeal No. 394 of 2018)

6. According to the National Solar Mission (in short “NSM”) Guidelines, NTPC

had issued a Request for Selection No. NTPC/2015-16/NSM/TI/NSP-UP/06 dated 12.08.2015 (RfS) for facilitating the purchase and sale of grid-connected solar power under the NSM Guidelines, the Appellant was selected by NTPC as the successful bidder for the development of the Solar Power Generating Systems (in short “SPGS”). Thereafter, the Appellant executed the 5 (five) identical PPAs with NTPC on 29.04.2016 and undertook the obligation to develop the SPGS and sell the solar power generated at the SPGS to NTPC as per the NSM Guidelines.

7. With the enactment of the GST laws with effect from 01.07.2017, the Appellant is required to bear additional recurring and non-recurring expenditure after the effective date i.e., 29.04.2016 in terms of Article 2.1.1 of each of the PPAs (Effective Date) in the form of an additional tax burden on various components of setting up, operating and maintaining the SPGS.

8. A tabular representation of a comparison between the old tax laws and rates applicable to the Appellant as on the Effective Date of each of the PPAs with the GST Laws and the revised rates thereunder is set out herein below for the ease of reference:

| S. No. | Old Tax Law Applicable as on the Effective Date of PPAs | Old Tax Rate Applicable as on the Effective Date of PPAs | New GST Law after the Effective Date of PPAs | New GST Rate after the Effective Date of PPAs |
|---------------|--|---|---|--|
| | | | | |

| | | | | |
|----|--|---------------|---|---|
| 1. | The Central Sales Tax Act, 1956 on inter-state sale of goods. | 0% - 2% | The Integrated Goods and Services Tax, 2017. | 5% on Goods required for the Solar Power Generating Systems |
| 2. | The Finance Act, 1994 levying Service Tax. | 15% | The Central Goods and Services Tax, 2017. | 5% on Services for Solar Power Generating Systems |
| | | | | 18% on Operation and Maintenance Services |
| 3. | The Uttar Pradesh Value Added Tax Act, 2008 levying tax on intra-state sale of goods at a rate of 5% on total civil contract value | 11% aggregate | The Uttar Pradesh Goods and Services Tax, 2017. | 5% on Supply of Solar Power Generation System |

| | | | | |
|--|--|--|--|--|
| | and The Finance Act, 1994 levying Service Tax at a rate of 15% on 40% of the civil contract value. | | | |
|--|--|--|--|--|

9. The Appellant, through Petition No. 34/MP/2018 filed before the Respondent Commission, sought a declaration that the introduction of GST Laws constitutes a 'Change in Law' under Article 12 of the Power Purchase Agreements (PPAs) and requested a corresponding tariff adjustment to offset the financial impact. The Appellant claimed compensation for the incremental tax burden on both EPC (Engineering, Procurement, and Construction) and O&M (Operation and Maintenance) costs.

10. The Respondent Commission recognized the GST Laws as a 'Change in Law' event under Article 12 of the PPA. It allowed compensation for the increased EPC costs during the construction phase, contingent upon the Appellant providing clear evidence of a direct correlation between the projects, goods/services supplied, and supplier invoices, supported by an auditor's certificate.

11. However, the Commission rejected the Appellant's claim for compensation for the increased O&M costs due to GST, stating that outsourcing such services was a decision made by the Appellant for its own benefit and could not be used to impose additional liability on the Respondents.

12. Aggrieved by the said order dated 09.10.2018 read with corrigendum dated 05.11.2018 in Petition No. 34/MP/2018, the Appellant challenges this rejection, asserting that the disallowance of the GST impact on O&M costs under the 'Change in Law' provision is erroneous, particularly given the Commission's approval of the GST impact on EPC costs. The appeal focuses solely on the O&M cost issue, as the EPC-related claim has already been approved.

Submissions of the Appellant

13. The Appellant submitted that this Appeal challenges parts of the order dated 09.10.2018 and its corrigendum dated 05.11.2018 issued by the Central Electricity Regulatory Commission in Petition No. 34/MP/2018. The Impugned Order disallowed the Appellant's "Change in Law" claims for increased Operation and Maintenance ("O&M") costs related to its five 10 MW Solar Power Generating Stations located in Mahoba, Uttar Pradesh.

14. The claims arose due to the implementation of the Goods and Services Tax (GST) Laws (Integrated GST Act, Central GST Act, and Uttar Pradesh GST Act) effective 01.07.2017. The Respondent Commission rejected the claims on the grounds that the Appellant had outsourced the O&M services for the Project based on its commercial decisions, thus disqualifying it from seeking relief under the "Change in Law" provisions.

15. The Central Electricity Regulatory Commission acknowledged that the implementation of the GST Laws qualifies as a "Change in Law" event under Article 12 of the five identical Power Purchase Agreements dated 29.04.2016. While the Commission approved the Appellant's claim for a lump sum payment

to offset the impact of GST Laws on the Engineering, Procurement, and Construction (“EPC”) costs during the construction phase—subject to providing evidence such as invoices, supplier correlation, and an auditor’s certificate—it disallowed the Appellant's claims for increased Operation and Maintenance (“O&M”) costs for the Project. The disallowance was solely based on the fact that the Appellant had outsourced the O&M of its solar power project to another entity as a commercial decision, which the Appellant contends is an erroneous basis for rejection.

THE ISSUE OF CHANGE IN LAW RELIEF IN O&M PERIOD HAS BEEN SETTLED BY THIS TRIBUNAL

16. The Appellant submitted that ***the issue of change in law relief for O&M*** has been settled by this tribunal in judgment dated 15.09.2022 in Appeal No. 256 of 2019 and connected appeals titled ***Parampujya Solar Energy Pvt. Ltd. vs. Central Electricity Regulatory Commission & batch***, referred to as the ***“Parampujya Judgment”***, wherein clarified the issue of GST-related claims during the O&M.

17. This Tribunal held that O&M expenses qualify as recurring expenditure under Article 12 of the Power Purchase Agreement and affirmed that developers are entitled to compensation for additional expenditure, whether recurring or non-recurring, incurred due to O&M activities. This entitlement applies irrespective of whether O&M services were outsourced or not.

18. Further, submitted that this Tribunal, in its orders dated 13.01.2022 and 03.02.2022 in Appeal No. 129 of 2019 and Appeal Nos. 61 to 65 of 2021, respectively, set aside similar orders issued by the Bihar Electricity Regulatory Commission (in short “BERC”) on 07.02.2019 and by the Central Electricity Regulatory Commission on 19.11.2019, respectively. These orders, which were based on the same rationale as the Impugned Order and earlier CERC orders dated 19.09.2018 and 30.11.2018, were remanded by the Tribunal to BERC and CERC for reconsideration, respectively.

19. In compliance with the remand order dated 13.01.2022, BERC, in its order dated 03.08.2022, in Case No. 05/2022 (***Azure Power Eris Private Limited vs. Bihar State Power Holding Company Ltd. & Ors.***), upheld the petitioner’s Change in Law claims for increased O&M expenses due to GST Laws, relying on the CGPL judgment. The order explicitly rejected the Respondents’ arguments, which align with the contentions raised by the Respondents in the current matter. The relevant paragraph of the order dated 03.08.2022 in Case No. 05/2022 passed by BERC is as follows:

“A. Whether the petitioner is entitled for compensation on O&M Expenses on account of Change in Law.

...

6.5 ...It has been correctly pointed out by the petitioner that provisions of Article 11.4 clearly indicate recognition of appointing a sub-contractor under PPA. Accordingly, Petitioner is entitled to outsource the O&M activities to third-party O&M contractor and the same are in terms of the provisions of the PPA.

...

6.6 In view of the above and in terms of the judgment of APTEL, petitioner is entitled for compensation on O&M Expenses on account of Change in Law."

20. In its order dated 25.11.2022, issued in remand proceedings (Petition No. 188/MP/2018 and batch cases titled ***Azure Solar Power Limited vs. NTPC Vidyut Vyapar Nigam Limited & Ors.***), the Central Electricity Regulatory Commission allowed the petitioner's "Change in Law" claims for increased O&M expenses arising from the implementation of GST Laws. The decision relied on the principles established in the ***CGPL Judgment*** and the ***Parampujya Judgment***. CERC expressly rejected the Respondents' arguments, which are identical to those raised by the Respondents in the present case. The relevant paragraphs of the order dated 25.11.2022 in Petition No. 188/MP/2018 and batch passed by the CERC are as under:

"30. We observe that from the ratio-decidenti as decided by the APTEL in Coastal Gujarat Judgment & A.No. 256 of 2019 & Batch it infers that the contractors can be engaged by the generating company if there is no inhibition in the agreement in such regard and once it is established that levy of a tax on services has an impact on the cost of or revenue from business of generation and sale of electricity - whether directly or indirectly, compensation must follow. Hence, the Petitioners are entitled to compensation for additional tax burden towards O&M activities notwithstanding the fact that they were outsourced.

...

33. In view of the above, the Petitioners shall be entitled to recover the compensation on account of incremental impact due to 'Change in Law' even after the occurrence of COD of the project including for O&M expenses due to promulgation of the GST Laws..."

21. As the PPAs impose no restrictions on outsourcing O&M services, the impact of GST Laws on such outsourcing qualifies for Change in Law relief. Consequently, the Appellant is entitled to restitution under the relevant judgments of this Tribunal.

22. The Appellant submitted that Article 12 of the PPAs enables the Appellant to claim relief for increased financial burdens resulting from changes in law, including the imposition of GST after the effective date of the PPAs (29.04.2016). This provision specifically covers additional O&M expenses incurred due to such legal changes.

23. The Change in Law provision in Article 12.1.1 of the PPAs does not restrict the Appellant's right to claim increased O&M expenses, even if O&M activities are outsourced. Since O&M costs are recurring in nature, they are clearly covered under this provision. The introduction of GST has directly and adversely impacted these costs, warranting relief.

24. Under Articles 4.1.1(b) and (c) of the PPAs, the Appellant is required to design, construct, and maintain the Solar Project in compliance with applicable laws and the Grid Code. Outsourcing O&M functions is a widely recognized

industry practice that aligns with prudent utility practices, enhancing operational efficiency and cost-effectiveness while meeting these obligations.

25. This Tribunal, in its judgment dated 20.09.2021 in Appeal No. 215 of 2021 (Tata Power Renewable Energy Limited v. Maharashtra Electricity Regulatory Commission), relying on its earlier judgment in Karnataka Power Transmission Corporation Limited v. Karnataka Electricity Regulatory Commission & Ors. (2007 ELR (APTEL) 223), held that denying Change in Law relief, otherwise validly established, is unfair merely because an alternative business model is preferred by the regulator. The Tribunal emphasized that regulatory commissions should not micro-manage the affairs or contracting decisions of regulated entities. The relevant paragraph of the judgement is as follows:

*“13. . . . The prudence check is conducted by the Commission to determine the computation of compensation such that imprudence in expenditure such as for setting up the power plant is not passed on while determining the compensation of Change in Law. **It does not extend to denying relief for Change in Law. Prudence Check cannot be extended to arranging business affairs on the basis of law which will come in future. The impugned view would indeed make Change in Law provision otiose, since prudence would get tested in the context of law to come in the future ...***

*14. **The recourse to composite contract was a business decision of the appellant. It is not fair to deny relief/or change in law, otherwise properly made out, only because another business model commends itself as better to the regulator. Suffice it to apply here the ruling of this tribunal in Karnataka Power Transmission***

*Corporation Limited v. Karnataka Electricity Regulatory Commission & Ors. reported as 2007 ELR (APTEL) 223 wherein **it was held that the Commissions cannot micro-manage the affairs and contracting of regulating entities.***

26. Outsourcing is a recognized and efficient industry practice. Denying the Appellant's claim for increased O&M costs based solely on outsourcing lacks legal foundation, especially since the Respondent Commission has previously acknowledged the legitimacy and benefits of outsourcing. The PPAs must be interpreted strictly according to their express terms. A purposive approach requires relying on the unambiguous language of the PPAs without implying additional restrictions or conditions not explicitly stated.

27. The Respondent Commission erroneously introduced a restrictive condition under the Change in Law provisions by disqualifying GST-related O&M cost claims due to outsourcing. This introduces a "commercial decision test" that has no basis in the contractual language and complicates an otherwise clear provision. By imposing restrictions not agreed upon by the parties, the Respondent Commission effectively rewrites the PPAs, which is beyond its authority. Any interpretation that alters the agreed contractual obligations must be rejected as it undermines the principles of contract law.

28. The PPAs contain no restriction on outsourcing O&M services. The "Change in Law" provision requires relief for the financial burdens introduced by GST, including increased O&M costs. The Appellant seeks recognition of its claim and appropriate compensation, urging the Tribunal to uphold the

contractual agreement's integrity and principles of commercial fairness as affirmed in prior judgments.

29. The Appellant further contended that the Respondent Commission has acted inconsistently by approving Change in Law relief for GST impacts on EPC costs during the construction phase but unjustifiably denying similar relief for O&M activities during the operational phase, citing outsourcing as a commercial decision. This distinction lacks logic and undermines regulatory coherence. Additionally, the Respondent Commission's inconsistency is highlighted by its order dated 24.01.2021 in Petition No. 365/MP/2019 (Mahindra Renewables Private Limited v. MP Power Management Company Limited), where it held that a generator's commercial decisions cannot be questioned. The relevant paragraph of the same is as follows:

“69. The Commission is of the view that the decision for project implementation including the mode of procurement of goods and services were taken by the Petitioner at the time of bidding and prior to imposition of the Safeguard Duty. It would not be appropriate to question such commercial decisions.

71. The Commission is of the view that the Petitioner is well within its rights to execute the EPC contract and to schedule with the EPC contractor, imports to match its plans for implementation of the project. These are purely commercial decisions made by the Petitioner. Further, the Commission in its Order dated 05.02.2019 passed in Petition No. 187/MP/2017 & Others in case of Mis Renew Wind Energy (TN2) Private Limited & Ors has already held that the procurers/ Respondents cannot question the

commercial decisions of the solar power developers for project implementation including mode of procurement of goods and services taken by the solar power developers prior to the Change in Law event.”

30. The Appellant submitted that the Appellant is entitled to carrying costs and interest for delayed payments related to its Change in Law claims. Article 12.2.2 of the PPAs mandates not only recognition of Change in Law events but also effective relief, including compensation that retains its economic value over time. This Tribunal has the authority to award carrying costs to ensure the Appellant's financial position is not adversely impacted by delays in payment.

31. The issue of carrying costs for Change in Law relief has been conclusively settled by this Tribunal in the Parampujya Judgment, which supports the Appellant's claim for such relief.

32. Clause 5.7 of the Guidelines for Tariff-Based Competitive Bidding Process for Procurement of Power from Grid-Connected Solar PV Power Projects issued on 03.08.2017 by the Ministry of Power under Section 63 of the Electricity Act mandates restitution in case of a Change in Law event. The Solar Power Generator or Procurer is entitled to compensation to ensure the generator's financial position remains unaffected by such an event. These Competitive Bidding Guidelines are statutory and binding. The relevant extract of the Competitive Bidding Guidelines is as follows:

“5. 7 Change in law

5. 7.1. *In the event a Change in Law results in any adverse financial loss/ gain to the Solar Power Generator then, **in order to ensure that the Solar Power Generator is placed in the same financial position as it would have been had it not been for the occurrence of the Change in Law, the Solar Power Generator/ Procurer shall be entitled to compensation by the other party, as the case may be, subject to the condition that the quantum and mechanism of compensation payment shall be determined and shall be effective from such date as may be decided by the Appropriate Commission.***”

33. The Appellant submitted that the Appellant is entitled to interest or carrying costs as compensation for delays in payment arising from the impact of the GST Laws. Such compensation is a well-established legal principle for addressing defaults in timely payments. Reliance is placed on the judgment of the Hon'ble Supreme Court in ***South Eastern Coalfields Limited v. State of MP & Ors. (2003) 8 SCC 648***, which underscores the obligation to pay interest or carrying costs as a compensatory mechanism for delays. This precedent supports the Appellant's claim for interest from the date the GST Laws came into effect. The relevant paragraph is as follows:

“22. We may refer to the decision of this Court in Executive Engineer, Dhenkanal Minor Irrigation Division, Orissa and Ors. v. NC Budharaj (Deceased) by Lrs. and Ors., wherein the controversy relating to the power of an arbitrator (under the Arbitration Act 1940) to award interest for preference period has been settled at rest by the Constitution Bench. The majority speaking through Doraiswamy Raju,

*J, has opined that **the basic proposition of law that a person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation by whatever name it may be called, viz., interest, compensation or damages and this proposition is unmistakable and validity the efficacy and binding nature of such law cannot be either diminished or whittled down.** It was held that in the absence of anything in the arbitration agreement, excluding the jurisdiction of the arbitrator to award interest on the amount due under the contract, and in the absence of any other prohibition, the arbitrator can award interest.*

24. We are, therefore, of the opinion that in the absence of there being a prohibition either in law or in the contract entered into between the two parties, there is no reason why the Coalfields should not be compensated by payment of interest for the period for which the consumers/purchasers did not pay the amount of enhanced royalty which is a constituent part of the price of the mineral for the period for which it remained unpaid.

Our Observations & Conclusion

34. The issue, as also agreed by the contesting parties, is to examine the batch of appeals in the light of the Parampujya Judgment, therefore, it is important to note the relevant extracts of the judgment.

35. The relevant extract of the judgment is as follows:

“103. The Central Commission by the impugned orders, has kept out the expenditure additionally arising on account of increase in tax liability attributable to Operation & Maintenance (“O&M”) contracts from the relief granted on the basis that outsourcing of O&M activity was purely a commercial decision taken by the SPPDs, it not being the requirement under the PPA. The reasoning is set out in the impugned orders on the following lines (quoted from Order dated 27.03.2020 which is subject matter of appeal no. 131 of 2022);

“The Commission is of the view that the recurring expenses referred to in Article 12 of the PPAs includes activities like salary, tax expenses, estimated maintenance costs, and monthly income from leases etc. The Commission notes, based on the records submitted in the context of the petitions, that outsourcing of ‘Operation and Maintenance’ services is not the requirement of the PPAs/ bidding documents. The concept of outsourcing is neither included expressly in the PPAs nor is it included implicitly in Article 12 of the PPAs. The Commission is of the view that in the Competitive Bidding Scenario, the SPDs bid levelled tariff without disclosing the details of the calculations of the project cost. It has already been held by the Commission in its earlier Orders that it is a pure commercial decision of the Petitioners taken for its own advantage. In the event the Petitioners choose to employ the services of other agencies, it cannot increase the liability for the Respondents. Therefore, the Commission holds that claim of the Petitioners on account of additional tax burden on

operation and maintenance expenses (if any), is not maintainable. This view is in consonance with the view taken by the Commission in Order dated 09.10.2018 in Petition No. 188/MP/2017 & Ors. case titled Acme Bhiwadi Solar Power Private Limited –v- Solar Energy Corporation of India and Ors. The Commission does not find merit in the argument of the Petitioners that compensation on O&M expenses should be allowed on lines of the Central Electricity Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2012. The present Petition relates to section 63 of the Electricity Act, 2003 and as such drawing reference to cost plus tariff fixation principles, is misplaced.”

104. There can be no two views as to the fact that O&M expenses form part of the recurring expenditure within the meaning of change in law clause contained in Article 12. Concededly, the appellant SPPDs have availed of O&M services by outsourcing them, statedly following standard industry practice.

.....

106. The above view has been followed by this tribunal in at least two subsequent decisions reported as Azure Solar Private Limited v. CERC & Ors. 2022 SCC OnLine APTEL 24 and Azure Power Eris Private Limited v. BERC & Ors. 2022 SCC OnLine APTEL 8.

107. The above decision applies on all fours. **We adopt the view taken in case of Costal Gujarat Power Limited (supra) and**

disapprove the decision of the Central Commission on the subject as quoted above and hold that the appellant SPPDs are entitled to compensation for additional expenditure (recurring /non-recurring) towards O&M activities as well, notwithstanding the fact that they were outsourced.”

36. Prima facie, it seems that the issue has already been settled by this Tribunal in the case of the ***Parampujya judgment***, however, the Respondents countered the reliance on this judgment.

37. It is, therefore, important to note and deliberate on the counter submissions of the Respondents in the following paragraphs.

Submissions by Southern Power Distribution Company of Telangana in Appeal No. 901 of 2023

38. The Southern Power Distribution Company of Telangana in Appeal No. 901 of 2023 has argued that Solar Power Developers (SPDs) filed three separate petitions before the Central Electricity Regulatory Commission seeking compensation, including carrying costs and increased O&M expenses, for Change in Law events arising from the implementation of GST by the Government of India, effective from 01.07.2017.

| Respondent No. | Name | Petition No. |
|---------------------|---|--------------|
| Respondent No. 2 | ACME Mahabubnagar Solar Energy Private Limited | 232/MP/2017 |

| | | |
|---------------------|---|-------------|
| Respondent No. 3 | ACME Yamunanagar Solar Energy Private Limited | 233/MP/2017 |
| Respondent No. 4 | Azure Power Thirty-Seven Private Limited (as per the corrigendum Order dated 05.11.2018) | 13/MP/2018 |

39. Further argued that CERC, through the Impugned Order, recognized the introduction of GST laws as a Change in Law event and directed the Appellant (DISCOM) to compensate the Respondent Solar Power Developers (SPDs) accordingly. While granting relief for GST-related claims, the CERC denied the SPDs' claims for carrying costs and increased O&M expenses. Both parties challenged the Impugned Order before this Tribunal; the SPDs filed Appeal No. 399 of 2018 to contest the denial of carrying costs and O&M expenses, while the DISCOMs filed Appeal No. 901 of 2023 challenging the compensation awarded to the SPDs.

40. The change in law clause in the PPA between the Appellant and the Respondent DISCOMs is as follows:

“12.1 Definitions

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

12.1.1 “Change in Law” means the occurrence of any of the following events after the effective date resulting into any additional recurring/ non-recurring expenditure by the SPD or any income to the SPD:

- *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;*
- *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;*
- *the imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier;*
- *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 Seller;*
- *any change in tax or introduction of any tax made applicable for supply of power by the Seller as per the terms of this Agreement.*

but shall not include (i) any change in any withholding tax on income or dividends distributed to the shareholders of the SPD, or (ii) any change on account of regulatory measures by the Appropriate Commission.

12.2 Relief for Change in Law

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

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

41. Relief for Change in Law under the PPA is available only if the tax or statutory levy directly impacts the supply of power by the Seller, as outlined in Clause 12.1.1. Not all tax changes or introductions qualify; the impact must specifically relate to the sale of power and not merely affect the financials of the project developer.

42. If GST is considered a Change in Law under the first bullet of Clause 12.1.1, it would render the fifth bullet redundant, which specifically addresses taxes on the supply of power. A harmonious interpretation requires the fifth bullet to retain its distinct purpose, limiting claims under statutory taxes to those directly tied to the supply of power.

43. We find the above argument without any merit, even reading the change in law provisions of the PPA, introduction of GST by an enactment is well covered under the first bullet itself, it cannot be disputed now that GST is not a change in law event, as countered by the Respondent.

44. Further, argued that the GST paid by SPDs on input goods, equipment, machinery, and other materials used for constructing the power plant pertains to project setup, not the sale of power. As such, these expenditures fall outside the scope of Article 12.1.1 of the PPA, and the SPDs are not entitled to relief for such costs under Change in Law provisions.

45. As already observed, it cannot be accepted, GST on O&M expenses directly affects the tariff, and such are covered by the ***Parampujya judgment***.

Submissions of the Respondent No. 2, NTPC Ltd.

(Appeal No. 394 of 2018)

46. The NTPC submitted that the parties in the present dispute are bound by the terms of the PPA. Under the PPA, the Appellant is solely responsible for fulfilling all contractual obligations, including the execution of projects, generation, and supply of electricity. The Respondent No. 2 (NTPC) is not involved in or concerned with the Appellant's methods of fulfilling these obligations or its dealings with contractors or representatives, as explicitly stated in Clause 17.10.2 of the PPA.

47. This clause also clarifies that no contractual relationship exists between the Respondent and any third party engaged by the Appellant. Regarding Force Majeure provisions, Clause 11.2 of the PPA identifies the "Affected Party" as either the Respondent or the Solar Power Developer (the Appellant) whose performance is impacted by a Force Majeure event. This definition aligns with the Central Government's standard bidding documents for power procurement. In essence, the PPA delineates clear responsibilities, leaving execution to the Appellant's discretion while defining mutual roles in case of Force Majeure.

48. According to the principles outlined in Sir Kim Lewison's Interpretation of Contracts (Chapter 7, Pages 7.05-7.06), the doctrine of *expressio unius est exclusio alterius* implies that when a contract explicitly addresses specific matters, it deliberately excludes others of the same category not mentioned. Applied to the PPA, the express terms indicate that the rights and obligations under the agreement are limited to the Appellant and the Answering Respondent. If liabilities towards subcontractors were intended to fall within the PPA's scope, they would have been explicitly included.

49. Clause 12 of the PPA addresses the "Change in Law" provision, which is limited to changes in taxes or the introduction of taxes specifically related to the supply of power by the Appellant. A combined reading of Clauses 12, 17.9, and 17.10 makes it clear that services procured by the Appellant from subcontractors fall outside the scope of the "Change in Law" clause. Furthermore, Clauses 17.9 and 17.10 obligate the Appellant (SPD) to indemnify the Respondent against any actions by contractors or subcontractors engaged by the Appellant.

50. The Appellant's decision to outsource certain O&M activities to external agencies was a commercial choice. If these activities had been performed internally, the Appellant would have borne the GST liability itself without passing any additional cost to the Respondent. Consequently, any financial implications arising from outsourcing cannot be shifted onto the Respondent.

51. Further, contented that the Appellant's outsourcing of works under the PPA compromises the integrity of its original bid, which was assessed and awarded based on the Appellant's credentials and competence. This outsourcing nullifies the Appellant's direct role in executing the PPA obligations.

52. Furthermore, outsourcing shifts responsibilities like labor law compliance and tax liabilities to third parties, benefiting the Appellant. However, the Appellant has not provided any documentation to demonstrate the outsourcing arrangements or the associated benefits. Without such evidence, the Appellant's Change in Law claim is untenable, as it has not shown any adverse impact from the change while benefiting from outsourcing.

53. Also argued that the PPA between the Appellant and the Respondent aligns with standard PPAs in the sector. Recitals E and F specify that the Appellant will purchase solar power, bundle it with thermal power allocated by the Ministry of Power, and sell the bundled power to DISCOMs. The Respondent, as part of the National Solar Mission, has agreed to facilitate this process by entering into Power Sale Agreements with the DISCOMs. This arrangement is composite and back-to-back, forming a tripartite structure where the Respondent acts solely as a facilitator. The DISCOMs are the ultimate consumers under the Power Sale Agreements executed with the Appellant.

54. From a regulatory perspective, liabilities arising from a Change in Law must be passed on to the ultimate beneficiaries, i.e., DISCOMs, and not borne by the Respondent, which acts solely as a facilitator. Under the PPA, the Appellant is entitled to a fixed tariff of ₹4.67/kWh, as specified in Clause 9, determined through a reverse auction without itemizing components like Return on Equity, Interest on Loan, Depreciation, or O&M expenses.

55. The Appellant cannot now seek bifurcated claims, particularly for O&M expenses. The CERC, in its Impugned Order, correctly concluded that the Appellant's commercial decision to outsource O&M works for its benefit precludes passing any cost increases, including taxes, onto the Respondent. Accordingly, the Appellant's claim under the Change in Law provision lacks merit.

56. We strongly reject the above contentions of NTPC. The issue has already been dealt with in the ***Parampujya Judgment***, as under:

“107. The above decision applies on all fours. We adopt the view taken in case of Costal Gujarat Power Limited (supra) and disapprove the decision of the Central Commission on the subject as quoted above and hold that the appellant SPPDs are entitled to compensation for additional expenditure (recurring /non-recurring) towards O&M activities as well, notwithstanding the fact that they were outsourced.”

57. On the contrary, NTPC also argued that appeals be disposed of in the light of the ***Parampujya Judgment***, stating that the present Appeal should be dismissed in light of the judgment dated 15.09.2022 in the Parampujya Batch case (Appeal No. 256 of 2019), which dealt with identical issues. In the Parampujya case, the CERC allowed compensation for additional tax burdens from GST laws and safeguard duties, but restricted it to the commissioning date and disallowed carrying costs due to the lack of a restitutive clause in the PPA. Compensation for additional tax burdens on outsourced O&M expenses was also denied.

58. This Tribunal overturned the CERC’s decision, granting claims for carrying costs and compensation for O&M expenses to the developer. The issues and outcomes in the Parampujya case are directly applicable to the present dispute.

59. The present Appeal lacks merit and should be dismissed, as the issues raised have already been addressed in the Parampujya Batch judgment. Although the judgment is under challenge before the Hon’ble Supreme Court in Civil Appeal No. 8880 of 2022 (Telangana Northern Power Distribution Company

Ltd. & Anr. v. Parampujya Solar Energy Pvt. Ltd. & Ors.), the Hon'ble Supreme Court has not granted a stay on the judgment in its entirety.

60. In its order dated 12.12.2022, the Hon'ble Supreme Court directed compliance with Para 109 of the Parampujya judgment, though enforcement of the final order has been stayed. Following this, APTEL has passed similar orders in related appeals, remitting matters to the CERC in light of the Hon'ble Supreme Court's directions, such as: Order dated 19.01.2023 in Appeal No. 432 of 2022; Orders dated 16.07.2024 in DFR Nos. 221 and 222 of 2024. Moreover, APTEL's order dated 09.02.2024 in Appeal No. 210 of 2019 (APSPDCL & Anr. v. CERC & Ors.) has settled similar issues. The Impugned Order rightly rejects the Appellant's claims, and the current Appeal should be disposed of in line with the Parampujya Batch judgment.

61. We find the submissions of the NTPC as inconsistent; however, the appeals are examined in the light of the ***Parampujya Judgment***.

Submissions of the Respondent No. 2, Solar Energy Corporation of India Limited

(Appeal No. 395 of 2018)

62. Respondent No. 2, SECI in Appeal No. 395 of 2018, submitted that the Appellant challenges the denial of the financial impact from the change in law related to GST on O&M activities. The Appellant disputes the non-allowance of carrying costs associated with the changes.

63. In the case Parampujya Solar Energy Pvt. Ltd. v. Central Electricity Regulatory Commission (Appeal No. 256 of 2019, Order dated 15.09.2022), this Tribunal directed the CERC to recognize and compensate the Change in Law claims, including GST impacts and associated O&M expenses, as well as the carrying cost. These compensations are subject to prudence checks for the entire duration affected by the new tax laws.

64. In Civil Appeal No. 8880 of 2022, filed by Telangana Discoms challenging the Tribunal's judgment dated 15.09.2022 in the Parampujya Case, the Hon'ble Supreme Court vide order dated 12.12.2022 ordered that CERC must comply with the Tribunal's directives (specifically paragraph 109) regarding Change in Law compensation. However, the enforcement of CERC's final order is stayed until further orders, pending the Supreme Court's final decision.

65. In Civil Appeal Nos. 000505-000510 of 2023, filed by Solar Energy Corporation of India challenging the Tribunal's judgment dated 15.09.2022 in the Parampujya Case, the Hon'ble Supreme Court directed that the CERC must adhere to the Tribunal's instructions (as per paragraph 109). However, the implementation of CERC's final order remains stayed until further notice. This order is linked with Civil Appeal No. 8880 of 2022, and SECI's appeal is currently under consideration by the Hon'ble Supreme Court.

66. Considering the above decisions of the Hon'ble Supreme Court, this Tribunal vide order dated 19.01.2023 in another case being Appeal No.432 of 2022 in the matter of Adani Solar Energy Jodhpur Three Private Limited –v- Central Electricity Regulatory Commission and others has held as under:

“Ms. Gayatri Aryan, learned Counsel for the Appellant, submits that the subject matter of this Appeal is covered by the order passed by this Tribunal earlier in Appeal No. 256 of 2019 & Batch dated 15.09.2022; on an appeal being preferred against the said Order in Civil Appeal No. 8880 of 2022, the Supreme Court, by order dated 12.12.2022 while directing the CERC to comply with the directions issued in paragraph 109 of the order of this Tribunal, further directed that the final order of the CERC shall not be enforced until further orders. The directions issued by this Tribunal as noted in Para 109 of the above said Judgment, reads as under:

.....

Suffice it, therefore, to dispose of this appeal in terms of the Order passed by this Tribunal in Appeal No. 256 of 2019 dated 15.09.2022, making it clear that, consequent on remand, it shall be open to the parties to the dispute to raise all such contentions as are available to them in law, and the same shall be considered by the CERC while passing an order afresh. Needless to state that, in terms of the Order of the Supreme Court, the order to be passed by the CERC shall not be enforced till the aforesaid Order is either varied or the appeal itself is disposed of by the Supreme Court. The instant Appeal is, accordingly, disposed of.”

67. The SECI submitted that the current appeal be remanded to the CERC for reconsideration, in line with this Tribunal’s judgment dated 15.09.2022, concerning additional compensation for O&M expenses and carrying costs. Also, the Counsel sought a directive ensuring that CERC’s remand order is not

enforced until the Hon'ble Supreme Court delivers its verdict in related cases (Civil Appeal No. 8880/2022 and Civil Appeal Nos. 000505-000510/2023).

68. We agree with the arguments of SECI.

Submissions of the Respondent Nos. 3 and 4, Eastern Power Distribution Company of Andhra Pradesh Ltd. and Southern Power Distribution Company of Andhra Pradesh Ltd.

69. The Distribution Companies of AP submitted that the Appellant's claims arise from the PPA dated 25.09.2016, executed between the Appellant and Respondent No. 2, SECI. Conversely, the rights and obligations of SECI are governed by a separate Power Sale Agreement (PSA) dated 27.10.2016.

70. Further, submitted that the Appellant's requested reliefs are deemed untenable due to the following reasons:

1. Jurisdictional Issues: The Andhra Pradesh Electricity Regulatory Commission (State Commission) holds exclusive jurisdiction under Article 12.1.3 of the PSA. The State Commission is responsible for adjudicating disputes affecting the tariff under the PSA it approved, especially since the case involves intra-state electricity supply.
2. Lack of Privity of Contract: The Respondents are not parties to the PPA, which is the basis for the Appellant's change in law claims.
3. Appellant's Sole Responsibility: As per Article 17.10.2 of the PPA, the Appellant is solely responsible for fulfilling its obligations.

71. The above issues have already been dealt with and settled in the Parampujya Judgment and therefore, rejected on the ground of merit, the relevant extract is quoted as under:

“45. We do not find any substance in the argument, since there is no usurpation of jurisdiction by the Central Commission or divesting of the jurisdiction of the State Commission in as much as the PPAs have arisen out of composite scheme, an aspect we may elaborate further.

*46. It is not in dispute that SECI has been granted inter-state trading license by CERC, it having been designated by MNRE as the Nodal Agency for implementation of MNRE Schemes. Thus, SECI has agreed to purchase such power from the SPDs. Parampujya has an intermediary in the form of SECI to sell it further to buying utilities on back-to-back basis. In Energy Watchdog (supra), **the Hon’ble Supreme Court had also held thus:***

“22. The scheme that emerges from these Sections is that whenever there is inter-State generation or supply of electricity, it is the Central Government that is involved, and whenever there is intra-State generation or supply of electricity, the State Government or the State Commission is involved. This is the precise scheme of the entire Act, including [Sections 79](#) and [86](#). It will be seen that [Section 79\(1\)](#) itself in sub- sections (c), (d) and (e) speaks of inter-State transmission and inter- State operations. This is to be contrasted with [Section 86](#) which deals with functions of the State Commission which uses the expression “within the State” in sub-clauses (a), (b), and (d), and “intra-state” in

sub- clause (c). This being the case, it is clear that the PPA, which deals with generation and supply of electricity, will either have to be governed by the State Commission or the Central Commission. The State Commission's jurisdiction is only where generation and supply takes place within the State. On the other hand, the moment generation and sale takes place in more than one State, the Central Commission becomes the appropriate Commission under the Act. What is important to remember is that if we were to accept the argument on behalf of the appellant, and we were to hold in the Adani case that there is no composite scheme for generation and sale, as argued by the appellant, it would be clear that neither Commission would have jurisdiction, something which would lead to absurdity. Since generation and sale of electricity is in more than one State obviously [Section 86](#) does not get attracted. This being the case, we are constrained to observe that the expression "composite scheme" does not mean anything more than a scheme for generation and sale of electricity in more than one State."

[Emphasis supplied]

47. It is also pertinent to note here that Article 12.2.1 on the subject of relief for Change in Law expressly conferred the jurisdiction on the Central Commission:

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

48. Since the project in question was set up under a composite scheme envisaging supply of electricity thereby generated to more than one State, the objection to the jurisdiction exercised by the Central Commission is not correct, it being inconsequential that the State of Chhattisgarh had eventually arranged to procure the entire generation capacity.”

72. Considering that the issues raised by Respondents have already been settled by this Tribunal, the objections raised herein are rejected.

Submissions of the Respondent No. 4, 16, 17 and 18, Punjab State Power Corporation Limited (PSPCL), Jaipur Vidyut Vitran Nigam Limited (JVVNL), Jodhpur Vidyut Vitran Nigam Limited (JDVVNL), Ajmer Vidyut Vitran Nigam Limited (AVVNL)- Rajasthan Discoms

(Appeal No. 65 OF 2023)

73. The PSPCL submitted that the Appellant (Azure Power (Rajasthan Private Limited), in Appeal No. 65 of 2023) cited this Tribunal's judgment dated 27.04.2021 in the CGPL Case, which held that outsourcing activities is a commercial decision of a generating company, permissible unless expressly barred by the PPA.

74. However, this judgment has been stayed by the Hon'ble Supreme Court on 14.10.2022 in Civil Appeal No. 2295-96 of 2021. Further argued that the CGPL Case differs significantly from the present case.

75. In CGPL, the PPA recognized O&M contracts as part of the project, allowing for the outsourcing of ancillary activities, not core generation operations. The present PPA lacks such provisions, and the Appellant has outsourced almost the entire project functioning, unlike in CGPL, where core operations were retained by the generator. Thus, the principles from the CGPL Case do not apply to the current case.

76. Moreover, in the CGPL case, the generator was a thermal power plant with extensive ancillary activities, unlike the Appellant's solar plant, which only requires routine operation and maintenance of solar panels and structures. Unlike thermal plants that involve fuel procurement, auxiliary equipment, and generation regulation, the Appellant's PPA does not contemplate outsourcing O&M activities, as these pertain solely to core generation tasks.

77. This distinction underscores that the PPA does not anticipate O&M contracts for solar plants, unlike the case with thermal generators like CGPL. Allowing a generator to outsource all O&M activities undermines the integrity of the bidding process, which evaluates the bidder's capacity to fulfill contractual obligations.

78. Such outsourcing practices are unprecedented in the electricity regulatory framework and, if permitted, could disrupt the sector by enabling entities to bid as generators but delegate operational responsibilities entirely to third parties. This would have significant and far-reaching regulatory implications.

79. Undisputedly, the purpose of O&M is to operate and maintain the generating station irrespective of whether it is a thermal project or a renewable energy-based project.

80. The Parampujya Judgment has categorically allowed the GST on the outsourced O&M services after duly considering the CGPL judgment; as such, the argument herein cannot be accepted.

81. The issue of carrying cost has also been settled in the Parampujya Judgment, thus, the objections raised herein are declined.

Submissions of the Respondent No. 6, Chhattisgarh State Power Distribution Company Limited (CSPDCL),

(Appeal No. 65 OF 2023)

82. The CSPDCL submitted that the Appellant filed a petition before the CERC on 06.06.2018, seeking relief for claims related to a period starting 01.04.2012. However, CERC rejected claims for the period from 01.04.2012 to 05.06.2015, citing the limitation period prescribed under the Limitation Act, 1963, which sets a three-year deadline from the cause of action. The CERC observed that the delay of 10 months in filing the petition rendered these claims inadmissible. It emphasized the legal principle that a party who delays asserting their rights forfeits them. Consequently, the claims for the specified period were rejected.

83. Further submitted that the Appellant's claim for carrying cost due to a Change in Law lacks merit as the PSA contains no provision for carrying cost or interest. The determination of the Change in Law claim is pending, and any

payment obligations, including supplementary invoices, will arise only after the amount is adjudicated. Furthermore, the issue of late payment surcharge would apply only after the due date for payment, as per the principle established in SLS Power Ltd v. Andhra Pradesh Electricity Regulatory Commission (APTEL Appeal No. 150 of 2011).

84. CERC correctly noted in its order that, as per the judgment in Adani Power Limited v. CERC (APTEL Appeal No. 210 of 2017), if a PSA lacks a provision for restoring the parties to the same economic position, carrying cost cannot be allowed. Similarly, in GMR Warora Energy Limited v. CERC (APTEL Appeal No. 111 of 2017), the absence of restitution provisions precluded the allowance of carrying costs.

85. Even if the concept of carrying cost as the time value of money is considered, as discussed in Parampujya Solar Energy Private Limited v. CERC (APTEL Judgment dated 15.09.2022, Appeal No. 256 of 2019), the effect of this judgment has been stayed by the Hon'ble Supreme Court in Civil Appeal No. 8880 of 2022 (Order dated 12.12.2022). Therefore, in the absence of restitution provisions in the PSA, the Appellant is not entitled to claim carrying costs or any relief beyond the explicit terms of the agreement.

86. We, at this stage, are only examining whether the matter is to be remanded to CERC for fresh consideration in the light of ***the Parampujya Judgment***; as such, this issue shall be dealt with by CERC in the remand proceedings.

Our Conclusion

87. This Tribunal, in its judgment dated 15.09.2022 in Appeal No. 256 of 2019 and connected appeals, Parampujya Solar Energy Pvt. Ltd. vs. Central Electricity Regulatory Commission has resolved the issue of claims under GST Laws during the O&M period. This Tribunal held that O&M expenses fall under the category of recurring expenditures as per Article 12 of the PPA. Consequently, developers are entitled to compensation for additional O&M costs, whether these services were outsourced or not.

88. The Tribunal also disapproved the Central Commission's earlier stance, which had excluded additional tax liability from O&M contracts, arguing that outsourcing was a commercial decision not mandated by the PPA. The Tribunal clarified that O&M expenses inherently constitute recurring costs within the 'Change in Law' clause of the PPA.

89. Moreover, this Tribunal, in its orders dated 13.01.2022 and 03.02.2022 in Appeals No. 129 of 2019 and Appeal Nos. 61 to 65 of 2021, respectively, remanded cases back to BERC and CERC for fresh consideration. These cases involved similar issues where relief under 'Change in Law' was denied due to the outsourcing of O&M services. The remand directed the commissions to reconsider the claims in light of the CGPL Judgment and related rulings.

90. The relevant paragraph of the order dated 13.01.2022 in Appeal No. 129 of 2019 is as follows:

“3. The State Commission while accepting that the GST laws do constitute a change in law event within the meaning of the expression used in the Power Purchase Agreement (PPA) binding the parties, it denied the relief taking exception to the fact that the operation and maintenance work had been outsourced.

...

5. After some hearing, it was fairly conceded by the learned counsel for the appellant and for the respondent procurers (distribution licensees) through their respective counsel that it would be appropriate that the matter is remitted to the State Commission for revisit of the decision taken denying the relief on the above mentioned reason, in as much as should the State Commission now accept the contention of the appellant that the relief is admissible in terms of ruling in Coastal Gujarat (Supra), it would also be required to undertake prudence check of the actual expenditure incurred which exercise has not been undertaken in the previous round.

6. In the forgoing facts and circumstances, we set aside the impugned order of the State Commission and remit the matter to it for fresh consideration, after hearing the parties, in accordance with law. Needless to add we would expect the State Commission to hold the proceedings on remand expeditiously and decide the matter at an early date, preferably within two months, and dispassionately not feeling bound in any manner by the view taken earlier.”

91. Subsequently, BERC, in its order dated 03.08.2022 in Case No. 05/2022, and CERC, in its order dated 25.11.2022 in Petition No. 188/MP/2018, allowed claims for increased O&M expenses due to GST Laws, relying on the CGPL and Parampujya Judgments. Both commissions rejected the Respondents' arguments, confirming that outsourcing O&M activities is permissible under the PPAs and qualifies for 'Change in Law' relief.

92. Further, in the order dated 03.02.2022 in Appeal Nos. 61 to 65 of 2021 passed by this Tribunal are as follows:

“3. It appears that the CERC has denied compensation on account of change in law events having an impact on O & M expenses for the reason that the appellants had outsourced such activities to third party. The appellants are also aggrieved by denial of carrying cost vis-à-vis the previously mentioned claim of compensation, the reasons set out in the impugned order being that in the Power Purchase Agreements (PPAs) governing the relationship of the parties, there is no provision incorporating of restitutionary principle.

...

6. Following the above, this tribunal with consent of the parties of that case had directed in the matter of Azure Power Eris Private Limited Vs. Bihar Electricity Regulatory Commission & Others(supra) similar remit for reconsideration by the State Commission.

7. After some hearing, it is fairly conceded by the learned Senior Counsel, Mr. M.G. Ramachandran on behalf of NVVN& SECI that

the matter deserves to be remitted to the Central Commission for reconsideration of the issue of O&M expenses in light of rulings of this tribunal in Coastal Gujarat(supra) & Azure Power Eris Private Limited Vs. Bihar Electricity Regulatory Commission & Others (supra). Though the learned counsel for other respondents seem to have some reservations, we feel that it would be appropriate that the Commission is called upon to revisit the issue in light of the above mentioned rulings of this tribunal. We order accordingly.

8. Learned counsel for the respondents seek to contest the claim of the appellants on the subject of carrying cost. **Learned counsel for the appellants submitted that since the issue of O&M expenses is being remitted, their right to challenge the view taken in the impugned order by the Central Commission vis-à-vis carrying cost may be reserved to be pursued and agitated after decision on O&M expenses issue has been rendered afresh by the Central Commission. We accept this request and grant liberty, as prayed.**

9. For the forgoing reasons, and in these circumstances, **we set aside the impugned orders to the extent thereby the Central Commission has denied the relief and impact of change in law on the O&M expenses and remit the same to the Central Commission for fresh consideration in light of the relevant law presently governing the subject.** Needless to add, we expect the Central Commission to hold the proceedings expeditiously in

accordance with law and render fresh decision under this remit at an early date preferably within two months. We request the Commission accordingly.”

93. The Appellant thereafter asserted its entitlement to carrying costs and interest due to delays in payments related to Change in Law claims, as per Article 12.2.2 of the PPAs. This provision not only acknowledges Change in Law events but also mandates effective relief, ensuring the economic value of compensation is maintained over time.

94. The issue of carrying costs was also addressed by this Tribunal in the ***Parampujya Judgment***, where it was held that relief for Change in Law is incomplete without the inclusion of carrying costs. The Tribunal emphasized that the burden arising from Change in Law events should not be borne gratuitously by SPPDs. The judgment directed the CERC to compensate SPPDs for the entire period of impact, including post-Commercial Operation Date (COD), along with carrying costs, subject to prudence checks.

95. The relevant paragraph of the judgement is as follows:

*“88. The procurers cannot derive undue benefit on this account, not the least at the cost of the SPPDs who could never conceivably have intended to discharge their tax burden as a gratuitous act. **Since the burden of carrying cost is a consequence directly flowing from the change in law event, the relief in such regard cannot be complete unless this part of the additional expenditure is also allowed as pass-through.***

.....

94. For the foregoing reasons, we cannot approve of the view taken by the Central Commission on the subject of carrying cost. We hold that the appellant SPPDs are entitled to grant of relief in the nature of carrying cost over and above the compensation already allowed by the Central Commission.

.....

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.”**

96. Additionally, Clause 5.7 of the Competitive Bidding Guidelines, issued on 03.08.2017 under Section 63 of the Electricity Act, mandates compensation for Solar Power Generators in the event of a Change in Law to ensure they are restored to their original financial position.

97. Further, this Tribunal, in **Adani Solar Energy Jodhpur Three Pvt. Ltd. v. CERC** (Appeal No. 432 of 2022, Order dated 19.01.2023), disposed of the Appeal in line with its earlier decision in Parampujya Solar, allowing the parties to raise all legal contentions before CERC, while noting that enforcement of CERC's order remains stayed per the Hon'ble Supreme Court's directive.

“Ms. Gayatri Aryan, learned Counsel for the Appellant, submits that the subject matter of this Appeal is covered by the order passed by this Tribunal earlier in Appeal No. 256 of 2019 & Batch dated 15.09.2022; on an appeal being preferred against the said Order in Civil Appeal No. 8880 of 2022, the Supreme Court, by order dated 12.12.2022 while directing the CERC to comply with the directions issued in paragraph 109 of the order of this Tribunal, further directed that the final order of the CERC shall not be enforced until further orders. The directions issued by this Tribunal as noted in Para 109 of the above said Judgment, reads as under:

.....

Suffice it, therefore, to dispose of this appeal in terms of the Order passed by this Tribunal in Appeal No. 256 of 2019 dated 15.09.2022, making it clear that, consequent on remand, it shall be open to the parties to the dispute to raise all such contentions as are available to them in law, and the same shall be considered by the CERC while passing an order afresh. Needless to state that, in terms of the Order of the Supreme Court, the order to be passed by the CERC shall not be enforced till the aforesaid Order is either varied or the appeal itself is disposed of by the Supreme Court. The instant Appeal is, accordingly, disposed of.”

98. Therefore, in light of the Hon'ble Supreme Court judgement mentioned above and the finding of this Tribunal in the afore-referred cases, we find it apt that this Appeal be remanded to the Central Commission with the direction that any order by the Commission concerning additional compensation (O&M expenses and carrying cost) shall be subject to the Hon'ble Supreme Court's pending decisions in Civil Appeal No. 8880/2022 and Civil Appeal No. 000505-000510/2023.

ORDER

For the foregoing reasons as stated above, we are of the considered view that the batch of appeals is remanded to the CERC in terms of the observation made in the foregoing paragraphs with the following directions:

- ***Suffice it, therefore, to dispose of these appeals in terms of the Order passed by this Tribunal in Appeal No. 256 of 2019 dated***

15.09.2022, making it clear that, consequent on remand, the observations made here in shall be considered by the CERC while passing an order afresh. Needless to state that, in terms of the Order of the Supreme Court, the order to be passed by the CERC shall not be enforced till the aforesaid Order is either varied or the appeal itself is disposed of by the Supreme Court. The instant Appeal is, accordingly, disposed of.”

The Impugned Orders, as noted in the first paragraph of this judgment, passed by CERC are set aside to the extent as observed herein above.

The Captioned Appeals and pending IAs, if any, are disposed of in the above terms.

PRONOUNCED IN THE OPEN COURT ON THIS 27th DAY OF MAY, 2025.

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member

REPORTABLE / NON-REPORTABLE

pr/mkj/kks