

PUNJAB STATE ELECTRICITY REGULATORY COMMISSION
SITE NO.3, BLOCK B, SECTOR 18-A MADHYA MARG, CHANDIGARH

Petition No. 48 of 2024
Date of Order: 22.01.2025

Petition under Section 86(1)(f) of the Electricity Act, 2003 seeking an appropriate adjustment/compensation to offset financial/commercial impact of Change in Law events on account of increase in the rate of goods and services tax from 5% to 12% by way of Notification No. 08/2021 – Central Tax (Rate) dated 30.09.2021, in terms of Article 9 of the Power Purchase Agreement dated 21.06.2022 between M/s SAEL Solar Solutions Private Limited and Punjab State Power Corporation Limited.

And

In the matter of: M/s SAEL Solar Solutions private Limited, Faridkot Road, Guruharsahai, Firozpur, Punjab-152022.

...Petitioner

Versus

Punjab State Power Corporation Limited, The Mall, PSEB Head Office, Patiala, Punjab-147001.

...Respondent

Commission: Sh. Viswajeet Khanna, Chairperson
Sh. Paramjeet Singh, Member

ORDER

1. The Petitioner (SAEL) has filed the instant petition for seeking an adjustment/compensation to offset the financial/commercial impact of the Change in Law event on account of increase in the Central Goods and Services Tax rate from 5% to 12% by way of Ministry of Finance Notification No. 08/2021–Central Tax (Rate) dated 30.09.2021. It has been submitted that:

- 1.1 That the Petitioner is a generating company and PSPCL is a Distribution Company established under the Electricity Act 2003 to carryout distribution of electricity to retail and bulk consumers in the State of Punjab.
- 1.2 That PSPCL issued a Request for Selection (RfS) for procurement of 250 MW solar power vide RfS No. 28/PSPCL/IPC/Solar/250MW/2021/ET-2 dated 18.05.2021. The RfS noted the last date of bid submission as 30.06.2021 which was extended to 31.08.2021 and thereafter to 15.09.2021. In terms of the same, the Petitioner submitted its bid by the said date.
- 1.3 That the tariff of Rs. 2.65/kWh was adopted for the Petitioner by this Commission vide Order dated 28.04.2022 in Petition No. 09 of 2022 and PSPCL issued Letter of Intent No. 542/IPC-889 (Vol-III) dated 11.05.2022 (“**LOI**”) to the Petitioner for procurement of 50 MW Solar Power from grid connected Solar PV Power Plants on long term basis (25 years).
- 1.4 Thereafter, the Petitioner entered into a Power Purchase Agreement dated 21.06.2022 (**PPA**) with PSPCL for supply of 50 MW power to PSPCL at a tariff of Rs. 2.65/-per unit with the project situated at Karamgarh, Tehsil Malout, Distt. Muktsar, Punjab (**Project**). The Change in Law clause of the PPA is highlighted herein for ready reference:
 - (a) In terms of Article 9 (Change in Law) of the PPA, a change in law is deemed to have occurred when there is any event which results in increase/decrease in the Project Cost. Under such circumstances, SAEL/PSPCL would be entitled for compensation from the other party, subject to the condition that such change in law

has been approved by this Commission.

- (b) The quantum and mechanism of compensation payment on account of such change in law shall be determined and effective from the date as decided by this Commission.
- (c) The decision of this Commission to acknowledge a change in law and the date from which it shall be effective shall be final and accordingly govern PSPCL/SAEL.

1.5 In the meanwhile the Central Government increased the rate of GST vide Notification No. 8/2021- Integrated Tax (Rate) dated 30.09.2021 (effective October 1, 2021) which provided as under:

- (a) As per the said Notification, Entry 234 and the entries related thereto with effective CGST and SGCT/ IGST rate of 2.5% (effective 5%) were omitted from the Schedule I and Entry 201A has been inserted to Schedule II wherein the rate of CGST and SGST/IGST is 6% (effective 12%).
- (b) The renewable energy devices i.e., photovoltaic cells whether or not assembled into modules or made up into panels and solar power generators and parts for their manufacture will be leviable to CGST and SGST/IGST at 12%, instead of 5%, thereby leading to an incremental CGST and SGST/IGST of 7%.
- (c) The relevant extract of Notification No. 8/2021- Integrated Tax (Rate) dated 30.09.2021 (effective October 1, 2021) is culled out herein below for the ready reference of the Commission:

“(b) in Schedule II - 6%, -

(iv) after S. No. 201 and the entries relating thereto, the following S.

No. and entries shall be inserted, namely:

“201A	84,85 or 94	<p>Following renewable energy devices and parts for their manufacture:-</p> <p>(a) Bio-gas plant;</p> <p>(b) Solar power based devices;</p> <p>(c) Solar power generator;</p> <p>(d) Windmills, Wind Operated Electricity Generator (WOEG);</p> <p>(e) Waste to energy plants / devices;</p> <p>(f) Solar lantern / solar lamp;</p> <p>(g) Ocean waves/tidal waves energy devices/plants;</p> <p>(h) Photo voltaic cells, whether or not assembled in modules or made up into panels.</p> <p><i>Explanation:- If the goods specified in this entry are supplied, by a supplier, along with supplies of other goods and services, one of which being a taxable service specified in the entry at S. No. 38 of the Table mentioned in the notification No. 11/2017-Central Tax (Rate), dated 28th June, 2017 [G.S.R. 690(E)], the value of supply of goods for the purposes of this entry shall be deemed as seventy per cent. of the gross consideration charged for all such supplies, and the remaining thirty per cent. of the gross consideration charged shall be deemed as value of the said taxable service.”</i></p>
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1.6 Subsequently, the Ministry of New and Renewable Energy (MNRE) issued circular dated 27.09.2022 with respect to the hike in GST Rates, stating as under:

- (a) As per Notification No. 8/2021, the GST rate specified for renewable energy devices and parts for their manufacture have been increased from 5% to 12%.
- (b) The renewable energy developers have represented to MNRE for treating the increase in GST Rates as Change in Law.

(c) The Projects wherein the last date of bid submission was before 30.09.2021 i.e., on or before the issuance of notification would be eligible to consider the hike in GST rate as change in law.

1.7 Accordingly, in terms of the PPA the Petitioner issued a change in law notice to PSPCL on 16.11.2022, highlighting that:

(a) The Notification No. 8/2021 had increased the GST on renewable energy devices and parts. The same has been acknowledged as a change in law by the MNRE vide circular dated 27.09.2022.

(b) In terms of Article 9.2.1 of the PPA, which deals with relief for change in law, the Petitioner would be entitled to relief.

1.8 On 27.12.2022, PSPCL replied to the Petitioner's change in law notice dated 16.11.2022 stating that this Commission is the appropriate forum for adjudication of change in law claims and that the true impact (if any) is only determinable once the expenditure had been incurred by the Petitioner. Further, PSPCL also stated that the Petitioner shall be entitled to the applicable relief (if any) in terms with the Bidding Documents as read with the PPA.

1.9 That in response to its Letter dated 03.03.2023, PSPCL vide Letter dated 22.06.2023 revised the Scheduled Commissioning Date (**SCD**) of the Project to 31.03.2024. Thereafter, on request of the Petitioner made vide letter dated 15.05.2024, PSPCL further extended the SCD of the Project from 31.03.2024 upto 20.06.2024 i.e., the maximum time period allowed with encashment of BG. Thereafter, the

Petitioner's 50 MW Solar Project was commissioned on 20.06.2024.

1.10 That the Notification No. 8/2021, increasing the rate of GST from 5% to 12% on renewable energy parts effective from 01.10.2021 issued by the Central Government in exercise of the powers conferred *inter alia* under Section 9 of the CGST Act, qualify as a change in law event under the fifth bullet of Article 9.1.1 of the PPA. The said notification, being in the nature of an amendment to existing law in as much as the same has been imposed by a notification of the Ministry of Finance, would also qualify as a change in law event under the first bullet Article 9.1.1 of the PPA.

1.11 Relevant Provisions of the PPA

In order to qualify the aforementioned claims as 'change in law', it is pertinent to understand the scope of the 'change in law' provisions under the PPA and the relief that the Petitioner is entitled to, the provisions of the PPA is being reiterated hereunder:

a) The term 'Law' has been defined in the respective PPAs as:

"1.1.1 [...]

"Law shall mean in relation to this Agreement, all laws in force in India including Electricity Laws and any statute, ordinance, regulation, notification or code, rule, or any interpretation of any of them by an Indian Governmental Instrumentality pursuant to or under any of them and shall include without limitation all applicable rules, regulations, decisions and orders of the Appropriate Commission;"

Accordingly, the term 'Law' includes any valid legislation, statute, rule, regulation, notification, directive or order; and

all such valid legislation, statute, rule, regulation, notification, directive or order issued or promulgated by Governmental Instrumentality.

b) Further, the term Government Instrumentality has been defined as:

“Government Instrumentality shall mean the Gol, GoP and any ministry, inspectorate, department agency, body, authority, legislative body under the direct or indirect control of such Government.”

c) Article 9 of the PPA provides for Change in Law and is reproduced hereunder:

“9.1 Definition

9.1.1 *“Change in Law” shall refer to the occurrence of any of the following events after the last date of bid submission.*

(1) ***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;***

[...]

(5) ***Any change in tax, duties and cess or introduction of any tax, duties and cess including any change in the rates of any taxes, duties and cess;***

[...]

9.1.2 *In the event of occurrence of any of the events under Article 9.1.1, which results in any increase/decrease in the Project Cost (i.e., cost incurred by the SPD towards supply and services only for the Project concerned, upto Scheduled Commissioning Date), the SPD/PSPCL shall be entitled for compensation from the other party, as the case may be, subject to the condition that such Change in Law is decided by the PSERC. The quantum and mechanism of compensation payment on account of such Change in Law shall be*

determined and shall be effective from such date as may be decided by the PSERC.

9.2 Relief for Change in Law

9.2.1 The SPD shall be required to approach the PSERC for seeking approval of Change in Law. *The SPD shall also be obliged to approach the PSERC if change in law is beneficial. However, in case SPD does not approach PSERC for a beneficial Change in Law, PSPCL may also approach the PSERC.*

9.2.2 The decision of PSERC 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 SPD and PSPCL.

[...]"

1.12 Thus, enactment of a new law, an amendment, modification or repeal of an existing law and any change in rate of taxes, duty and cess which have a direct effect on the Solar Power Project are listed as events under change in law. Additionally, it is also relevant to note that Ministry of Power vide Letter dated 27.08.2018 had also clarified that any change in domestic duties, levies, cesses and taxes imposed by the Central Government, State Government or Union territories or any Governmental Instrumentality which leads to corresponding changes in cost may be treated as change in law and be allowed as pass through. Therefore, it is relevant to determine the 'last date of bid submission' as any of the aforementioned events would qualify as 'Change in Law' only if it occurs after the last date of bid submission.

1.13 That the incremental expenditure which has been incurred by the Petitioner on account of increase in the rate of CGST and SGST/ IGST vide Notification No. 8/2021 has been certified by a Chartered Accountant evidencing the

incremental expenditure for the respective Projects. And, Article 9 provides that the aggrieved party shall be required to approach this Commission in terms of Article 9.2.1 of the PPA.

1.14 Further, the Petitioner is also entitled to carrying costs on account of increase in Capital Expenditure which has thereby led to an increase in the Debt and Equity Requirement of the Petitioner:

a) That the increase in costs due to change in law events have a direct bearing on debt and equity required for setting up of the Project. These components are integral to the all-inclusive tariff bid. At the time of the submissions of bid, the Petitioner had factored in 'interest on working capital' and 'return on equity' based on the costs prevalent at the time of bid. With the increase in the costs due to the change in law event explained above, the working capital requirement, and consequently, the interest on working capital have also increased as compared to that prevalent at the time of bid. The Petitioner has funded the additional CGST and SGST/IGST from a mix debt and equity in the ratio of 75:25. Therefore, Petitioner is entitled for reimbursement of carrying cost along with interest on carrying cost from the date of occurrence of the Change in Law event i.e., the date from which rates CGST and SGST/IGST increased, till the date of full and final payment to the Petitioner. This is to put the Petitioner in the same economic position as if change in law had not occurred.

b) Further, as per the principle of restitution which is built-in/embedded in the Change in Law clause, in the event a

Change in Law results in any adverse financial loss to the Power Producer, in order to ensure that the Power Producer 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 Power Producer/ 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 this Commission.

- c) Hon'ble Appellate Tribunal for Electricity (APTEL) *in Order dated 16.11.2021 passed in Appeal No. 163 of 2020 and Appeal No. 171 of 2020 in Nisarga Renewable Energy Private Limited v. Maharashtra State Electricity Distribution Co. Ltd. and Anr. and Juniper Green Energy Private Limited v. Maharashtra State Electricity Distribution Co. Ltd. and Anr.*, has also held as under:

"[...] 44. It needs to be borne in mind that carrying cost is the value for money denied at the appropriate time and is different from LPS which is payable on non-payment or default in payment of invoices by the Due Date. Payment of carrying cost is a part of the Change in Law clause which is an in-built restitution clause [see Uttar Haryana Bijli Vitran Nigam Ltd. Vs. Adani Power Ltd. (2019) 5 SCC 325]. We are satisfied that carrying costs on the CIL amount should have been on actuals and not the Late Payment Surcharge ("LPS") rate specified in the PPAs i.e., 1.25% in excess of 1- year MCLR of SBI for the period of 25 years."

1.15 The PPA is based on the provisions of MoP Guidelines issued under the provisions of Section 63 of the Electricity

Act 2003. The MoP Guidelines clearly recognize that the SPD is required to be placed in the same financial position as it would have been had the Change in Law not occurred, which is essentially the principle of restitution. The relevant provisions of the Guidelines has been reproduced hereunder for ready reference:

“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 the 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.”

1.16 The Petitioner also places reliance on the certain Orders in which the Notification No. 8/2021 has been held and declared as Change in Law:

(a) CERC in its Order dated 05.12.2023 passed in Petition

No. 283/MP/2024 and Petition No. 286/MP/2024- JSW Renew Energy Limited v. SECI and Ors has held as under:

*“17. In the instant petitions, bids were submitted by the Petitioner on 28.07.2020. PPAs were executed between the Petitioner and the SECI on 01.05.2021 (in Petition No. 283/MP/2022) and on 27.07.2021 (in Petition No. 286/MP/2022) and the SCoD of the projects were 31.03.2023 (in Petition No. 283/MP/2022) and 15.07.2023 (in Petition No. 286/MP/2022). In terms of SECI's letter dated 05.07.2022, the SCoD of the projects were revised and the Projects were required to be commissioned on or before 30.12.2023 and 28.12.2023 in Petition No. 283/MP/2022 and 286/MP/2022 respectively. We observe that GST rates were amended vide Notification No. 8/2021 - Central Tax (Rate) dated 30.09.2021 w.e.f. 01.10.2021 and Notification No. II(2)/CTR671 (E-1)/2021 issued by Government of Tamil Nadu. **As such, the Petitioner's project was affected by the said notifications. Therefore, we hold that the Petitioner is entitled to compensation on the increase of GST from 5% to 12% on goods only on account of a Change in Law as per the terms of Article 12 of the PPAs due impugned notifications viz. Notification No. 8/2021 - Integrated Tax (Rate) dated 30.09.2021 and Notification No. II(2)/CTR/671(e-1)/2021 dated 04.10.2021.***

[...]

22. We observe that the impact of a change in law event can be only assessed in respect of the project cost when actual expenditure is incurred by the Petitioner. As also admitted on records by the Petitioner that they will approach the Commission when they incur actual expenditure, we hold that as on date, it is not necessary to pass any order on the computation methodology/carrying cost. However, once the

Petitioner incurs actual expenditure, it may approach this Commission separately, seeking compensation qua change in law events.”

(b) CERC in its Order dated 21.12.2023 passed by the Ld. CERC in Petition No. 267/MP/2022- Azure Power Forty-One Private Limited v. SECI and Ors., Petition No. 268/MP/2022- Azure Power Forty-Three Private Limited v. SECI and Ors., and Petition No. 269/MP/2022- Azure Maple Private Limited v. SECI and Ors., took the consistent stand as in *Order dated 05.12.2023* and also allowed carrying cost to the Petitioners. The relevant extract has been quoted hereunder:

“15. [...]

The introduction of Notification No. 8/2021- Integrated Tax (Rate) dated 30.09.2021 has been issued by the Ministry of Finance, Government of India. As such the introduction of the impugned notifications has been enacted by the Act of Parliament. The change in rate of Goods and Services Tax from 5% to 12% w.e.f. 01.10.2021 has resulted in the change in the cost of the inputs required for generation and the same is considered as a ‘Change in Law’. Hence, we hold that Notification No. 8/2021- Integrated Tax (Rate) dated 30.09.2021 (2021 GST Notification) is the Change in Law event as per Article 12 of the PPAs. It is pertinent to mention here that the view taken is consistent with similar orders issued by the Commission, viz. Order dated 05.12.2023 in Petition No. 283/MP/2022 & 286/MP/2022; Order dated 05.04.2023 in Petition No. 216/MP/2022.

[...]

32. ***The Petitioners, in the instant petitions, shall be eligible for carrying costs starting from the date when the actual payments were made to the authorities until the date of issuance of this Order, at the actual rate of interest paid by Petitioners for arranging funds (supported by Auditor’s Certificate) or the rate of interest on working***

capital as per the applicable RE Tariff Regulations prevailing at that time or the late payment surcharge rate as per the PPA, whichever is the lowest. Once a supplementary bill is raised by Petitioners in terms of this order, the provision of Late Payment Surcharge in the PPA would kick in if the payment is not made by the Respondents within the due date. It is pertinent to mention here that the carrying cost in the instant case already factors in the interest on the Petitioner's liability towards payment of GST, and as such, the prayer for 'interest on carrying cost' as a separate component does not sustain.

33. The Commission further directs that the responding Discoms are liable to pay to SECI all the above-reconciled claims that SECI has to pay to the Petitioners. However, payment to Petitioners by SECI is not conditional upon the payment to be made by the responding Discoms to SECI.[...]"

1.17 In view of the foregoing, it is submitted that increase in rate of CGST and SGST/IGST has resulted in an increase expenditure for the Petitioner after the effective date and thus triggers the 'Change in Law' event, as defined under Article 9 of the PPA. That as per Article 9 of the PPA, once a change in law has occurred; the aggrieved party is required to approach this Commission for seeking approval of change in law. Accordingly, the Petitioner has approached this Commission seeking relief on account of the change in law.

1.18 It is, therefore, prayed that the PSERC may:

- (a) Declare the increased rate of CGST and SGST/IGST on renewable energy devices and parts for their manufacture imposed vide Notification No. 8/2021 as Change in Law in terms of the PPA which have led to an increase in the expenditure for the respective Projects;
- (b) Evolve a suitable mechanism to compensate the Petitioner for the increase in expenditure incurred by the Petitioner on account of Change in Law;

- (c) Direct Respondent to compensate the Petitioner towards CGST and SGSR/IGST, as a one-time lump sum amount or mechanism devised by this commission in prayer (b)
- (d) Grant carrying cost along with interest on carrying cost from the date of incurring of the cost by the Petitioner occurrence of Change in Law event i.e., increase in the rates of CGST and SGST/IGST till the date on which the full and final payment is made to the Petitioner, thereby, restoring the Petitioner to the same economic position as before the occurrence of the Change in Law event(s);
- (e) Allow legal and administrative costs incurred by the Petitioner in pursuing the instant petition; and
- (f) Pass any such other and further reliefs as the Commission deems just and proper in the nature and circumstances of the present case.

2. PSPCL' Reply

PSPCL submitted its reply to the petition on 23.12.2024, submitting that the present Petition is liable to be dismissed. Its submissions are summarized as under:

2.1 That the Petitioner submitted its bid on 14.09.2021 for procurement of 50 MW solar power (hereinafter being referred to as "**Project**") in response to the RfS issued by PSPCL for procurement of 250 MW solar power having 15.09.2021 as the last date of bid submission. That the E-Reverse auction took place on 22.10.2021, wherein the Petitioner quoted a tariff of Rs. 2.69 per unit for a capacity of 50 MW. Thereafter, a meeting was held between the negotiation committee of PSPCL and the Petitioner for negotiation of the tariff for the Project on 05.12.2021 and the Petitioner *vide* its letter dated 03.02.2022 agreed to reduce the tariff from Rs. 2.69 per unit to Rs. 2.65 per unit.

- 2.2 The said tariff of Rs. 2.65 per unit was adopted for the Petitioner's project by this Commission vide its Order dated 28.04.2022 in Petition No. 09 of 2022. Accordingly, on 11.05.2022, Letter of Intent was awarded by PSPCL to the Petitioner for procurement of power from 50 MW Solar Power Project for a period of 25 years and the PPA for the same was entered into with the Petitioner on 21.06.2022.
- 2.3 The Ministry of Finance vide Notification No. 08/2021 – Central Tax (Rate) dated 30.09.2021, revised the rate of GST from 5% to 12% on solar power-based devices, solar power generator, windmills, wind operated electricity generator, solar lantern/solar lamp etc., with effect from 01.10.2021.
- 2.4 On 16.11.2022, the Petitioner issued a Change in Law notice to PSPCL. It is pertinent to mention that the in terms of Article 9.3 of the PPA, a Change in Law notice is required to be sent within 60 days from the date of occurrence of such Change in Law. That the GST Notification was issued on 30.09.2021 and the PPA was signed on 21.06.2022. Therefore, even if we consider 60 days starting from the date of signing of the PPA, the Change in Law notice ought to have been issued by the Petitioner within 60 days from 21.06.2022 i.e., by 20.08.2022. However, the Petitioner has issued the Change in Law notice on 16.11.2022 which is way beyond 60 days from signing of the PPA. In view thereof, it is clear that the Petitioner has not fulfilled the basic condition to be fulfilled for an event to be allowed as a Change in Law.
- 2.5 Even otherwise, the notice dated 16.11.2022 does not fulfill the conditions of a Change in Law notice. In terms of Article 9.3.2 of the PPA, a Change in Law notice shall provide

precise details of the Change in Law and its effects on the Project Cost along with documentary evidences including Statutory Auditor Certificate. However, the notice dated 16.11.2022 does not provide any of the above-mentioned details and only provides that the Petitioner will approach this Commission once the actual cost to be incurred has been determined. Therefore, in the absence of an appropriate Change in Law notice in terms of the PPA, the Petitioner ought not to be provided with the benefits of a Change in Law event.

2.6 It is also submitted that the contentions with regard to the claim of GST as a change in law are erroneous. Firstly, at the stage of negotiation of tariff and the execution of the PPA, the GST rate had already increased to 12%. Secondly, the Petitioner has also not given any breakup of the equipment procured and how the increase in GST has affected the Petitioner and the details of the GST payment. It is stated that:

- a) The details of the GST credit that the Petitioner has availed due to the higher GST paid have also not been provided. In case the entire or part of the higher GST paid has been availed as input GST credit by the Petitioner, the same cannot thereafter be passed on to PSPCL as change in law.
- b) That the payment of higher GST on inputs may not result in higher expenditure, as it would depend on the quantum of input credit available to be taken and the total GST that is available to the assessee.
- c) Further, GST is payable only on Inverters and Modules which are installed/required corresponding to 50 MW

Solar Project and no GST is payable on extra Inverters and Modules procured by the Petitioner for inventory etc.

2.7 That the Petitioner has as yet not provided any of the details required to justify its claims. Therefore, it is not entitled to carrying cost on the alleged Change in Law event as the time taken by the Petitioner to substantiate its own claims cannot be taken against PSPCL for payment of interest/carrying cost. Further, the claim for interest on carrying cost is also misplaced. The relief for Change in law has been laid down in Article 9.2 of the PPA, which captures the entirety of the nature of the relief which the Petitioner is entitled to in case of the declaration of a particular event as a change in law event. In terms of Article 9.2.3 tariff shall be revised based upon total extra expenditure incurred (after reconciliation of claim) and only claim of carrying cost upto date of order can be added in the increase in capital requirement.

3. Rejoinder by the Petitioner

On 30.12.2024, the Petitioner filed its rejoinder to PSPCL's reply reiterating its earlier submissions and further adding that:

3.1 Change in Law Notice

PSPCL has contended that a valid change in law notice has not been provided to it in terms of the PPA. In this regard, SAEL submits as under:

(i) SAEL has issued the change in law notice beyond 60 days of being affected by change in law event

A change in law notice is a mechanism to inform the affected party of a change in law and its impact on a contract. It is the submission of SAEL that the sending of a change in law notice to PSPCL was merely a formality. It is

relevant to note that:

a) The Request for Selection (**RfS**) was issued by PSPCL on 18.05.2021 and the Letter of Intent (**LOI**) was issued on 11.05.2022. In pursuance of the RfS read with the LOI, SAEL was to adhere to the bid documents and the PPA which was to be signed subsequently. The LOI was issued subsequent to the Notification dated 30.09.2021 and the PPA was signed on 21.06.2022. Since the Notification dated 30.09.2021 was issued on an earlier date, SAEL could not reasonably and practicably adhere to the mandate under Article 9.3.2 of the PPA which was signed at a later date.

b) That PSPCL was aware of the change in law event and that the project of SAEL was affected by it. The Tariff Adoption Order dated 28.04.2022 passed in Petition No. 9 of 2022 records the submission of PSPCL noting that that subsequent to the bid submission date, the Ministry of Finance has issued Notification dated 30.09.2021. The relevant extract has been quoted hereinafter:

“1. The submissions of PSPCL are summarized as under:

[...]

p) That subsequent to the bid submission date, the Ministry of Finance, Central Government had issued the Notification dated 30.09.2021 increasing the GST rate from 5% to 12% on solar power based devices and solar power generators i.e. modules and invertors.

[...]”

c) That PSPCL in its reply dated 27.12.2022, to the change in law notice issued by the Petitioner, has

replied/stated that as discussed in the meeting on 05.12.2021, SAEL shall be entitled to applicable relief (if any) in terms of the bidding documents. This implies that in the said meeting as well, SAEL and PSPCL discussed the change in law which would accrue to SAEL.

- d) Thirdly, on 27.09.2022 the Ministry of New and Renewable Energy (**MNRE**) recognized the Notification dated 30.09.2021 as a change in law. The present PPA has been signed on 21.06.2022 and the change in law notice has been sent to PSPCL on 27.12.2022 (correct date is 16.11.2022).

(ii) Documentary evidence of change in law event

It is the contention raised by PSPCL that the change in law notice did not contain the effects of project cost along with documentary evidence including auditor certificate. SAEL craves leave to refer to the CA Certificate dated 20.09.2024 (Annexure N, Page 216 of the Petition) which provides for the cost incurred by SAEL due to change in law.

3.2 Further, it is submitted that:

- a) SAEL has not availed the benefit of input credit and is therefore, eligible to the change in law benefit from PSPCL. SAEL is providing herewith a sample GST return which shows that that input tax benefit has not been claimed by it. Any further returns as required by PSPCL can be provided at the time of reconciliation.
- b) On the issue of GST on additional modules and inverters the Hon'ble Tribunal has held as under:

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

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

[Emphasis Supplied]

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

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

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

[Emphasis Supplied]

3.3 Carrying Cost

The contention raised by PSPCL is that carrying cost ought not be granted due to lack of adequate documentation provided on behalf of SAEL. Further, according to PSPCL the time taken by SAEL to substantiate its own claims cannot be taken against PSPCL for payment of interest/carrying cost. In this regard, SAEL craves leave to refer to the CA Certificate dated 20.09.2024 which provides for the cost incurred by SAEL due to change in law. The same shows the impact of the Notification dated 30.09.2021 on SAEL. Further, SAEL undertakes to provide additional documents to substantiate its claim under change in law as and when directed by this Commission.

3.4 Interest on carrying cost

It is submitted that PSPCL ought to provide carrying cost to SAEL in terms of the explicit restitution provision in the PPA. SAEL places reliance on the decision of the Hon'ble Supreme Court in Civil Appeal No. 7129 of 2021 titled as “***Uttar Haryana Bijli Vitran Nigam Ltd. and Another vs. Adani Power (Mundra) Limited and Another***” wherein the Hon'ble Apex Court was pleased to allow interest on carrying cost. The relevant extract has been quoted hereinafter for reference:

“...

17. In the instant case, the respondent No. 1 – Adani Power had to incur expenses to purchase the FGD and install it in view of the terms and conditions of the Environment Clearance given by the Ministry of

Environment and Forests, Union of India, in the year 2010. For this, it had to arrange finances by borrowing from banks. The interest rate framework followed by Scheduled Commercial banks and regulated by the Reserve Bank of India mandates that interest shall be charged on all advances at monthly rests. In this view of the matter, the respondent No. 1 – Adani Power is justified in stating that if the banks have charged it interest on monthly rest basis for giving loans to purchase the FGD, any restitution will be incomplete, if it is not fully compensated for the interest paid by it to the banks on compounding basis. We are of the opinion that interest on carrying cost is nothing but time value for money and the only manner in which a party can be afforded the benefit of restitution in every which way. In the facts of the instant case, the Appellate Tribunal was justified in allowing interest on carrying cost in favour of the respondent No. 1 – Adani Power for the period between the year 2014, when the FGD was installed, till the year 2021.....”

[“Emphasis Supplied”]

4. The Petition was taken-up for hearing on 08.01.2025. The parties mainly relied upon their written submissions made in the petition. The Ld. Counsel of the Petitioner pleaded that the GST Notification dated 30th September 2021 effecting increase in rates from 5% to 12% has been issued after the bid submission date of 18.05.2021 (i.e. date of issuance of RfP) and therefore the Petitioner could not have considered this increase in the cost of the Project while submitting its bid and has to incur additional costs. On Contra, the Ld. Counsel appearing for the Respondent PSPCL submitted that at the time of submitting its bid in the e-Reverse Auction, tariff negotiations/submission of the revised offer and execution of the PPA, the GST rate had already been revised to 12%. After hearing the parties, the Order was reserved with directions that the parties may file written submissions, if any, within a week. PSPCL and SAEL submitted their respective

written submissions on 14.01.2025 and 15.01.2025 reiterating their submissions made during the proceedings of the case.

5. Analysis and Decision of the Commission:

The Commission has examined the submissions and arguments thereon made by the parties. The analysis and decision of the Commission on the prayers made by the petitioner are as under:

5.1 Prayer (a) to declare the increased rate of CGST and SGST/IGST on renewable energy devices and parts for their manufacture imposed vide Notification No. 8/2021 as Change in Law in terms of the PPA.

The Commission refers to the term 'Change in Law' as defined in the PPA, which read as under:

"ARTICLE 9: CHANGE IN LAW

9.1 Definition

9.1.1 "Change in Law" shall refer to the occurrence of any of the following events after the last date of bid submission.

(1)

...

(5) Any change in tax, duties and cess or introduction of any tax, duties and cess including any change in the rates of any taxes, duties and cess;

.....

9.3 Notification of Change in Law

9.3.1 If the SPD is affected by Change in Law in accordance with Article 9, it shall give notice to PSPCL of such Change in Law as soon as reasonably practicable (but no later than 60 days from the date of occurrence of such Change in Law)

9.3.2 Any notice service pursuant to this Article 9.3.1, shall provide, amongst other things, precise details of the Change in Law and its effect on the Project Cost, supported by documentary

evidences including Statutory Auditor Certificate to this effect so as to establish one to one correlation and its impact on the Project Cost.”

In view of above, the Commission analyses the submissions of the parties as under:

a) Issue of consideration of the impugned notification as a Change in Law for the Petitioner’s project:

The Commission observes that the parties are not disputing that the change in tax rate, such as the impugned increase in the Central Goods and Services Tax rate from 5% to 12% vide Ministry of Finance (Department of Revenue) Notification No. 08/2021– Central Tax (Rate) dated 30.09.2021, would constitute a “Change in Law” in terms of the PPA provided it occurs after the last date of bid submission.

Therefore, as also submitted by the Petitioner, it is relevant to determine the ‘last date of bid submission’ as such an event would qualify as ‘Change in Law’ only if it occurs after the ‘last date of bid submission’. To analyze the same, the Commission refers to the Bid Information Sheet of the RfP document, specifying the dates as under:

<i>Last Date & Time for</i>	
<i>a. Online Submission of Response to RfS</i>	<i>Date 30.06.2021 Time 15:00</i>
<i>b. Submission of all documents as per Section 3.18B, physically at the O/o tender issuing authority at Patiala</i>	<i>Date 30.06.2021 Time 15:00</i>
<i>...</i>	<i>...</i>
<i>Reverse Auction</i>	<i>Date 05.08.2021 Time 13:00</i>

As is evident, the process of Reverse Auction is also a part of bid submission. Further, the Petitioner has not disputed that the above dates of 30.06.2021 (for On-line

submission of response to RfS and requisite documents) and 05.08.2021 (for Reverse Auction) were got extended in steps and finally shifted to 15.09.2021 and 22.10.2021 respectively, indicating the last date of bid submission (i.e., the Reverse Auction) as 22.10.2021.

As such, the Notification No. 08/2021–Central Tax (Rate) dated 30.09.2021, which had been issued prior to the date of Reverse Auction process of the bidding conducted on 22.10.2021, cannot be considered as a Change in Law event in terms of the PPA signed by the Petitioner.

Further, the Commission also notes the Respondent PSPCL's submission that, even after submitting its bid of Rs. 2.69 per unit in the Reverse Auction the Petitioner, vide its letter dated 03.02.2022, has further agreed to reduce its bid tariff of Rs. 2.69 per unit to Rs. 2.65 per unit and has signed the PPA on 21.06.2022, indicating that the Petitioner was fully aware of the change in GST rates at the time of Reverse Auction, tariff negotiations/submission of the revised offer and execution of the PPA.

The Petitioner has submitted that PSPCL, vide its reply dated 27.12.2022 in response to the Petitioner's change in law notice dated 16.11.2022, has stated that as discussed in the Meeting (held for negotiations) on 05.12.2021 the Petitioner shall be entitled to the applicable relief (if any) in terms with the Bidding Documents as read with the PPA. This, however, is of no

help to the Petitioner's case as it was not recorded and thus not substantiated in the Minutes of the said Meeting dated 05.12.2021, nor does it find any mention in the Petitioner's final offer letter dated 03.02.2022.

Also, the Petitioner's submission that on 27.09.2022 the Ministry of New and Renewable Energy (**MNRE**) recognized the Notification dated 30.09.2021 as a change in law is misconceived as it also specifies that, "*wherein the last date of bid submission was on or before September 30, 2021, i.e. on or before the issuance of notification*" and SCD including time extensions, if any, was on or after October 1, 2021, REIAs may consider this hike under 'Change in Law'.

Further, while observing that the CERC Orders are not binding on it, the Commission notes that in the cases cited by the Petitioner the complete bidding processes were completed and even the PPAs were signed before the issuance of the impugned notification.

b) Issue of Notification of Change in Law

The Commission refers to Article 9.3 of the PPA (reproduced above) which specifies that the SPD affected by Change in Law in accordance with Article 9, shall give notice to PSPCL of such Change in Law as soon as reasonably practicable (but no later than 60 days from the date of occurrence of such Change in Law) providing, amongst other things, precise details of the Change in Law and its effect on the Project Cost, supported by documentary evidences including Statutory Auditor Certificate to this effect so as to establish one to one correlation and its impact on the Project Cost.

However, the Commission observes that the Petitioner's Change in Law notice issued to PSPCL on 16.11.2022 neither fulfills the criteria of time limit of "not later than 60 days from the date of occurrence of such Change in Law" nor does it contain the details of the Change in Law and its effect on the Project Cost, supported by documentary evidences including a Statutory Auditors Certificate to this effect, as mandated in the PPA.

The Petitioner's submission that the sending of a change in law notice to PSPCL was merely a formality and that PSPCL was already aware of the same is not maintainable in view of the settled law that a process when specified has to be mandatorily followed.

Further, the Petitioner's submission that the Letter of Intent (LOI) was issued on 11.05.2022 and the PPA was signed on 21.06.2022 i.e., subsequent to the Notification dated 30.09.2021 therefore it could not reasonably and practicably adhere to the mandate under Article 9.3.2 of the PPA is also misconceived. Even if the said plea is accepted, the Petitioner's notice dated 16.11.2022 cannot be said to fulfill the stated criteria specified in the PPA since it exceeds the time limit specified in the PPA even if taken from the date the PPA was signed.

Also, the Petitioner's submission that SAEL craves leave to refer to the CA Certificate dated 20.09.2024 which provides for the cost incurred by SAEL due to change in law is grossly delayed in relation to its Notice dated 16.11.2022 (which itself was not in conformity with the schedule specified in the PPA) and hence cannot be

considered as relevant.

In light of the above analysis, the Commission denies Prayer (a) to the Petitioner.

5.2 Prayer (b) to evolve a suitable mechanism to compensate the Petitioner for the increase in expenditure incurred by the Petitioner on account of Change in Law

The Commission observes that the PPA already provides for such mechanism as reproduced below:

“9.2.3 In case of Change in Law as approved by PSERC, the SPD/PSPCL (as the case may be) shall be entitled for relief as follows:

Every net increase/decrease of Rs. 1 lakh per MW in the Project Cost (i.e., cost incurred by the SPD for the supply and services in the Project concerned, upto Schedule Commissioning Date or extended Schedule Commissioning Date, for reasons other than those wherein such extension is on account of payment of liquidated damages, penalty or other charges, as the case may be), shall be liable for corresponding increase/decrease of an amount equal to Rs. 0.005/kwh.”

However, in view of the decision on Prayer (a), this does not remain relevant to the present case.

5.3 Prayers (c) to (e) to direct the Respondent to compensate the Petitioner towards CGST and SGSR/IGST as a one-time lump sum amount or mechanism devised by this commission, to grant carrying cost along with interest on carrying cost from the date of incurring of the cost by the Petitioner occurrence of Change in Law event i.e., increase in the rates of CGST and SGST/IGST till the date on which the full and final payment is made to the Petitioner, and to

allow legal and administrative costs incurred by the Petitioner in pursuing the instant petition:

The Commission observes that in view of its analysis and decision under Para 5.1 above, the said prayers made by the Petitioner have been rendered redundant and hence are dismissed.

The Petitioner's prayers are thus denied and the petition is disposed of in light of the above analysis/observations and directions of the Commission.

Sd/-
(Paramjeet Singh)
Member

Sd/-
(Viswajeet Khanna)
Chairperson

Chandigarh
Dated: 22.01.2025

