IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No. 184 of 2023

Dated: 30th May, 2025

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

In the matter of:

M/s Renew Clean Energy Private Limited
Through its Assistant Manager,
138, Ansal Chamber – II Bikaji Cama Place,
New Delhi – 110006
Email: kuhoo.saxena@renewpower.in … Appellant

Versus

1. **Madhya Pradesh Electricity Regulatory Commission**
Through its Registrar
5th Floor, Metro Plaza, Arera Colony,
Bittan Market, Bhopal – 462 016
Email: mercindia@merc.gov.in

2. **Madhya Pradesh Power Management Company Limited**
Represented through Chairman & Managing Director
Shakti Bhawan, Block No. 11,
Rampur, Jabalpur – 482 008
Email: customercare@mahadiscom.in … Respondent (s)

Counsel for the Appellant(s)	:	Mannat Waraich Mridul Gupta Ashabari Basu Thakur Ananya Goswami for App.
Counsel for the Respondent(s)	:	Preeti Goel for Res. 1 Nitin Gaur for Res. 2

J U D G M E N T

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. The Appellant is aggrieved by the order dated 15th June, 2022 for the 1st Respondent Madhya Pradesh Electricity Regulatory Commission (hereinafter referred to as "the Commission") whereby the Commission, while holding that introduction of Goods and Services Tax (GST) w.e.f. 1st July, 2017 constitutes Change in Law in terms of Article 11.6.3. of the PPA executed between the Appellant and 2nd Respondent, restricted its additional burden upon the expenditure incurred by the Appellant upto Scheduled Commercial Operation Date (SCOD) of the project only, rejected the claim of the Appellant for additional tax burden due to GST on O&M expenses and denied carrying cost to the Appellant on incremental expenditure due to GST.

2. The Appellant – M/s Renew Clean Energy Private Limited is a Independent Power Producer (IPP) of clean energy with more than 5600 MW of commissioned and under construction clean energy assets and has set up a number of wind and solar power projects in India. The Appellant is a generating company as defined in Section 2(28) of the Electricity, Act, 2003.

3. The 2nd Respondent – Madhya Pradesh Power Management Company Ltd. (in short “MPPMCL”) is holding company of all the Madhya Pradesh Discoms and entrusted with responsibility of procuring power on behalf of the Discoms who are engaged in the distribution and retail supply of power within the State of Madhya Pradesh.

4. The 2nd Respondent issued a request for proposal (RFP) on 6th May, 2015 for procurement of 300 MW solar power. In pursuance to the said RFP, the Appellant was selected as a solar power developer for development of 51 MW capacity of solar PV ground mount project at Village Jaitpur, Rajgarh Taluk M.P. Letter of Intent dated 22nd October, 2015 was issued to the Appellant in this regard.

5. Thereafter, the Appellant entered into a Power Purchase Agreement (PPA) dated 10th May, 2015 with 2nd Respondent – MPPMCL for setting up of the solar PV ground mount project and for the consequent sale of solar power to the 2nd Respondent. Subsequently, in accordance with the direction of the Hon’ble Supreme Court dated 5th April, 2018 location of the project was changed from Jaitpur village to Village Bhansara, Taluk Shadro District Ashok Nagar,

Madhya Pradesh. This change of location was recorded between the parties by way of supplementary PPA dated 16th August, 2018.

6. In the meanwhile, Goods and Services Tax Act was introduced w.e.f 1st July, 2017 which changed the indirect taxation regime in India, resulting in paradigm shift by subsuming various old taxes and introducing new taxation.

7. The Appellant filed a petition No. 54 of 2018 under Section 86 of the Electricity Act, 2003 read with Article 11.6.4. of the PPA before the Commission seeking approval that the implementation of GST laws w.e.f. 1st July, 2017 constitutes an event of Change in Law under the PPA and further seeking compensation consequent to such Change in Law event. The Commission found the petition not maintainable for the reason that the petitioner had directly approached it without following the procedure prescribed under Article 13 of the PPA for dispute resolution. Accordingly, the petition was dismissed as not maintainable with liberty to the Appellant to approach the Commission again after exhausting the mechanism available under Article 13 of the PPA.

8. In accordance with these directions of the Commission, The Appellant issued notices dated 20th August, 2020 to 2nd Respondent – MPPMCL seeking compensation in the Change in Law event with the

request to provide List of Documents required for availing such compensation. The 2nd Respondent vide a letter dated 9th October, 2020, refused to accept the said communications dated 20th August, 2020 of the Appellant as a “Notice” under Article 13.2 of the PPA termed as the same was “incomplete” and “difficult to comprehend”. Subsequently, vide letter dated 28th October, 2020, the Appellant raised another claim along with carrying cost upon the 2nd Respondent in terms of the provisions of Article 11.6 read with Article 13.2 of the PPA, in relation to the additional non-recurring and recurring expenditure incurred by the Company on account of implementation of GST in India. However, vide letter dated 18th January, 2021, the 2nd Respondent denied the claim of the Appellant without making any efforts to amicably settle the issue. In letter dated 31st March, 2021, the Appellant reiterated its requests for discussion on the issues arising out of its claim but did not receive any response from 2nd Respondent.

9. Accordingly, having exhausted the mechanism available to the Appellant under Article 13.2 of the PPA and on account of failure to resolve the disputes amicably, the Appellant approached the Commission again by way of petition No. 45 of 2021 under Section 86 of the Electricity Act, 2003 seeking (i) quashing of letter dated 18th

January, 2021 issued by the 2nd Respondent – MPPMCL; (ii) approval of imposition of GST Laws as Change in Law event and; (iii) seeking proper mechanism for grant of an appropriate adjustment/compensation to offset financial/commercial impact of Change in Law events on account of imposition of safeguard duty on solar cells/modules in terms of Article 13.3 read with Article 11.6 of the PPA.

10. The petition has been disposed off by the Commission vide impugned order dated 18th June, 2022 holding the introduction of GST laws w.e.f. 1st July, 2017 as an event of "Change in Law" in terms of 1st and 5th bullet of Article 11.6.3 of the PPA. However, at the same time, the Commission held the 2nd Respondent liable to pay the additional cost due to introduction of GST laws only upto the scheduled date of commissioning of the project as per PPA. The Commission also refused to consider the claim of the Appellant for additional tax burden due to GST on O&M expenses. It also held that the claim of the Appellant regarding carrying cost on the incremental expenditure is not admissible.

11. Thus, the Appellant is before us in this appeal against the said order dated 18th June, 2022 of the Commission.

12. We have heard Learned Counsel for the parties and perused the impugned order as well as written submissions filed by the Learned Counsels.

13. Learned Counsel for the Appellant vehemently argued that restricting the claim for compensation on account of the Change in Law event i.e. the imposition of Goods and Services Tax Act, to the invoices raised till SCOD of the project only is extraneous and hence cannot be approved. In this regard, reliance is placed upon the judgement of this Tribunal dated 15th September, 2022 in Appeal No. 256 of 2019 & batch M/s Parampujya Solar Energy Pvt. Ltd. and Anr. Vs. CERC and Ors. & batch.

14. With regards to the rejection of the Appellant's claim for compensation towards additional expenditure on O&M services on account of Change in Law event, it is argued that service tax on O&M services was levied @ 15% previously which has increased to 18% regime w.e.f. 1st July, 2017 thereby resulting in increase in the said expenditure. It is submitted that the view taken by the Commission that the claim under this head is not covered under Change in Law clause contained in the PPA for the reason that the PPA does not provide for outsourcing of O&M, is contrary to the law and, therefore, cannot be

accepted. It is submitted that there is no embargo placed by any clause in the PPA restricting the relief in respect of Change in Law event only for self-performed activities and not to out-sourced activities. Reference is again made to the above quoted judgement of this Tribunal in Parampujya case in which it has been held that the solar power developers are entitled to compensation for additional expenditure (recurring/non-recurring) towards O&M activities as well even if these activities have been out-sourced.

15. With regards to the denial of carrying cost by the Commission, it is argued that in doing so, the Commission has failed to keep in mind the underlined principle of restitution enshrined in the Change in Law clause in the PPA. It is submitted that the very purpose of Change in Law clause is to restore the affected party to the same economic position as it was holding prior to Change in Law event and, therefore, even if specific words to that effect are not present in the provisions of Change in Law in the PPA, the said concept of restoration of party to the same economic position must be read into it by necessary implication. It is submitted that since the basic intent and purpose of Change in Law is “Restitution”, the element of carrying cost is inbuilt and implicit in every such clause and does not have to be expressly to

be provided therein. On this aspect also, reliance is placed upon the judgement of this Tribunal in Parampujya case.

16. On behalf of the 2nd Respondent – MPPMCL, it is argued that the impugned order is flawless and absolutely justified in the facts and circumstances of the case. It is submitted that the expenditure incurred beyond scheduled commissioning date of the project is to the account of the project developer and the liability for such expenditure can be put on the beneficiary i.e. the procurers. It is submitted that the liability of payment on account of impact of GST on procurement of solar PV and associated equipment by the Appellant after the SCOD of the project would squarely lie with the Appellant only.

17. Learned Counsel for the 2nd Respondent has further argued that it was imperative on the Appellant to demonstrate that the delay in completion of the project was for reasons beyond its control and in the absence of any material to this effect, the 2nd Respondent cannot be made to bear the consequences of the delay which could have been easily avoided if the Appellant had diligently completed and commissioned the project.

18. It is further argued that outsourcing of O&M services is not provided under the PPA /bidding document and, therefore, impact of

increase in O&M cost due to increase in applicable taxes is wrongly being claimed by the Appellant. It is pointed out that in case the Appellant had used internal resources for performing the O&M activities also there would not have been any impact on service tax. Thus, the monetary impact of commercial decision of the appellant in outsourcing the O&M services cannot passed on to 2nd Respondent and ultimately to end consumers. It is also argued that while submitting there bids during the bidding process, the solar power developers do not disclose the details of the calculation of the project cost and they are expected to have included the O&M expenses, to be borne during the construction of the project, in the competitive bidding. It is submitted that the Change in Law provision under the PPA cannot be used to compensate business decision/business risk of the power generator.

19. In so far as the aspect of carrying cost is concerned, it is argued on behalf of the 2nd Respondent that the same has been rightly disallowed by the Commission as the PPA does not provide for the same. It is submitted that since there is no provision in the PPA providing restitution or restoration of affected party by Change in Law event to the same economic position as it occupied before the

happening of Change in Law event, the claim of the Appellant for carrying cost is patently inadmissible, as the Appellant cannot claim more than what is provided in the contract.

Our Analysis

(a) Restricting compensation on account of Change in Law event till the SCOD of the project only.

20. In order to discuss the rival contentions of the parties on this issue, it would be apposite to extract Article 11.6.3 of the PPA executed between the Appellant and the 2nd Respondent which is with regards to the Change in Law. The Article is as under :-

> *11.6.3. "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 Seller or any income to the Seller:*
>
> - *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 Seller or (ii) any change on account of regulatory measures by the Appropriate Commission.*

11.6.4. Relief for Change in Law

The aggrieved Party shall be required to approach the State Commission for seeking approval of Change in Law and the consequent impact on Tariff.

21. Perusal of this Change in Law clause in the PPA would reveal that as long as the event qualifies as “Change in Law” and results in “additional recurring or non-recurring expenditure after the effective date”, the solar power developer i.e. the Appellant is entitled to approach the Commission for seeking approval of Change in Law and consequent impact of tariff which would imply that the Appellant would be entitled to claim compensation in relation to the additional expenditure incurred due to Change in Law event, by way of increase in tariff.

22. The issue which arises for consideration is whether the Commission was right in restricting the impact of Change in Law event in the instant case till SCOD of the project only.

23. This Tribunal was confronted with similar issue in the Parampujya case (supra) and it has been held as under :-

"95. The appellant SPPDs had also claimed compensation (on account of change in law events) for the consequent additional expenditure incurred or invoices raised after the Commercial Operation Date (COD) of the SPPs. The Central Commission, by the impugned decisions, has held that liability towards additional expenditure is to be borne by the respondent beneficiaries only till the date of corresponding COD of the project. The Commission has articulated its views on the subject as under (quoted from Order dated 27.03.2020 which is subject matter of appeal no. 131 of 2022):

"103. The Commission notes that commissioning of the projects as defined in Article 1 read with Article 5 [along with Schedule 6 Petition No. 388/MP/2018] of the PPAs implies that all the equipment as per rated project capacity has been installed and energy has flown into the grid. Further, the liability of the Respondents for payment of purchase of the power from the Petitioner starts from the Commercial Operation Date (COD). As per definition of Commercial Operation Date (COD) provided in Article 1 of the PPAs, COD will be the date 30 days subsequent to the actual date of commissioning of full capacity. Accordingly, the Commission holds that the liability of payment on account of impact of GST on procurement of Solar PV panels and associated equipment by the Petitioners shall lie with the Respondents till the Commercial Operation Date (COD) only. The Commission is also of the view that there has to be a clear and one to one correlation between

the projects, the supply of goods or services and the invoices raised by the supplier of goods and services."

96. The contesting respondents defend the above view taken by the Central Commission submitting that it is not correct to contend that the PPAs do not bar the SPPDs for such expenditure after the COD of the projects."

97. It bears repetition to note that change-in-law clauses in the PPAs (Article 12) assure relief to be provided in relation to "any additional recurring/non-recurring expenditure" arising out change-in-law. There is no restriction in the contracts as to application of this clause for period prior to the COD. The activities of generation of electricity and its supply, post COD, are bound to include non-recurring expenditure, O&M expenses being one such area. In fact, the use of the word "any" in relation to the consequent "recurring or non-recurring expenditure" signifies the wide ambit of the contractual clause, no exclusion of such nature as understood by the Commission deserving to be read there into. The extraneous

qualification that such expenditure must relate to period prior to COD cannot be approved of.

98. Whilst we do not agree with the Central Commission as to the blanket denial of additional expenditure, as has arisen, post COD, due to change in law events, we would avoid at this stage to make any comment as to the justification for or prudence of such expenditure in as much as that is an exercise which must be first carried out at the level of the regulatory authority."

24. We completely agree with the above noted reasoning and the observations of this Tribunal in the Parampujya case. The language used in clause 11.6.3 nowhere indicates that the impact of Change in Law event must relate to only the expenditure incurred prior to the Scheduled Commercial Operation Date of the project and not subsequent thereto. The use of expression "Any additional recurring/not-recurring expenditure" in the said clause of the PPA clearly conveys that every kind of additional expenditure, be it before the SCOD of the project or thereafter, qualifies for being considered with regards to the impact of Change in Law event on the same. This

contractual clause does not specify any restriction in order to signify that it would be applicable only upon the expenditure which has been incurred prior to the SCOD of the project.

25. There may have been certain transactions which were entered into and completed before the SCOD of the project but the bills were raised immediately after the SCOD of the project. Similarly, there may have been certain situations which necessitated certain expenditure with regards to the completion as well as commissioning of the project after the SCOD. In both these situations, it would be completely unfair and unjust to deprive the project developer of the impact of Change in Law event on such expenditure. Thus, as has been held by this Tribunal in the Parampujya judgement, blanket denial of the impact of Change in Law event on the additional expenditure incurred post SCOD of the project would be contrary to the provision of the PPA. The Commission is required to conduct a prudence check on every such additional expenditure in order to rule as to whether or not the impact of Change in Law event on the same should be allowed.

26. Hence, the findings of the Commission on this aspect cannot be sustained and are hereby set aside.

(b) Rejection of claim of the Appellant for additional tax burden due to GST on O&M expenses

27. The Commission has disallowed the claim of the Appellant on account of tax burden on O&M expenses due to out-sourcing of manpower which, according to the Commission, is a commercial decision of the Appellant and any increase in costs including on account of taxes etc., in the event the Appellant chooses to employ the services of other, may not increase the liability for the 2nd Respondent.

28. This issue had also arisen before this Tribunal in the Parampujya case (supra), and it has been held as under :-

"O&M EXPENSES

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 levellised 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.

105. Questions as to the correctness, propriety and legality of similar view taken by the Central Commission in another matter had come up before this tribunal, decided by judgment dated 27.04.2021 reported as Coastal Gujarat Power Limited v. CERC & Ors. 2021 SCC Online APTEL 10. We had held in the said case as under:

> *"67. It is argued that the operation and maintenance of the plant is the responsibility of the appellant and if the appellant seeks to employ services of other agencies, the same cannot increase the liability of the Procurers; this was a commercial decision and choice of the appellant; and that if the appellant had not employed services of outside agencies, there would have been no impact of the alleged changes of tax rates.*
>
> *We find no substance in the above submissions. The*

work contractors are engaged by the appellant within its discretion and there is no inhibition in PPA in such regard. In fact, it is pointed out by the appellant, and rightly so, that Article 7 of the Model PPA which was a part of the RFQ documents had envisaged that the generator (Seller) alone shall be liable to operate and maintain the power station at its own cost but, in the final PPA that was executed between the parties, the clause to such effect was removed, this clearly indicative of the common understanding of the parties that the generator (CGPL) would not be solely responsible for O&M, the definition of 'Project Documents' read with 'O&M contracts' contemplating that a third-party O&M contractor might be appointed by it (CGPL).

It is wrong to argue that because the appellant stands in the capacity of the Principal in relation to the work contractors engaged by it, it is responsible for the action (or inaction) on their part in such matters as have financial implication for the Procurers because the option exercised by the contractor is not a change in law but part of the commercial and business decision and has to be dealt inter se the former two. …

It is not disputed that the appellant (CGPL) is a project specific Special Purpose Vehicle (SPV) set up solely for the purpose of generating and supplying electricity exclusively to the Procurers in accordance with the PPA. It engages in no other business undertaking. All services availed by CGPL are undoubtedly used for its sole objective of generating electricity for supply to the Procurers under the PPA. The increased cost towards Krishi Kalyan Cess and Swachh Bharat Cess affects the cost of the business of the appellant or generation and sale of electricity. The twenty services left out by CERC also are connected to the commercial activities of the

appellant adding to its cost of production and supply. In this view, there was no justification for disallowance of the claim for additional financial burden on other services covered under Swachh Bharat Cess and Krishi Kalyan Cess contrary to Article 13 of the PPA.

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."

[Emphasis supplied]

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.

29. We feel in complete agreement of the above noted observations and findings of this Tribunal on this aspect and see no reason to deviate from the same. It is to be noted that no clause in the PPA places any embargo upon the Appellant from outsourcing the O&M activities. There is no gain saying that O&M expenses form part of the recurring expenditure within the meaning of Change in Law clause contained under Article 11 of the PPA. It is the discretion of the power generator to either use its internal resources for performing the O&M activities or decide to outsource the same. Once the power generator finds it convenient and commercially viable to outsource the O&M activities, it may not be dis-entitled to compensation for additional

expenditure on these activities merely because of out-sourcing the same.

30. Therefore, the findings of the Commission on this aspect are erroneous and cannot be sustained. The same are hereby set aside.

(C) Denial of Carrying Cost to the Appellant to the Appellant on incremental expenditure due to GST.

31. The Commission has denied carrying cost on incremental expenditure to the Appellant on the ground that the PPA does not have any provision dealing with restitution principle of restoration of the party affected by Change in Law event to the same economic position as it held prior to the happening of the Change in Law event. Reliance has been placed on the judgement of this Tribunal in Appeal No. 210 of 2017 in the case of Adani Power Limited vs. CERC and Ors. decided on 13th April, 2018.

32. We find that on exactly similar grounds had the Commission denied carrying cost to the Appellant in the above noted Parampujya case also. Therefore, we find the discussion of this Tribunal on this aspect in the said judgement very pertinent and the same is extracted herein below :-

"56. On the issue of carrying cost, reference was made, inter alia, to two previous decisions of this tribunal. They include judgment dated 13.04.2018 in the matter of Adani Power Limited v. CERC & Ors. (Appeal no. 210 of 2017) and judgment dated 14.08.2018 in the matter of M/s GMR Warora Limited v. CERC &Ors.(Appeal no. 111 of 2017).

57. In Adani Power Limited (supra), this Tribunal had observed thus:

"ISSUE NO.3: DENIAL OF CARRYING COST

12. c) Let us now take all the questions of law together raised by the Appellant on Issue No. 2 (Impact of Change in Law Events under Gujarat Bid-01 PPA) i.e. Question No. 7. b). The same is reproduced below:

vi. We have gone through the various provisions of the Gujarat01 Bid PPA, competitive bidding guidelines, judgements of the Hon'ble Supreme Court and submissions made by Respondent No. 4. We are of the considered opinion that once PPA has been entered into between the parties pursuant to the competitive bidding, the rights and obligations of the parties are to be seen in terms of the agreed PPA. Accordingly, the reliance of the Appellant on various judgements of Hon'ble Supreme Court is misplaced…

…

d) Let us now take all the questions of law together raised

by the Appellant on Issue No. 3 (Disallowance of Carrying Cost) i.e. Question No. 7. c). The same is reproduced below:

…

iii. The Appellant has contended that as per Article 13 of the PPAs the Appellant is to be restored to the same economic position as if Change in law had not occurred and it also includes compensation in terms of carrying costs incurred with respect to the Change in Law events. The relevant extract from one of the PPAs is reproduced below:

"13.2 Application and Principles for computing impact of Change in Law

While determining the consequence of Change in Law under Article 13, the Parties shall have due regard to the principle that the purpose of compensation the Party, affected by such Change in Law, is to restore through Monthly Tariff payments, to the extent contemplated in this Article 13, the affected Party to the same economic position as if such Change in Law has not occurred."

From the above it can be seen that while determining the consequence of Change in Law, the affected party is to be restored to the same economic position as if such change in law has not occurred.

…"

x. Further, the provisions of Article 13.2 i.e. restoring the Appellant to the same economic position as if Change in Law has not occurred is in consonance with the principle of 'restitution' i.e. restoration of some specific thing to its rightful status. Hence, in view of the provisions of the PPA, the principle of restitution and judgement of the Hon'ble Supreme Court in case of Indian Council for

Enviro-Legal Action vs. Union of India &Ors., we are of the considered opinion that the Appellant is eligible for Carrying Cost arising out of approval of the Change in Law events from the effective date of Change in Law till the approval of the said event by appropriate authority. It is also observed that the Gujarat Bid-01 PPA have no provision for restoration to the same economic position as if Change in Law has not occurred. Accordingly, this decision of allowing Carrying Cost will not be applicable to the Gujarat Bid-01 PPA."

[Emphasis supplied]

58. From the decision in case of M/s GMR Warora Limited (supra), the following observations have been quoted:

"ix. In the present case we observe that from the effective date of Change in Law the Appellant is subjected to incur additional expenses in the form of arranging for working capital to cater the requirement of impact of Change in Law event in addition to the expenses made due to Change in Law. As per the provisions of the PPA the Appellant is required to make application before the Central Commission for approval of the Change in Law and its consequences. There is always time lag between the happening of Change in Law event till its approval by the Central Commission and this time lag may be substantial. As pointed out by the Central Commission that the Appellant is only eligible for surcharge if the payment is not made in time by the Respondents Nos. 2 to 4 after raising of the supplementary bill arising out of approved Change

in Law event and in PPA there is no compensation mechanism for payment of interest or carrying cost for the period from when Change in Law becomes operational till the date of its approval by the Central Commission. We also observe that this Tribunal in SLS case after considering time value of the money has held that in case of redetermination of tariff the interest by a way of compensation is payable for the period for which tariff is re- determined till the date of such re-determination of the tariff. In the present case after perusal of the PPAs we find that the impact of Change in Law event is to be passed on to the Respondents Nos. 2 to 4 by way of tariff adjustment payment as per Article 13.4 of the PPA. The relevant extract is reproduced below:

> *13.4 Tariff Adjustment Payment on account of Change in Law 13.4.1 Subject to Article 13.2 the adjustment in Monthly Tariff Payment shall be effective from:*
>
> *the date of adoption, promulgation, amendment, re- enactment or repeal of the Law or Change in Law;*
>
> *or*
>
> *the date of order/ judgment of the Competent Court or tribunal or Indian Government instrumentality, it the Change in Law is on account of a change in interpretation of Law. (c) the date of impact resulting from the occurrence of Article 13.1.1.*

From the above it can be seen that the impact of Change in Law is to be done in the form of adjustment to the tariff. To our mind such adjustment in the tariff is nothing less then re-determination of the existing tariff

x. Further, the provisions of Article 13.2 i.e. restoring the Appellant to the same economic position as if Change in Law has not occurred is in consonance

with the principle of 'restitution' i.e. restoration of some specific thing to its rightful status. Hence, in view of the provisions of the PPA, the principle of restitution and judgment of the Hon'ble Supreme Court in case of Indian Council for Enviro Legal Action vs. Union of India &Ors., we are of the considered opinion that the Appellant is eligible for Carrying Cost arising out of approval of the Change in Law events from the effective date of Change in Law till the approval of the said event by appropriate authority.

This Tribunal vide above judgement has decided that if there is a provision in the PPA for restoration of the Seller to the same economic position as if no Change in Law event has occurred, the Seller is eligible for carrying cost for such allowed Change in Law event (s) from the effective date of Change in Law event until the same is allowed by the appropriate authority by an order/ judgment."

[Emphasis supplied]

59. Based on the above quoted decisions, the Central Commission eventually concluded as under (quoted from Order dated 27.03.2020, subject matter of appeal no. 131 of 2022):

"127. From the above judgment, the Commission finds that if there is a provision in the PPAs for restoration of the Petitioners to the same economic position as if no Change in Law event has occurred, the Petitioners are

eligible for 'Carrying Cost' for such allowed 'Change in Law' event(s) from the effective date of Change in Law event until the same is allowed by the Commission. The Commission observes that the PPAs do not have a provision dealing with restitution principles of restoration to same economic position. Therefore, the Commission is of the view that the claim regarding separate carrying cost is not admissible."

[Emphasis supplied]

60. The views taken in other impugned decisions on the subject of carrying cost are similar.

61. The contesting respondents, primarily the beneficiaries (distribution licensees) and the intermediary (SECI), have relied upon the above quoted judgments of this tribunal in Adani Power Ltd (supra) and GMR Warora Ltd(supra) arguing that the PPAs in the maters at hand are similar to the contracts which were subject matter of the said earlier decisions, they being modeled on Gujarat

Bid-01 PPA which, unlike Gujarat Bid-02 PPA, does not contain the restitution clause, the submission being that in absence of such restitution clause, the claim for carrying cost arising out of change in law compensation plea is not admissible, the rights and obligations of the parties, as observed in Adani Power Ltd(supra), required "to be seen in terms of the agreed PPA", the relief of carrying cost being allowable only, as said in GMR Warora Ltd (supra), "if there is a provision in the PPA".

62. The contesting respondents rely on the ruling of Hon'ble Supreme Court reported as Uttar Haryana Bijli Vitran Nigam Limited (UHBVNL) v. Adani Power Limited and Ors. (2019) 5 SCC 325, it being a judgment arising out of civil appeal challenging the judgment dated 13.04.2018 in Adani Power Ltd (supra) referring particularly to the following observations:

> *"10. Article 13.2 is an in-built restitutionary principle which compensates the party affected by such change in law and which must restore, through monthly tariff payments, the affected party to the same economic position as if such change in law has not occurred. This would mean that by this*

clause a fiction is created, and the party has to be put in the same economic position is if such change in law has not occurred, i.e., the party must be given the benefit of restitution as understood in civil law…

…

13. A reading of Article 13 as a whole, therefore, leads to the position that subject to restitutionary principles contained in Article 13.2, the adjustment in monthly tariff payment, in the facts of the present case, has to be from the date of the withdrawal of exemption which was done by administrative orders dated 06.04.2015 and 16.02.2016. The present case, therefore, falls within Article 13.4.1(i). This being the case, it is clear that the adjustment in monthly tariff payment has to be effected from the date on which the exemptions given were withdrawn. This being the case, monthly invoices to be raised by the seller after such change in tariff are to appropriately reflect the changed tariff. On the facts of the present case, it is clear that the respondents were entitled to adjustment in their monthly tariff payment from the date on which the exemption notifications became effective. This being the case, the restitutionary principle contained in Article 13.2 would kick in for the simple reason that it is only after the order dated 04.05.2017 that the CERC held that the respondents were entitled to claim added costs on account of change in law w.e.f. 01.04.2015. This being the case, it would be fallacious to say that the respondents would be claiming this restitutionary amount on some general principle of equity outside the PPA. Since it is clear that this amount of carrying cost is only relatable to Article 13 of the PPA, we find no reason to interfere with the judgment of the Appellate Tribunal."

[Emphasis supplied]

63. The relevant clauses of the PPAs in the matters at hand on the subject of change in law and relief in its context have already been taken note of. The model of PPA in Gujarat Bid-01 process, which was subject matter of afore quoted observations in the previous decisions, contains Article 13 on the subject of change in law which, to the extent relevant, may be extracted as under:

> *"Gujarat Bid-01 PPA – GUVNL (Thermal)*
>
> *13.Articles 13 change in law*
>
> *13.1 Definitions*
>
> *In this Article 13, the following terms shall have the following meanings*
>
> *"Change in Law" means the occurrence of any of the following after the date, which is seven (7) days prior to the Bid Deadline:*
>
> *i. the enactment, bringing into effect, adoption, promulgation, amendment, modification or repeal, of any statute, decree, ordinance or other law, regulation, notice, circular, code, rule or direction by any Govt. instrumentality…*
>
> *ii. the imposition by any Governmental Instrumentality, which includes the Government of the State where the project is located, of any material condition in connection with the issuance, renewal, modification, revocation or non renewal (other than for cause) of any Consent after the date of this Agreement.*
>
> *That in either of the above cases*
>
> *(a) results in any change with respect of any tax or*

surcharge or cess levied or similar charges by the Competent Government…

…

13.2 Tariff Adjustment Payment for Change in Law

13.2.1 The seller shall have to move the Appropriate Commission to ascertain the impact of any change in law of the Seller's revenues and costs...

13.2.2 If a Change in Law results in the seller's costs directly attributable to the Project being decreased or increased by one percent (1.0%) of the estimated revenue from the Electricity for the Contract Year… the Tariff Payment to the Seller shall be proportionately Increased or decreased.

13.2.3 The Procurer or the Seller, as the case may be, shall provide the other Party with a certificate stating that the adjustment in the Tariff Payment is directly as a result of the Change in Law.

13.2.4 The adjustment in Monthly Tariff Payment for reasons attributable to Article 13.2.2 shall be effective from:

(i) the date of adoption, promulgation, amendment, re- enactment or repeal of the Law;

(ii) the date of order/judgment of the Competent Court, if the Change in Law is on account of a change in interpretation of Law;

(iii) the date of impact resulting from the occurrence of Article 13.1.1(ii).

13.2.5. The payment for Change in Law shall be claimed through supplementary bill as mentioned in Article 11.8 for the period of which such Change in Law."

[Emphasis supplied]

64. In contrast, the model of Haryana PPA, which was subject matter of dispute in Adani Power Ltd (supra) while providing for change in law scenario, by Article 13, provided as under (quoted to the extent relevant):

> *"Haryana PPA – HBVNL (Thermal)*
>
> *13.1 Definitions*
>
> *In this Article 13, the following terms shall have the following meanings*
>
> *13.1.1 "Change in Law means the occurrence of any of the following events after the date, which is seven (7) days prior to the Bid Deadline:…*
>
> *…*
>
> *13.2 Application and Principles for Computing impact of Change in Law*
>
> *While determining the consequence of change in law under this Article 13, the parties shall have due regard to the principle that the purpose of compensating the party affected by such Change in Law is to restore through Monthly Tariff Payments, to the extent contemplated in this Article 13, the affected Party to the same economic position as if such Change in Law has not occurred.*
>
> *…*
>
> *13.3 Notification of Change in Law…*
>
> *13.4 Tariff Adjustment Payment on account of Change in Law*
>
> *13.4.1 Subject to Article 13.2, the adjustment in Monthly Tariff Payment shall be effective from: (i) the date adoption, promulgation, amendment, re-enactment or repeal of the Law or Change in Law;*

or (ii) the date of order/judgment of the Competent Court or tribunal or Indian Governmental Instrumentality, if the Change in Law is on account of a change in interpretation of Law.

13.4.2 The payment for Changes in Law shall be through supplementary bill as mentioned in Article 11.8…"

65. It is the argument of the contesting respondents that the claim for compensation under the PPAs at hand is contingent upon the decision in the first instance of the Central Commission on the admissibility and once such claim has crystallized upon approval of the claim of change in law, compensation from the date of such approval only can be granted, there being no provision for carrying cost being claimed for the anterior period. Referring to the expression "provide relief", as appearing in Article 12.2.2 of the PPAs, the respondents submit that the same cannot be interpreted to mean restitution of the kind claimed in the present appeals.

66. To put it simply, the controversy at hand requires to be addressed on the basis of interpretation to be put

on the key words "provide relief" consequent to change in law appearing in Article 12.1.1. It may be noted at this very stage that the language employed in the PPAs at hand, using the above noted expression, is materially distinct from the one seen in corresponding Article 13 on change in law in Gujarat Bid-01 PPA which was subject matter of denial of carrying cost in the cases of Adani Power Ltd(supra) and GMR Warora Ltd.(supra). Concededly, however, the words "the purpose of compensating the party affected by such change in law is to restore … the affected party to the same economic position as if such change in law had not occurred", as appearing in the Haryana PPA are missing here. The question that arises is as to whether this renders the PPAs at hand one which do not at all contain the restitutionary provision. The answer to this question, in our considered view, depends on the construction that is to be placed on the words "provide relief".

67. There is no contest to the proposition that grant of

carrying cost is affording to the party affected the time value of money. The expressions "carrying cost" and "time value of money" have been defined in P Ramanatha Aiyar Advanced Law Lexicon, as under:

> *"Carrying Cost*
> *Book value of the assets and interest accrued thereon but not received. [Non-Banking Financial Companies Prudential Norms (Reserve Bank) Directions, 1998, Para 2(1)(ii)]"*
>
> *"Time Value of Money*
> *Theory which postulates that one's money is more valuable now than at any time in the future, whether it be in an hour's time, next week or next year. For example, the earlier money is received the sooner it can be invested to earn interest, and the later it is paid out the longer it will earn interest. (International Accounting; Business; Investment)"*

68. In Indian Council of Enviro-Legal Action v. Union of India & Ors. (2011) 8 SCC 16, the Supreme Court had ruled that compensation ought to be granted on compound interest basis as it takes into account, the time value of money and the inflationary trends, which is the true spirit of restitution of the affected party. We may quote the following passage from the said decision:

> *"161. The terms `unjust enrichment' and*

`restitution' are like the two shades of green - one leaning towards yellow and the other towards blue. With restitution, so long as the deprivation of the other has not been fully compensated for, injustice to that extent remains. Which label is appropriate under which circumstances would depend on the facts of the particular case before the court. The courts have wide powers to grant restitution, and more so where it relates to misuse or non-compliance with court orders.

,,,

To do complete justice, prevent wrongs, remove incentive for wrongdoing or delay, and to implement in practical terms the concepts of Time Value of Money, restitution and unjust enrichment noted above - or to simply levelise - a convenient approach is calculating interest. But here interest has to be calculated on compound basis - and not simple - for the latter leaves much uncalled for benefits in the hands of the wrongdoer.

Further, a related concept of inflation is also to be kept in mind and the concept of compound interest takes into account, by reason of prevailing rates, both these factors, i.e., use of the money and the inflationary trends, as the market forces and predictions work out."

[Emphasis supplied]

69. This principle has been reiterated and consistently applied in subsequent decisions by the Supreme Court, illustratively in judgments reported as

Torrent Power Limited v. GERC & Ors., 2019 SCC OnLine APTEL 110; Uttar Haryana Bijli Vitran Nigam Ltd. & Anr. v. Adani Power (Mundra) Ltd. & Anr. 2022 SCC OnLine SC 1068; and Vidarbha Industries Power Limited v. Axis Bank Limited 2022 SCC OnLine SC 841. Pertinently, in Vidarbha Industries (supra), the court held that "the law must ensure that time value of money is preserved, and that delaying tactics in these negotiations will not extend the time set for negotiations at the start".

70. The appellants SPPDs rightly point out that principle of time value of money has been recognized as an inherent attribute of "financial debt" by the provision contained in Section 5(8) of the Insolvency Bankruptcy Code, 2016. Further, it needs to be noted here that principle of restitution is now part of the regime on change in law reflecting public policy, as introduced by the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 providing as under:

> *"3. Adjustment in tariff on change in law.*
> *On the occurrence of a change in law, the*

monthly tariff or charges shall be adjusted and be recovered in accordance with these rules to compensate the affected party so as to restore such affected party to the same economic position as if such change in law had not occurred."

[Emphasis is supplied]

71. Restitution is a principle of equity which is generally invoked by the adjudicatory authorities – Courts and Tribunals – to render substantial justice and, in this context, we may quote the following observations of Supreme Court in judgment reported as South Eastern Coalfields Ltd v. State of Madhya Pradesh & Ors. (2003) 8 SCC 648:

"19. What Section 61 incorporates is a rule of equity, justice and sound logic. The buyer should not unduly benefit by holding the goods bought in one hand and yet retaining in the other hand the money equivalent to the price of goods due and payable by him to the seller. Similarly, the seller should not unjustly enrich by retaining the money received in advance as price in full or part of the goods forming the subject-matter of the contract, and retaining on the other hand the goods legitimately due for delivery to the buyer. It was submitted on behalf of the consumers/purchasers that

Section 61 does not create any right in the seller (that is, the Coalfields) by itself, it only confers power on the court to award interest at such rate as it thinks fit. In the present case, the Coalfields are demanding interest without having recourse to any court for recovery and that too in the absence of a contract in that regard. We are not impressed by the submission. Though, Section 61 may not in terms apply yet the principle underlying the provision can very well be relied on for the purpose of settling the rights of the parties in a just manner.

21. Interest is also payable in equity in certain circumstances. The rule in equity is that interest is payable even in the absence of any agreement or custom to that effect though subject, of course, to a contrary agreement (see Chitty on Contracts, 1999 Edn., Vol. II, Para 38-248 at p. 712). Interest in equity has been held to be payable on the market rateeven though the deed contains no mention of interest. Applicability of the rule to award interest in equity is attracted on the existence of a state of circumstances being established which justify the exercise of such equitable jurisdiction and such circumstances can be many.

…

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. The justification for award of interest stands fortified by the weighty factor that the Coalfields themselves are obliged to pay interest to the State on such amount. It will be a travesty of justice to hold that though the Coalfields must pay the amount of interest to the State but the consumers/purchasers in whose hands the money was actually withheld be exonerated from liability to pay the interest.

…

29. Once the doctrine of restitution is attracted, the interest is often a normal relief given in restitution. Such interest is not controlled by the provisions of the Interest Act of 1839 or 1978."

[Emphasis Supplied]

72. As ruled in above mentioned case, absence of prohibition in law or contract against award of interest to recompense for delay in payment is also significant. As already quoted earlier, in the case of Uttar Haryana Bijli Vitran Nigam Ltd(supra), the Supreme Court has upheld the view that in terms of restitutionary principle, the affected party is to be given the benefit of restitution "as understood in civil law".

73. The claim arising out of change in law provisions,

across all kinds of PPAs under bidding route, is essentially a claim for compensation, the objective being to relieve the affected party of the impact of change in law on its revenues or cost or by way of additional expenditure. The word "compensation" simply means anything given to make things equal in value, anything given as an equivalent, to make amends for loss or damage.

74. As has been pointed out, carrying cost, wherever allowed, has been granted generally at the rate of interest prescribed for Late Payment Surcharge ("LPS") in as much as, it also relates to amount paid towards deferred payments. Hon'ble Supreme Court in a recent decision rendered on 24.08.2022 in Uttar Haryana Bijli Vitran Nigam Ltd. & Anr. v. Adani Power (Mundra) Ltd. & Anr. 2022 SCC OnLine SC 1068, has observed that since the funds arranged by the developer are based on interest rate framework followed by scheduled commercial banks, the affected developer ought to be compensated in the same way.

75. The cardinal rule of interpretation is that words have to be read and understood in ordinary, natural and grammatical meaning. [S. Ganapathraj Surana v. State of T.N. 1993 Supp (2) SCC 565]. The crucial words are "provide relief". The word relief is defined by Black's Law Dictionary as under:

> *"Deliverance from oppression, wrong, or injustice. In this sense it is used as a general designation of the assistance, redress, or benefit which a complainant seeks at the hands of a court, particularly in equity. It may be thus used of such remedies as specific performance, or the reformation or rescission of a contract."*

76. The meaning of the expression "relief", explained in P Ramanatha Aiyar's Advanced Law Lexicon is similar:

> *"Relief:*
>
> *(a) Deliverance from some hardship, burden or grievance; legal redress or remedy; the lightening or removal of any burden.*
> *(b) Aid or assistance given to those in need, especially, financial aid provided by the state.*
> *(c) The redress or benefit, especially equitable in nature (such as an injunction or specific performance), that a party asks of a Court.— Also termed remedy. (Black, 7th Edn., 1999)*
> *(d) Legal remedy for wrongs..*

(e) "Relief" means the remedy which a Court of Justice may afford in relation to some actual or apprehended wrong or injury. [5 A. 345 (FB)]
(f) The word "relief" necessarily implies the pre-existence of a wrong. An action is not given to one who is not injured, 'actio non datur non dammi ficato'. [33 Bom. 509 : 11 Bom LR 85 : 5 MLT 301 : 2 IC 701]"

77. As is vivid from above, the word "relief" is akin to the word "(legal) redress" or "remedy". Advanced Law Lexicon defines the said expressions as under:

"Redress:

"To set right; to compensate; to make amend to; relief; reparation. Redress is said only with regard to matters of right and justice.

..The object of civil law is the redress of wrongs by compelling compensation or restitution: the wrongdoer is not punished, he only suffers so much harm as is necessary to make good the wrong he has done. The person who has suffered gets a definite benefit from the law, or at least he avoids a loss.."

Remedy:

"(a) The means of enforcing a right or preventing or redressing a wrong; legal or equitable relief.

(b) Adequate remedy at law means a remedy that affords complete relief with reference to the particular matter in controversy, and is appropriate to the circumstances of the case..

(c) A remedy is anything a Court can do for a litigant who has been wronged or is about to be wronged.

The two most common remedies are judgments that plaintiffs are entitled to collect sums of money from defendants and orders to defendants to refrain from their wrongful conduct or to undo its consequences..

(d) As a legal term means to recover a debt or enforce a right; a mode prescribed by law to enforce a duty or redress a wrong; that which gives relief to the party aggrieved; the means by which the obligation is effectuated; the means employed to enforce a right or redress an injury..

(e) A remedy is simply the means by which the obligation or the corresponding action is effectuated."

78. The use of the word "relief" in the context of adjudicatory process, simply means the remedy which the adjudicatory forum may afford "in regard to some actual or apprehended wrong or injury" or something which a party may claim as of right, or making the affected party "feel like easing out of … hardship". [Sarsuti v. Kunj Behari Lal, 1883 SCC OnLine All 85; Santhamma v. Kerala State 2019 SCC OnLine Ker 1265; Commissioner of Income-Tax v. R.B. Jodhamal Kuthiala, 1963 SCC OnLinePunj 403; Dipti Aggarwal v. Ashish Chandra,2017 SCC OnLine Cal 8835; Mewar Sugar Mills Ltd. v. Chairman Central Board of Direct Taxes and Ors. (09.10.1998 - DELHC)].

In Kavita Trehen v. Balsara Hygiene Products Ltd AIR (1995) SC 441, it was held by the Supreme court that jurisdiction to make restitution is inherent in every court and can be exercised whenever justice of the case demands.

79. While construing the contract, purposive interpretation of its terms is requisite [Nabha Power Limited vs. Punjab State Power Corporation Limited & Anr. (2018) 11 SCC 508]. This principle must be borne in mind while comprehending the scope and width of expression "provide relief" used in Article 12.2.2 in the PPA. For this, the statutory framework, as indeed the contractual clauses, will have to be kept in consideration.

80. The Central Commission is the sector regulator vested with wide powers to act in furtherance of the objectives enshrined in the Electricity Act, 2003. Section 61 of the said enactment guides its functions expecting the authorities established by this legislation to follow

"commercial principles", act so as to ensure optimum returns on the investments, promote generation from renewable sources of energy and, most importantly, strike a balance between consumers' interest and recovery of cost of electricity in a reasonable manner. The Tariff Policy 2016 lays emphasis on the recovery of returns by stipulating, inter alia, thus:

> *"8. DISTRIBUTION*
>
> *8.2 Framework for revenue requirements and costs*
>
> *8.2.1 The following aspects would need to be considered in determining tariffs:*
>
> *8.2.2 The facility of a regulatory asset has been adopted by some Regulatory Commissions in the past to limit tariff impact in a particular year. This should be done only as a very rare exception in case of natural calamity or force majeure conditions and subject to the following:*
>
> *a. Under business as usual conditions, no creation of Regulatory Assets shall be allowed;*
>
> *b. Recovery of outstanding Regulatory Assets along with carrying cost of Regulatory Assets should be time bound and within a period not exceeding seven years. The State Commission may specify the trajectory for the same"*
>
> *[Emphasis supplied]*

81. It is in this light that Hon'ble Supreme Court in the

case of Energy Watchdog (supra) ruled, albeit in the context of Section 63, that the Regulatory Commission must exercise its functions in accordance with law and guidelines and in situations where no such guidelines exist, it may avail of its "general regulatory powers" under Section 79(1)(b).

82. We have already noted that the PPAs which were subject matter of decisions in the case of Adani Power Ltd (supra) and GMR Warora Ltd (supra) contained change in law clauses structured differently from the shape in which they occur in the present PPAs, the words "provide relief" not having been used in the former. The judgment dated 13.04.2018 of this tribunal in Adani Power Ltd.(supra) did not even consider the question as to whether the principle of time value of money would apply in examining the impact of change in law once change in law had been approved. The said decision for present purpose is, thus, sub silentio. When the judgment in the said case was carried in appeal to the Hon'ble Supreme Court leading to

decision reported as Uttar Haryana Bijli Vitran Nigam Ltd (UHBVNL) (supra), the challenge was not in relation to what had been denied by this tribunal as the first appellate forum and, therefore, it is not correct to say that the issue stands settled by the said judgment. We are, at the same time, conscious of the fact that while upholding the relief to the extent granted in the case of Adani Power Ltd (supra), the Supreme Court by judgment reported as UHBVNL (supra) had observed that it would be fallacious to say that the claim of restitution was being put forward "on some general principle of equity", the amount of carrying cost in that case being "relatable to Article 13 of the PPA" (the change in law clause).

83. In the present cases, the claim for compensation of SPPDs is primarily founded not on principles of equity but on the contractual clause stating that the affected party is entitled to approach the Commission which shall "provide relief" in relation to the impact of the change in law event if it has resulted in "any additional recurring /non-recurring

expenditure". The purpose of the change in law clause in the PPAs is to relieve the SPPDs of the additional burden. Since the impact of the new tax (GST or Safeguard Duty on Imports, as the case may be) would come from the date of enforcement of the new laws, the relief intended to be afforded under the contracts cannot be complete unless the said burden is allowed to be given a pass through from the date of imposition of the levy. Unlike the PPA in UHBVNL (supra) wherein the phraseology of change-in-law provision was exhaustive, the words "provide relief" in present PPAs are open ended, not qualified in any manner so as to be given a restrictive meaning in order to treat the date of adjudication of the claim by the regulatory authority as the effective date or to justify denial of carrying cost burden for the period anterior thereto. In our reading, the expression "provide relief" is of widest amplitude and cannot be read to limit its scope the way the contesting respondents seek to propagate or the way the Central Commission has determined.

84. It is in the above context that we accept that the regulatory powers of the Central Commission ought to have been properly exercised to do complete justice to the claims for compensation it having been denied by depriving the SPPDs of their legitimate expectation of relief vis-à-vis the burden of carrying cost as well, rendering the dispensation partially unfair.

33. We note that the judgement of this Tribunal in Adani Power Case Appeal No. 210 of 2017 on which the Commission has based its findings in the impugned order, has been noted and distinguished in the Parampujya judgement.

34. It is true that in the Change in Law clause which was subject matter of the discussion before this Tribunal in Parampujya case contained the words “Provide Relief”, which have been interpreted by this Tribunal. Clauses 12.2.1 and 12.2.2 of the PPA in that case are relevant and are quoted herein below :-

“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 decisions 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 parties."

(Emphasis supplied)

35. The Change in Law clause contained in the PPA between the Appellant and the 2nd Respondent in the instant case, has already been quoted in paragraph No. 19 herein above. Clause 11.6.4. is relevant for our discussion is again reproduced hereinbelow at the cost of repetition.

"11.6.4. Relief for Change in Law

The aggrieved Party shall be required to approach the State Commission for seeking approval of Change in Law and the consequent impact on Tariff."

(Emphasis supplied)

36. It is seen that the words used in the Change in Law clause in the instant case are "Consequent Impact on Tariff". Key word is the "impact". The word impact is synonymous to "burden", "repercussions" "consequences" etc. Therefore, what clause 11.6.4 of the PPA involved in the instant case canvasses is that the party affected by

Change in Law event is entitled to be compensated for all the consequences as well as burden of the Change in Law event upon the tariff indicating that the tariff is to be determined for the power project having regard to the impact or consequences of the Change in Law event upon the expenditure incurred by the project developer on the completion of the project. This would certainly include carrying cost upon such additional expenditure without which the restitution would only be an anathema. It needs to be noted that the terms and conditions for determination of tariff under Section 61 to the Electricity Act, 2003 are based upon commercial principles in so far as its clause (d) envisages that the power generator must recover the cost of electricity in a reasonable manner. Clause (c) of Section 61 enjoins upon the Electricity Commissions to ensure optimum returns on the investments whereas clause (h) provides for promotion of generation of electricity from renewable sources of energy. Over all Section 61 strikes balance between the interests of consumers and recovery of cost of electricity by the power generator in a reasonable manner.

37. As held by this Tribunal in Parampujya judgement that the words “Provide Relief” in the PPAs involved in that case were open ended, not qualified in any manner so as to be given restricting

meaning, the word “impact” used in the PPA in the instant case also is open ended with no restriction in any manner to justify denial of carrying cost burden post the decision of the regulatory authority i.e. the Commission. The word “impact” carries within its ambit each and every consequences of the Change in Law event and cannot be read to limit its scope as done by the Commission in the impugned order. It is to be noted that the purpose of Change in Law clause in the PPA is to provide relief to the power developer of the additional burden cast upon it due to the Change in Law event and, therefore, the impact of Change in Law event would certainly include carrying cost in case the intended relief is not afforded to the power developer on the date of incurring the additional expenditure but on some subsequent date.

38. Therefore, the findings of the Commission on this aspect also cannot be accepted and are hereby set aside.

39. During the course of argument, we were informed that the judgement of this Tribunal in Parampujya case has been assailed before the Hon’ble Supreme Court by way of Civil Appeal No. 8880 of 2022. It appears that the Civil Appeal had come up for consideration before the Court on 12th December, 2022 on which date following order has been passed :-

"1. Issue Notice.

2. Pending further orders, the Central Electricity Regulatory Commission (CERC) shall comply with the directions issued in para 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.

40. It is, therefore, evident that the Hon'ble Supreme Court has not stayed the judgement of this Tribunal and in fact has permitted the Commission to apply directions issued in the operative paragraph no. 109 of the judgement. Hon'ble Supreme Court has, however, stayed the enforcement of final order of the Commission till further orders.

Conclusion

41. Having regard to the above discussion, the impugned order of the Commission is hereby set aside. The appeal stands allowed. The Commission is hereby directed to pass consequential orders in pursuance to the findings/observations contained in this judgement by allowing the impact of Change in Law event on the additional

expenditure post SCOD of the project also subject, however, to prudence check, along with carrying cost.

42. However, we make it clear that the final order to be passed by the Commission in the instant case in pursuance to this judgement shall not be enforceable till and shall be subject to the passing of judgement by the Hon'ble Supreme Court in Civil Appeal No. 8880 of 2022.

Pronounced in the open court on this 30th day of May, 2025.

(Virender Bhat) Judicial Member	(Sandesh Kumar Sharma) Technical Member (Electricity)

✓

REPORTABLE / ~~NON REPORTABLE~~

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