

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

**APPEAL NO. 256 OF 2019  
APPEAL NO. 299 OF 2019  
APPEAL NO. 427 OF 2019  
APPEAL NO. 23 OF 2022  
APPEAL NO. 35 OF 2022  
APPEAL NO. 131 OF 2022  
AND  
APPEAL NO. 275 OF 2022**

**Dated: 15.09.2022**

**Present: Hon'ble Mr. Justice R.K. Gauba, Officiating Chairperson  
Hon'ble Mr. Sandesh Kumar Sharma, Technical Member**

**APPEAL NO. 256 OF 2019**

**In the matter of:**

**1. PARAMPUJYA SOLAR ENERGY PVT. LTD.**

*[Represented through its Authorized Representative]*

Adani House, 4<sup>th</sup> Floor, South Block

Shantigram, Ahmedabad

Gujarat – 382 421

**2. WARDHA SOLAR (MAHARASHTRA) PRIVATE LTD.**

*[Represented through its Authorized Representative]*

Adani House, 4<sup>th</sup> Floor,

South Block, Shantigram,

Ahmedabad, Gujarat – 382 421

..... Appellants

**VERSUS**

**1. CENTRAL ELECTRICITY REGULATORY COMMISSION**

*[Represented through its Secretary]*

3<sup>rd</sup>& 4<sup>th</sup> Floor, Chanderlok Building

36, Janpath,

New Delhi-110 001

**2. NATIONAL THERMAL POWER CORPORATION LTD (NTPC)**

*[Represented through its Chairperson]*

Core-7, SCOPE Complex,

7, Institutional Area, Lodhi Road,

New Delhi-110 003

3. **SOLAR ENERGY CORPORATION OF INDIA LIMITED (SECI)**  
*[Represented through its Managing Director]*  
1<sup>st</sup> Floor, A-Wing, 0-3,  
District Centre, Saket,  
New Delhi-110 017
4. **THE MINISTRY OF NEW AND RENEWABLE ENERGY (MNRE)**  
*[Represented by its Secretary]*  
Block-14, CGO Complex,  
Lodhi Road,  
New Delhi-110 003
5. **MANGALORE ELECTRICITY SUPPLY COMPANY LTD.**  
*[Represented through its Managing Director]*  
MESCOM Bhawan,  
Kavoor Cross Road  
Bejai, Mangaluru, Karnataka, 575 004
6. **BANGALORE ELECTRICITY SUPPLY COMPANY LTD (BESCOM)**  
*[Represented through its Managing Director]*  
6, 2<sup>nd</sup> Floor, 2<sup>nd</sup> B Cross Road  
Koramangala 1A Block,  
Koramangala, Bengaluru  
Karnatka 570 034
7. **CHAMUNDESWARI ELECTRICITY SUPPLY CORP. LTD (CESCOM)**  
*[Represented through its Managing Director]*  
Sri Harsha Rd, Lashkar Mohalla,  
Mysuru,  
Karnataka 570 001
8. **GULBARGA ELECTRICITY SUPPLY COMPANY LTD. (GESCOM)**  
*[Represented through its Managing Director]*  
Station Road, Kalaburagi  
Karnataka 585 102
9. **HUBLI ELECTRICITY SUPPLY COMPANY LTD (HESCOM)**  
*[Represented through its Managing Director]*  
PB Road, Durgad Bail,  
Navanagar,  
Hubballi  
Karnataka – 585 025

10. **TELANGANA NORTHERN POWER DISTRIBUTION COMPANY LTD.**

*[Represented through its Managing Director]*

Hyderabad – Warangal – Bhopalpatnam Highway  
Near Wadepally Lake,  
NGOs Colony,  
Wadepally, Hanamkonda,  
Telangana 506 001

11. **TELANGANA SOUTHERN POWER DISTRIBUTION COMPANY LTD. (TSPDCL)**

*[Represented through its Managing Director]*

Engine Bowli, Jangammet,  
Falaknuma,  
Hyderabad  
Telangana 500 053

12. **MAHARASHTRA STATE ELECTRICITY DISTRIBUTION COMPANY LTD. (MSEDCL)**

*[Represented through its Managing Director]*

Hudco, Ekanth Nagar,  
N 11, Cidco, Aurangabad  
Maharashtra 431 003

..... Respondents

Counsel for the Appellant (s) : Mr. Gopal Jain, Sr. Adv.  
Ms. Poonam Verma  
Ms. Sakshi Kapur  
Ms. Gayatri Aryan

Counsel for the Respondent (s): Mr. Sri Venkatesh  
Mr. Jatin Ghuliani  
Mr. Ashutosh Srivastava  
Mr. Rishabh Sehgal  
Mr. Kartikay Trivedi for R-2

Ms. Anushree Bardhan  
Mr. Aneesh Bajaj  
Ms. Surbhi Kapoor for R-3

Mr. Balaji Srinivasan  
Ms. Garima Jain  
Mr. Shiva Ok for R-5, 7&9

Ms. Pallavi Sharma for R-12

**APPEAL NO. 299 OF 2019**

**In the matter of:**

**1. PARAMPUJYA SOLAR ENERGY PVT. LTD.**

*[Represented through its Authorized Representative]*

Adani House, 4<sup>th</sup> Floor, South Block

Shantigram, Ahmedabad

Gujarat – 382 421

..... Appellant(s)

**VERSUS**

**1. CENTRAL ELECTRICITY REGULATORY COMMISSION**

*[Represented through its Secretary]*

3<sup>rd</sup>& 4<sup>th</sup> Floor, Chanderlok Building

36, Janpath,

New Delhi-110 001

**2. NATIONAL THERMAL POWER CORPORATION LTD (NTPC)**

*[Represented through its Chairperson]*

Core-7, SCOPE Complex,

7, Institutional Area, Lodhi Road,

New Delhi-110 003

**3. SOLAR ENERGY CORPORATION OF INDIA LIMITED (SECI)**

*[Represented through its Managing Director]*

1<sup>st</sup> Floor, A-Wing, 0-3, District Centre, Saket,

New Delhi-110 017

**4. THE MINISTRY OF NEW AND RENEWABLE ENERGY (MNRE)**

*[Represented by its Secretary]*

Block-14, CGO Complex, Lodhi Road,

New Delhi-110 003

**5. MANGALORE ELECTRICITY SUPPLY COMPANY LTD.**

*[Represented through its Managing Director]*

MESCOM Bhawan,

Kavoor Cross Road

Bejai, Mangaluru, Karnataka, 575 004

**6. BANGALORE ELECTRICITY SUPPLY COMPANY LTD  
(BESCOM)**

*[Represented through its Managing Director]*

6, 2<sup>nd</sup> Floor, 2<sup>nd</sup> B Cross Road

Koramangala 1A Block,

Koramangala, Bengaluru

Karnatka 570 034

7. **CHAMUNDESWARI ELECTRICITY SUPPLY CORP. LTD (CESCOM)**  
*[Represented through its Managing Director]*  
 Sri Harsha Rd, Lashkar Mohalla,  
 Mysuru,  
 Karnataka 570 001
8. **GULBARGA ELECTRICITY SUPPLY COMPANY LTD. (GESCOM)**  
*[Represented through its Managing Director]*  
 Station Road, Kalaburagi  
 Karnataka 585 102
9. **HUBLI ELECTRICITY SUPPLY COMPANY LTD (HESCOM)**  
*[Represented through its Managing Director]*  
 PB Road, Durgad Bail, Navanagar, Hubballi  
 Karnataka – 585 025
10. **M/S CHHATTISGARH STATE POWER DISTRIBUTION COMPANY LTD.**  
*[Represented through its Managing Director]*  
 Near Water Tank, Mowa Road, Dubey Colony,  
 Mowa, Raipur  
 Chhattisgarh 492 001

..... Respondents

Counsel for the Appellant(s) : Mr. Gopal Jain, Sr. Adv.  
 Ms. Poonam Verma  
 Ms. Gayatri Aryan  
 Ms. Sakshi Kapoor

Counsel for the Respondent(s) : Mr. Sri Venkatesh  
 Mr. Ashutosh Srivastava  
 Mr. Jatin Ghuliani  
 Mr. Rishabh Sehgal  
 Mr. Kartikay Trivedi for R-2

Ms. Anushree Bardhan  
 Mr. Aneesh Bajaj  
 Ms. Surbhi Kapoor for R-3

Mr. Balaji Srinivasan  
 Ms. Garima Jain  
 Mr. Shiva Ok for R-6, 7 & 9

Ms. Neelima Tripathi, Sr. Adv.  
 Mr. Apoorv Kurup  
 Ms. Aparna  
 Ms. Nidhi Mittal  
 Ms. Soumya Shree for R-10

**APPEAL NO. 427 OF 2019**

**In the matter of:**

**MAHOPA SOLAR (UP) PRIVATE LIMITED**

*[Through its project company*

Kilaj Solar (Maharashtra) Limited]

Adani House, Near Mithakhali, Six Roads, Navrangpura,

Ahmedabad – 382 421

..... Appellant(s)

**VERSUS**

**1. CENTRAL ELECTRICITY REGULATORY COMMISSION**

*[Through its Secretary]*

3<sup>rd</sup>& 4<sup>th</sup> Floor, Chanderlok Building, 36, Janpath,

New Delhi-110 001

**2. SOLAR ENERGY CORPORATION OF INDIA LIMITED**

*[Through its Director]*

D-3, 1<sup>st</sup> Floor, Wing-A, Prius Platinum Building,

District Centre, Saket,

New Delhi-110 017

**3. BSES YAMUNA POWER LIMITED**

*[Through its Director]*

Shakti Kiran, Vishwas Nagar Extension,

Shahdara

New Delhi-110 032

..... Respondents

Counsel for the Appellant(s) : Mr. Sourav Roy  
Mr. Kaushal Sharma  
Mr. Prabudh Singh

Counsel for the Respondent(s) : Ms. Anushree Bardhan  
Mr. Aneesh Bajaj  
Ms. Surbhi Kapoor for R-2

**APPEAL NO. 23 OF 2022**

**In the matter of:**

**PRAYATNA DEVELOPERS PVT. LTD.,**

*[Represented by its Authorized Signatory]*

7B, Sambhav House, Judges Bungalow Road,

Bodakdev,

Ahmedabad- 380015, Gujarat

..... Appellant(s)

## **VERSUS**

1. **CENTRAL ELECTRICITY REGULATORY COMMISSION**  
*[Represented through its Secretary]*  
3<sup>rd</sup>& 4<sup>th</sup> Floor, Chanderlok Building  
36, Janpath,  
New Delhi-110 001
  2. **NATIONAL THERMAL POWER CORPORATION LTD (NTPC)**  
*[Represented through its Chairman& Managing Director]*  
Core-7, SCOPE Complex,  
7, Institutional Area, Lodhi Road,  
New Delhi-110 003
  3. **JAIPUR VIDYUT VITRAN NIGAMLIMITED**  
*[Through its Managing Director]*  
Vidyut Bhawan, Jyoti Nagar,  
Jaipur – 302005, Rajasthan
  4. **AJMER VIDYUT VITRAN NIGAMLIMITED**  
*[Through its Managing Director]*  
Vidyut Bhawan, Panchsheel Nagar,  
Akarwall Road,  
Ajmer – 305004, Rajasthan
  5. **JODHPURVIDYUTVITRANNIGAMLIMITED**  
*[Through its Managing Director]*  
New Power House,  
Industrial Area,  
Jodhpur - 342003, Rajasthan
  6. **THE MINISTRY OF NEW AND RENEWABLE ENERGY (MNRE)**  
*[Represented by its Secretary]*  
Block-14, CGO Complex, Lodhi Road,  
New Delhi-110 003
- .... Respondent(s)

Counsel for the Appellant(s) : Mr. Gopal Jain, Sr. Adv.  
Ms. Poonam Verma  
Ms. Gayatri Aryan  
Ms. Sakshi Kapoor

Counsel for the Respondent(s) : Mr. Sri Venkatesh  
Mr. Ashutosh Srivastava  
Mr. Jatin Ghuliani  
Mr. Rishabh Sehgal  
Mr. Kartikay Trivedi for R-2

**APPEAL NO. 35 OF 2022**

**In the matter of:**

**M/S CHHATTISGARH STATE POWER DISTRIBUTION  
COMPANY LTD.**

*[Represented through Authorized Representative]*

Near Water Tank, Mowa Road,

Dubey Colony, Mowa, Raipur

Chhattisgarh 492 001

..... Appellant(s)

**VERSUS**

1. **CENTRAL ELECTRICITY REGULATORY COMMISSION**  
*[Represented through its Secretary]*  
3<sup>rd</sup>& 4<sup>th</sup> Floor, Chanderlok Building  
36, Janpath,  
New Delhi-110 001
2. **PARAMPUJYA SOLAR ENERGY PVT. LTD.**  
*[Represented through its Managing Director]*  
5B, Sambhav House,  
Judges Bungalow Road,  
Bodakdev, Ahmedabad-380 015
3. **SOLAR ENERGY CORPORATION OF INDIA LIMITED (SECI)**  
*[Represented through its Managing Director]*  
1<sup>st</sup> Floor, A-Wing, 0-3, District Centre, Saket,  
New Delhi-110 017
4. **THE MINISTRY OF NEW AND RENEWABLE ENERGY (MNRE)**  
*[Represented by its Secretary]*  
Block-14, CGO Complex, Lodhi Road,  
New Delhi-110 003
5. **NATIONAL THERMAL POWER CORPORATION LTD (NTPC)**  
*[Represented through its Chairperson]*  
Core-7, SCOPE Complex, 7, Institutional Area,  
Lodhi Road,  
New Delhi-110 003
6. **MANGALORE ELECTRICITY SUPPLY COMPANY LTD.**  
*[Represented through its Managing Director]*  
MESCOM Bhawan,  
Kavoor Cross Road  
Bejai, Mangaluru, Karnataka, 575 004



7. **BANGALORE ELECTRICITY SUPPLY COMPANY LTD (BESCOM)**  
*[Represented through its Managing Director]*  
6, 2<sup>nd</sup> Floor, 2<sup>nd</sup> B Cross Road  
Koramangala 1A Block,  
Koramangala, Bengaluru  
Karnatka 570 034
8. **CHAMUNDESWARI ELECTRICITY SUPPLY CORP. LTD (CESCOM)**  
*[Represented through its Managing Director]*  
Sri Harsha Rd, Lashkar Mohalla,  
Mysuru,  
Karnataka 570 001
9. **GULBARGA ELECTRICITY SUPPLY COMPANY LTD. (GESCOM)**  
*[Represented through its Managing Director]*  
Station Road, Kalaburagi  
Karnataka 585 102
10. **HUBLI ELECTRICITY SUPPLY COMPANY LTD (HESCOM)**  
*[Represented through its Managing Director]*  
PB Road, Durgad Bail, Navanagar,  
Hubballi  
Karnataka – 585 025
- ..... Respondents

Counsel for the Appellant(s) : Ms. Neelima Tripathi, Sr. Adv.  
Mr. ApoorvKurup  
Ms. Aparna Arun  
Ms. Nidhi Mittal  
Ms. Soumya Shree

Counsel for the Respondent (s) : Mr. Gopal Jain, Sr. Adv.  
Ms. Poonam Verma  
Ms. Gayatri Aryan  
Ms. Sakshi Kapoor for R-2/PSPCL

Ms. AnushreeBardhan  
Mr. Aneesh Bajaj  
Ms. Surbhi Kapoor for R-3

Mr. Balaji Srivastava  
Ms. Garima Jain  
Mr. Shiva Ok for R-6 & R-10

**APPEAL NO. 131 OF 2022**

**In the matter of:**

**1. WARDHA SOLAR (MAHARASHTRA) PRIVATE LTD.**

*[Represented through its Authorized Representative]*

Adani Corporate House, Shantigram,  
Near Vaishno Devi Circle, S.G. Highway,  
Khodiyar, Ahmedabad  
Gujarat – 382 421

**2. PARAMPUJYA SOLAR ENERGY PVT. LTD.**

*[Represented through its Authorized Representative]*

Adani Corporate House, Shantigram,  
Near Vaishno Devi Circle, S.G. Highway,  
Khodiyar, Ahmedabad  
Gujarat – 382 421

..... Appellants

**VERSUS**

**1. CENTRAL ELECTRICITY REGULATORY COMMISSION**

*[Represented through its Secretary]*

3<sup>rd</sup>& 4<sup>th</sup> Floor, Chanderlok Building  
36, Janpath,  
New Delhi-110 001

**2. SOLAR ENERGY CORPORATION OF INDIA LIMITED (SECI)**

*[Represented through its CMD]*

1<sup>st</sup> Floor, A-Wing, 0-3, District Centre, Saket,  
New Delhi-110 017

**3. NATIONAL THERMAL POWER CORPORATION LTD (NTPC)**

*[Represented through its Chairman]*

Core-7, SCOPE Complex, 7, Institutional Area,  
Lodhi Road,  
New Delhi-110 003

**4. THE MINISTRY OF NEW AND RENEWABLE ENERGY (MNRE)**

*[Represented by its Secretary]*

Block-14, CGO Complex, Lodhi Road,  
New Delhi-110 003

**5. MANGALORE ELECTRICITY SUPPLY COMPANY LTD.**

*[Represented through its Managing Director]*

MESCOM Bhawan,  
Kavoor Cross Road  
Bejai, Mangaluru, Karnataka, 575 004

6. **BANGALORE ELECTRICITY SUPPLY COMPANY LTD (BESCOM)**  
*[Represented through its Managing Director]*  
6, 2<sup>nd</sup> Floor, 2<sup>nd</sup> B Cross Road  
Koramangala 1A Block,  
Koramangala, Bengaluru  
Karnatka 570 034
7. **CHAMUNDESWARI ELECTRICITY SUPPLY CORP. LTD (CESCOM)**  
*[Represented through its Managing Director]*  
Sri Harsha Rd, Lashkar Mohalla,  
Mysuru,  
Karnataka 570 001
8. **GULBARGA ELECTRICITY SUPPLY COMPANY LTD. (GESCOM)**  
*[Represented through its Managing Director]*  
Station Road, Kalaburagi  
Karnataka 585 102
9. **HUBLI ELECTRICITY SUPPLY COMPANY LTD (HESCOM)**  
*[Represented through its Managing Director]*  
PB Road, Durgad Bail, Navanagar,  
Hubballi  
Karnataka – 585 025
10. **NORTHERN POWER DISTRIBUTION COMPANY OF TELANGANALIMITED**  
*[Represented by its Chairman]*  
H. No. 2-5-31/2, Corporate Office,  
Vidyut Bhavan, Nakkalgutta,  
Hanamkonda; Warangal,  
Telangana. 506001
11. **SOUTHERN POWER DISTRIBUTION COMPANY OF TELANGANLIMITED**  
*[Represented by its Chairman]*  
Corporate office:# 6-1-50, Mint Compound,  
Hyderabad, Telangana. 500063
- ..... Respondents

Counsel for the Appellant(s) : Mr. Gopal Jain, Sr. Adv.  
Ms. Poonam Verma  
Ms. Gayatri Aryan  
Ms. Sakshi Kapoor

Counsel for the Respondent(s) : Ms. AnushreeBardhan  
Mr. Aneesh Bajaj  
Ms. Surbhi Kapoor for R-2

Mr. Sri Venkatesh  
Mr. Ashutosh Srivastava  
Mr. JatinGhuliani  
Mr. Rishabh Sehgal  
Mr. Kartikay Trivedi for R-3

## APPEAL NO. 275 OF 2022

### In the matter of:

1. **PARAMPUJYA SOLAR ENERGY PVT. LTD.**  
*[Represented through its Authorized Signatory]*  
Adani House,  
4<sup>th</sup> Floor, South Block  
Shantigram, Ahmedabad  
Gujarat – 382 421
  2. **WARDHA SOLAR (MAHARASHTRA) PRIVATE LTD.**  
*[Represented through its Authorized Representative]*  
Adani House,  
4<sup>th</sup> Floor, South Block  
Shantigram, Ahmedabad  
Gujarat – 382 421
- ..... Appellants

### **VERSUS**

1. **CENTRAL ELECTRICITY REGULATORY COMMISSION**  
*[Represented through its Secretary]*  
3<sup>rd</sup>& 4<sup>th</sup> Floor, Chanderlok Building  
36, Janpath,  
New Delhi-110 001
2. **SOLAR ENERGY CORPORATION OF INDIA LIMITED (SECI)**  
*[Represented through its Managing Director]*  
1<sup>st</sup> Floor, A-Wing,  
0-3, District Centre, Saket,  
New Delhi-110 017
3. **THE MINISTRY OF NEW AND RENEWABLE ENERGY (MNRE)**  
*[Represented by its Secretary]*  
Block-14, CGO Complex,  
Lodhi Road,  
New Delhi-110 003

4. **MANGALORE ELECTRICITY SUPPLY COMPANY LTD.**  
*[Represented through its Managing Director]*  
MESCOM Bhawan,  
Kavoor Cross Road  
Bejai, Mangaluru, Karnataka, 575 004
  5. **BANGALORE ELECTRICITY SUPPLY COMPANY LTD (BESCOM)**  
*[Represented through its Managing Director]*  
6, 2<sup>nd</sup> Floor, 2<sup>nd</sup> B Cross Road  
Koramangala 1A Block,  
Koramangala, Bengaluru  
Karnatka 570 034
  6. **CHAMUNDESWARI ELECTRICITY SUPPLY CORP. LTD (CESCOM)**  
*[Represented through its Managing Director]*  
Sri Harsha Rd, Lashkar Mohalla, Mysuru,  
Karnataka 570 001
  7. **GULBARGA ELECTRICITY SUPPLY COMPANY LTD. (GESCOM)**  
*[Represented through its Managing Director]*  
Station Road, Kalaburagi  
Karnataka 585 102
  8. **HUBLI ELECTRICITY SUPPLY COMPANY LTD (HESCOM)**  
*[Represented through its Managing Director]*  
PB Road, Durgad Bail, Navanagar,  
Hubballi  
Karnataka – 585 025
  9. **NATIONAL THERMAL POWER CORPORATION LTD (NTPC)**  
*[Represented through its Chairman]*  
Core-7, SCOPE Complex,  
7, Institutional Area,  
Lodhi Road,  
New Delhi-110 003
- ..... Respondents

Counsel for the Appellant(s) : Mr. Gopal Jain, Sr. Adv.  
Ms. Poonam Verma  
Ms. Gayatri Aryan  
Ms. Sakshi Kapoor

Counsel for the Respondent(s) : Ms. AnushreeBardhan  
Mr. Aneesh Bajaj  
Ms. Surbhi Kapoor for R-2

Mr. Balaji Srinivasan  
Ms. Garima Jain  
Mr. Shiva Ok for R-5

Mr. D. Abhinav Rao  
Mr. Rahul Jajoo for R-10 and 11

## **J U D G M E N T**

**PER HON'BLE MR. JUSTICE R.K. GAUBA, OFFICIATING CHAIRPERSON**

1. Barring one (Appeal no. 35 of 2022), the six other captioned appeals have been instituted by *Solar Power Project Developers* (“SPPDs”), each aggrieved by the various orders passed by the respondent *Central Electricity Regulatory Commission* (hereinafter referred to variously as “*the Central Commission*” or “*CERC*”) mainly on account of declining the relief in the nature of carrying cost founded essentially on claim for restitution in the wake of ‘*Change in Law*’ (“*CIL*”) provision contained in the *Power Purchase Agreements* (“PPAs”) regulating the financial terms binding the said generators (SPPDs) on one hand and the beneficiaries (procurers), in the array as respondents, on the other. Appeal no. 35 of 2022 is by the distribution licensee operating in the State of Chhattisgarh which is aggrieved by some relief granted to the opposite party (*Parampujya Solar Energy Private Limited*) by Order dated 18.08.2017, it being cross-appeal in relation to appeal no. 299 of 2019. Certain common questions of law against almost similar backdrop have arisen in these appeals and hence they have been taken up together.

**2.** The claim of compensation of the SPPDs in these appeals (except appeal no. 427 of 2019) is founded on the provision of *Change in Law* in PPAs with reference to *Goods and Services Tax* (GST) regime introduced in July, 2017. In Appeal no. 427 of 2019, the claim relates to *safeguard duty on import of solar cells* levied from 30.07.2018. By the impugned Orders, the Central Commission has accepted the enactment of laws bringing in GST, and safeguard duty, as an additional tax burden and allowed the consequent additional expenditure to be passed on for recompense restricting the same, however, to date of commissioning, declining at the same time the element of carrying cost on the reasoning that the PPAs do not have any restitutive provision, also disallowing compensation of consequential additional tax burden on *Operation & Maintenance* (“O&M”) expenses on the ground that such services have been outsourced. The project developers assail the said denials mainly arguing that the view taken runs contrary to foundational basis of CIL provisions, failure to give effect to principle of restitution as understood in civil law, ignoring the applicable statutory provisions envisaging principles of restitution and unjust enrichment and failure to render substantial justice by the Regulatory Authority.

**3.** While the other procurers have accepted the dispensation by the Central Commission through the impugned orders, the distribution licensee in the State of Chhattisgarh by its independent appeal (no. 35 of 2022) questions the legality of the relief granted to the generating company with

which it has a power purchase contract on the ground the Central Commission could not have exercised the jurisdiction in the matter, the power plants in question being located in the State of Chhattisgarh, the supply of electricity thereby generated being *intra-state*, SECI, the intermediary having never informed it (the beneficiary) of the claim of CIL, the projects having actually been declared commercially operational only on 08.03.2018, *after* the GST regime had come into effect.

## BACKGROUND FACTS

### APPEAL NO. 256 OF 2019

**4.** The order under challenge in Appeal no. 256 of 2019 was rendered by the Central Commission on 11.04.2019, commonly governing six petitions which included four (Petition nos. 206/MP/2018, 209/MP/2018, 212/MP/2018 & 226/MP/2018) of first appellant i.e. *Parampujya Solar Energy Private Limited* (hereinafter referred to as "*Parampujya*") and two (Petition nos. 207/MP/2018 & 210/MP/2018) by second appellant i.e. *Wardha Solar (Maharashtra) Private Limited* (hereinafter referred to as "*Wardha*"). *Parampujya* is a generating company primarily engaged in the business of setting up of *Solar Power Plants* ("*SPPs*") and generating electricity. It is wholly owned subsidiary of M/s Adani Green energy Ltd. *Wardha* is also a generating company similarly engaged primarily in setting up of *SPPs* and generation of electricity, it being a wholly owned subsidiary of *Parampujya*.



5. The respondents in appeal no. 256 of 2019 include, besides the Central Commission, the distribution licensees operating in the States of Karnataka, Telangana and Maharashtra (respondent nos. 5 to 12) and additionally three other parties i.e. *National Thermal Power Corporation Ltd.* (“NTPC”), *Solar Energy Corporation of India Ltd* (“SECI”) and *Ministry of New and Renewable Energy* (“MNRE”) in the Government of India, they being in the fray as respondent nos. 2 to 4.

6. It is stated that in the wake of guidelines issued by MNRE on 10.03.2015 and 04.08.2015 for implementation of Scheme for selection of 3000 MW Grid Connected Solar PV Power Projects (“SPPs”) under Phase-II, Batch-II (State Specific Bundling Scheme) and setting up of Grid Connected SPPs under Phase-II, Batch-III with viability gap funding support from National Clean Energy Fund (“VGF Guidelines”), NTPC had invited proposals on 09.10.2015 through a *Request for Selection* (“RfS”) for setting up Grid Connected SPPs of 350 MW capacity (10 MW x 35 projects) on the land to be identified and arranged by *Solar Power Developers* (“SPDs”) in the State of Telangana, this being followed by SECI issuing RfS on 15.02.2016 for setting up of Grid Connected SPPs of 1000 MW capacity in the State of Karnataka and another on 24.02.2016 for setting up of Grid Connected SPPs for development of cumulative capacity of 50 MW in the State of Maharashtra. NTPC, subsequently, issued another RfS on

16.06.2016 inviting proposals for setting up of Grid Connected SPPs of 100 MW capacity (50 MW x 2 projects) in District of Tumkur in the State of Karnataka and *Letter of Intent* (“*Lol*”) for development of 20 MW SPPs in the State of Maharashtra.

7. Lols were issued in favour of *Parampujya* on 20.06.2016 for development of five projects of 10 MW each in State of Telangana. SECI, similarly, issued Lols on 02.07.2016 in favour of *Wardha* for development of SPPs at two locations in the State of Karnataka each with a capacity of 50 MW.

8. *Parampujya* executed a PPA with SECI on 19.07.2016 in relation to proposed SPPs of 20 MW capacity for a period of twenty-five years @ Rs.4.43/kWh, the effective date of each PPA having been identified as 16.07.2016. *Parampujya* also entered into five other PPAs with NTPC on 23.08.2016 for setting up of five projects of 10 MW capacity for twenty-five years @ Rs.4.67/kWh, the effective date having been identified as 19.07.2016. Similarly, *Wardha* entered into two PPAs with SECI on 22.09.2016 for sale of power of 50 MW each, the effective date identified being 02.08.2016.

9. Pursuant to the bids submitted in response to another RfS issued on 04.11.2016, *Parampujya* entered into one more PPA with NTPC on

26.12.2016 in relation to an SPP for twenty-five years @ Rs. 4.86/kWh, the effective date being 03.12.2016.

**10.** In the wake of amendment to the Constitution (One Hundred and First Amendment) Act, 2016, the Parliament enacted the *Central Goods and Services Tax Act, 2017* (“CGST Act”) and *Integrated Goods and Services Tax Act, 2017* (“IGST Act”) both of which came into force from 01.07.2017. By the said enactments, the Central Government was empowered to levy and collect CGST and IGST for *Intra-state* and *Inter-state* supply of goods or services or both.

**11.** The States of Maharashtra, Karnataka and Telangana in due course brought in their own legislation governing the subject of *Goods and Services Tax* (“GST”) by enacting *Maharashtra Goods and Services Tax Act, 2017* (“MSGST Act”), *Karnataka Goods and Services Tax Act, 2017* (“KSGST Act”) and *Telangana Goods and Services Tax Act, 2017* (“TSGST Act”) on 15.06.2017, 27.06.2017 and 21.07.2017 respectively, each made effective from 01.07.2017.

**12.** In terms of the relevant clauses of PPAs, governing the impact of CIL, the appellants issued notices to NTPC and SECI with reference to the aforementioned legislation by the Central and State Governments on the

subject of *Goods & Services Tax* (hereinafter referred to as “*the GST Laws*”) on 15.07.2017.

**13.** The SPPs of the appellants were successfully commissioned, interconnected and synchronized to the respective grids during Financial Year (FY) 2017-18, *after* the enforcement of GST Laws.

**14.** The appellants *Parampujya* and *Wardha* filed six petitions mentioned earlier in June/July, 2018 seeking approval for CIL, the claim for compensation and carrying cost being based on GST Laws, invoking Article 12 of the PPAs. The said petitions were disposed of by CERC, by impugned common Order passed on 11.04.2019 acknowledging that the promulgation of GST Laws constituted CIL event and holding that the respective *Solar Power Project Developers* (SPPDs i.e. the appellants) are consequently saddled with additional burden and so entitled to compensation due to escalation in the cost of construction on account of levy of GST. But, by the said order, the Central Commission has also held that the appellants are not entitled to carrying cost because the PPAs do not have a provision providing for restoration of the parties to same economic position or to compensation on account of consequential additional tax burden on “O&M” expenses since outsourcing of the O&M services is not a mandate of the PPAs.

**15.** As mentioned at the beginning, these two are cross appeals, one filed by SPPD (*Parampujya*) and the other by the procurer i.e. Chhattisgarh State Power Distribution Company Ltd. (for short, "*Chhattisgarh Discom*"). The impugned order under challenge in these appeals was rendered by the Central Commission on 18.04.2019 on two petitions (no. 164/MP/2018 and 165/MP/2018) of *Parampujya*, the Chhattisgarh Discom being concerned with the latter case. In both the above-mentioned appeals (Appeal nos. 299 of 2019 and 35 of 2022), besides CERC, NTPC, SECI and MNRE, the distribution licensees of States of Karnataka and Chhattisgarh are made party respondents.

**16.** It is stated that in the wake of MNRE guidelines concerning State Specific Bundling Scheme issued on 10.03.2015, and pursuant to the RfS issued by NTPC on 01.09.2015, followed by the RfS issued by SECI on 08.03.2016, bids were submitted by *Parampujya*, it having been selected, by NTPC, for setting up of two Grid Connected Solar PV Projects of 50 MW capacity each in the State of Karnataka by Lol issued on 17.05.2016 and, by SECI, for development of two Grid Connected solar Power Projects of 50 MW capacity each in the State of Chhattisgarh through Lol issued on 02.07.2016. *Parampujya* entered into PPAs with NTPC and SCI on 22.07.2016 and 02.08.2016 respectively for periods of twenty-five years for

setting up of the said power plants for supply @ Rs. 4.79/kWh and Rs. 4.43/kWh respectively.

**17.** As noted earlier, the Central Government enacted the GST laws bringing them into force from 01.07.2017. This was followed by enactment on 14.06.2017 of *Chhattisgarh Goods and Services Tax Act, 2017* (“CSGST Act”), also brought in to effect from 01.07.2017 empowering the State of Chhattisgarh for levy and collection of SGST on intra-state supply of goods or services. We have already noted earlier that *Karnataka Goods and Services Tax Act* also came on the statute book on 27.06.2017, the Central and State GST regime (“GST Laws”) becoming effective from 01.07.2017.

**18.** *Parampujya* issued notices to NTPC and SECI on 07.07.2017 and 15.07.2017 respectively claiming title to receive compensation on account of additional burden consequent to the enactment of GST Laws treating the same as CIL events. It may be mentioned here that the SPPs are stated to have been commissioned in the State of Chhattisgarh on 05.10.2017 and in the State of Karnataka on 15.12.2017, *after* the enforcement of GST Laws. Eventually, *Parampujya* preferred the two petitions mentioned earlier on 14.05.2018, invoking Article 12 of the PPAs, for necessary approval of CIL and consequential reliefs on 14.05.2018 also seeking carrying cost. The said petitions were decided by the CERC by the impugned Order dated 18.04.2019 accepting that GST Laws constituted CIL event and approving

the claim for compensation of *Parampujya* due to consequential escalation in the cost of construction but denying the reliefs in the nature of carrying cost as also compensation due to escalation in cost of O&M expenses on account of GST.

**19.** It has been averred by Chhattisgarh Discom (appellant in appeal no. 35 of 2022) that though the Scheduled Commercial Operation Date (“SCOD”) of the relevant project was 01.10.2017, the projects were declared commercially operational only on 08.03.2018, *after* coming into force of the GST laws.

#### APPEAL NO. 275 OF 2022

**20.** This appeal is also by *Parampujya* and *Wardha*, the two appellants in appeal no. 256 of 2019. The order under challenge was passed by the Central Commission on 30.12.2019 commonly on five petitions, they including one (no. 4/MP/2019) of *Parampujya* and four (nos. 352/MP/2018, 355/MP/2018, 358/MP/2018 and 359/MP/2018) of *Wardha*. The background facts refer to VGF Guidelines issued by MNRE on 04.08.2015 and the RfS issued by SECI in their terms on 15.02.2016. On the basis of scrutiny of the bids submitted, Lols were issued in favour of the appellants by SECI on 02.07.2016 resulting in PPAs being signed by SECI on one hand and the two proponents on the other, PPA of *Parampujya* having been executed on 02.08.2016 for 40 MW Solar Power Project, four PPAs having been signed

by *Wardha* on 22.09.2016 for four Solar Power Projects of 50 MW each, the effective date of each PPA being 02.08.2016. The claim for compensation with reference to CIL events was founded on the enactment of GST Laws by the Central Government and State of Karnataka, notices having been issued in terms of the PPA for requisite relief by the appellant on 15.07.2017.

**21.** It is stated that *Wardha* synchronized its power projects with the grid in December, 2017 and January, 2018. The SPP of *Parampujya* was partly synchronized on 19.01.2018. *Wardha's* SPPs were commissioned in February/March, 2018 while that of *Parampujya* was commissioned partly on 08.03.2018. *Wardha* declared Commercial Operation Date (COD) of its projects in March, 2018 while *Parampujya* declared COD of its projects in April/May, 2018.

**22.** The abovementioned petitions filed by *Wardha* and *Parampujya* in November/December, 2018 resulted in the impugned order being passed on 30.12.2019 with similar result as in the other cases, the grievance herein being the denial of expenses additionally incurred due to GST impact for installation of Solar PV Modules (and allied equipment) *after* the COD, disallowance of GST impact on cost of O&M services, and denial of carrying cost.

APPEAL NO. 131 OF 2022



**23.** *Wardha* and *Parampujya* are the appellants in this appeal as well, the grievance against the impugned Order dated 27.03.2020 – passed on Petition nos. 388/MP/2018 and 395/MP/2018 – being similar to the other appeals.

**24.** Pursuant to the RfSs issued on 09.10.2015 by NTPC and 15.02.2016 by SECI in the wake of State Specific Bundling Scheme and VGF Guidelines issued by MNRE, the appellants had participated successfully, Lol having been issued by NTPC for setting up of five projects of 10 MW each in the State of Telangana in favour of *Parampujya* and SECI having issued Lol on 02.07.2016 in favour of *Wardha* for development of solar PV Project of 40 MW capacity in the State of Karnataka. In due course, PPAs were executed by *Parampujya* on 04.08.2016, and by *Wardha* on 20.09.2016, with NTPC and SECI respectively, the effective date for each PPA of *Parampujya* being 19.07.2016 and that of *Wardha* being 02.08.2016.

**25.** GST laws came into effect from 01.07.2017, CIL notices having been issued by the appellants on 15.07.2017. The five projects of *Parampujya* in the State of Telangana were commissioned on 17.11.2017 and that of *Wardha* in the State of Karnataka on 17.12.2017. The petitions were filed seeking CIL compensation based on Article 12 of the PPAs in November, 2018, the plea that promulgation of GST laws constituted CIL having been upheld and compensation due to consequent escalation in the cost of

construction having been allowed but, the relief on account of increase in tax payable on installation of solar PV modules and other associated equipment and allied services incurred *after* COD and O&M expenses incurred on the basis of contracts awarded along with carrying cost having been disallowed.

#### APPEAL NO. 23 OF 2022

**26.** The appellant *Prayatna Developers Private Ltd.* (hereinafter referred to as "*Prayatna*") is also a generating company primarily engaged in the business of setting up of SPPs and generation of electricity. The impugned order was passed by the Central Commission on Petition (no. 43/MP/2019) presented by *Prayatna* impleading NTPC (second respondent) and MNRE (sixth respondent) in addition to three distribution licensees (third to fifth respondents) in the State of Rajasthan, the decision being rendered on 21.01.2020.

**27.** The appellant had participated in the bid process initiated by RfS issued by NTPC on 03.07.2015 pursuant to the State Specific Bundling Scheme and, having been selected, Lols were issued in its favour by NTPC on 29.07.2016 resulting in execution of two PPAs on 16.09.2016 for development of two Grid Connected Solar PV Power Projects of 10 MW capacity each in the State of Rajasthan on long term basis at tariff of Rs. 4.36/kWh, the effective date of the projects under the PPA being 29.08.2016.

**28.** As noted earlier, GST regime was introduced w.e.f. 01.07.2017 by enactment of SGST and IGST Act by the Central Government, followed by the State of Rajasthan also enacting *Rajasthan Goods and Services Tax Act, 2017* (“*RSGST Act*”) for levy and collection of SGST w.e.f. 01.07.2017.

**29.** The appellant *Prayatna* issued CIL notices in terms of PPAs to NTPC on 15.07.2017 after enactment of GST Laws. The two SPPs were commissioned subsequently on 29.09.2017 and 11.10.2017. The appellant preferred the petition seeking approval of change in law compensation in terms of Article 12 of the PPAs on 01.12.2018, the carrying cost having been denied. The appellant then preferred Petition no. 43/MP/2019 seeking grant of carrying cost, the proceedings taken out being in continuation of the petition that was decided on 19.09.2018. The prayer for carrying cost has been denied by the Central Commission by the impugned order dated 21.01.2020 on the ground the PPAs do not contain specific provision for restitution.

APPEAL NO. 427 OF 2019

**30.** The order impugned by this appeal was passed by the Central Commission on 04.10.2019 commonly on four petitions including Petition no. 13/MP/2019, preferred by the appellant, *Mahoba Solar (UP) Private Limited* (hereinafter referred to variously as, “*Mahoba*” or “*MSPL*”). *Mahoba* is a

generating company similarly placed as *Parampujya* and *Wardha*. It has formed a project company namely *M/s Kilaj Solar (Maharashtra) Pvt. Ltd.* for development of SPP.

**31.** The Central Government had issued the “*Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects*” (“*TBCB Guidelines*”) under Section 63 of Electricity Act, 2003 on 03.08.2017. In the wake of RfS issued on 30.01.2018 by SECI for procurement of power from solar PV projects on long term basis through *TBCB Process*, reverse auction was held on 02.07.2018 in which *Mahoba* participated successfully for supplying 50 MW solar power. It having submitted a capacity utilization factor on 19.07.2018 to SECI. SECI issued the *Letter of Award (“LoA”)* on 27.07.2018.

**32.** Subsequently, on 30.07.2018, the Ministry of Finance in the Government of India issued Notification no. 01/2018-Customs(SG) imposing safeguard duty on import of solar cells, whether or not assembled in panels/modules. *Mahoba* sent its acceptance of *LoA* on 31.07.2018 informing that the project would be executed by its fully owned subsidiary, also seeking confirmation that safeguard duty will be allowed as pass through in the PPA. After requisite formalities had been completed, the PPA was executed on 30.11.2018 by the project company of *Mahoba* and *SECI*.

**33.** Based, *inter alia*, on a direction issued on 27.08.2018 by the Central Government, in exercise of its power under Section 107 of Electricity Act, 2003 to the effect that change in domestic duties, levies, etc. are to be allowed as pass through, *Mahoba* filed Petition no. 13/MP/2019 on 02.01.2019. The Central Commission, by Order dated 04.10.2019, has allowed safeguard duty impact to be recompensed though restricting it up to the scheduled commissioning date, denying carrying cost as part of the relief.

### JURISDICTIONAL ISSUE

**34.** As noted earlier, the Chhattisgarh Discom, by its Appeal no. 35 of 2022, it being cross appeal in relation to Appeal no. 299 of 2019 of SPPDs, directed against the Order dated 18.04.2019 on Petition no. 165/MP/2018 has also raised the issue of jurisdiction. This needs to be considered first.

**35.** The regulatory mechanism provided by the Electricity Act, 2003 comprises primarily the Electricity Regulatory Commissions both at State and at Central level, the former including a Joint Commission for more than one State. The State Commissions are constituted under Section 82 while the Central Commission is established under Section 76, their functions having been specified in Section 86 and Section 79 of Electricity Act, 2003 respectively. The relevant parts of Sections 79 and 86 may be quoted thus:

*“Section 79. (Functions of Central Commission): --- (1) The Central Commission shall discharge the following functions, namely:-*

*(a) to regulate the tariff of generating companies owned or controlled by the Central Government;*

*(b) to regulate the tariff of generating companies other than those owned or controlled by the Central Government specified in clause (a), if such generating companies enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State;*

...

*Section 86. (Functions of State Commission): --- (1) The State Commission shall discharge the following functions, namely: -*

*(a) determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State: Provided that where open access has been permitted to a category of consumers under section 42, the State Commission shall determine only the wheeling charges and surcharge thereon, if any, for the said category of consumers;*

*(b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State;*

...”

**36.** From the above, it is clear that the matters of the tariff of generating companies owned or controlled by the Central Government is under the regulatory regime of the Central Commission. Further, the tariff of companies other than those owned or controlled by the Central Government is also regulated by the Central Government if such generating companies have entered into or otherwise have a composite scheme for generation and sale of electricity “in more than one State”. In contrast, the matters relating to tariff for generation, supply, transmission, wheeling, purchases or procurement “within the State” falls to the jurisdiction of the corresponding

State Commission under Section 86 of Electricity Act, 2003. To put it simply, matters pertaining to inter-state transactions of such nature pertain to the jurisdiction of the Central Commission.

**37.** Chhattisgarh Discom contends that the Central Commission has wrongly assumed jurisdiction in the matter because it did not have a composite scheme, the SPPs being located in the State of Chhattisgarh, the power thereby generated being supplied within the same State, to Chhattisgarh Discom only. Reliance is placed on observations of Hon'ble Supreme Court in the case of *Energy Watchdog v. CERC & Ors (2017) 14 SCC 80* to the following effect:

*“26. Another important facet of dealing with this argument is that the tariff policy dated 6th June, 2006 is the statutory policy which is enunciated under Section 3 of the Electricity Act. The amendment of 28th January, 2016 throws considerable light on the expression “composite scheme”, which has been defined for the first time as follows:*

*“5.11 (j) Composite Scheme: Sub-section (b) of Section 79(1) of the Act provides that Central Commission shall regulate the tariff of generating company, if such generating company enters into or otherwise have a composite scheme for generation and sale of electricity in more than one State.*

*Explanation: The composite scheme as specified under section 79(1) of the Act shall mean a scheme by a generating company for generation and sale of electricity in more than one State, having signed long-term or medium-term PPA prior to the date of commercial operation of the project (the COD of the last unit of the project will be deemed to be the date of commercial operation of the project) for sale of at least 10% of the capacity of the project to a distribution licensee outside the State in which such project is located.”*

*27. That this definition is an important aid to the construction of Section 79(1)(b) cannot be doubted and, according to us, correctly brings out the meaning of this expression as meaning nothing more than a scheme by a generating company for generation and sale of electricity in more than one State...*

**38.** The learned counsel for SECI, however, pointed out that being the nodal agency under the *Jawaharlal Nehru National Solar Mission (JNNSM)* it acts as an intermediary trading agency in purchase of power under the PPAs from the SPPDs and resells it to the distribution licensees under Power Sale Agreements (PSAs) on back-to-back basis. It refers to *JNNSM* guidelines notified by the Government of India, particularly the following para thereof:

*“1.6 Phase-II, Batch-III: State Specific VGF Scheme*

*.....*

*These guidelines shall form the basis for selection of Grid Connected Solar PV projects under this scheme. Out of total capacity of 2000 MW, a capacity of 250 MW will be earmarked for bidding with Domestic Content Requirement (DCR).*

*MNRE shall specify the total State-wise Capacity of the projects (both “open Category” and “DCR Category”) based on commitments from the State for off take of not less than 90% of the capacity to be invited by SECI before issue of Request of Selection (RfS). SECI shall tie up for the remaining capacity with the other Buying Entities for which the Host State shall facilitate inter-State transfer of power.*

**39.** It is submitted that there is no mandate of absolute nature that there must necessarily be sale of 10% of installed capacity of the power project to State other than the State where 90% is being sold. It points out that the subject was covered by Article 4.2.2 of the PPAs as under:



“ARTICLE 4.4.2 OF PPAs

*4.4.2 Notwithstanding Article 4.4.1, any excess generation over and above 10% of declared annual CUF will be purchased by SECI at a tariff as per Article 9.4, provided SECI is able to get any buyer for sale of such excess generation. While the SPD would be free to install DC solar field as per its design of required output, including its requirement of auxiliary consumption and to reconfigure and repower the Project from time to time during the term of the PPA, it will not be allowed to sell any excess power to any other entity other than SECI (unless refused by SECI). .....Any energy produced and flowing into the grid before CoD shall not be at the cost of SECI under this scheme and the SPD will be free to make short-term sale to any organisation or individual. SECI may agree to buy this power as a trader if they find it viable outside this scheme.”*

**40.** It also relies on the following clauses of PSAs executed on back-to-back basis:

*“6.5. Third Party Sales by SECI:*

*.....*

*6.5.5. SECI shall have the right to divert the solar power or part thereof and sell it to any third party namely:*

*Any consumer, subject to applicable Law; or  
Any licensee under the Act;*

*SECI shall request the concerned SLDC/RLDC to divert such power to third party as it may consider appropriate.”*

*...*

*6.8 Renewable purchase obligation:*

*6.8.3 The Buying Utility, at any time during a Contract Year, shall not be obliged to purchase any additional energy from SECI beyond 263.063 Million kWh (MU) as per PPAs signed with SECI for solar PV Projects.....*

*6.8.4 Notwithstanding Article 6.8.3, any power which is in excess of the quantum of power agreed to be supplied under this agreement shall be offered to the Buying Utility and in case*

*the Buying Utility does not accept the same, SECI shall take appropriate action as per PPA.”*

**41.** The back-to-back arrangement of the purchase of solar power from the Solar Power Developers and resale thereof to the Buying Utilities/Distribution Companies in the context of similar PPAs and PSAs involving SECI as an intermediary trader had come up before this tribunal in the decision dated 27.02.2020 passed in Appeal Nos. 368, 369, 370, 371, 372 & 373 of 2019 in the matter of *Ayana Ananthapuramu Solar Private Limited v. Andhra Pradesh Electricity Regulatory Commission & Ors.* Batch which, *inter alia*, reads as under:

*“57. Admittedly, the solar power developers have entered into PPAs with Intermediary procurer i.e., NTPC/SECI as the case may be, and PSAs between the intermediary procurer and end procurer i.e., NTPC/SECI with AP Discoms. These PSAs and PPAs between the parties are back-to-back agreements. Therefore, they are not separate transactions; they are part and parcel of one single transaction even in accordance with the provisions of PPAs.”*

**42.** Having heard the learned counsel on all sides, we are not impressed with the objections raised. The SPPDs were set up by *Parampujya* through the TBCB process conducted by SECI under the State Specific Bundling Scheme in terms of MNRE Guidelines notified on 04.08.2015, the scheme requiring a commitment from the State for offtake of not less than 90% of power, it being obliged to facilitate inter-state transfer of the remainder 10% by sale to other entities. Clause 1.6 of MNRE Guidelines may be quoted in this context:

*“1.6 Phase-II, Batch-III: State Special Viability Gap Funding (VGF) in the Scheme:*

*Projects of 2000 MW Capacity under the State Specific VGF Scheme will be set up in the Solar Parks of various States, to be developed through coordinated efforts of Central and State Agencies. As implementation of solar parks have begun recently, it could be possible that Solar Parks in some of the States do not become available soon. For such States, Solar Projects would be allowed to be located outside solar parks with land being provided either by the State Government, or arranged by the Solar Power Developers (SPDs).*

*These Guidelines shall form the basis for selection of Grid Connected Solar PV projects under this scheme. Out of total capacity of 2000 MW, a capacity of 250 MW will be earmarked for bidding with Domestic Content Requirement (DCR).*

*MNRE shall specify the total State-wise Capacity of the Projects (both “Open Category” and “DCR Category”) based on commitments from the State for off take of not less than 90% of the Capacity to be invited by SECI before issue of Request for Selection (RfS). SECI shall tie up for the remaining capacity with the other Buying Entities for which the Host State shall facilitate Inter-State transfer of power.”*

**43.** From the above, it does emerge that the SECI has been entitled to divert power when there is excess generation beyond the quantum of power specified in the PSA read with PPAs. Thus, we accept the submission on its behalf that the basic governing documents viz. the Guidelines issued by the Central Government under section 63 of the Electricity Act 2003 envisage the sale of electricity under a composite scheme in more than one State, the role of SECI as the nodal agency being to promote renewable sources of power on pan-India basis, and the provisions in the PPAs and PSAs entered into enabling sale of power to third parties in certain eventualities which could from time to time be outside the State of Chhattisgarh also, the arrangement

falls within the scope of Section 79(1)(b) of the Electricity Act and, therefore, the jurisdiction lies with the Central Commission.

**44.** The submission of Chhattisgarh Discom that the assumption of jurisdiction by the Central Commission amounts to divesting the State Commission is based on the following observation of this tribunal in Order dated 23.09.2015 in appeal nos. 57 and 58 of 2015 (*Chhattisgarh State Power Distribution Company Limited v. Chhattisgarh State Electricity Regulatory Commission &ors.*):

*“18. ... The submission of the Appellant is that MNRE guidelines divested the State Commission of the said jurisdiction. We have already noted that MNRE guidelines are not made under the Electricity Act. They cannot divest the State Commission of the inherent jurisdiction vested in it in law. In any case, no guidelines can travel beyond the statute.”*

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

**46.** It is not in dispute that SECI has been granted inter-state trading license by CERC, it having been designated by MNRE as the Nodal Agency for implementation of MNRE Schemes. Thus, SECI has agreed to purchase such power from the SPDs. *Parampujya* has an intermediary in the form of

SECI to sell it further to buying utilities on back-to-back basis. In *Energy*

*Watchdog* (supra), the Hon'ble Supreme Court had also held thus:

*“22. The scheme that emerges from these Sections is that whenever there is inter-State generation or supply of electricity, it is the Central Government that is involved, and whenever there is intra-State generation or supply of electricity, the State Government or the State Commission is involved. This is the precise scheme of the entire Act, including Sections 79 and 86. It will be seen that Section 79(1) itself in sub-sections (c), (d) and (e) speaks of inter-State transmission and inter-State operations. This is to be contrasted with Section 86 which deals with functions of the State Commission which uses the expression “within the State” in sub-clauses (a), (b), and (d), and “intra-state” in sub-clause (c). This being the case, it is clear that the PPA, which deals with generation and supply of electricity, will either have to be governed by the State Commission or the Central Commission. The State Commission’s jurisdiction is only where generation and supply takes place within the State. On the other hand, the moment generation and sale takes place in more than one State, the Central Commission becomes the appropriate Commission under the Act. What is important to remember is that if we were to accept the argument on behalf of the appellant, and we were to hold in the Adani case that there is no composite scheme for generation and sale, as argued by the appellant, it would be clear that neither Commission would have jurisdiction, something which would lead to absurdity. Since generation and sale of electricity is in more than one State obviously Section 86 does not get attracted. This being the case, we are constrained to observe that the expression “composite scheme” does not mean anything more than a scheme for generation and sale of electricity in more than one State.”*

*[Emphasis supplied)*

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

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

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

#### CHANGE IN LAW

**49.** The issue of compensation for additional expenditure incurred by the SPPDs on account of CIL, consequent upon enforcement of the GST laws, as indeed the safeguard duty on import of solar cells (in the case of *Mahoba*), and the incidental relief of carrying cost, is common to all the appeals at hand.

**50.** The subject of CIL is covered by Article 12.1.1 of the PPAs in these cases (described as “*RE-PPAs*”), the objective concededly being to off-set the adverse financial effect caused on account of change in circumstances stipulated under the contract, the provision, to the extent relevant, reading as under:

*“12.1.1 ‘Change in Law’ means the occurrence of any of the following events after the Effective Date resulting into any additional recurring/non-recurring expenditure by the SPD or any income to the SPD...*

- the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law;

...

- any change in tax or introduction of any tax made applicable for supply of power by the SPD as per the terms of this Agreement. ”

*[Emphasis supplied]*

**51.** The PPAs contain identical terms on the subject of “*Relief for Change in Law*” in the following form:

*“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]*

**52.** As noted in the narrative of the background facts, the Central Commission has accepted the case of the SPPDs that the promulgation of GST laws, and imposition of safeguard duty on imports on solar cells, constitutes a scenario of CIL within the meaning of Article 12.1.1, the same having resulted in additional recurring/non-recurring expenditure for the SPPDs consequent upon introduction of levy of tax as a result of new law or notification under the existing law having been brought into force. Such that there is no confusion left in this regard, we may quote the following

observations of the Central Commission appearing in Order dated 27.03.2020 (subject matter of appeal no. 131 of 2022):

*“96. The Commission observes that as per Article 12, ‘Change in Law’ means the enactment/ coming into effect/ adoption/ promulgation/ amendment/ modification or repeal of any Law in India; change in the interpretation of any law in India; imposition of a requirement for obtaining any consents or change in tax or introduction of any tax made applicable for supply of power by the SPD as per the terms of this Agreement, resulting into any additional recurring/ non-recurring expenditure or any income to the SPD. The Commission is of the view that harmonious construction of the bullet points under Article 12 makes it clear that bullet point one is wider in scope and refers to the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal of any law in India, including rules and regulations framed pursuant to such law whereas bullet point last in seriatim refers specifically to any change in tax or introduction of any tax made applicable for ‘supply of power’ by the SPD as per the terms of Agreement. Clearly, the ‘GST laws’ enacted are not in the nature of a mere change in the tax having limited applicability on supply of power. Rather, it is in the nature of an enactment having wide ranging implication on the entire indirect taxation regime in India. In the instant case, the ‘GST Laws’ have been enacted by the Act of Parliament and the State Legislative Assemblies. The change in duties/ tax imposed by the Central Government and State Government(s) has resulted in the change in cost of the inputs required for generation and the same is to be considered as ‘Change in Law’. Hence, the Commission holds that the enactment of ‘GST laws’ is squarely covered as ‘Change in Law’ under the first, and last bullet in seriatim of Article 12.1.1 of the PPA.”*

*[Emphasis supplied]*

**53.** Similarly, on the subject of claim on account of imposition of safeguard duty, in the case of *Mahoba*, by Order dated 04.10.2019 (subject matter of appeal no. 427 of 2019), the Central Commission has ruled thus:

*“68. From the above, it is apparent that any tax or application of new tax on “supply of power” covers the taxes on inputs*



*required for such generation and supply of power to the Distribution Licensees. In the instant case, “Safeguard Duty” has been levied on import of “Solar Cells whether or not assembled in modules or panels”. The change in duties/ tax imposed by the Central Government has resulted in the change in cost of the inputs required for generation.*

*69. Accordingly, the Commission of the view that as per the Government of India Notification No. 01/2018-Customs (SG) dated 30.07.2018 and provision of PPAs related to “change in law” the imposition of the “Safeguard Duty” is covered under „Change in Law” under first, and last bullet of Article 12 of the PPAs.*

...

*72. In the instant petitions the bid submission dates are before 30.07.2018 and the SCoD in the petitions are after 30.07.2018. Therefore, in view of the above discussion, the protection under clause of “Change in Law” as contained in Article 12 of the PPAs is available to the Petitioners”*

*[Emphasis supplied]*

**54.** The contention of the SPPDs has been that the concept of CIL enshrined in above quoted clauses of PPAs is based on restitutionary principle whereunder they are entitled to restoration to the same economic position as if CIL had not occurred, that being the intended objective of the parties. It has been submitted that the purpose of a contract is the interests, objectives, values and policy which it is designed to actualize. The appellants submit that once the imposition of new tax regime has been acknowledged and declared as a CIL event, the consequential relief of carrying cost would also flow from the main relief of compensation, the purpose of award of carrying cost being to compensate “for time value of the money”. The contention is that any composition for CIL is incomplete if it does not come with the carrying cost. The appellants seek to highlight the word “any”

qualifying the focal area of compensation on account of CIL occurring in words “any additional recurring/non-recurring expenditure” arguing that Article 12.1.1 signifies wide ambit of the CIL clause, there being nothing to restrict the compensation for CIL, not the least “up to the commissioning date of the projects”. They also submit that mandate of CIL provision in PPAs of all kinds executed on the standard documents drafted by the Government agencies is “restitution” since that is inherent to relief of compensation.

**55.** Each of the SPPDs in appeal before us had argued before the Central Commission on above lines but were unable to persuade the Central Commission to agree.

**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, if 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 than 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 matters 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 as 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*

*13.1.1 “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.

””  
178. 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.

179. 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.*

(1) *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 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 rate even 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 Trehan 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.

**85.** There is one more justification for the view we are taking in the matter and that stems from the provision contained in Section 70 of Indian Contract Act, 1872 which relates to the obligation of person enjoying benefit of a non-gratuitous act.

**86.** It was pointed out, and there was no denial offered, that the respondent distribution licensees had been deriving benefit of non-payment of GST component during the period the claims of change in law were pending adjudication before the Central Commission. As noted earlier, it is the burden of the SPPDs to pay (to the revenue) the new levies from the date(s) of enforcement of the corresponding laws.

**87.** As pointed out by learned counsel for *Mahoba*, under the PPA there is an obligation on the part of SPPDs to ensure “*continuance of supply of power throughout the term of Agreement*”. It is inherent in this that SPD, in order to continue to supply, must reconfigure or repower the plant, if so required, by installing additional modules after the COD since the contractual clause

does not create any distinction as to expenditure pre or post COD, for purposes of change-in-law compensation. The plea for relief concerning post COD cannot be rejected, the expenditure incurred being not meant to be gratuitous, the intent instead being to discharge contractual responsibilities. We may quote the following passage from judgment of Hon'ble Supreme Court in *State of West Bengal v. BK Mondal*, AIR 1962 SC 779, in the context of Section 70 of the Indian Contract Act, 1872:

*“It is plain that three conditions must be satisfied before this section can be invoked. The first condition is that a person should lawfully do something for another person or deliver something to him. The second condition is that in doing the said thing or delivering the said thing he must not intend to act gratuitously; and the third is that the other person for whom something is done or to whom something is delivered must enjoy the benefit thereof. When these conditions are satisfied S.70 imposes upon the latter person, the liability to make compensation to the former in respect of or to restore, the thing so done or delivered. In appreciating the scope and effect of the provisions of this section it would be useful to illustrate how this section it would operate. If a person delivers something to another it would be open to the latter person to refuse to accept the thing or to return it; in that case S.70 would not come in to operation. Similarly, if a person does something for another it would be open to the latter person not to accept what has been done by the former; in that case again s. 70 would not apply. In other words, the person said to be made liable under s. 70 always has the option not to accept the thing or to return it. It is only where he voluntarily accepts the thing or enjoys the work done that the liability under s. 70 arises. Taking the facts in the case before us, after the respondent constructed the warehouse, for instance, it was open to the appellant to refuse to accept the said warehouse and to have the benefit of it. It could have called upon the respondent to demolish the said warehouse and take away the materials used by it in constructing it; but; if the appellant accepted the said warehouse and used it and enjoyed its benefit then different considerations come into play and S.70 can be invoked”*

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

**89.** The facts of the case of *Mahoba* (Appeal no. 427 of 2019) bring in the vice of perversity vitiating the impugned order, certain crucial clauses of the contract having been glossed over.

**90.** The PPA in the case of *Mahoba* was signed pursuant to selection in the wake of RfS issued on 30.01.2018 expressly referring to certain clauses of TBCB Guidelines provided as under:

**““5.7 CHANGE IN LAW**

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

*5.7.2 In these Guidelines, the term Change in Law shall refer to the occurrence of any of the following events after the last date of bid submission, including (i) the enactment of any new law; or (ii) an amendment, modification or repeal of an existing law; or (iii) the requirement to obtain a new consent, permit or license; or (iv) any modification to the prevailing conditions*



*prescribed for obtaining an consent permit or license, not owing to any default of the Solar Power Generator; or (v) any change in the rates of any Taxes which have a direct effect on the Project. However, Change in Law shall not include any change in taxes on corporate income or any change in any withholding tax on income or dividends.”*

**91.** The guidelines mandated thus:

*“6.3 The bidding documents including the RfS and the draft PPA shall be prepared by the Procurer in consonance with these Guidelines and the SBDs...”*

**92.** The RfS document dated 30.01.2018, *inter alia*, declared as under:

*“2.0 Ministry of Power has issued “Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects” vide Gazette Resolution dated 03.08.2017. These Guidelines have been issued under the provisions of Section 63 of the Electricity Act, 2003 for long term procurement of electricity by the ‘Procurers’, from grid-connected Solar PV Power Projects, having size of 5 MW and above, through competitive bidding. This RfS document has been prepared in line with the above Guidelines issued by MoP dated 03.08.2017.”*

*“11.0 This RfS document has been prepared based on the “Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects” issued by Ministry of Power vide Gazette Resolution dated 03.08.2017...”*

**93.** By extension, the stipulation that the SPPD would be entitled to be placed *in the same financial position as it would have had it not been for the occurrence of change-in-law*” stood incorporated in the PPA executed in its wake, the guidelines also having a binding effect [*Energy Watchdog* (supra)].

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

#### CLAIM OF COMPENSATION FOR PERIOD POST-COD

**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.

**PLEA OF ABSENCE OF CLAIM OR NOTICE  
(CHATTISGARH DISCOM)**

**99.** The claim for compensation on account of change-in-law necessarily requires a prior notice under the PPA. It is the grievance of Chhattisgarh Discom that no such notice was issued to it by the generator. It is also submitted that the SPPD had not even sought any relief against Chhattisgarh Discom.

**100.** Having bestowed our anxious consideration to the above arguments, we find no substance in the contentions raised. Chhattisgarh Discom was not a party before the Central Commission in the proceedings initially taken out by petition of the SPPD (registered as Case no. 165/MP/2018). But it is an admitted fact that Central Commission by its Order dated 20.09.2018, had impleaded Chhattisgarh Discom as necessary party thereby putting it to notice. It is not correct to contend that this was an arbitrary decision of the Central Commission. In this context, we would only recall the view already taken by us in earlier part of this judgment on the objection to the jurisdiction exercised by the Central Commission. The PPA and PSA, executed on back-to-back basis, are intertwined and have to be read together. The liability of SECI has to ultimately reach the door of the ultimate beneficiary i.e. Chhattisgarh Discom.

**101.** In the proceedings before the Central Commission, questions had also arisen as to whether it is the obligation of SECI to pay the consequential compensation to the SPPDs under the PPAs or the ultimate beneficiaries would be obliged to do so in terms of the corresponding PSA. The views of the Commission on this issue find articulation as under (quoted from order dated 27.03.2020, subject matter of Appeal no. 131 of 2022):

*“111. From the above, the Commission is of the view that the PPAs and PSAs are interconnected and inextricably linked to each other and as such there is privity between the Petitioners which are the power generators and the Respondents which are the Discoms and the ultimate beneficiaries of the PPAs as well as parties to the PSAs. The back to back nature of the PPAs and PSAs implies that the Respondent Discoms are liable to pay to the Respondents SECI and NTPC all that the said Respondents have to pay to the Petitioners. However, in so far as payment mechanism is considered, the issue raised for decision of the Commission is whether in view of the back to back nature of PPAs and PSAs, the Respondents SECI and NTPC are liable to pay to the Petitioners only when and if the Respondent Discoms make payment to the said Respondents. In this context, the Commission notes the Provisions of Article 10 of PPAs and Article 6 of PSAs (It is pertinent to note that Articles under reference are similarly worded in both the instant petitions).*

...

*114. From the above, the Commission observes that the billing and payment between the Petitioner and the Respondents SECI and NTPC are not conditional upon billing and payment between the Respondents SECI and NTPC and the Respondent Discoms. Although, the above provisions, namely, Article 10 of PPA and Article 6 of PSA, deal with regular monthly tariffs, the underlying philosophy that the billing and payment of one leg is not conditional upon the billing and payment of the other leg, can be equally applicable to the payment towards incremental impact on account of GST being a change in law, as well. In view of the above, the Commission holds that the Power Purchase Agreement and Power Sale*

*Agreement being back to back in nature are interconnected implying thereby that the Respondent Discoms are liable to pay to the Respondents SECI and NTPC all that the said Respondents have to pay to the Petitioner. However, payment to the Petitioners by Respondents SECI and NTPC is not conditional upon the payment to be made by the Respondent Discoms to Respondents SECI and NTPC in view of the provisions of Article 10 of PPA and Article 6 of the PSA. The Commission having held that GST is a change in law, the Respondents SECI and NTPC are liable to pay to the Petitioners as per discussion above. However, the Respondents SECI and NTPC are eligible to claim the same from the Respondent Discoms on back to back basis.*

*[Emphasis supplied]*

**102.** In above view of the matter, the contentions in the above nature are repelled.

#### 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 levelled tariff without disclosing the details of the calculations of the project cost. It has already been held by the Commission in its earlier Orders that it is a pure commercial decision of the Petitioners taken for its own advantage. In the event the Petitioners choose to employ the services of other agencies, it cannot increase the liability for the Respondents. Therefore, the Commission holds that claim of the Petitioners on account of additional tax burden on operation and maintenance expenses (if any), is not maintainable. This view is in consonance with the view taken by the Commission in Order dated 09.10.2018 in Petition No. 188/MP/2017 & Ors. case titled Acme Bhiwadi Solar Power Private Limited –v- Solar Energy Corporation of India and Ors. The Commission does not find merit in the argument of the Petitioners that compensation on O&M expenses should be allowed on lines of the Central Electricity Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2012. The present Petition relates to section 63 of the Electricity Act, 2003 and as such drawing reference to cost plus tariff fixation principles, is misplaced.”*

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

**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.*

*68. 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).*

*69. 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. ...*

*91. 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*



for 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.

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

[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.

## CONCLUSION

**108.** For the foregoing reasons, Appeal no. 35 of 2022 (*Chhattisgarh State Power Distribution Company Ltd. v. Central Electricity Regulatory Commission & Ors.*) must fail. It is accordingly dismissed.

**109.** The other captioned appeals – Appeal no. 256 of 2019 (*Parampujya Solar Energy Pvt. Ltd & Anr. v. CERC & Ors.*), Appeal no. 299 of 2019 (*Parampujya Solar Energy Pvt. Ltd. v. CERC & Ors.*), Appeal no. 427 of 2019 (*Mahoba Solar (UP) Private Limited v. CERC & Ors.*), Appeal no. 23 of 2022 (*Prayatna Developers Pvt. Ltd. v. CERC & Ors.*) Appeal no. 131 of 2022 (*Wardha Solar (Maharashtra) Private Ltd. & Anr. v. CERC & Ors.*) and Appeal no. 275 of 2022 (*Parampujya Solar Energy Pvt. Ltd. & Anr. v. CERC & Ors.*) - deserve to be allowed. We order accordingly directing the Central Electricity Regulatory Commission to take up the claim cases of the *Solar Power Project Developers* herein for further proceedings and for passing necessary orders consequent to the findings recorded by us in the preceding parts of this judgment, allowing Change in Law (CIL) compensation (on account of GST laws and Safeguard Duty on Imports, as the case may be) from the date(s) of enforcement of the new taxes for the entire period of its impact, including the period post *Commercial Operation Date* of the projects

in question, as indeed towards Operation & Maintenance (O&M) expenses, along with carrying cost subject, however, to necessary prudence check.

**110.** It is desirable that decisions in terms of this remit are taken expeditiously, in accordance with law, at an early date, preferably within four months of this judgment. We direct accordingly.

**111.** The appeals are disposed of in above terms.

**PRONOUNCED IN THE OPEN COURT ON THIS 15<sup>TH</sup> DAY OF SEPTEMBER, 2022.**

**(Sandesh Kumar Sharma)**  
**Technical Member**

**(Justice R.K. Gauba)**  
**Officiating Chairperson**

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