IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

Appeal No. 289 of 2022
Appeal No. 291 of 2022
Appeal No. 290 of 2022
Appeal No. 46 of 2023
Appeal No. 47 of 2023
&
Appeal No. 48 of 2023

Dated: 30.05.2025

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

Appeal No. 289 of 2022
Appeal No. 290 of 2022
Appeal No. 46 of 2023
Appeal No. 47 of 2023

In the matter of:

Adyah Solar Energy Private Limited
Through its Authorised signatory,
138, Ansal Chambers-II,
Bhikaji Cama Place,
New Delhi – 110 066. **…Appellant(s)**

Vs.

1. Karnataka Electricity Regulatory Commission
   Rep. by Registrars,
   No.16, C-1, Millers Tank Bed Area,
   Vasanth Nagar,
   Bengaluru-560052.

2. Bangalore Electricity Supply Company Limited
   Represented through Chairman and Managing Director

KR Circle, Bengaluru-560001. **...Respondent(s)**

Counsel for the Appellant(s) : Mr. Mannat Waraich
Mr. Mridul Gupta
Ms. Ananya Goswami
Mr. Mohd. Munis Siddique

Counsel for the Respondent(s) : Ms. Shwetha Ravishankar Kandhi
Mr. Vinayak Mehrotra
Ms. Ishani Banerjee
Mr. Darpan K.M. for R-1

Mr. Shahbaaz Husain
Mr. Fahad Khan for R-2

Appeal No. 291 of 2022

In the matter of:

Adyah Solar Energy Private Limited
Through its Authorised signatory,
138, Ansal Chambers-II,
Bhikaji Cama Place,
New Delhi – 110 066. **…Appellant(s)**

Vs.

1. Karnataka Electricity Regulatory Commission
Rep. by Registrars,
No.16, C-1, Millers Tank Bed Area,
Vasanth Nagar,
Bengaluru-560052.

2. Gulbarga Electricity Supply Company Limited
Represented through Chairman and Managing Director
Station Main Road,
Kalaburgi -585102. **...Respondent(s)**

Counsel for the Appellant(s) : Mr. Mannat Waraich
Mr. Mridul Gupta

Ms. Ananya Goswami

Counsel for the Respondent(s) : Ms. Shwetha Ravishankar Kandhi
Mr. Vinayak Mehrotra
Ms. Ishani Banerjee
Mr. Darpan K.M. for R-1

Mr. Arunab Patnaik
Ms. Bhabna Das for R-2

Appeal No. 48 of 2023

In the matter of:

Adyah Solar Energy Private Limited
Through its Authorised signatory,
138, Ansal Chambers-II,
Bhikaji Cama Place,
New Delhi – 110 066. **…Appellant(s)**

Vs.

1. Karnataka Electricity Regulatory Commission
Rep. by Registrars,
No.16, C-1, Millers Tank Bed Area,
Vasanth Nagar,
Bengaluru-560052.

2. Hubli Electricity Supply Company Limited
Represented through Chairman and Managing Director
Corporate Offices, Nava Nagar,
P.B. Road, Hubballi- 580025. **...Respondent(s)**

Counsel for the Appellant(s) : Mr. Mannat Waraich
Mr. Mridul Gupta
Ms. Ananya Goswami
Mr. Mohd. Munis Siddique

Counsel for the Respondent(s) : Ms. Shwetha Ravishankar Kandhi

Mr. Vinayak Mehrotra
Ms. Ishani Banerjee
Mr. Darpan K. M. for R-1

Mr. Shahbaaz Husain
Mr. Fahad Khan for R-2

JUDGEMENT

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

1. The Appellant, M/s. Adyah Solar Energy Private Limited (in short "Adyah") filed this batch of appeals assailing the following Orders passed by the Karnataka Electricity Regulatory Commission:

Appeal No.	Impugned Order in Case No.	Dated
289 of 2022	O.P.No.11 of 2019	15.06.2021
291 of 2022	O.P.No.07 of 2019	15.06.2021
290 of 2022	O.P.No.06 of 2019	15.06.2021
46 of 2023	O.P.No.10 of 2019	15.06.2021
47 of 2023	O.P.No.09 of 2019	15.06.2021
48 of 2023	O.P. No. 08 of 2019	15.06.2021

2. The Appellant is aggrieved to the extent that the Commission has denied Appellant's claims for carrying cost, disallowed claims for Safeguard duty and Integrated Goods and Services Tax ("IGST") paid in respect of additional modules imported and installed to supply contracted energy to Respondent No. 2, the corresponding distribution company and computed incremental tariff

corresponding to the minimum energy generated by the Appellant.

3. The Appellant is also challenging the additional court fee paid by the Appellant on account of the objection raised by the Registry, wherein such court fee is in contravention to the Karnataka Electricity Regulatory Commission (Fee) Regulations, 2016 ("Fee Regulations").

Description of Parties

4. The Appellant is a company incorporated under the Companies Act, 2013. It is a Special Purpose Vehicle (SPV) of M/s Renew Solar Private Limited (Renew) which is engaged in the business of development, building, owning, operating and maintaining utility scale grid connected solar power projects, for generation of solar power. The Appellant is a generating company as defined in Section 2(28) of the Electricity Act, 2003.

5. The Karnataka Electricity Regulatory Commission (in short "State Commission" or "KERC") is the statutory authority constituted under the Electricity Regulatory Commissions Act, 1998 vested with specific powers by virtue of Section 79 of the Electricity Act, 2003.

6. The Bangalore Electricity Supply Company Limited ("Respondent No. 2"/ "BESCOM"), is a company incorporated under the Companies Act, 1956 and is a public sector undertaking of the Government of Karnataka which has been created with the principal object of engaging in the business of distribution and supply of electricity in the State of Karnataka.

Factual Matrix of the Case (s)

7. The Government of Karnataka initiated the development of a 1200 MW solar power project as part of the 2000 MW (AC) Pavagada Solar Park. Karnataka Renewable Energy Development Limited (KREDL), as the nodal agency, invited proposals through Request for Proposal No. KREDL/07/SG/1200 MW/Pavagada Park/809/2017-18 dated 31.01.2018, specifying the technical and commercial terms for the selection of bidders to implement 1200 MW (AC) (50 MW AC × 24 blocks) grid-connected solar photovoltaic projects on a Build-Own-Operate basis for a 25-year power procurement by ESCOMs of Karnataka.

8. Pursuant to the RfP, KREDL awarded a 50 MW (AC) solar power project in Block B-1, Pavagada Solar Park, to Renew, issuing Letter of Award No. KREDL/07/SG/1200 MW/Pavagada Park/B1/809/2017-18/2344-47 on 21.03.2018, along with the allotment letter.

9. Subsequently, on 20.04.2018, a Power Purchase Agreement (PPA) was executed between BESCOM and the Appellant (a special purpose vehicle established by Renew for the project) for the development and supply of solar power. The PPA was approved by the Karnataka Electricity Regulatory Commission (KERC) via approval letter No. KERC/S/F-31/VOL-1264/18-19/335 dated 06.06.2018.

10. Following the execution of the PPA, the Central Government, through Notification No. 1/2018-Customs (SG) dated 30.07.2018, imposed a safeguard

duty on the import of solar cells, including those assembled in modules or panels. This duty, effective from 30.07.2018, led to an increase in both recurring and non-recurring expenditures for the Appellant.

11. Under Article 15 of the PPA, any change in law related to taxes and duties after the submission of the technical bid (12.03.2018) is to be borne by BESCOM, with relief granted through an appropriate tariff adjustment. As per Article 15.2, the affected party must seek approval for such a change from KERC.

12. As the imposition of safeguard duty with effect from 30.07.2018 resulted in increase in recurring/non-recurring expenditure for the Appellant and qualified as an event of change in law, the Appellant filed petition under Section 86 of the Electricity Act read with Article 15 of the PPA, before the Commission seeking compensation consequent to such change in law.

13. Further, at the time of filing the Petition, the Appellant had duly paid an amount of Rs. 5,000 as the Court Fee in accordance with S. no. 14 of Regulation 4 of the KERC (Fee) Regulations, 2016.

14. After the filing of the counter affidavits by the Respondent and the rejoinder by the Appellant, the Commission, for the first time, raised an objection regarding the deficient court fee by the Appellant. As per the Commission, the fee payable in relation to the change in law petition was 0.5% of the monetary claim, covered under section 13 of Regulation 4 of the Fee Regulations which provides as under:

Particulars	*Amount of Fee*

Petition for adjudication of disputes under the Act-	*Disputes involving monetary claims- 0.5% of the monetary claim subject to a minimum of Rs. 25,000* *In other cases- Rs. 25,000*

15. To avoid delays that could cause significant financial prejudice, the Appellant, following the directions of the Commission, calculated and paid the court fee under protest while also submitting a detailed affidavit on the court fee issue.

16. Subsequently, through the impugned order dated 15.06.2021, the Commission ruled that the imposition of safeguard duty effective from 30.07.2018 constituted a change in law under Article 15 of the PPA.

17. The Commission held that the safeguard duty imposed under Notification No. 01/2018-Customs dated 30.07.2018 qualifies as a change in law under Article 15.1 of the PPA. However, compensation for carrying cost/interest on additional working capital due to safeguard duty and IGST was denied, as the PPA does not contain any explicit or implicit provision for such relief. Clause 5.7.1 of the Competitive Bidding Guidelines (MoP Notification No. 23/27/2017-R&R dated 03.08.2017) provides for financial restitution in case of a change in law, but this provision was not incorporated in the PPA dated 20.04.2018, making it non-enforceable.

18. No relief was granted for the safeguard duty and IGST on 60,647 excess imported modules, as the Appellant's contractual obligation under the PPA was limited to generating 69.076 MU at a minimum CUF of 15.76%, and the decision to install excess modules was a business choice. The Commission held that the Appellant failed to provide documentary evidence showing prior intimation to the Respondents about the excess imports, as required under Clause 1.4.1 of the RfP.

19. The MNRE advisory letter dated 05.11.2019 permits generators to install additional DC capacity but does not specify its inclusion under a change in law claim. Reimbursement for safeguard duty and IGST is restricted to the contracted energy of 69.076 MU at a CUF of 15.76% for a 50 MW project.

20. An incremental tariff of 44 paise per unit was approved, calculated based on the minimum CUF of 15.76% to generate 69.076 MU. Additional tariff was not permitted for energy supplied beyond the contracted 69.076 MU.

21. Aggrieved by the impugned order to the extent of denial of carrying costs, disallowance of the claim of Safeguard duty and IGST in respect of additional modules imported and installed to supply contracted energy to Respondent ESCOM, computation of the incremental tariff on the quantum of 69.076 Mus (corresponding to the minimum CUF of 15.76%) and the computation of court fee, the Appellant has filed the present appeal before this Tribunal.

22. All the appeals are identical in nature. The Appeal No. 289 of 2022 shall be the lead Appeal in this batch of appeals.

Written Submissions of the Appellant

23. The Appellant submitted that the Appellant has filed the present appeal against the Impugned Order of the KERC, which, while recognizing the imposition of safeguard duty under the 30.07.2018 notification as a change in law event, denied certain legitimate claims. During the proceedings on 04.11.2024, submissions by the Appellant were restricted to the specific issues raised in the Appeal, namely:

1) Disallowance of Safeguard Duty and IGST: Rejection of claims for safeguard duty and IGST paid on additional imported modules used to supply contracted energy to BESCOM.
2) Computation of Incremental Tariff: Dispute over the method used to determine the incremental tariff corresponding to the Appellant's minimum energy generation.
3) Denial of Carrying Cost: Rejection of the Appellant's claim for carrying cost compensation.
4) Excess Court Fees: Challenge against the excessive court fees charged by the KERC.

24. The Appellant contends that Issues 1, 2, and 3 are directly addressed by the Tribunal's judgments dated 16.11.2021 in Appeal 163 of 2020 (***Nisarga Renewable Energy Pvt. Ltd. v. Maharashtra Electricity Regulatory***

Commission & Anr.) and 15.09.2022 in Appeal 256 of 2019 (**Parampujya Solar Energy Pvt. Ltd. & Anr. v. Central Electricity Regulatory Commission & Ors**.).

25. The Appellant seeks to rely on the relevant findings from these judgments in support of its claims.

A. Judgment dated 16.11.2021 passed by the Tribunal in Appeal 163 of 2020 (Nisarga Renewable Energy Private Limited Vs. Maharashtra Electricity Regulatory Commission and Anr.)

26. In its judgment dated 16.11.2021, the Tribunal held that reimbursement of safeguard duty and IGST paid on additional solar modules is permissible, provided the modules were installed before the COD as per the PPA. Since the additional modules in this case were installed before COD, the ruling is directly applicable.

27. This Tribunal also established that generators are entitled to compensation for a change in law on additional modules corresponding to the nameplate/DC capacity. Accordingly, the Appellant asserts its right to such compensation, as the additional modules were installed specifically to meet the declared nameplate/DC capacity at the time of executing the PPA. The relevant extract from the aforementioned judgment is as follows:

*"36. **In our view, under the PPAs, there is no restriction on the DC capacity to be set up of the maximum declared CUF.** The CUF as declared by the appellants has been accepted by MSEDCL. The higher installed DC capacity results in higher generation from the*

Project while using the same AC infrastructure, thereby optimizing the utilization of the AC infrastructure, leading to a lower cost of energy, benefits of which have statedly *been passed on to MSEDCL as lower tariff in terms of the PPAs. DC overloading is accepted as an industry practice for Solar Projects.* ***MSEDCL has already taken the benefit of higher generation at a lower tariff. MSEDCL cannot claim that DC overloading is high. Accordingly, there is no escape from the full DC capacity of the Projects being considered while computing the Change in Law compensation****"*

(Emphasis Supplied)

28. The Appellant further submitted that the Tribunal's finding—that additional modules installed before the COD are eligible for compensation, directly addresses Issue No. 1. This Tribunal has also affirmed the developer's right to install modules corresponding to the nameplate/DC capacity or maximum CUF. Therefore, the additional expenditure incurred due to the safeguard duty imposed by the 30.07.2018 notification on these modules should be compensated on this basis alone.

B. Judgment dated 15.09.2022 in Appeal No. 256 of 2019 (Parampujya Solar Energy Pvt. Ltd & Anr. vs. Central Electricity Regulatory Commission & Ors).

29. In its judgment dated 15.09.2022, this Tribunal held that the right to claim carrying costs arises from the contractual provision allowing the affected party to seek relief for additional recurring or non-recurring expenditures resulting from a

change in law event. The Tribunal further clarified that the term "provide relief" is broad and not subject to restrictive interpretation to deny carrying cost claims. Accordingly, carrying cost compensation was allowed to restore the Appellants to their original financial position. Additionally, it was established that change in law claims are not limited to pre-COD expenses but also extend to post-COD claims, the relevant paragraphs from the said Judgement are as follows:

> *"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****.*
>
> ***[…]***
>
> ***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.

[…]

87. 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."

…

(Emphasis Supplied)

30. The Appellant highlighted that Article 15.2 of the present PPA is *pari materia* with the PPA interpreted by the Tribunal in its judgment dated 15.09.2022. As per Article 15.2, once an event is recognized as a Change in Law, the KERC has a duty to "provide relief." The Tribunal has explicitly held that compensation for expenditures incurred due to a Change in Law cannot be restricted to pre-COD claims.

31. Therefore, even if additional modules were installed post-COD, the Appellant is entitled to compensation. Based on a combined reading of the judgments dated 16.11.2021 and 15.09.2022, the Appellant asserted:

1. It had the right to install additional modules corresponding to the maximum CUF, nameplate, or DC capacity.
2. There should be no restriction on post-COD claims for the safeguard duty imposed on the additional modules.

32. It was further submitted that this Tribunal vide its Judgement dated 15.09.2022, has granted carrying cost as under:

"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.

[…]

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.

[…]

(Emphasis Supplied)

33. The Appellant submitted that it is entitled to claim carrying costs and compensation for additional modules without any restriction based on COD. During the proceedings on 04.11.2024, BESCOM argued that the judgment dated 15.09.2022 had been challenged before the Hon'ble Supreme Court in CA No. 8880 of 2022 (Telangana Northern Power Distribution Company Ltd. & Anr. v. Parampujya Solar Energy Private Limited & Ors.) and contended that the judgment was effectively stayed.

34. However, the Appellant clarifies that, per the Hon'ble Supreme Court's order dated 12.12.2022 in CA No. 8880 of 2022, enforcement of any order granting carrying cost under the 15.09.2022 judgment is stayed pending further orders. Notably, the Hon'ble Supreme Court also directed the Central Commission to comply with the Tribunal's directions in paragraph 109 of the 15.09.2022 judgment, which mandates the Commission to adjudicate developers' Change in Law claims as allowed by the Tribunal. The relevant extract from the Order passed by the Hon'ble Supreme Court has been reproduced as follows:

> *"2.* ***Pending further orders, the Central Electricity Regulatory Commission (CERC) shall comply with the directions issued in paragraph 109 of the impugned order dated 15 September 2022 of the Appellate Tribunal for Electricity. However, the final order of the CERC shall not be enforced pending further orders****."*
>
> *(Emphasis Supplied)*

35. The KERC is duty-bound to pass orders in accordance with the Tribunal's judgment dated 15.09.2022, irrespective of its enforcement status. Additionally, in subsequent orders, Order dated 29.03.2022 in OP No. 107 of 2018 (Azure Power Earth v. BESCOM & Anr.) and Order dated 20.05.2022 in OP No. 10-16 of 2020 (Vivasat Solar Energy v. MESCOM & batch), the KERC allowed similar claims by other developers. These orders held that:

(a) Relying on the Nisarga Judgment (16.11.2021), Change in Law was recognized for additional modules imported, along with incremental tariff.
(b) Generators had the discretion to declare maximum CUF at the time of executing the PPA, with subsequent injection and off-take governed by the PPA's MU provisions.
(c) Reimbursement of safeguard duty and IGST paid on additional solar modules was allowed, provided the modules were installed before COD per the PPA.

36. Given these precedents, the Appellant asserted that all its claims should be allowed, and the Respondents' objections should be dismissed.

37. The Appellant also argued that KERC's findings on the imposition of safeguard duty on additional modules are erroneous. The Appellant's additional module imports were completed before COD, and the PPA does not restrict Change in Law benefits under Article 15 to only pre-COD claims.

38. By imposing such a restriction, the KERC has introduced extraneous conditions that are legally untenable. This amounts to an impermissible amendment or rewriting of the PPA's express terms, contrary to the Hon'ble Supreme Court's ruling in ***HPPC v. Sasan Power Limited (2024) 1 SCC 247***.

39. Furthermore, the Appellant declared a CUF of 27.76% at a tariff of Rs. 2.91/kWh, significantly above the normative CUF of 19%. To maintain this higher CUF, the Appellant had to install additional modules to optimize DC capacity. This Tribunal, in its order dated 16.11.2021, has upheld this necessity.

40. The Appellant's project generated power at a higher CUF with a lower tariff, which was supplied to BESCOM. By benefiting from the lower tariff, BESCOM has gained from the Appellant's installation of additional modules corresponding to the declared maximum CUF.

41. BESCOM's rejection of compensation for excess modules contradicts the principle of approbate and reprobate, as established in ***R.N. Gosain v. Yashpal Dhir (1992) 4 SCC 683.*** This principle prevents a party from accepting the benefits of a transaction while later invalidating it to avoid obligations.

42. BESCOM cannot justify benefiting from competitive tariffs enabled by the

Appellant's installations while simultaneously denying compensation by claiming the additional modules were unnecessary. The Appellant is entitled to Change in Law claims under the PPA, and the KERC's rejection of these claims is erroneous.

43. The Change in Law clause in the PPA is intended to restore the affected party to its original economic position as if the change had not occurred, aligning with the principle of restitution. This necessitates adequate compensation for additional expenses incurred due to regulatory changes.

44. The Hon'ble Supreme Court in ***UHBVNL v. Adani Power (2019) 5 SCC 325***, reaffirmed in ***JVVNL v. Adani Power Rajasthan (2020 SCC OnLine SC 697),*** held that carrying cost is payable from the date of the Change in Law event to ensure economic restitution.

45. Further, Clause 5.7.1 of the Guidelines for Tariff-Based Competitive Bidding Process for Procurement of Power from Grid-Connected Solar PV Power Projects (issued by the Ministry of Power on 03.08.2017) mandates that any financial loss due to a Change in Law must be compensated to restore the Solar Power Generator to its original financial position.

46. The Bidding Guidelines, issued under Section 63 of the Electricity Act, 2003, constitute "Law" and must be considered while interpreting Article 15 of the PPA. Article 18.1 of the PPA mandates that the agreement be governed by Indian law, which includes these guidelines. The guidelines explicitly require that a party affected by a Change in Law be restored to its original financial position, thereby entitling the Appellant to carrying cost.

47. Additionally, the quantum meruit principle under Section 70 of the Contract Act, 1872, applies, as the Appellant incurred additional expenditure not gratuitously but to provide competitive tariff benefits.

48. As per the Tribunal's Judgment dated 15.09.2022, compensation must cover all reasonable costs, including carrying cost. Therefore, the KERC erred in denying carrying cost, which should be granted from the date of impact of the 2018 Notification until reimbursement of Change in Law claims by BESCOM. The issue is already covered under the Judgment dated 15.09.2022.

49. Under Article 15 of the PPA, the Appellant is entitled to compensation for additional expenditure through a corresponding change in tariff, without restrictions. The Appellant has generated energy within the declared CUF, which is significantly higher than the minimum CUF, and BESCOM has procured this additional energy.

50. However, the Impugned Order of the KERC calculated incremental tariff based on the minimum contracted capacity of 69.076 MUs, disregarding the actual higher energy procured by BESCOM. This approach is unfair, as BESCOM has benefited from the additional energy while restricting compensation to the minimum contracted capacity.

51. Thus, the Appellant is legally entitled to full compensation for generating power at a higher CUF. The incremental tariff must be based on the maximum CUF of the project rather than the minimum contracted energy. Given that the

KERC has allowed an incremental tariff in its subsequent orders, the same principle must apply in this case.

52. The proceedings before the KERC pertained to a change in law, wherein its role was regulatory rather than adjudicatory. However, the KERC categorized the matter as a monetary dispute and imposed a court fee of 0.5% of the claim amount.

53. The Appellant contended that such regulatory matters fall under Entry 14 of Clause 4 of the Fee Regulations, attracting only a fixed fee of INR 5000. The Appellant paid the differential amount under protest and reserves the right to seek reimbursement before this Tribunal.

Written Submissions of the Respondent No. 2, Bangalore Electricity Supply Company Limited

54. The Appellant sought carrying cost/interest on additional expenses incurred due to Safeguard Duty (SGD) and IGST on imported modules.

55. However, the KERC, in its order dated 15.06.2024, disallowed these claims, including the carrying cost at 14% from the date of incurring the SGD and IGST. The issue of carrying cost for change in law was previously addressed in Parampujya Solar Energy Pvt. Ltd. & Anr. v. CERC & Ors. (APL 256/2019), where this Tribunal ruled in favor of granting such claims. However, the Hon'ble Supreme Court stayed enforcement of carrying cost in Telangana Northern Power Distribution Co. Ltd. v. Parampujya Solar Energy Pvt. Ltd. & Ors. (CA No.

8880/2022), thereby impacting the Appellant's claim. The relevant portion of the Order is as follows:

> *"Pending further orders, the Central Electricity Regulatory Commission (CERC) shall comply with the directions issued in paragraph 109 of the impugned order dated 15 September 2022 of the Appellate Tribunal for Electricity. However, the final order of the CERC shall not be enforced pending further orders."*

56. Following the Hon'ble Supreme Court's Order in Civil Appeal No. 8880 of 2022, this Tribunal has ruled on similar carrying cost matters. In Hubli Electricity Supply Co. Ltd. v. Azure Power Earth Pvt. Ltd. & Anr. (APL 918 of 2023), the Tribunal applied the Supreme Court's precedent, overturning the Hon'ble KERC's decision that had erroneously enforced carrying cost on HESCOM.

57. Aggrieved, HESCOM appealed, leading to the Tribunal's Interim Order dated 14.03.2024, which held that carrying cost would not be enforced unless the Hon'ble Supreme Court varied its Order dated 12.02.2022 in CA No. 8880 of 2022. Accordingly, the present matter may be remanded to the Hon'ble KERC for quantification of carrying cost, but its enforcement shall remain subject to any further Hon'ble Supreme Court orders in CA No. 8880 of 2022.

58. The Appellant has sought carrying cost at 14% from the date of incurring the SGD and IGST on module imports. However, KERC has already determined the carrying cost at 10% per annum. In Tata Power Renewable Energy Ltd. v. BESCOM (RP 12/2022), KERC ruled that carrying cost should be based on

actuals incurred by the generator and fixed it at 10%, subject to the outcome of Civil Appeal No. 8880/2022 before the Hon'ble Supreme Court. The Order dated 28.03.2022 reflects this position, which has been consistently followed in similar cases. Allowing 14% in this case would disrupt established parity and create further disputes. In light of these submissions, this Tribunal may dispose of or remand the matter to KERC for quantification of carrying cost in accordance with the Hon'ble Supreme Court's decision in CA No. 8880 of 2022, ensuring justice and equity.

Analysis and Conclusion

59. After hearing the Learned Counsel for the Appellant and the Learned Counsel for the Respondents at length and carefully considering their respective submissions, we have also examined the written pleadings and relevant material on record. The Appellant challenges the impugned order on four distinct grounds:

A. Denial of the claim for excess modules – the Commission held that the installation of additional modules was a commercial decision, thereby precluding reimbursement of safeguard duty and IGST.

B. Denial of carrying cost despite the underlying principle of restitution being inherent in Change in Law claims.

C. Restriction of incremental tariff computation to the minimum Contracted Unit Factor (CUF) of 15.76%, rather than on the declared CUF of 27.76%, which reflects actual performance.

D. Computation of court fees under an inapplicable provision of the Fee Regulations.

60. The Appellant herein has prayed for the following:

"(a) Allow the present Appeal;

(b) Set aside the impugned order dated 15.06.2021 to the extent it has disallowed carrying cost/interest on additional cost incurred towards Safeguard duty, disallowed Safeguard duty and IGST in respect of additional modules imported and installed to supply contracted energy, computed incremental tariff corresponding to the minimum energy generated and computed court fee under Sr. no. 13 of Regulation 4 of the Fee Regulations

(c) Direct the Respondents to pay carrying costs incurred by the Appellant at the rate of 14% as allowed under KERC Generic Tariff order dated 18.05.2019 from the date of incurring Safeguard Duty and consequential IGST on the import of modules;

(d) Direct the Respondents to reimburse the entire claim of the Appellant in respect of import and installation of excess modules;

(e) Direct the Respondents to compute the incremental tariff corresponding to the maximum energy to be supplied by the Appellant and undertake a reconciliation at the end of the financial year to determine the tariff corresponding to the actual energy generated by the Appellant;

(f) Direct the Respondent to refund the additional court fee paid by the Appellant under protest, along with interest and thereby restricting the Court fee payable to the Ld. Commission to the initial amount deposited by the Appellant amounting to Rs.

25,000

(g)Pass such other orders as this Hon'ble Tribunal deems fit."

61. The PPA entered into between the Appellant and BESCOM requires the generation of a minimum of 69.076 million units (MU) of electricity. In order to achieve a declared CUF of 27.76%, significantly higher than the normative CUF of 19%, the Appellant was compelled to install additional solar modules. The imposition of a safeguard duty under Notification No. 01/2018 imposed a direct financial burden on these additional modules. The PPA, particularly through its Change in Law provision (Article 15), provides that any change in taxes, duties, or cess occurring after the technical bid submission shall be borne by BESCOM and compensated via an appropriate change in tariff.

62. The Appellant submits that its decision to install excess modules was not a discretionary, isolated commercial maneuver; rather, it was an industry-standard measure (commonly referred to as DC overloading) essential for achieving the higher efficiency and CUF promised in its bid. This measure was instrumental in ensuring that the project's overall performance met the declared targets, thereby allowing BESCOM to benefit from lower tariffs owing to higher energy yields. The Appellant relies on the Nisagra Renewable Energy precedent, wherein this Tribunal held that reimbursement of safeguard duty and related taxes is warranted if the modules are installed before the Commercial Operation Date (COD).

63. On the contrary, BESCOM contends that the decision to install additional modules was a matter of commercial choice, beyond the contractual obligation, and that any additional cost should not automatically be passed on to the

consumer. It also argues that the Appellant failed to comply with the mandatory notification requirement under Clause 1.4.1 of the Request for Proposal (RfP).

64. Undisputedly, the issue at hand is entirely covered by the ***Nisagra*** Judgment dated 16.11.2021, wherein it was noted that the express language of the PPA does not restrict Change in Law relief solely to the originally contracted capacity. The sole trigger is the occurrence of a change in applicable taxes and duties post-bid submission. The additional modules, installed to achieve the higher declared CUF, are intrinsically part of the project's economic structure. The relevant extract of the judgment is quoted again for clarity:

> *"36.* ***In our view, under the PPAs, there is no restriction on the DC capacity to be set up of the maximum declared CUF.*** *The CUF as declared by the appellants has been accepted by MSEDCL. The higher installed DC capacity results in higher generation from the Project while using the same AC infrastructure, thereby optimizing the utilization of the AC infrastructure, leading to a lower cost of energy, benefits of which have* statedly *been passed on to MSEDCL as lower tariff in terms of the PPAs. DC overloading is accepted as an industry practice for Solar Projects.* ***MSEDCL has already taken the benefit of higher generation at a lower tariff. MSEDCL cannot claim that DC overloading is high. Accordingly, there is no escape from the full DC capacity of the Projects being considered while computing the Change in Law compensation****"*

65. This Tribunal finds that since the additional modules were installed before COD, the claim for Safeguard Duty and IGST reimbursement should have been allowed, following the precedent in the ***Nisagra Judgment***. BESCOM has benefited from the additional energy at a lower tariff and cannot now argue that the installation was unnecessary (***R.N. Gosain v. Yashpal Dhir, 1992 4 SCC 683 – doctrine of approbate and reprobate***). The Commission erred in rejecting this claim.

66. Therefore, we agree with the contentions of the Appellant that the Commission erred in disallowing the Appellant's claim for reimbursement of safeguard duty and IGST on excess modules. The installation of these modules was necessitated by industry practice to meet a higher declared CUF, and BESCOM, having benefited from this arrangement, must bear the corresponding cost.

67. Further, Carrying cost represents the compensation for the time value of money incurred by the Appellant due to the delay in reimbursement of additional expenses resulting from a Change in Law event. The underlying principle is that the affected party should be restored to the financial position it would have occupied had the adverse change not occurred. In the present case, the Appellant incurred additional costs for safeguard duty and IGST and seeks carrying cost from the date of incurring these costs until reimbursement is effected.

68. The issue is well covered by the ***Parampujya Judgment*** dated 15.09.2022.

69. Therefore, this Tribunal concludes that the denial of carrying cost is contrary

to both the principle of restitution and the underlying policy of the Change in Law mechanism. However, in the light of the decision of the Hon'ble Supreme Court, we direct as under:

> *We direct the Commission to dispose of these appeals in terms of the Order passed by this Tribunal in Appeal No. 256 of 2019 dated 15.09.2022. Needless to state that, in terms of the Order of the Supreme Court, the order to be passed by the Commission in respect of the carrying cost shall not be enforced till the aforesaid Order is either varied or the appeal itself is disposed of by the Supreme Court.*

70. The PPA stipulates a minimum contracted energy based on a minimum CUF of 15.76%, while the Appellant declared a much higher CUF of 27.76% to secure a competitive tariff of Rs. 2.91/kWh. An incremental tariff is intended to compensate the Appellant for additional capital expenditure and operational costs incurred in achieving the higher CUF.

71. The Appellant contends that the incremental tariff should be calculated based on the actual energy generated, which reflects the declared CUF, rather than being capped at the minimum contracted energy of 69.076 MU. The Appellant emphasizes that BESCOM has purchased energy well above this minimum threshold, thereby enjoying the benefits of higher generation.

72. BESCOM argues that the PPA only obligates it to purchase a minimum quantum of energy and that any compensation for additional generation is not warranted under the contract. It further asserts that the incremental tariff was

rightly computed on the minimum CUF basis, as the contract did not expressly provide for an upward adjustment.

73. This Tribunal finds that the incremental tariff mechanism is designed to cover the entire additional expenditure incurred by the Appellant in order to generate energy beyond the minimum contracted quantum. The purpose of allowing a higher declared CUF was to incentivize developers to optimize performance, with the understanding that higher generation would warrant proportional compensation.

74. It is also to be seen that in the case of ***Nisagra Judgment***, this Tribunal has held as under:

> *"The higher installed DC capacity results in higher generation from the Project while using the same AC infrastructure, thereby optimizing the utilization of the AC infrastructure, leading to a lower cost of energy, benefits of which have* statedly *been passed on to MSEDCL as lower tariff in terms of the PPAs. DC overloading is accepted as an industry practice for Solar Projects.* ***MSEDCL has already taken the benefit of higher generation at a lower tariff. MSEDCL cannot claim that DC overloading is high."***

75. From the above, this Tribunal has emphasized that equitable adjustment based on actual generation is necessary to ensure that the consumers are not unduly penalized for the additional energy generated at a lower cost and thus should be passed on to the consumers through the Distribution licensee.

76. Therefore, this Tribunal holds that the computation of incremental tariff should be based on the guaranteed energy i.e. at the normative CUF/ MUs. Therefore, the decision of the State Commission is found to be correct.

77. Under the KERC Fee Regulations, disputes involving monetary claims attract a fee computed as 0.5% of the claim. However, when a petition invokes the regulatory powers of the Commission, rather than being a dispute purely over a monetary claim, the fee is fixed at a nominal amount (Serial No. 14, typically Rs. 5,000).

78. The Appellant maintains that its Change in Law petition does not constitute a dispute over a monetary claim but is an invocation of regulatory power aimed at securing compensation for additional expenditure. Accordingly, the appropriate fee should be the fixed amount rather than a percentage of the claim.

79. The Appellant argues that the erroneous computation of court fees under the monetary dispute category has led to an excessive fee being levied.

80. BESCOM contends that since the petition seeks monetary relief, the higher fee is justified under Serial No. 13 of Regulation 4 of the Fee Regulations.

81. This Tribunal, upon review of the contractual framework and the nature of the relief sought, concludes that the Change in Law is a restitution principle allowing the commercial/ economic loss to the developer, fundamentally a claim of the quantum of a monetary claim.

82. Therefore, this Tribunal finds that the Commission has correctly applied the Regulation.

83. For the reasons articulated above, this Tribunal finds that:

1. On Issue A: The Commission erred in denying the Appellant's claim for reimbursement of safeguard duty and IGST on additional modules. The additional modules, installed as an industry-standard measure to achieve a higher declared CUF, must attract compensation, and the Impugned Order is set aside to the extent it disallows such reimbursement.
2. On Issue B: The denial of carrying cost is contrary to the underlying restitution principle inherent in the Change in Law clause. While the enforcement of carrying cost remains subject to the Hon'ble Supreme Court's stay in CA No. 8880/2022, the Appellant is entitled to carrying cost from the date of incurrence until final reimbursement.
3. On Issue C: The Order of the State Commission is upheld on this issue.
4. On Issue D: The Commission has correctly computed the court fees.

ORDER

For the foregoing reasons as stated above, we are of the considered view that the Appeal Nos. 289 of 2022, 291 of 2022, 290 of 2022, 46 of 2023, 47 of 2023 & 48 of 2023 have merit and are partly allowed in the above terms, and the Impugned Order is accordingly set aside to the extent specified.

It is therefore directed that:

(a) The Respondents reimburse the Appellant for the safeguard duty and IGST incurred on all additional modules installed before COD.

(b) The Respondents are directed to compute and pay carrying cost at actuals from the date of incurrence until reimbursement is effected, subject to the Hon'ble Supreme Court's directions in Civil Appeal No. 8880 of 2022.

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

PRONOUNCED IN THE OPEN COURT ON THIS 30th DAY OF MAY, 2025.

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member

pr/mkj/kks